# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Kianfar

**Respondent:** Proterms Limited

**Heard at:** London South (in public by video) **On:** 24 January 2025

**Before:** Employment Judge N Wilson

**Appearances**

For the claimant: Mr Kianfar (in person)
For the respondent: Mr Anderson (counsel)

# RESERVED JUDGMENT

The claimant's claim of wrongful dismissal is well founded and succeeds.

The respondent's counterclaim is not well founded and is dismissed.

The matter will be listed for a remedy hearing for evidence to be heard from the parties to determine remedy.

# REASONS

1. The Judgment in this matter was reserved as the hearing unfortunately started late due to a listing issue. We also encountered some technical difficulties once the hearing started. The result being oral evidence did not commence until around 11.30 am with closing submissions concluding at 5 pm. This was not due to the fault off any party. There was accordingly no time for me to deliberate and hand down my decision on the day of the hearing. At the outset it was agreed we would hear evidence about liability and not remedy due to time constraints.

2. I apologise for the delay in providing this decision which was due to an intervening period of leave.

## Background

3. The claimant was employed by the respondent, under a contract of employment as a Tech Lead from 25 September 2023 until 14 February 2024 when he was summarily dismissed for poor performance.

4. The claimant's claim is for wrongful dismissal; a failure to pay him his notice pay.

5. ACAS early conciliation started on 21 February 2024 and ended on 15 March 2024. The claim form was presented on 20 March 2024 (in time) and following clarification requested from the Tribunal regarding the name of the respondent it was accepted on 16 April 2024.

6. The claim is about

   a) Wrongful Dismissal - Notice pay.

7. The respondent's defence is they were entitled to summarily dismiss the claimant as he was negligent in the performance of his duties, claimed to have qualifications he did not have and worked for a third party when he should have been performing his duties for the respondent.

8. The respondent also brings an employer contract counterclaim in respect of losses it says arise from the manner in which the claimant carried out his duties and its belief that he was working for a third party simultaneously while working for the respondent.

## The Complaints

9. The Tribunal will deal with the following complaints:

   a) Wrongful dismissal - Notice Pay
   b) Employers contract counterclaim

## The Issues

10. **Wrongful dismissal / Notice pay**

    10.0 What was the claimant's notice period?

    10.1 Was the claimant paid for that notice period?

    10.2 If not, did the claimant do something so serious that the respondent was entitled to dismiss without notice? The respondent states the claimant:

    10.2.1 claimed to have qualifications that he did not have
    10.2.2 performed his duties negligently

10.2.3 worked for a third party when he should have been performing his duties for the respondent

## The Law

11. An action for wrongful dismissal is a common law action based on breach of contract. It is very different from a complaint of unfair dismissal. The reasonableness or otherwise of an employer's actions is irrelevant; all that has to be considered is whether the employment contract has been breached.

12. The EAT drew out this distinction in **Enable Care and Home Support Ltd v Pearson EAT 0366/09,** where the employee claimed both unfair and wrongful dismissal

13. Turning to the wrongful dismissal element of the appeal, the EAT stated that this question was quite different. The Tribunal was concerned not with the reasonableness of the employer's decision to dismiss but with the factual question: was the employee guilty of conduct so serious as to amount to a repudiatory breach of the contract of employment entitling the employer to summarily terminate the contract?

### Repudiatory conduct justifying summary dismissal

14. An employer faced with a repudiatory or fundamental breach by an employee can either affirm the contract and treat it as continuing or accept the repudiation and terminate the contract, which results in immediate i.e. summary dismissal. Dismissal without notice (or with inadequate notice) is wrongful i.e. is a breach by the employer unless the employer can show that summary dismissal was justified because of the employee's repudiatory breach of contract, or that it had a contractual right to make a payment in lieu of notice.

15. The rule that only repudiatory breaches by employees will justify summary dismissal can be traced back to the Court of Appeal's decision in **Laws v London Chronicle (Indicator Newspapers) Ltd 1959 1 WLR 698, CA**. In that case, Lord Justice Evershed thought that in order to amount to a repudiatory breach, the employee's behaviour must disclose a deliberate intention to disregard the essential requirements of the contract. Some more recent cases have expressed the threshold for repudiation by reference to the implied term of mutual trust and confidence. In **Briscoe v Lubrizol Ltd 2002 IRLR 607, CA,** the Court of Appeal approved the test set out in **Neary and anor v Dean of Westminster 1999 IRLR 288,** where Lord Jauncey asserted that the conduct '*must so undermine the trust and confidence which is inherent in the particular contract of employment that the [employer] should no longer be required to retain the [employee] in his employment'*. The Court of Appeal in **Briscoe** stressed that the employee's conduct should be viewed objectively, and so an employee can repudiate the contract even without an intention to do so.

16. Cases involving repudiatory breaches by employees typically rely on serious misconduct by the employee, such as dishonesty, intentional disobedience or negligence. They often speak of 'gross misconduct' and 'gross negligence', but the underlying legal test to be applied by Courts and Tribunals is not whether the employee's negligence or misconduct is worthy of the epithet 'gross', but whether it amounts to repudiation of the whole contract. This is a question of fact.

17. Any breach of the implied term of mutual trust and confidence has the effect of repudiating the contract of employment. However, in the context of dismissals for misconduct, it may not be helpful to consider the extent to which the conduct in question breaches the employee's obligation to preserve trust and confidence in the employment relationship. For example, in **McFarlane v Relate Avon Ltd 2010 ICR 507, EAT**, Mr Justice Underhill (then President of the EAT) observed: 'Although in almost any case where an employee has acted in such a way that the employer is entitled to dismiss him the employer will have lost confidence in the employee (either generally or in some specific respect), it is more helpful to focus on the specific conduct rather than to resort to general language of this kind. We have noticed a tendency for the terminology of "trust and confidence" to be used more and more often outside the context of constructive dismissal in which it was first developed… [T]his is a form of mission creep which should be resisted.' Similar sentiments were subsequently expressed in **A v B 2010 ICR 849, EAT.** And in **Leach v Office of Communications 2012 ICR 1269, CA,** Lord Justice Mummery, after referring with approval to Underhill P's remarks in the two previously mentioned cases, also enjoined Tribunals and parties not to apply a casual use of 'trust and confidence' terminology when characterising misconduct. His Lordship remarked: '*The mutual duty of trust and confidence, as developed in the case law of recent years, is an obligation at the heart of the employment relationship. I would not wish to say anything to diminish its significance. It should, however, be said that it is not a convenient label to stick on any situation, in which the employer feels let down by an employee or which the employer can use as a valid reason for dismissal whenever a conduct reason is not available or appropriate. The circumstances of dismissal differ from case to case. In order to decide the reason for dismissal and whether it is substantial and sufficient to justify dismissal the Employment Tribunal has to examine all the relevant circumstances.'*

18. A Court or Tribunal must be satisfied, on the balance of probabilities, that there was an *actual* repudiation of the contract by the employee. It is not enough for an employer to prove that it had a reasonable belief that the employee was guilty of gross misconduct.

