



## EMPLOYMENT TRIBUNALS (SCOTLAND)

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**Case No: 4105678/2023 Hearing Held at Glasgow on 20 and 21 August 2024,  
and Members' Meeting on**

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**Employment Judge: M A Macleod  
Tribunal Member: L Govan  
Tribunal Member: J Haria**

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**Ms M Ginter**

**Claimant  
Represented by  
Ms D Janusz  
Legal Consultant**

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**Bridge of Weir Care Home Limited**

**Respondent  
Represented by  
Mr B Mitchell  
Head of Human Resources**

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### JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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**The unanimous Judgment of the Employment Tribunal is that the claimant's  
claims succeed, and that the respondent is ordered to pay to the claimant  
the total sum of Ten Thousand Four Hundred and Twenty Two Pounds and  
Four Pence (£10,422.04).**

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### REASONS

1. The claimant presented a claim to the Employment Tribunal on 6 October 2023 in which she complained that she had been automatically unfairly dismissed for reasons relating to her pregnancy/maternity, discriminated

against on the grounds of pregnancy/maternity, unlawfully deprived of pay and holiday pay, and that the respondent failed to provide her with payslips and a P45 or a P60.

- 5 2. The respondent submitted an ET3 response form in which they resisted all claims made by the claimant.
- 10 3. A Hearing was listed to take place at the Glasgow Employment Tribunal on 20 to 22 August 2024. As it turned out, the Hearing concluded on 21 August 2024, and was continued to a Members' Meeting which took place on (date). The claimant appeared and was represented by Ms D Janusz, Legal Consultant, and the respondent was represented by Mr B Mitchell, their Group Head of Human Resources (HR).
- 15 4. The claimant gave evidence on her own behalf. The respondent called Amber McHutchison, Accounts Team Leader; Helen Maloy, Registered Care Manager and Joann Longwell, Receptionist/Administrator as witnesses.
5. Each of the witnesses gave their evidence in chief by way of witness statements, which were then taken as read. They were all subject to cross-examination.
- 20 6. The claimant had the benefit of the assistance of an interpreter in the Polish language, on each day of the Hearing, who attended by Cloud Video Platform.
7. A Joint Bundle of Productions was presented to the Tribunal and relied upon by both parties in the course of the Hearing.
- 25 8. Based on the information presented and the evidence led, the Tribunal was able to find the following facts admitted or proved.

### **Findings in Fact**

9. The claimant, whose date of birth is 14 April 1987, commenced employment with the respondent on 1 May 2022 as a

receptionist/administrator. The respondent is a company which owns and operates a care home providing health care services to residents.

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10. Her duties included working on reception, completing documents in relation to employees who attended at the care home, checking the email address associated with reception, forwarding information and issues to the care home manager, dealing with residents' post and complying with requests and instructions by her manager.
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11. The claimant's line manager on commencing employment with the respondent was Karen Armstrong, until March 2023, when Helen Maloy took over at short notice following Ms Armstrong's abrupt departure from the respondent's employment.
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12. Shortly after commencing employment with the respondent, the claimant found out that she was pregnant. She commenced annual leave prior to maternity leave in November 2022. While on annual leave on 10 December 2022, the claimant gave birth to her baby son. Her maternity leave commenced on 25 December 2022.
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13. During the claimant's absence on maternity leave, the respondent appointed Louise Malley to take her position. Ms Malley was provided with a contract of employment (149), which was dated 9 February 2023. The contract provided, at clause 1.2, that *"The Employee's employment under this agreement commenced on 28<sup>th</sup> February 2023. The offer of employment is made on a strictly temporary basis, to provide cover for maternity leave. It is anticipated that the period of employment will be around 1 year. This is not a fixed term contract of employment. If there is to be an extension to this contract or indeed converted to a permanent appointment, this would be discussed and agreed with you separately."*
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- 30
14. The respondent appears to have advertised for a Receptionist/Administrator on 28 April 2023 (140/2) and 24 May 2023 (144/6). No explanation was available in evidence to us to explain this. Each advertisement said that the post was likely to be for the duration of 12 months.

