EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8002150/2024

Held in Glasgow on 21, 22 and 23 May 2025

Employment Judge L Wiseman
Members T Lithgow & R McPherson

Mr D Ashe	**Claimant** **Represented by:** **Ms M McJannett - Solicitor**
Claims Equilibrium Club Ltd	**Respondent** **Represented by:** **Mr R Topping - Managing Director**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The tribunal decided the claimant was unfairly constructively dismissed and the respondent shall pay to the claimant compensation in the sum of £14,568 (being a basic award of £700 and a compensatory award of £13,868).

REASONS

1. The claimant presented a claim to the Employment Tribunal on the 17 December 2024 alleging he had been unfairly constructively dismissed. The claimant asserted in the claim form that he had entered into an agreement with Mr Topping for employment and to buy a share of equity in the business but Mr Topping had reneged on the agreement to purchase equity. The claimant further asserted Mr Topping had taken no action to address the points of his grievance which had been partially upheld and had taken no action regarding his sickness absence. These matters had led the claimant to resign.

2. The respondent entered a response in which it asserted the arrangement regarding purchase of equity had been subject to satisfactory performance by the claimant. The claimant had not performed as expected and ultimately Mr Topping had withdrawn the offer. Mr Topping accepted there had been a breakdown in the relationship between himself and the claimant but denied there had been any breach of contract entitling the claimant to resign. The respondent asserted that it had, in fact, been the claimant who had been in breach of contract in terms of his performance.

3. The Tribunal heard evidence from the claimant; Mr Paul Nicholson, National Account Manager for the respondent; Mr Roger Topping, Managing Director and Ms Christine Thomson, General Manager.

4. The Tribunal were also referred to a jointly produced folder of documents. A small number of documents were added, with agreement, to the folder.

5. The Tribunal, on the basis of the evidence before it, made the following material findings of fact. Material findings of fact are facts which are relevant to the (legal) issues to be determined by this Tribunal. The Tribunal heard quite a bit of evidence which, whilst we understand was important to the parties, was not relevant to the legal issues to be determined. Accordingly, no findings were made regarding this evidence, and it is not referred to in this Judgment.

Findings of fact

6. Mr Roger Topping founded the respondent business in 2003. The respondent business operates as an insurance claims assistance service for insurance brokers and their clients.

7. The respondent earns revenue in two ways: brokers pay small sums to retain its services to give assistance if a complex insurance problem arises (before the event payments) and one-off fees paid by policyholders on individual cases as a percentage of the claim settlement (after the event payments). The latter are much more lucrative and are relied on for the financial success of the business.

8. The respondent is a small business with five employees: Mr Topping, Managing Director and senior loss adjuster; Mr Paul Nicholson, National Account Manager; Ms Christine Thomson, Head of Operations and two administrative employees.

9. Mr Topping wished to find a partner and successor to run the business. Mr Topping knew the claimant, having worked with him in a sister company from April 2008 to November 2012 and trained him as a loss adjuster. Mr Topping was aware the claimant had since acquired management experience whilst working in Indonesia.

10. Mr Topping approached, and entered into discussions, with the claimant which resulted in an offer of employment being made (page 76). The letter was entitled *"Employment and then Equity Ownership of CEC".* The letter recorded Mr Topping's pleasure that the discussions had *"resulted in agreement over the terms of your joining CEC as a Director and then part owner. I can now set out formally the specifics of the relationship for the immediate future and the medium term."*

11. The letter confirmed the claimant would take up appointment as Director of the company from the 1 April 2022 and set out details of the remuneration package. The letter then dealt with *"Acquisition of Shares in CEC"* and recorded:

"Our agreement is that you will also be entitled to the following:

1. To acquire up to 50% of the share capital of the business (currently all 100 shares are owned by me). It is agreed the value of the company would be set at [a fixed sum] for this purpose. The shares will be transferred 25 at a time within five years of this letter under a Sale and Purchase Agreement (SPA) to be drawn up for this purpose at the time you choose to initiate the transaction.

2. ….."

12. A contract of employment was attached and it was noted this would clearly be superseded when the share sale took place and there was an agreed

shareholder's agreement. The claimant signed the contract of employment and a copy of the letter and returned them to Mr Topping.