19. Since the question of whether an employee is in repudiatory breach is a matter of fact, the employer's motivation for wanting to summarily dismiss is effectively irrelevant.

**Contractual terms governing summary dismissal.**

20. The issue of whether misconduct by an employee amount to a repudiation may turn on the terms of his or her contract of employment. In **Dietmann v Brent London Borough Council 1988 ICR 842, CA,** D's contract incorporated a disciplinary procedure which stated that instant dismissal was a possible sanction for offences of gross misconduct. This was defined as 'misconduct of such a nature that the authority is justified in no longer tolerating the continued presence at the place of work of the employee who commits an offence of gross misconduct'. A non-exhaustive list of nine examples of gross misconduct was included in the contract, which also referred to the possibility of other offences of 'similar gravity'. D succeeded in her argument that, on the particular terms of the contract, gross negligence was not gross misconduct and therefore did not justify summary dismissal. The examples of gross misconduct in the contract all involved an element of intention on the part of the guilty employee and comprised conduct which was either dishonest or disruptive. D's gross negligence — a failure to perform properly her professional duties — was not an offence of that type.

21. In **Robert Bates Wrekin Landscapes Ltd v Knight EAT 0164/13,** K's contract of employment contained a clause stating that his employment could be terminated summarily in various circumstances, including if he committed 'any breach of the employer's or customer's security rules'. K was dismissed, having absentmindedly hung on to some bolts belonging to a customer (instead of handing them in), in breach of that customer's security rules. The customer had a contract with the employer representing 40 per cent of the latter's business. The employer argued that K's conduct justified his summary dismissal under the clause, which did not specify that the breach had to be deliberate. Rejecting that argument, the EAT held that the clause did not apply to any breach of security rules, however minor or inadvertent. It had to be interpreted in its commercial context; the general understanding of employers and employees is that absent gross misconduct or gross negligence, an employee will be entitled to notice. Clauses in employment contracts are not lightly to be interpreted in a way which extends the rights of an employer contrary to that general understanding. Putting it in its commercial context and applying normal principles of employment law, the relevant clause applied to a breach that was serious and wilful or grossly negligent. K's breach was not such a (repudiatory) breach and therefore his summary dismissal was wrongful.

22. In this case the contract of employment between the parties at Section 15.1 refers to termination of employment with immediate effect without notice in the event of *gross misconduct* or *fundamental breach of any provision whether express or implied*. Examples of what is considered to constitute gross misconduct are not provided. The respondent relies on the following breaches in its ET3/grounds of resistance:

    a) implied term of trust and confidence
    b) express term of failure to work faithfully and diligently and to devote his full time and attention in the performance of his tasks

c) implied duty to exercise reasonable care and skill in the performance of his duties
d) the claimant had misrepresented his level of skill and experience

23. At an earlier case management hearing the list of issues was identified and they are set out above.

**Disobedience**.

24. An employee who disobeys his or her employer's lawful instructions is likely to be in breach of the implied duty of cooperation. However, not all acts of disobedience are repudiatory breaches. In ***Laws v London Chronicle (Indicator Newspapers) Ltd*** **(above)** the Court of Appeal thought that, to be repudiatory, 'the disobedience must at least have the quality that it is "wilful": it does (in other words) connote a deliberate flouting of the essential contractual conditions'.

25. A single act of disobedience or insubordination may amount to a repudiation. In ***Kempster v Cantor Fitzgerald (UK) Ltd, unreported 19.1.95, CA***, for example, K, a bond broker, was told by a superior to return to his desk as he was distracting other brokers. K swore at the superior in front of the other brokers and refused to do as he was asked. He was summarily dismissed for misconduct. The Court of Appeal upheld the Judge's decision that K had been justifiably dismissed. K had refused to obey a lawful and reasonable instruction. The Court referred to the Laws case and upheld the Judge's decision that K had wilfully flouted his obligation to comply with a lawful order in circumstances which showed that he was repudiating the contract.

**Dishonesty**

26. It is generally accepted that criminally dishonest acts such as theft and fraud amount to serious misconduct justifying summary dismissal at common law. However, the situation may be less clear cut where the employee stands accused of dishonesty which does not amount to a criminal offence. Following the test in ***Neary and anor v Dean of Westminster*** (above), the question here must be whether the employee's dishonesty so undermined trust and confidence that the employer is no longer required to retain the employee in its employment.

**Gross negligence.**

27. An employee's negligent act, or failure to act, can entitle the employer to dismiss without notice, even if not deliberate, dishonest or wilful — provided that that act/failure is sufficiently serious. As with all other forms of repudiation, this is a question of fact to be determined on a case-by-case basis.

28. In **Adesokan v Sainsbury's Supermarkets Ltd 2017 ICR 590, CA,** the Court of Appeal held that the focus must be on the damage to the relationship between the parties and that in a case of alleged gross negligence the question will be whether the dereliction of duty was 'so grave and weighty' as to justify summary

dismissal. Here A was summarily dismissed for gross misconduct following his failure to intervene when a subordinate acted in breach of SS Ltd's employee engagement assessment procedure. In upholding the High Court's rejection of A's claim of wrongful dismissal, Lord Justice Elias observed that a failure to act, without any intention to contradict or undermine the employer's policies, should not readily be found to be such a grave act of misconduct as to justify summary dismissal. However, in the particular circumstances of this case, it was open to the High Court to conclude that A's failure to act had attained that level of gravity. The critical feature justifying that conclusion was that, as regional operations manager, A was responsible for ensuring the successful implementation of the employee engagement procedure in his region. Once it became known to him that the integrity of the process was being undermined (or at least was at risk of being undermined), it was his duty to ensure that this was remedied. Given the significance placed by SS Ltd on the procedure, the High Court was entitled to find that this was a serious dereliction of duty, which undermined trust and confidence and therefore constituted gross misconduct.