15. The claimant found Ms Armstrong to be communicative and supportive during her maternity leave, until she (Ms Armstrong) left the employment of the respondent.
- 5 16. The claimant's new manager, and the new manager of the care home, was Helen Maloy, who commenced employment there on 1 May 2023. Ms Maloy did not know the claimant, though she was advised by her deputy manager Angela Carden that the claimant was absent on maternity leave.
- 10 17. The claimant anticipated that the new manager would contact her when she took up her post, but she did not. Ms Maloy took the view that there was no requirement for her to do so, and was content to wait for the claimant to contact her. Her view was that when she took up post, she had a considerable number of matters to attend to, including the improvement of the performance of the care home..
- 15 18. In around April 2023, the claimant required to contact the respondent in order to ask for copies of payslips and her P60. She had split up with her partner at home, and required to take on the mortgage herself. As a result, her mortgage broker had requested that she provide this financial information for the purpose of transferring the mortgage to her name.
- 20 19. At around that time, or in May 2023, the claimant telephoned the care home and spoke to Ms Maloy.
20. There is a significant divergence between the claimant and Ms Maloy as to what was said in this conversation.
- 25 21. Ms Maloy maintained that the conversation did not last long, and that the claimant told her that she was not returning to work at the conclusion of her maternity leave; in addition, she said that she had invited the claimant to bring her baby to the care home to show to the staff and residents, but that the claimant had declined.
- 30 22. The claimant stated that she congratulated Ms Maloy on her new position, and informed her that she worked on the administrative position at

reception, but was on maternity leave at the time. She also said that  
would be in contact with her in a few months' time, prior to her return from  
maternity leave. She said that Ms Maloy appeared to be surprised by that.  
When the claimant said that she had not received her payslips Ms Maloy  
5 said that she would deal with it and be in contact with the claimant in  
relation to that matter, asking her for her telephone number.

23. We concluded that the evidence of the claimant was to be preferred on  
this point.

24. Firstly, we considered that the claimant was straightforward and honest in  
10 her evidence, in general, but that Ms Maloy was notably defensive and, to  
some extent, dismissive in her evidence.

25. Secondly, Ms Maloy appeared keen to distance herself from the claimant  
as an employee during her maternity leave, suggesting that she had no  
reason to get in touch with her in her absence, and that she was, in effect,  
15 to busy to be dealing with the claimant.

26. Thirdly, Ms Maloy did not email the claimant – nor did she email anyone  
else – to confirm the terms of what should have been regarded, if correct,  
as being a very important conversation in the context of the claimant's  
employment. We found it inexplicable that a manager who pronounced  
20 herself very experienced in care home management would not  
understand the importance of making a contemporaneous record of a  
conversation in which an employee effectively announced their  
resignation.

27. Fourthly, the claimant's evidence was consistent with her position before  
25 she left for maternity leave, and indeed her position when she made clear  
at a later stage that she wished to return to work. Given her personal  
circumstances at the time, it is simply not believable that the claimant  
would have indicated that she did not wish to return to work there, when  
she was having to contemplate taking on significant extra financial  
30 commitments, as well as having a newborn baby, due to the fact that her

partner had left the home and she required to take on the mortgage herself.

- 5 28. Accordingly, it is our finding that the claimant did not tell Ms Maloy in that telephone conversation that she did not wish to return to work, but that she told her she would be in touch closer to the end of her maternity leave.
29. Following this conversation, the claimant had no further contact from Ms Maloy, nor did she receive any payslips or her P60.
- 10 30. The claimant sought to contact the respondent on a number of occasions by telephone. She maintained that the receptionist did not put her through to Ms Maloy, or simply advised her that Ms Maloy was in a meeting or unavailable, and that she would take a message for her to call back. Ms Maloy did not call her back.
- 15 31. Our conclusion on this was that the claimant did try to make contact with Ms Maloy in order to pursue matters with regard to her payslips and her return to work, but was unable to speak to her, largely because Ms Maloy was extremely busy managing the care home. We are unable to find that the receptionist deliberately frustrated the claimant's efforts to contact Ms Maloy. However, it is consistent with our view of Ms Maloy's evidence  
20 that she was largely unconcerned with the claimant's position, regarding it as a matter for Human Resources to deal with.
- 25 32. However, it is clear that the claimant became increasingly frustrated by the respondent's lack of response to her requests. In mid-July 2023, the claimant contacted reception to ask if she could speak to her manager, to be told, again, that her manager was in a meeting and unavailable. She did speak to a deputy manager shortly thereafter, and advised her that she was an employee on maternity leave and wanted to discuss her return to work with her manager. The deputy manager asked her what position she worked in, and she advised her that she worked on reception  
30 in an administrative position. The deputy manager told her to contact the respondent again in about a month or so.

33. The claimant emailed the reception at the care home on a number of occasions seeking copies of her payslips, and also the email address of her manager (19)(11, 17 and 27 July 2023) without reply.