13. The Statement of Employment Particulars was produced at page 148. Clause 4 set out the remuneration, bonus, share acquisition, expenses and equipment provisions. At clause 4.6 it was stated *"the terms of the bonus scheme and your entitlement to acquire shares in the company are set out in the accompanying letter from the company".*

14. The claimant commenced employment with the respondent on 1 April 2022, as a Director - Operations. The first year of employment went relatively smoothly, although there were some concerns on both sides and some cracks beginning to appear in the relationship.

15. An end of year review was carried out in August 2023 which identified there were some concerns in the relationship between the claimant and Mr Topping. Mr Topping identified that the claimant was not seeing the brokers he should (in terms of business development) and that he had not used Mr Paul Nicholson to get to know brokers. Mr Topping acknowledged there was much to be done by the claimant to develop relationships with brokers because he had been out of the country for some years, and he had wanted the claimant to accompany Mr Nicholson, who was well known in the business.

16. Mrs Thomson had taken the claimant to meet three brokers, but two of these meetings did not result in any business. A fourth meeting had been planned, but the claimant had been unable to attend because he had been unwell. Mrs Thomson described this broker as having lots of potential, but needing "nurturing". The claimant had not ever picked this up for development.

17. The claimant had expected more from Mr Topping in terms of meeting and being introduced to brokers and finding work. The claimant also felt he was not being allocated sufficient work by Mr Topping.

18. The relationship between Mr Topping and the claimant continued to deteriorate: Mr Topping considered the claimant was lacking in leadership and doing insufficient work to develop the business. The claimant was busy doing

work to service the "before the event" work, but this was not lucrative and so the claimant's fee income (and therefore bonus) dropped. Mr Topping had expected the claimant to carry out this work as quickly as possible and seek to convert it into "after the event" work, which was lucrative. The claimant considered Mr Topping was blinkered and stuck in his ways; that there was a lack of work being fed to him and that he did not have oversight of the work of others.

19. Mr Topping emailed the claimant on 11 May 2024 (page 112): the email was entitled "Communications and Procedure". Mr Topping started the email by stating that he had been thinking about the overall management of the company, and he noted they had had some communications problems recently. The email went on to say there were management control issues because the company did not know how much work had been done on any specific case and could not tell whether extra resources were needed. An example of this was that the company did not know the average time each referral took, and this needed to be quantified. Mr Topping attached a document he had prepared setting out procedural steps which were a way of monitoring the service being provided, and he invited the claimant's thoughts on this.

20. Mr Topping believed that if the claimant agreed to the procedural steps proposed, it would also give him a better insight to what time was being spent by the claimant on which tasks.

21. The claimant replied at length on the 13 May (Page 111). The claimant referred to an understanding that the rest of the team felt the claims team (that is, Mr Topping and the claimant) were letting the side down. The claimant defended his position and stated he had *"yet to identify any fault on my side".* The claimant, in respect of the procedural steps put forward by Mr Topping, responded to propose an online file system.

22. The claimant went on to say that he *was "growing more and more frustrated with our relationship. On many of the teams calls you shouted me down in front of the team….. I am not the 22 year old boy that worked for you 16 years*

ago. I have managed and grown a large company with 60 plus staff and a multimillion budget. I don't think you intentionally intend to belittle me but this needs to change…."

23. The claimant referred to promises being made when they first agreed to work together, for example file transfers, fees and a transparent pathway to ownership. The claimant confirmed he had joined on this basis but the promised files and fees had not materialised. Instead the claimant felt he had been bogged down in referrals, his contract had been changed (in respect of the car allowance) and the goal posts had been moved completely regarding purchase of equity. The claimant referred to having become *"a very unhappy small team"* and that he could not consider a proposal made by Mr Topping to purchase 100% of the company although he had been ready to make the initial 25% purchase come the financial year end.

24. Mr Topping responded to this by email on 13 May (page 110) where he stated the claimant was quite right that they had become an unhappy team, which was a shame, and he also shared the claimant's frustration that their relationship seemed to be deteriorating. Mr Topping considered he had always been completely honest regarding the way in which the business operated. He acknowledged the referral service took time, but this was an opportunity for an ambitious adjuster to turn unpaid enquiries into fees.