29. If the employer finds out after the employee has been dismissed that the employee was guilty of a fundamental breach of contract which would have justified summary dismissal, the employer can rely on this to rebut a claim of wrongful dismissal — **Boston Deep Sea Fishing and Ice Co v Ansell 1888 39 ChD 339, CA.**

## Findings of fact

30. The relevant facts are as follows. Where I have had to resolve any conflict of evidence, I indicate how I have done so at the material point. References to page numbers are to the main hearing bundle comprising sections A-I with a combined total of 407 pages (plus the index). I also have the claimant's witness statement which ran to 4 pages and the respondent's witness statements from Mr Adrian Marlowe. The first of those statements ran to 27 pages and his supplemental statement ran to 11 pages. I have considered all the oral evidence heard and the documents referred to in the bundle. I only refer to as much of the evidence as is necessary to explain my decision.

31. I heard sworn evidence from the claimant and Mr Marlowe (director and sole shareholder of the respondent).

32. The claimant's employment with the respondent commenced on 25 September 2023. He was employed as a Tech Lead. Pursuant to his employment contract his notice period was three months. He was summarily dismissed on 14 February 2024.

33. It is not in issue the claimant was only paid one weeks pay in lieu of notice upon termination of employment.

34. The claimant accepted in evidence that his role was that of a full stack developer. This means the claimant was or ought to have been skilled in building the front

and back of a website. The front of the website being the public facing part and the back end including the server side.

35. At the material time the claimant was developing a new website to replace the respondent's existing live Lawspeed website.

36. The claimant stated in evidence he had 'more experience than the job tole required'. I find he therefore was holding himself out at the material time as someone with suitable skills and expertise to carry out the role.

37. I accept that as the project progressed there were a number of changes which were required by the respondent including content and design changes.

38. From 26 September 2023 the claimant carried out an audit of the existing live Lawspeed website. He did this to ascertain what plug ins they were using and to assess which plug ins were better to use. The clamant did not audit the programming language as part of this auditing process.

39. From the end of September 2023, the claimant accepted in evidence that over a one-month period he was providing demos, and the respondent was giving feedback about those demos. I accept this involved the claimant getting feedback from multiple people some of which may have been contradictory.

40. I accept that at the same time as working on Lawspeed the claimant was also involved to some degree on a redesign of Proterms. Mr Marlowe gave clear evidence as to the degree of that involvement which was unchallenged. I therefore find the claimant had some involvement with Proterms while he was developing the new Lawspeed website, but that involvement was limited to discrete tasks Mr Marlowe had asked him to do. Mr Marlowe gave unchallenged evidence as to the Proterms website being in the process of transfer and that the claimant was only asked to deal with some discrete issues. Whilst the claimant's evidence was that he spent much longer on those Proterms issues there was no evidence of him being asked by Mr Marlowe to prioritise Proterms over Lawspeed. I find the development of the Lawspeed website was Mr Marlowe's priority in terms of Mr Kianfar's job role and nor was this disputed by the claimant.

41. It seems clear based on the claimant's evidence that whilst the tasks given to him in relation to Proterms were discrete and it was not anticipated that they would take up much of his time, they did take up more of his time than perhaps Mr Marlowe was aware. This is based on Mr Kianfar's own evidence, which I accept, that the Proterms website was mostly custom, and the plug ins were not ones he had experience in. It is evident therefore that he spent a greater degree of time on the Proterms tasks than Mr Marlowe was aware of. I did not hear any evidence to satisfy me (and nor do I find) that this was because of any negligence or lack of expertise on the part of the claimant.

42. In any event it is clear Mr Kianfar did not raise any issues with Mr Marlowe that he may be having in dealing with any tasks relating to Proterms nor that the time he was having to spend on those tasks was impacting his ability to work on or deliver the Lawspeed website.

43. There is no evidence (even from the claimant) that the time he had to build the website from the start of his employment to the Lawspeed website launch date on 8 January 2024 was unreasonable.

44. One of the deliverables expected with the new website was to increase the speed. Indeed, Mr Kianfar accepted that he informed the respondent the coding was being changed and that this process will 'massively increase the speed' (page C68). In or around 14 November 2023 the claimant informed the respondent he had increased the speed a bit but was still working on it. He even states it will not be 100% but it should get to 85% 'or something'. It is unclear what the speed of the website was at the point of the launch nor at the time of the claimant's dismissal as I have insufficient evidence of this. I also have no evidence as to the speed of the original Lawspeed website so cannot make a finding about the degree to which the claimant failed to improve the speed of the website. I take note Mr Marlowe gives unchallenged evidence in his witness statement that on 13 February 2024 he ran some website speed tests, and the reported performance was 19/100. There is however no context to this as I have no evidence of whether this changed over the relevant period or what factors may have influenced this speed test on this particular date. I also have no evidence of the speed pre and post launch. It is therefore unclear whether the speed was variable or consistently at this level post launch of the new website. I have no evidence about the speed of the website on the date of dismissal.

45. It is clear in November 2023 (C70) Mr Marlowe states, 'getting the design looking right must be the first box to tick' and indeed goes on to say that they may have to outsource the design aspect given the project has been running for a month. In addition, Mr Marlowe makes it clear in the message that 'we will stick with the current site until the new site is fully resolved'. It appears from this Mr Marlowe was prepared to continue to use the current website until issues with the new site were fully resolved. Notably no issues or concerns are raised at this time with the claimant's ability or the way he was performing his job role.

46. Mr Marlowe then requests the new website to be launched on 8 December 2023. (C74). This is despite his witness statement referring to a number of exchanges between him and the claimant between November and the end of December 223 which he says informed the claimant of multiple issues and problems the claimant was being asked to rectify. I consider Mr Marlowe's witness statement at paragraph 22 and paragraph 23 is inconsistent with the documents in the bundle in this aspect. The exchange of Teams messages from C66 to C81 demonstrate multiple instructions being given to the claimant regarding design and content changes including questions about various functional aspects. The

messages do not support the contention in Mr Marlowe's statement that he and his team were beginning to have concerns during this time that the claimant '*seemed slow to correct problems that we raised, he was slow at getting on with development, the site was taking a long time to complete given the hours he was working for us'*. The exchange of messages for this period in the bundle do not reflect this. They show multiple requests over a short period of time being made of the claimant including design and content changes. I find they show the claimant was available, quick to respond to instructions and to deal with queries. I am also troubled by Mr Marlowe's assertion in his witness statement that he had concerns with the way the claimant was performing prior to the website launch yet:

a) he does not raise this with the claimant
b) there was no extension to the claimant's probationary period which was surely the obvious option available to him where he asserts concerns were noted with performance
c) he continues to entrust the claimant with instructions not only with Lawspeed's development but also Proterms.