34. On 28 July 2023, the claimant emailed Ms Maloy, having obtained her email address (52):

*“Good morning*

*Helen did you get any response from the head office about my payslips and p60? To my detriment if I don't receive my payslips by the end of the week and p60i won't be able to remortgage for my house and I will be left with my child without real estate which will affect the company because I won't leave it like this. It is the employer's duty to give me my payslips even if they are lost in the office they should give me a new copy of the payslips it's been 3 months to get my payslips it's plenty of time to sort this out of course. I contacted the head office but no response and I tried many times to contact you but the lady from the reception is very rude which should not happen such behavior, it is really hard to even contact you about returning to work and reception don't answer for my email which should not be the case. Please let me know what is going on with my payslips and p60???*

*Regarding my maternity which ends on September 25<sup>th</sup>:*

*I decided I want to use my due leave after my maternity leave ending September 25, which is 20.6 days until September 25, and after the end of my leave I do not want to go back to work.*

*I've chosen to stay at home with my baby and not return to work, most after situation with my payslip.*

*Please reply if you need to I complete a holiday request???*

*My holiday be from 25 September to 20 October and 20 October be my last working day for company.*

*From the experience of how our company works with eternal problems with hours and holidays and mistakes. I suspect there will be no problems with my last payment which should be 30 October (one week maternity leave and 20.6 days holiday).*

5 *Regard Maja Ginter.”*

35. Mr Mitchell, Group HR Manager, responded to this email on the same date (53) to say that he would speak with the Finance Team regarding payslips, and asking which ones she required. He expressed disappointment that she had decided to resign from the company, but told  
10 her that her decision was respected. He wished her well with her baby, and invited her to tell him what payroll information she required so he could seek to obtain it.

36. Mr Mitchell did not respond directly to the claimant's comments about her not returning to work.

15 37. The claimant submitted a complaint to the respondent about her treatment dated 30 September 2023. No copy of this complaint was made available to the Tribunal.

38. The claimant submitted her Employment Tribunal claim on 6 October 2023 (1).

20 39. She had a number of email exchanges with the respondent, in the person of Mr Mitchell, thereafter. On 31 October 2023, she sent a lengthy email to Mr Mitchell (75) in which she said that she was trying to contact her manager to talk about returning to work 2 months before 25 September 2023, and asserted that her manager repeatedly refused to speak to her.  
25 She also complained that the respondent had failed to provide her with her payslips, as she had requested. She went on:

*“Really Brian I try call to manager maybe 40 times delete my phone call and sometimes someone from reception checky to me get message to manager and big surprises what you want.*

*Apart from the receptionist, I also tried to contact her when Angela was still working, but without successfully.*

*In such a situation, if the manager was not interested to give me back to work and any chace to speak with her, if the manager was not interested in me wanting to go back to work, my maternity leave ended on*  
5 *September 25, no one was interested in talking to me and I already found a new job in me wanting to go back to work, I didn't know the point of going back, my maternity leave ended on September 25, no one was interested in talking to me and I already found a new job.*

10 *I hope you understand me, I was a good employee, I really liked this place, I didn't call sick, I was happy to go to work every day to help Karen or Lorna and to do best job, I didn't deserve to be treated like that and lose my house because of payslips that was very stressful situation with small baby, which take 5 minutes to send. If you have any more*  
15 *questions, I'll be happy to answer."*

40. It is not clear whether or not a meeting took place between Mr Mitchell and the claimant about these matters. Mr Mitchell did not give evidence before this Tribunal.

41. Following her resignation from the respondent's employment, the  
20 claimant took work as a self-employed cleaner, starting in late December 2023. She works 18 hours per week and earns £502 each fortnight. She is unable to work longer hours due to her childcare needs.

42. The claimant suffered from stress and anxiety as a result of what she considered to have been discriminatory treatment by the respondent. She  
25 experienced dizziness, and on occasions she was unable to get out of bed and take care of her baby. The dizziness lasted from July to December 2023, on an almost daily basis. She also suffers from psoriasis, which she attributes to her stress, and also suffered sleeping issues from July to November 2023. Her general practitioner prescribed  
30 her steroid cream in order to deal with the psoriasis, and also medication in relation to her circulation.

43. The respondent paid the claimant in respect of 22 days' holiday, in the sum of £1,971.20, on 23 February 2024 (218). The claimant accepted that she had received this payment, though complained that it was very late, and that it should have been paid subject to the deduction of tax.

5 44. The claimant complains that she was underpaid her maternity pay in the sum of £338 in September 2023. She received £344.96 for the period 25 August 2023 to 24 September 2023, when she should have received £683.12.

### Submissions

10 45. Both parties made short oral submissions which are not recorded in detail here but which were taken into consideration by the Tribunal and which are noted, where appropriate, in the decision section below.

### The Relevant Law

15 46. Section 95 of the Employment Rights Act 1996 ("ERA") sets out the circumstances in which an employee is treated as dismissed. This provides, inter alia

“(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2), only if)—

20 ...

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.”

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47. Where a claimant argues that there has been constructive dismissal a Tribunal requires to consider whether or not they had discharged the onus on them to show they fall within section 95(1)(c). The principal authority for claims of constructive dismissal is **Western Excavating -v- Sharp [1978] ICR 221**.