47. The claimant's probationary period ended on 25 December 2025 (3 months from his commencement date). The respondent accepts this was not extended but denies a formal passing of the probationary period. The claimant sates there was a conversation between him and Mr Marlowe where he expressed he had passed his probation. However, he was also candid in evidence and accepted there was no formal meeting. I find at the time of any feedback given about his performance no issues had yet emerged regarding the claimant's ability to deliver the website. There was no formal probationary period sign off yet there was similarly no extension to the probation period for any performance issues. This goes some way to support that certainly up until the website was launched the respondent considered the claimant capable and that he was performing his role diligently and with due care and skill. I find it highly unlikely that if the claimant did not have suitable skills and qualifications for the role and/or that he was not acting diligently and devoting his full time and attention to the role that this would not have become evident much sooner than the website launch given the number of demos and meetings which were taking place.

48. The emails between Hannah Porter and the claimant are telling. In particular the ones set out from D1 for the period October 2023 to December 2023 show numerous instructions being given to the claimant regarding the website design and content which he clearly responds to well. It is notable he is thanked for delivering outcomes in relation to those requests. This does not demonstrate someone who is incapable, lacking in expertise or experience and importantly showing a lack of care in the performance of his duties. It also supports the claimant's evidence that not only was he available whenever he was contacted but also there were numerous changes being made pre-launch. Notably the requests increase in the immediate days before the launch on 8 January 2024.

49. I therefore find the respondent has not established a breach of trust and confidence in the claimant's ability to perform his job certainly at any time up until the launch of the website. I find the relationship between the respondent and the claimant up until the website launch remained a good one. I find no repudiatory conduct prior to the the launch of the website justifying dismissal.

50. At no time does Mr Kianfar in evidence state the new website was not ready to be launched on 8 January 2024 (the actual launch date). He does not assert for example that he was pressured into it by the respondent despite there being known issues. To the contrary Mr Kianfar in evidence clearly was of the view he had carried out all necessary testing to satisfy himself the new website was ready for launch on 8 January 2024. He appears to have accepted there would be a number of functional issues which could only become evident and resolved once the website was launched. He conceded in evidence there were some things he may have missed.

51. There is no evidence of any conversation or agreement between Mr Kianfar and Mr Marlowe as to the extent of any teething problems which would be considered acceptable before Lawspeed could be launched, albeit the respondent accepts they expected some teething problems.

52. The claimant was satisfied with the results of his testing, and that the website was suitably operational resulting in the launch.

53. The new Lawspeed website was launched on 8 January 2025.

54. There were a number of issues with the website following launch. The first category was what the respondent referred to as 'appearance/cosmetic issues' which the respondent does not rely as the reasons for dismissal. The second category were 'functional issues' i.e. things that should have been working on the website which were not. The respondent attributes these to the negligence of the claimant.

55. It was not disputed by the claimant the following functional issues arose following the launch of the website:

    a) The privacy policy page was not working
    b) The booking times at page was displaying A404 error code
    c) The sitemap was not working
    d) Several links on the new website were not working
    e) Clicking next service in mobile view did not work
    f) Uploading images for a news article
    g) Payment issues with STRIPE

56. The following were disputed by the claimant as being a functional issue:

a) The contact form on the let's talk page was not working
b) Scrolling function
c) Delays when loading a new page/speed of the site
d) The screen going black when clicking on a link in products and services
e) When clicking on a linked item and then clicking back, being taken back to the homepage not back to the area you clicked from.
f) The author box disappearing

57. I find the functional issues that transpired following launch were all matters which fell within the claimant's job role as the developer of the website and therefore were matters he was responsible for.

58. I find the claimant gave a number of reasons why some of the functional issues arose which amounted to a reasonable explanation thus I do not find they show lack of care and/or negligence on his part. For example, I accept his evidence that he was not informed of all external links which meant they were not picking up the redirect to the new website. I accept that without being given this information by the respondent's marketing team the claimant could not have identified this issue until the site went live. I do not find this issue arose because of any lack of testing or negligence on his part. Put simply if he did not know of the existence of such links, he would not have been able to test them. I also heard no evidence that persuades me he was solely responsible for this as part of his job role as distinct from the marketing team needing to have provided him with this information.

59. Whilst the respondent focuses on the functional issues it attributes to the claimant's alleged gross negligence; I find that at the same time as dealing with functional issues it is clear that following the launch of the website the claimant was also dealing with a number of cosmetic and design changes the respondent wanted him to also attend to. It is not contended these arose due to the claimant's negligence. I find this supports the claimant's contention that during the period before and after the launch there were multiple changes being asked to be made to the cosmetic and design aspects of the website. This goes some way to support his assertion that there were a number of competing demands on his time before the website launch and in the immediate weeks post the launch of the website which I accept. Mr Kianfar readily accepted in his evidence he may therefore have missed some things due to those competing demands on his time. I find he was not clear about how to prioritise the instructions he was being given.

60. I accept that the claimant did undertake multiple tests of the website before its launch despite which some functional issues remained.

61. I also accept a number of the issues the respondent immediately raised post launch in relation to functional issues were not due to any negligence on the claimant's part. For example, I find the issue raised about the contact form not

working ultimately was an issue with someone not completing a security question. Similarly, the issue of being directed back to the home page I accept was a design issue and was present for the respondent to see at the demo stage prior to launch and they did not raise it as an issue pre-launch.

62. I also accepted the claimant's explanation about the mobile view not working. I accepted his evidence that he tested for multiple platforms, devices and browsers. There is no evidence that the mobile view was not working across all devices and browsers. Again, based on the evidence I am not satisfied this is evidence of gross negligence on the part of the claimant.

63. It is also clear the issue with the author box not being able to be changed was resolved after the claimant showed the person involved how to make the changes.

64. The respondent asserts that it is invariably normal practice when launching a website to first test the functionality on a staging site. The claimant gave unchallenged evidence that he could not just apply changes solely to the staging website (for example in relation to testing Cloudflare on the staging site). I am satisfied that some changes had to be made to the live site. It is also evident from the emails in the bundle that he did use a staging site during the development of the website.

65. Ultimately there were a number of very plausible explanations provided by the claimant in evidence which I accept for why some of the functional issues arose.

66. The claimant's case largely centred around:

a) not being given the time to resolve problems and /or
b) some of the issues being his fault due to having too many changes to contend with and/or
c) he had too many competing demands on his time, and he had too much to do.
d) some of the issues would only become evident once the site went live. For example, him not being given details of all links which needed to go through a redirect resulting in error or 404 messages.

67. It was also clear Mr Kianfar did not consider these functional issues to be critical or 'big issues'.

68. I do not find (despite one of Mr Kianfar's Linked In accounts referring to him being a personal trainer) that the claimant did not have prior experience as a web developer, and I am not persuaded that he fabricated his CV. However, it is clear on his own evidence there were a number of issues which he had not experienced before. He may indeed have found aspects overwhelming. It is evident from his evidence and the bundle that he was clearly spending

weekends and evenings working on the job. However, at no time did he give the respondent any indication of having too much to do and nor did he let the respondent know the website was not fully functional and operational and ready to launch. I find he believed he had carried out sufficient testing and it appears he was comfortable with there being some functional issues as he did not appear to consider them to be significant even on his evidence. Mr Kianfar did ultimately resolve a number of the functional issues over the course of 2 to 3 weeks post website launch, but by this time the respondent states they had lost trust and confidence in him and no longer believed he had the skills and experience to carry out the functions of the job role he was engaged to do.

69. It is not in issue the payment issue was not resolved for approximately 2 weeks after the website launch. It appears to have been resolved on or around 22 January 2024. There subsequently appears to have been an further issue with STRIPE after a configuration on or around 1 February 2024.

70. The respondent in cross examination of the claimant referred to the items set out at paragraph **55 a) b) and c)** as being minor issues. I heard no evidence to persuade me these issues were considered to be significant at the material time nor evidence of gross negligence on the part of the claimant.

71. I find the claimant gave reasonable explanations for the issues set out at paragraphs **55 d) e) f) and 56 a) b) e) and f).** I heard no evidence to persuade me these issues occurred due to negligence on the part of the claimant.

72. This leaves **55 g)** (payment issues with STRIPE), **56 c) (**delays when loading a page/speed of the site) **and 56 d)** (black screen appearing) in respect of which I was not satisfied I heard a reasonable explanation for from the claimant. I will deal with each of these in turn below.

***STRIPE/payment issue***

73. The reason for the payment issues was not a problem with STRIPE. The claimant gave evidence that the payment issues related to a specific bank card and the issue was outside his control. The respondent's position is they had utilised STRIPE (the same payment method) on the old website with no issues.
74. The claimant relies on the record of a telephone conversation between himself and STRIPE to argue that the issue with payments not going through was not a technical issue (ie within his role and responsibility but rather a banking issue). It is clear the payment issue was not preventing all payments being processed. The respondent asserts it was not a banking issues but rather an IT one. It was unchallenged evidence that the respondent's previously live Lawspeed website used the same payment system, and they never had this issue. The claimant argues it was just an issue for specific cards and could not have been tested for during the developmental phase of the website. I find the problem was with certain cards/banks and not all payments. I accept the claimant had tested the

payment process pre-launch and it was working with the bank card he used during the testing. The bundle contains a transcript of the conversation the claimant had with STRIPE on 16 January 2021 (the claimant accepting in evidence the reference to Adrian Marlowe's name in the transcript of the conversation was in fact him speaking with 'Gracey' at STRIPE). It was unchallenged evidence that the claimant was asked by Mr Marlowe on or around 23 October 2023 to check the payments arrangement was being set up by him involving using STRIPE as the money collector and the plug in WooCommerce. I find the issue was not with STRIPE because the issue was ultimately resolved by the claimant at the end of January 2024. It transpired the issue with was how WooCommerce had been set up with STRIPE. I find this would have been part of the claimant's job role and therefore on balance I find he did not set up the payment settings correctly. He did however resolve these initial payment issues albeit approximately 2 weeks post launch of the website.

75. The payments issue I accept was of great concern at the material time particularly as the respondent had a seminar arranged which they were needing people to pay for and attend at the relevant time and they were concerned payments not being able to go through was having a direct impact on this.

***Black Screen***

76. I found the claimant gave no plausible explanation as to the presence of a black screen which I note was resolved at one point but later re materialised. It is unclear from the evidence whether this was in fact resolved prior to his dismissal. I have to find therefore this was due to some error on his part.

***Loading speed/speed of site***

77. I was not satisfied with the explanation for the delay with the loading speed. I found Mr Kianfar's evidence about this to be vague and not persuasive. However as referred to previously (above) I also have no evidence as to the speed of the original Lawspeed website so cannot make a finding about the degree to which the claimant failed to improve the speed of the website. However, I do accept the loading speed and the speed of the site in general was slower than expected by the respondent.

78. There are a number of other matters the respondent asserts point to a repudiatory breach of contract which I will deal with below.

***Google search results:***

79. The claimant had built the website so that Google identified a testimonial on the home page as distinct from what the company does and who they are. The claimant's evidence in this regard was vague and unsatisfactory. I find the respondent had a reasonable expectation of what the Google search result

should have been, and that the claimant ought to as a web developer also have known this, and the website ought to have been built accordingly. I find the claimant did not deliver this objective as requested by the respondent.

***Cookies consent:***

80. In February 2024 it became clear that the claimant had not added any cookies process onto the website. I accept the respondent's unchallenged evidence that failure to put in place appropriate consent processes for use of cookie data is unlawful and in breach of the Privacy and Electronic Communications Regulations 2003 (as amended). I also accept that an experienced website developer ought to have been aware of the need for this when developing the website. The respondent states they raised this with the claimant. On 1 February 2024 (C99) the respondent asks about cookies and the claimant replies that cookies is being used. It is notably the claimant who says that as he has added analytics, cookies consent also needs to be added. He was therefore clearly aware of the requirement for it. The claimant raises this with the respondent again on 6 February 2024 (C99). It is the claimant who refers to needing it to be GDPR compliant. It it is clear the claimant had not put this in place before the launch of the website. However, it is also evident, contrary to what the respondent asserts, that he knew this was required and why it was required, which again supports that he had sufficient experience to be aware of this. This goes some way to rebut the assertion that he has been dishonest about his experience/knowledge. His evidence was that during the time he had a number of competing priorities, and he essentially had too much to do, and all matters were urgent. There is no indication in the contemporaneous documents/Teams' messages that the claimant required more time to test the functionality or to implement key components of the website before it could be launched. The claimant however was clearly working on days off and late at night and this was clearly also known to the respondent. It ought to have been obvious perhaps the claimant appeared to have too much to do if he was having to work outside of normal hours during the relevant period which may have impacted his performance. I find the cookies consent was delayed but not because of any lack of care or gross negligence but rather due to the claimant having too many competing demands on his time and it was overlooked pre-launch. However, it was resolved by him prior to his dismissal.