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48. In considering the issues the Tribunal had regard to the guidance given in **Western Excavating** and in particular to the speech of Lord Denning which gives the “classic” definition:

5            “An employee is entitled to treat himself as constructively dismissed if  
the employer is guilty of conduct which is a significant breach going  
to the root of the contract of employment; or which shows that the  
employer no longer intends to be bound by one or more of the  
essential terms of the contract. The employee in those circumstances  
10            is entitled to leave without notice or to give notice, but the conduct in  
either case must be sufficiently serious to entitle him to leave at  
once. Moreover, the employee must make up his mind soon after the  
conduct of which he complains. If he continues for any length of time  
without leaving, he will be regarded as having elected to affirm the  
15            contract and will lose his right to treat himself as discharged.”

49. The Western Excavating test was considered by the NICA in **Brown v Merchant Ferries Ltd [1998] IRLR 682** where it was formulated as:

20            “...whether the employer’s conduct so impacted on the employee  
that, viewed objectively, the employee could properly conclude that  
the employer was repudiating the contract. Although the correct  
approach to constructive dismissal is to ask whether the employer  
was in breach of contract and not did the employer act unreasonably,  
25            if the employer’s conduct is seriously unreasonable that may provide  
sufficient evidence that there has been a breach of contract.”

50. What the Tribunal required to consider was whether or not there was  
evidence that the actions of the respondents, viewed objectively, were  
30            such that they were calculated or likely to destroy or seriously damage  
the employment relationship.

51. We were also referred to, and took account of, the well-known decision in  
**Malik v Bank of Credit & Commerce International SA [1997] IRLR**

**462**, in which Lord Steyn stated that “The employer shall not, without reasonable and proper cause, conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.”

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52. It is also helpful to consider the judgment of the High Court in **BCCI v Ali (No 3) [1999] IRLR 508 HC**, in which it is stressed that the test (of whether a breach of contract amounts to a breach of the implied term of trust and confidence) is “whether that conduct is such that the employee cannot reasonably be expected to tolerate it a moment longer after  
10 discovering it and can walk out of his job without prior notice.”

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53. In **Jones v Collegiate Academy Trust UKEAT/0011/10/SM**, the EAT stated: “It is important to note that an objective test is to require whether the conduct complained of is calculated or likely to destroy or seriously  
15 damage the relationship; the subconscious of intent of the respondent is irrelevant as the Employment Tribunal correctly held... The subjective perception of the employee is also not relevant. The respondents’ conduct must be repudiatory in order to establish a breach of the implied  
20 term; it must be conduct by the respondent which objectively considered it likely to undermine the necessary trust and confidence in the employment relationship.”

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54. **Omilaju v Waltham Forest London Borough Council [2005] 1 All ER 75** is helpful in considering whether or not the resignation of an employee is a response to a last straw in a series of acts by the employer which amount, together, to a fundamental breach of contract. It is noted in that  
judgment: “The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with the  
earlier acts on which the employee relies, it amounts to a breach of the  
30 implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant.” This endorses the view of the court in **Lewis v Motorworld Garages Ltd [1985] IRLR 465**: “The breach of this implied term of trust and confidence

may consist of a series of actions on the part of the employer which cumulatively amount to a breach of the term, though each individual incident may not do so. In particular in such a case the last action of the employer which leads to the employee leaving need not itself be a breach of contract; the question is, does the cumulative series of acts taken together amount to a breach of the implied term?...This is the 'last straw' situation."

55. The Tribunal also took into account the Employment Appeal Tribunal decision in **Wright v North Ayrshire Council UKEATS/0017/13/BS** from June 2013. In that case, having examined the line of authorities relating to claimants who resign for more than one reason, Langstaff J cautioned against seeking to find the "effective cause" of the claimant's resignation, but found that Tribunals should ask whether the repudiatory breach played a part in the dismissal.

56. Section 18(2) of the Equality Act 2010 provides:

*"A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably –*

*(a) because of the pregnancy, or*

*(b) because of illness suffered by her as a result of it."*

57. Section 18(6) defines the protected period:

*"the protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends –*

*(a) if she has the right to ordinary and additional maternity leave, at the end of the additional maternity leave period or (if earlier) when she returns to work after the pregnancy;*

*(b) if she does not have that right, at the end of the period of 2 weeks beginning with the end of the pregnancy."*

**Discussion and Decision**

58. In this case, a provisional list of issues was set out by Employment Judge Bradley in his Preliminary Hearing Note dated 18 December 2023:

**1. What was the reason for the claimant's resignation? The claimant**

5 **relies on her entitlement to have done so by reason of the conduct**

**of the respondent. The respondent avers that she resigned**

**voluntarily to either take up or explore alternative employment**

**which presented better opportunities for work life balance.**

**2. In relation to the claimant's claim of constructive dismissal did**  
10 **the**

**respondent**

**i. Fail in its statutory duty to issue to her payslips?**

**ii. Fail to keep or stay in touch with her during her period of**

**maternity leave?**

15 **3. If so, was that conduct (individually or together) sufficiently**  
**important or serious to justify the claimant resigning?**