***Website Crash***

81. The website crashed on 10 February 2024 during the claimant making changes. This essentially was the site 'freezing'. It is unclear how long it had frozen for but from the bundle the issue occurred over a weekend and was resolved over the same weekend. The claimant had installed multiple plug ins and uninstalled them, and whilst making changes the cPanel logged him out and the website crashed. The changes were being made during a weekend on his day off. In oral

evidence he states he was taking back ups, and his evidence indicates it was not a significant issue. Indeed, he states 'you never have a website that doesn't crash'.

82. The claimant accepted in evidence the cPanel is part of the infrastructure of the website and he also accepted he was given a direct instruction by Mr Marlowe not to make changes to the infrastructure of the website without his written authority first before the 10 February 2024 (C94). It is notable the instruction gives the example of the claimant not getting Cloudflare without Mr Marlowe's prior authority and does not specially refer to accessing the cPanel. I accept the cPanel is infrastructure. The claimant did not accept however that he was in direct breach of that instruction by making the changes he did which caused the website to crash because he stated he needed access to the cPanel as the Tech Lead in order to develop the website. That may be right, but the relevant point is he had prior to this been given a direct instruction by Mr Marlowe and I find he did indeed contravene that by his actions on 10 February 2024 which resulted in the website crash. I do not find he was wilfully disobedient. I find he believed at the material time being able to access the cPanel was an inherent part of this job role as Tech Lead. Mr Marlowe's witness statement at paragraph 69 states he could not see any valid reason for him to access the Proterms cPanel. However, it is notable the claimant and Mr Marlowe exchange Teams messages during the developmental phase pre-launch regarding access to the cPanel. There is no instruction by Mr Marlowe that he is not authorised to do this at any point pre-launch. I find the claimant did not reasonably believe the instruction given by Mr Marlowe included the cPanel and I heard no persuasive evidence that a Tech Lead doing this role would have no legitimate need to access the cPanel.

83. Mr Kianfar did provide a reasonable explanation as to why he accessed the cPanel as part of his role (including using different plug ins to try and increase the speed of the site) albeit these actions he readily accepted at the material time caused the freeze (C102). Indeed, Mr Marlowe does subsequently give the claimant access to the cPanel when he is locked out of it. This supports that as Tech Lead it would not be unusual for the claimant to need to access the cPanel. I am not satisfied a reasonable explanation is given by Mr Marlowe as to why, if the trust and confidence was destroyed so significantly at this point (particularly where he refers to this incident as 'the final straw') he allowed Mr Kianfar access to the cPanel following this website freeze.

***Remote working access***

84. The respondent asserts that there were a number of failures by the claimant in January and February 2024. One such failure being the ability of staff to remotely access their computer system via VPN (virtual private network) and failure to email customers via the marketing supplier Mail chimp. STRIPE informed the respondent on 31 January 2024 that the DNS setting was wrong. When this was

reported to the claimant he changed the IP address without any discussion with Mr Marlowe. I accept this change was implemented without proper regard to the consequence (in this instance causing a problem with staff unable to connect remotely to the respondent's server as the change of IP address disabled the VPN locking out staff). The claimant gave no reasonable explanation for this, and it was clear he had simply not appreciated this as a consequence. I find this was an error on his part.

***Working elsewhere/absence during working hours***

85. The claimant accepted that when Mr Marlowe asked to speak to him on 14 February 2024 regarding his concerns, the claimant was on an extended lunch break and decided to go shopping after that. His contracted lunch break hours were 'generally' between 12-2 p.m. The Teams messages indicate he got back from any extended lunch break/shopping trip on 14 February at 4.24 pm. I accept he started his lunch later that day than his contracted hours. I accept the claimant's evidence that he considered there to be a flexible approach to this due to him having worked weekends and evenings when this was not part of his contracted hours. The respondent also notably in the responses to the Teams messages where the claimant says he is going shopping and/ or having a late launch makes no issue of this. I therefore accept it was acceptable for him to have taken an extended lunch in the circumstances given no issue was taken with that at the material time. Although it is referred to in the letter of dismissal it was not mentioned during the messages between the claimant and Mr Marlowe on Teams during that afternoon. I do not find there is any evidence the claimant was unavailable because he was working elsewhere.

86. Mr Marlowe in agreement with his team arrived at the conclusion the claimant had not performed his job role satisfactory and was negligent and/or did not have the technical capability to continue to perform his job role.

87. On 14 February 2024 Mr Marlowe attempted to have a Teams meeting with the claimant (this was at the time the claimant had taken a late lunch and was then unavailable due to going shopping). Mr Marlowe did speak to him at some time on 14 February 2024 and terminated his employment with immediate effect. On the same day at 17.18 pm Mr Marlowe wrote to the claimant confirming the dismissal. The reasons for the dismissal centre on the website failing to meet the required performance, speed, functionality and failure to follow instructions regarding the STRIPE payment process, the failure of the redirects for links and the 'black page' issue.

88. Mr Marlowe in the dismissal letter cites that the incidents either collectively or individually are so serious that they amount to a fundamental breach of his employment contract and in a breakdown of trust and confidence in the claimant such that his employment is terminated with immediate effect.

89. The claimant was paid one week's statutory notice, and he received one weeks pay in lieu.

***Dishonesty/qualifications***

90. The claimant's Linked In account profile (at page F1) states he is a fitness coach/web developer since September 2023. It does state he started to focus on his fitness career in September 2023 by becoming a part time developer. This period is during the same period he is employed by the respondent full time. However, at page F2 he also refers to being a full-time web developer since September 2023 albeit he describes himself as freelance/self employed. The respondent argues this shows that the claimant was doing other work when he was employed with them. Or in the alternative he was being dishonest which goes to credibility.

91. The respondent also relies on the claimant's bank statements which he was ordered to disclose by the Tribunal as being incomplete disclosure. They rely on the bank statements showing transfers of sums of money and that those transactions must be from a linked account which belongs to the claimant and which he has not disclosed. This is relied on to establish income from another employment (s). The claimant gave evidence that the only transfers will have been from his sister or from 'another' nationwide account. I found his evidence to be confused rather than dishonest when answering the questions about the other bank accounts. He said he does not have any other accounts just Nationwide and Halifax but then he openly referred to the transfer either being from his sister or 'another' nationwide account. He may have reasonably been confused about the extent of disclosure required in this regard. I do not find any omission in this regard was deliberate. I did not find the claimant dishonest or lacking in credibility when giving his evidence.

92. In any event I am not persuaded the claimant was doing another job at the time he was working for the claimant. I note this is not something the respondent considered until the date his employment was terminated when the claimant took an extended lunch break to go shopping. I find it is more likely than not that had the claimant been doing another job during the hours he was contracted to work for the respondent this would have become evident far sooner. There is no cogent evidence before me that for example the claimant was unavailable during working hours or that he failed to attend meetings or was not contactable. I have no evidence to persuade me of the claimant working elsewhere during the relevant period. Mr Marlowe was indeed candid in his evidence stating he did not believe this to be the case until he saw the claimant's Linked In page. He makes the assumption based on what he estimates the claimant spent in hours on the development of Lawspeed versus what he reports the replacement developer took. However, this calculation discounts the time the claimant states it took for him to deal with multiple changing instructions from different team members and the time he says it took him to deal with any instructions for

Proterms. It also does not take account of what was resolved by the claimant prior to his dismissal. Nor do I have any evidence of the extent of the replacement developers remit and/or to what extent they were dealing with matters from the same starting point as the clamant. There would inevitably have been design and content matters for example which would have been resolved after the initial launch in January 2024 so they would have had a different level of involvement to that which the claimant did.

93. Whilst the respondent may have considered the claimant's involvement in Proterms to have been limited I have accepted the claimant appears to have taken longer to resolve or deal with those instructions than the respondent may have thought it would take. The respondent may not like that he spent longer on those instructions than they think was required but I heard no evidence to persuade me this was due to any negligence or lack of experience. Indeed, there could be any number of things even an experienced web developer will not have encountered/may have taken time to resolve. This in itself is not evidence of negligence.

94. I also accept the claimant simply had different Linked In account pages. I am not persuaded this is evidence of his qualifications being misrepresented. The Linked In page screenshots in the bundle have no context; for example, I cannot be sure when they were created, which were active, and which were being posted on at any given time over the relevant period. The claimant says he had different accounts at different times for different job roles. I find this is not evidence of dishonesty nor evidence that at the material time when he was employed to work for the claimant he was working elsewhere.

95. I heard no cogent evidence to persuade me the claimant did not have the educational qualifications the respondent says were mispresented. Nor did I hear any cogent evidence to persuade me the claimant did not have the claimed level of experience on his CV. There are a number of functional errors which I am satisfied the claimant provided a reasonable explanation for and were not as a result of any negligence on his part. I am not persuaded that the functional errors which I would class as more significant are evidence of dishonesty on the part of the claimant about the level of experience and/or qualifications he had. This is an assumption on the part of the respondent which I am not satisfied there was sufficient evidence to support. It is evident, to the contrary, the claimant had sufficient expertise for the respondent to have not noted any lack of experience, skill and expertise during the testing and demo phases of the new website development, nor anything of significance to require for example an extension to his probationary period. The claimant clearly had sufficient technical expertise to be able to develop and launch the new website and to resolve a number of the design and functional issues pre and post launch. He has also established not all the issues the respondent raised and relies on were due to any negligence on his part. I am not persuaded he therefore did not have the

qualifications and experience he disclosed to the respondent. Having experience and qualifications does not mean an employee will not make errors.

## Conclusion

96. In a wrongful dismissal case, I am of course able to take into consideration matters that came to the employee's attention after the termination. I remind myself that I must be satisfied, on the balance of probabilities, that there was an *actual* repudiation of the contract by the employee. It is not enough for an employer to prove that it had a reasonable belief that the employee was guilty of gross misconduct.

97. I do not find that on balance the respondent established two critical matters; that the claimant mispresented his degree and/or qualifications (this is assumed because of the functional issues which arose) nor that he was working elsewhere during the time he was contracted to work for them (this is assumed because of different Linked in profiles and an extended lunch break/shopping expedition on the day of termination). I have not found that during the period he is alleged to have been grossly negligent (to justify summary dismissal) he was a) unavailable at any point to fulfil the functions of his job role and b) that he did not have the qualifications he asserted to have. Cases involving repudiatory breaches by employees typically rely on serious misconduct by the employee, such as dishonesty, intentional disobedience or negligence. They often speak of 'gross misconduct' and 'gross negligence', but the underlying legal test to be applied by courts and Tribunals is whether the alleged conduct amounts to repudiation of the whole contract.

98. Mr Marlowe's evidence is that given the claimant's history of attempting to fix an issue without having regard to potential adverse consequences the respondent issued the instruction to not make any changes to the infrastructure without obtaining Mr Marlowe's prior written agreement. However crucially there is no evidence that Mr Marlowe informs the claimant even when this instruction is issued on 31 January 2024 that he has lost confidence in the claimant's ability to do the job. Indeed, to the contrary the context to the instruction is that it follows the issue with Cloudflare, and the message clearly refers to Mr Marlowe knowing that the claimant was planning to set it up but that he wanted to know what he has arranged/the plan and 'so on'. Indeed, it appears to be a request made so Mr Marlowe can keep a record of what the claimant was doing. The claimant continues to work for the respondent following the instruction and there is no evidence that he is not attempting to perform his job role. The claimant is not informed of any concerns about the way he is performing his job role until a Teams message on 12 February 2024 from Mr Marlowe. I am not satisfied the respondent's trust and confidence in the claimant had been affected to the degree to which is now asserted certainly before this date. Had it been, I find it highly unlikely on the balance of probabilities Mr Marlowe would not have raised it particularly in the context of the instruction he now says was given because of that lack of trust and confidence. It is troubling that there is no evidence of any

serious concern with the claimant's abilities or the way he was doing the job in the Teams' messages between Mr Marlowe and the claimant post website launch until the message on 12 February 2024.

99. Mr Marlowe in his witness statement states he was concerned the claimant would blame the issue on someone else and had no perception of the damage it was causing or the time it was wasting. Whilst the claimant was able to give a number of possible reasonable explanations for some issues (eg the issue with scrolling, the contact form issue arising because Hannah Porter had missed a security question and the clicking back to the home page issue being a design not functional issue which could have been raised by the respondent pre launch as it was a feature which was present before the launch) I was not satisfied with his responses to what I would consider to be the more significant functional issues such as speed, black pages, payment issues, cookies consent.