**4. Did the claimant delay too long in terminating the contract in**  
**response to the respondent's conduct?**

20 **5. Did the respondent engage in the following treatment in the**  
**"protected period" as that term is defined by section 18(6) of the**

**Equality Act 2010**

**i. Fail to provide to the claimant details of her new manager?**

**ii. Fail to contact the claimant in relation to her return to work?**

**iii. Underpay the claimant her maternity pay?**

**6. If so was any or all of that treatment unfavourable?**

**7. If so, was any or all of that unfavourable treatment because of the claimant's pregnancy or because she was on maternity leave?**

**8. For the month of September 2023 what wages were due by the respondent to the claimant? The claimant avers that she was due to be paid £682.00.**

**9. What wages were paid by the respondent to the claimant for**

**September 2023? The claimant avers that she was paid £344.00.**

**10. Did the respondent deduct £338.00 from those wages?**

**11. If so was that deduction contrary to section 13 of the Employment**

**Rights Act 1996?**

**12. In the period between May and October did the respondent fail to issue to the claimant payslips according to her right in terms of section 8 of the Employment Rights Act 1996?**

**13. To what remedy (if any) is the claimant entitled in respect of:-**

**i. The claim of unfair dismissal**

**ii. The claim of discrimination**

**iii. The claim of an unlawful deduction of wages**

**iv. The claim of a failure to provide payslips**

59. We address these issues in turn.

**1. What was the reason for the claimant's resignation? The claimant relies on her entitlement to have done so by reason of the conduct of the respondent. The respondent avers that she resigned voluntarily to either take up or explore alternative employment which presented better opportunities for work life balance.**

**2. In relation to the claimant's claim of constructive dismissal did the respondent**

**i. Fail in its statutory duty to issue to her payslips?**

**ii. Fail to keep or stay in touch with her during her period of maternity leave?**

60. On the evidence, it is clear to us that the reason for the claimant's resignation was that she had reached a point where she considered that she no longer had trust and confidence in her employer, primarily because she had repeatedly asked for copies of her payslips and P60, but had had no effective response, had been frustrated in her attempts to contact the respondent in order to discuss that and her return to work, and had reached the point where she believed that her employer did not wish her to return to work. Of these, the failure by the respondent to contact her in relation to her return to work was the most important, though each played its part.

61. The respondent's evidence with regard to payslips was that their payroll system was badly affected by the volume of work with which it had to deal, at a point where they did not have sufficient staff to cope with the demands upon the department. They brought evidence that they have now entered into a contract with an independent payroll provider, in order

to demonstrate that they accepted that the payroll system was ineffective and needed to be rectified. That evidence, however, was entirely irrelevant to the issue before us, which was whether or not the claimant resigned because she did not receive any payslips or P60, nor indeed any response to her queries about this. Indeed, it appeared to us that the respondent was not disputing that their payroll department was, for a period of time, unable to respond to such queries. That they have sought to do something about that now may be commendable but is unrelated to the question of whether or not the claimant actually received her payslips or P60 when she requested them, or within a reasonable time thereafter. Plainly she did not. That was entirely the responsibility of the respondent.

62. With regard to the question of ongoing contact during maternity leave, we also found that the claimant was credible in her evidence that she tried to contact the respondent's manager Ms Maloy following her introduction as the care home manager, but that, apart from one occasion, she was unable to do so. Again, the respondent's response to this was curious: Ms Maloy appeared to dismiss the suggestion that she had any responsibility to communicate with an employee who was absent on maternity leave, and proceeded, in effect, to ignore the claimant during her leave.

63. Ms Maloy's position appeared to be that since the claimant had told her that she did not intend to return to work, no further action was required. That would have been an incorrect understanding of the circumstances had that been the case, but in our judgment, the claimant did not tell Ms Maloy that she did not intend to return to work. There is no mention of this in any of the correspondence between the claimant and the respondent during the course of her employment, and at no stage did Ms Maloy see fit to put it in writing both to HR (whose responsibility she clearly considered the claimant to be) or to the claimant. The claimant subsequently tried to get in touch with Ms Maloy, without success, and in mid July managed to speak to her deputy, to ask about her return to work (which is consistent with the claimant's evidence that she did not tell Ms Maloy that she did not intend to return to work). The deputy manager did

not seem to be aware of the claimant's position nor how to deal with the matter, and nothing happened.