100. On balance I find there were a number of functional issues with the website the claimant was employed to develop which resulted from acts or omissions on the claimant's part namely;

a) Not suitably testing the functionality specifically in relation the speed of pages loading
a) Not ensuring the STRIPE payments transfer was fully functioning and/or failing to set up the appropriate plug ins for the payment process to be fully functioning
b) changed the IP address without regard for the consequence to access for remote workers
c) failing to suitably enhance the speed of the website
d) crashing the website due to installing multiple plugin ins for speeds**.**

101. I do not find objectively the claimant's behaviour disclosed a deliberate intention to disregard the essential requirements of the employment contract. Whilst the respondent also relies on an instruction given to the claimant not to make any functional changes without prior agreement from the respondent, I do not find on the facts of this case that there was substantial insubordination or intentional disobedience by the claimant. There is certainly no pattern of the claimant failing to comply with instructions. On the contrary he appears to have been attempting to resolve issues post the website launch to improve the functionality at the material time as opposed to a deliberate flagrant disregard of an instruction or a negligent one.

102. I do not find there was a dereliction of duty that was so 'grave and weighty' to justify summary dismissal. It seems to me the claimant was clearly capable of performing a not insubstantial part of his job role for the 3-month period prior to the launch of the website. There were a number of issues post website launch some of which were design and content related. The dismissal letter from Mr Marlowe refers to them but counsel for the respondent does not argue they

justify summary dismissal as it is evident those changes were led by the respondent and not due to any negligence on the part of the claimant.

103. The claimant demonstrated sufficient knowledge and skill to be able to launch the website and to remedy a number of the functional issues.

104. The respondent argues the functional issues demonstrate gross negligence. I find they do not.

105. Having considered the functional issues and the claimant's explanation (including the fact he accepted some of them may have been his omissions) I find that negligence is not established sufficient to amount to a repudiatory breach of any express or implied term of the employment contract. Mr Kianfar's behaviour does not disclose a deliberate intention to disregard the essential requirements of the employment contract with the respondent. He may have encountered more difficulties than Mr Marlowe believes he ought to have done carrying out the role but I do not find the bar for negligence justifying summary dismissal is met on the facts of this case.

106. Whilst Mr Marlowe also relies on the breach of the implied term of trust and confidence it should be remembered this term is used in the context of constructive unfair dismissal claims. In any event in this instance again I do not find the claimant conducted himself in a manner calculated or likely to destroy or seriously damages the relationship of trust and confidence between the claimant and the respondent. I do not find the claimant intended a repudiation of the contract when considering his conduct as a whole. I find the respondent was happy with his performance and the way he was doing his job certainly up to the launch of the website. I cannot find that the relationship had been damaged to the degree that summary dismissal was justified even with the subsequent speed and payment processing issues. It is notable the respondent at that stage continues to entrust Mr Kianfar to resolve the issues. This is not indicative of the implied term of trust and confidence being damaged. There is of course no doubt Mr Marlowe will have been frustrated and concerned with the functional issues but this is not the same as the claimant being grossly negligent or indeed in breach of the implied term of trust and confidence.

107. Notably I find a number of assumptions are made by the respondent that the functional issues must be as a result of the claimant's negligence and/or not having the experience and qualifications he purported to have. I have found a number of the functional issues were due to things being missed by the claimant because he had a number of competing demands on his time, and he was not clear about what to prioritise.

108. The respondent seeks to persuade me the conduct was sufficiently serious to amount to a repudiatory breach sufficient to entitle them to dismiss the claimant without notice. They rightly point out that matters after the dismissal can be relevant. The conduct relied on is the array of functional issues with the website and the failure to follow an express instruction not to change the infrastructure

and finally the claimant being absent for 2 hours when a serous conversation was to be had about his performance.

109. The claimant's contract of employment and the terms relied on by the respondent at 15.1 states 'we may terminate your employment with immediate effect without notice in the event of gross misconduct, or fundamental breach of any provision whether express or implied'

110. Section 3 of the contract under 'your primary obligations' states the claimant will work faithfully and diligently, devote full time and attention to performing such tasks in accordance with instructions directions and restrictions given by the respondent and that he will at all times act in good faith.

111. I find there is no objective evidence the claimant did not work faithfully and diligently. I am not persuaded on balance that he showed a lack of care nor that his actions were grossly negligent. He may have had some inexperience in some areas, but I find when he accepted the role he held an honest belief that he had the prerequisite skills and experience to fulfil the job. There is no evidence that he was not available to carry out the functions of his job role and/or that he was not acting in good faith. What is of concern is that no time was taken to investigate why the functional issues which arose following launch arose. There is an assumption that it was because the claimant cannot have been as experienced as he asserted at interview. The claimant readily accepts he may have missed a few things prior to launching the website predominantly due to competing demands on his time arising from multiple instructions.

112. I do not find there was a persistent and gross lack of attention to detail. It is clear many aspects of the website were operating and that the claimant made changes he thought would resolve the functional issues which became apparent post launch. The respondent relies on failure to follow a direct instruction regarding the infrastructure when the claimant accessed the cPanel. However, this is notably absent from the reasons for dismissal in the dismissal letter. Nowhere contemporaneously does the respondent state there was a failure by the claimant to follow a direct instruction in relation to the incident where the website crashed, and the claimant accessed the cPanel. I do not find this amounted to a repudiatory breach entitling the respondent to summarily dismiss the claimant.

113. There may have been some capability and/or performance issues, but the respondent fails to consider these or address them. Indeed, several assumptions are clearly made about all the functional issues listed by the respondent and relied on post website launch being due to negligence on the part of the claimant which I have found they were not.

114. Of the remaining more significant matters I find on the balance of probabilities the issues and the actions of the claimant were not so grave and weighty to justify summary dismissal particularly where many of those issues had been resolved by him by the time of dismissal. On balance his behaviour did not disclose a deliberate intention to disregard the essential requirements of the contract.

115. The claimant was not paid his 3-month notice. He received 1 weeks pay in lieu. I find the claimant's claim for wrongful dismissal is well founded and succeeds. The respondent's contract counterclaim is not well founded and accordingly dismissed.

116. The matter will be listed for a one-day remedy hearing. A separate notice of hearing will follow.

**Public access to employment tribunal decisions**

117. All judgments and written reasons for the judgments (if provided) are published in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the parties in a case.

Employment Judge N Wilson
Dated: 26 February 2025

Judgment sent to the parties on
Date: 7 March 2025