- 5 64. It is clear to us that the claimant persisted in her attempts to communicate with her new manager throughout the remainder of her employment, but since Ms Maloy either did not receive any messages (or all messages) which were left, or did not consider the claimant her responsibility, it is not surprising to us that the claimant became increasingly frustrated and began to conclude that the respondent had no interest in her return to work.
- 10 65. Ms Maloy's evidence was that as soon as the claimant told her that she did not wish to return to work she had no further reason to be involved with her. We did find this to be surprising. Ms Maloy is a manager of great experience in the care home sector, and we would have expected her to have treated an employee on maternity leave with a degree of understanding, and in line with the obligations which an employer owes to 15 such an employee, that this situation could easily have been avoided. In addition, it was simply not credible that Ms Maloy, with her long experience, considered herself discharged of her responsibilities by this phone call, and did not contact the respondent's HR department in order 20 to advise them to process the claimant's declaration that she did not intend to return to work. The absence of any such contact either to or from HR suggests strongly to us that Ms Maloy's evidence was simply incorrect, and that the claimant did not say to her that she did not intend to return to work.
- 25 66. We have come to the conclusion that the claimant's resignation came at a point when she felt exasperated and disappointed at the lack of contact from her manager, and her own inability to communicate directly with her manager, that she reached the point where she felt compelled to resign from her employment with the respondent. We consider that it was 30 reasonable for the claimant to conclude that the respondent had no interest in her returning to work, and decided simply to leave aside any contact with her.

67. With regard to the particular breaches of contract alleged by the claimant, we consider that the respondent did fail to provide the claimant with her payslips and P60, without good reason and without making any attempt to explain to the claimant what the reason might be; and that the respondent did fail to contact and to keep in touch with the claimant during her maternity leave. In effect, the claimant's appeals to her employer to obtain the necessary information to help her remortgage her property fell on deaf ears. Whether by design or by accident, the claimant became invisible during her leave to her employer, and accordingly they failed to communicate effectively, and for long periods, at all, with her.

68. The respondent denied resolutely that they did not wish the claimant to return to work. Their evidence undermined this denial, however, as the advertisements for the claimant's job were issued over several months; her successor was appointed for 12 months on 23 February 2023; and the post was subsequently advertised, again for periods of 12 months, on 28 April and 24 May 2023. Any successor appointed would be in place for longer than the claimant's absence on maternity leave, and no explanation was given by the respondent about this matter. It was clear to us that the respondent did not seriously intend to allow the claimant to return to work either in her original post or in an alternative post at the conclusion of her maternity leave.

**3. If so, was that conduct (individually or together) sufficiently important or serious to justify the claimant resigning?**

**4. Did the claimant delay too long in terminating the contract in response to the respondent's conduct?**

69. We turned to consider the next two issues in the List of Issues.

70. We were of the view that the respondent's conduct in failing to provide the claimant with her payslips was a very serious matter. The claimant had made clear at the outset that she needed the payslips and her P60 in order to remortgage her house following the departure of her partner. The

fact that the respondent had a statutory duty which they failed to comply with, that they delayed and for long periods failed entirely to respond to her requests for her payslips and that they ultimately only responded to the claimant once she tendered her resignation on 28 July 2023 demonstrates, in our judgment, that the respondent committed a serious breach of the fundamental implied term of trust and confidence inherent in a contract of employment between employer and employee.

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71. Further, their failure to make contact with the claimant and to keep in touch with her during her maternity leave was a further significant failure on the respondent's part which amounted to a fundamental breach of contract. The claimant received the very strong impression that the respondent had little understanding or knowledge of the fact that she was off on maternity leave after Ms Armstrong abruptly left the organisation (an unfortunate fact over which the claimant had no control and for which the claimant bore no responsibility). Overall, we would characterise the attitude of the respondent as ignoring or even forgetting about the existence of the claimant on maternity leave.

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72. Accordingly, we consider that the respondent's failures as set out above amounted to conduct which fundamentally breached the claimant's contract of employment. She was attempting to return to work, but received no assistance in doing so from an employer which barely listened to her and made erroneous assumptions about an employee on maternity leave. It was very telling, in our judgment, that the respondent only began to respond with any seriousness to her correspondence at the point when she resigned.

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73. We do not consider that the claimant waived the breach, which took place over an extended period of time. The claimant continued to try to obtain copies of her payslips and to communicate with her manager but found that when she contacted the respondent they were never available. She resigned, in our judgment, at the point when she could not contemplate returning to work for the respondent, which would have taken place in September 2023 at the expiry of her maternity leave.

74. Accordingly, it is our judgment that the actions of the respondent amounted to a repudiatory breach of the claimant's contract of employment and therefore that the claimant was constructively dismissed by the respondent.

5           **5. Did the respondent engage in the following treatment in the “protected period” as that term is defined by section 18(6) of the Equality Act 2010**

**i. Fail to provide to the claimant details of her new manager?**

**ii. Fail to contact the claimant in relation to her return to work?**

10           **iii. Underpay the claimant her maternity pay?**

**6. If so was any or all of that treatment unfavourable?**

**7. If so, was any or all of that unfavourable treatment because of the claimant's pregnancy or because she was on maternity leave?**

15           75. We take these issues together.

76. Firstly, it is necessary to define the protected period under section 18(6) of the 2010 Act. The protected period is defined therein, in relation to a woman's pregnancy, begins when the pregnancy begins and ends, if the claimant has the right to ordinary and additional maternity leave, at the end of the additional maternity leave period; and if she does not have that  
20           right, at the end of the period of 2 weeks beginning with the end of the pregnancy.

77. Neither party's representative addressed us on this point. No mention was made of the protected period, nor of whether the claimant was  
25           entitled to additional maternity leave. All that was said was that the

claimant intended to be on maternity leave from 25 December 2022 until 25 September 2023.

5 78. The provisions of the 1999 Regulations set out the duration of the statutory maternity period, including ordinary and, if applicable, additional maternity leave. Regulation 4(1) provides that an employee is entitled to ordinary maternity leave and additional maternity leave provided that she satisfies certain conditions. She must notify her employer no later than the end of the 15<sup>th</sup> week before her expected week of childbirth, she notified her employer of her pregnancy, her expected week of childbirth and the date on which she intended her ordinary maternity leave to commence.

10 79. In this case, the claimant plainly complied with these requirements. The respondent granted her a full period of ordinary and additional maternity leave, based on the fact that she remained on maternity leave – a fact not disputed by the respondent before us – after the period of compulsory maternity leave (that is, until 2 weeks after the end of pregnancy).

15 80. Accordingly, it is clear that the protected period continued from December 2022 until September 2023 in this case.

20 81. Did the respondent fail to provide the claimant with details of her new manager? In our judgment, the simple truth is that they did so fail. The claimant had to contact the respondent on a number of occasions to obtain the name and email address of her line manager. The respondent's argument on this point was that it would have been easy for the claimant to have guessed the email address of the new manager once she knew her name. That may be so, but the employer also has a reasonable obligation to let an employee on maternity leave know that their manager has changed, and how to get in touch with that new manager, and in this case, the respondent plainly failed to provide the claimant with that information.

25 82. Did the respondent fail to contact the claimant in relation to her return to work? The only evidence brought forward by the respondent in this regard

is that Ms Maloy received a call from the claimant during which her return to work was mentioned (albeit that there is a dispute as to what was said). In our judgment, the respondent never contacted the claimant as to her return to work. They left it to her to contact them about this. They took no steps to identify with the claimant her intentions about her return to work. Accordingly, we have found that in the protected period, the respondent did fail to contact her about her return to work.

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83. Did the respondent underpay the claimant her maternity pay? We heard evidence from the claimant that she was underpaid the sum of £338 in relation to maternity pay during the protected period. We heard no evidence from any of the respondent's witnesses about this matter. We accept the claimant's evidence as accurate, and accordingly we find that the respondent did underpay her in relation to her maternity pay during the protected period.

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84. It is our judgment that the above treatment did amount to unfavourable treatment. The respondent acted towards the claimant as if they had no obligation towards her as an employee on maternity leave, and made no real effort to communicate with her about her maternity leave and her return to work. We consider that this treatment had the effect of making the claimant feel that the respondent had forgotten about her and had no interest in whether she returned to work at the end of her maternity leave. These failures amounted to unfavourable treatment towards the claimant, in the sense that they were detrimental towards her.

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85. Was such treatment unfavourable on the grounds of her maternity leave? In our judgment, it was plainly related to her maternity leave. She was absent from the business, and when a new manager took over her management, she was effectively forgotten by the respondent. Her unfavourable treatment came about simply because she was absent from the business on maternity leave. We considered that it was notable that the first substantive response to her correspondence came after she resigned, from Mr Mitchell. Her requests and attempts to communicate

with the respondent during her maternity leave were simply not taken seriously by the respondent.

**8. For the month of September 2023 what wages were due by the respondent to the claimant? The claimant avers that she was due to be paid £682.00.**

**9. What wages were paid by the respondent to the claimant for September 2023? The claimant avers that she was paid £344.00.**

**10. Did the respondent deduct £338.00 from those wages?**

**11. If so was that deduction contrary to section 13 of the Employment**

**Rights Act 1996?**

86. We find that the claimant has given unchallenged evidence to the effect that she was due £682 in wages in September 2023, and that she received £344. As a result, it is our finding that the respondent did unlawfully deduct £338 from the claimant's wages. No reason – indeed, no evidence – was provided by the respondent in response to this assertion. Accordingly, we find that the respondent did unlawfully deduct the sum of £338 from the claimant's wages, contrary to section 13 of ERA.

**12. In the period between May and October did the respondent fail to issue to the claimant payslips according to her right in terms of section 8 of the Employment Rights Act 1996?**

87. The respondent did not dispute that for this period they did fail to provide the claimant her payslips according to her right under section 8 of ERA. Their position in relation to this matter was curious: they insisted that the

reason for this was that their payroll department was struggling badly at the time, and that other staff were also affected, as if that were a defence to this claim. The fact is that if other staff were affected, that is irrelevant to whether, in this case, they failed in their statutory duty towards the claimant. To put it another way, the respondent cannot defend their failure to comply with a statutory duty towards the claimant by saying that they failed in their statutory duty towards a large number of other employees. Furthermore, it is of no relevance to this claim that they have taken steps to rectify that situation, commendable though that may be.

10 88. Accordingly, we find that this claim succeeds under section 8 of ERA.

**13. To what remedy (if any) is the claimant entitled in respect of:-**

**i. The claim of unfair dismissal**

**ii. The claim of discrimination**

**iii. The claim of an unlawful deduction of wages**

15 **iv. The claim of a failure to provide payslips**

89. We considered the claimant's claim of constructive unfair dismissal first, together with the claim of discrimination on the grounds of maternity/pregnancy, since she lacked the necessary minimum qualifying service upon which to base a claim of "ordinary" unfair dismissal. That is, her claim in relation to dismissal forms part of her claim of discrimination.

20 90. Accordingly, we considered, firstly, the claimant's claim for loss of earnings. In her schedule of loss, which was not included in the bundle but provided to the Tribunal in advance of the Hearing, the claimant's claim under this heading amounted to £1,343.72. The claimant received varying sums over the period from 30 November 2022 until 31 May 2022, amounting to a total over those 8 months of £10,867.40, which the claimant calculated (and no dispute was raised by the respondent about this) meant that her weekly net pay was £310.08. She commenced employment as a self-employed cleaner on 4 December 2023, and

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received Universal Credit on 19 October, 19 November and 19 December 2023, of £828.24 each month. Her calculation of loss includes the deduction of these figures. She also received £259 in the period claimed for an invoice for her cleaning service.

5 91. We accept that the claimant suffered a loss of earnings due to her constructive dismissal and discriminatory treatment in the amount of **£1,343.72**, and accordingly the respondent is ordered to pay this sum to the claimant in respect of loss of earnings.

10 92. Secondly, we considered the claimant's claim for injury to feelings of £15,000. In our judgment, in the absence of any medical evidence to support her assertions as to the effect of the respondent's treatment on her, we cannot support such a figure. We consider that the injury to feelings which she sustained, while not completely insignificant, falls in the middle of the lowest Vento band, and accordingly that it is just and  
15 equitable to award to the claimant the sum of **£7,500** in respect of injury to feelings. The claimant did attend her GP, and received treatment in relation to psoriasis, but it is not clear from the evidence that this amounted to a significant period of illness, nor how this was related to her treatment at the hands of the respondent.

20 93. With regard to the claimant's complaint that she was underpaid in respect of maternity pay, we have determined that the respondent should pay to the claimant the sum of **£338**.

25 94. The claimant also complained that she was entitled to a payment in respect of the respondent's failure, found to have taken place, to provide payslips over an extended period of time to her. She seeks payment of £1,240.32, or the equivalent of 4 weeks' pay (4 x £310.04).

95. There is no doubt that the respondent failed to provide the claimant with payslips for a considerable period of time.

96. Under section 8 of ERA provides that an employee has the right to be given by their employer “at or before the time at which any payment of salary or wages is made to him, a written itemised pay statement.”

97. This claim is made under section 11 of ERA in light of the respondent’s failure to provide payslips, or written itemised pay statements, to use the statutory wording.

98. Under section 12(3) the Tribunal may make a declaration to the effect that the respondent has failed to provide the claimant with a written itemised pay statement. There is no clear statutory guidance as to the sum to be awarded in the event that there is no finding that during the absence of payslips the claimant was unlawfully subjected to deductions from wages. The claimant claims 4 weeks’ pay in compensation for what we consider to have been an egregious failure by the respondent to provide payslip, for which no satisfactory explanation has been provided. The respondent relied upon the difficulties which their payroll department was undergoing without clearly explaining at the time to the claimant what those difficulties were, nor how they intended to rectify them in her case. They simply ignored her.

99. We regard it just and equitable to order the respondent to pay to the claimant the sum of **£1,240.32**, namely 4 weeks’ pay, in compensation for the failure to provide her with payslips.

100. Accordingly, the claimant’s claims succeed, and the respondent is ordered to pay to the claimant the total sum of **£10,422.04**.

**M A Macleod**  
Employment Judge

**29 October 2024**  
Date of Judgment

Date sent to parties

**04 November 2024**

I confirm that this is my Judgment in the case of Ginter v Bridge of Weir Care Home Limited and that I have signed the Judgment by electronic means.