25. Mr Topping referred to the need for there to be a much better understanding of the work that was being done on claims by the adjusters and on monitoring responses. Mr Topping proposed to press ahead with the adjuster's procedure in line with the document/proposal he had sent to the claimant. Mr Topping felt the claimant's proposal of an online system would be helpful in a large company where any employee could pick up a case, but for a company of their size, better communication would be achieved it everyone copied communications to *info@* mailbox. This would enable Mrs Thomson and Mr Nicholson to see what the claimant and Mr Topping had been doing. Mr Topping noted this was something he had asked the claimant to do, but he was not doing it.

26. Mr Topping understood from the claimant's email that he was no longer interested in a staged purchase of the business, but he hoped the claimant would reconsider and, even if the claimant did not buy the business, he hoped he would wish to remain employed.

27. The claimant and Mr Topping met on 5 June to discuss matters. Mr Topping emailed the claimant after that meeting (page 178). Mr Topping confirmed that the meeting was a culmination of the problems in their relationship over many weeks. He confirmed that if the claimant was to continue working for the business, then a reset was needed because as things stood there were a number of areas where they did not agree on the claimant's duties and responsibilities.

28. Mr Topping referred to the claimant joining the business, and his commitment to sell 50% of the equity in the business to the claimant within 5 years for a set sum. The claimant was being offered a partnership and it was understood he would use the bonuses earned on fees earned to fund the purchase. Mr Topping made reference to fees coming from work he was given and from cases brought in from contacts developed.

29. The work required to be done by the claimant was more than just servicing the existing business. The business required expansion, and the claimant required to earn extra fees and show leadership to take over the running of the business. Mr Topping referred to the claimant having brought in no new clients and had failed to raise his business profile. Fee earnings had been disappointingly low and whilst a bonus of £22,113 had been earned in year 1, there was no prospect of a bonus in year 2 because the claimant had not earned enough fees.

30. Mr Topping referred to one key problem area being the claimant's outright refusal to send his emails to brokers and their clients to the info@ mailbox.

31. Mr Topping confirmed that he could not see the current relationship improving and therefore there was no prospect of the originally planned partnership of 50/50 working. It was noted the claimant had also agreed this would not work. However, Mr Topping had been prepared to sell the entire equity of the

company to the claimant for the valuation sum which had been agreed, and he would walk away because he did not want to be tied to the claimant as a business partner. He noted the claimant was not prepared to do this.

32. In conclusion, Mr Topping considered the claimant could stay on doing support adjuster work, on the same salary and terms currently in place. Mr Topping confirmed he understood if the claimant wished to leave, but asked him to confirm whether he wished to continue in employment.

33. The claimant responded to Mr Topping's email on 6 June (page 120). The claimant agreed the meeting on 5 June was the result of ongoing unresolved issues, but he disagreed that he had been the cause of this. The claimant referred to having always had concerns regarding their ability to work together but he genuinely believed the opportunity to purchase equity in the business was a valuable one. The claimant considered that what he had been promised in terms of work, and the reality, were very different. He also considered that not knowing what Mr Topping was doing was an issue.

34. The claimant set out a full account of what he had been doing and the work he had done to develop the business. The claimant acknowledged that he did not copy his emails to the *info@* mailbox, but he did not consider this necessary when he had daily contact with Mrs Thomson. The claimant noted that he had no access to monitor the emails of Mrs Thomson or Mr Nicholson, and so assumed the need for them to monitor his emails was an attempt to undermine him.

35. The claimant also made reference to the fortnightly staff meetings, held on Teams, where Mr Topping had shouted at him to "shut up" which was unacceptable.

36. The claimant made reference to the decision to now sell the company in its entirety and the option for the claimant to buy 50% being removed to facilitate this. The claimant confirmed he had refused the offer to buy 100% of the company.

37. The claimant considered he had done all he could to achieve results for clients, and strengthen the business. The claimant confirmed he would need to consider his position but would, for the time being, continue with the business as usual.

38. The claimant raised a grievance by email of 7 June (page 145). The issues raised in the grievance were (i) the withdrawal of the purchase agreement. The claimant described the purchase agreement as being fundamental to his decision to join the company; (ii) the failure to provide the agreed fee generating case numbers within the proposal document on which the decision to join the company was made; (iii) the alteration of the contract of employment to include car allowance as salary and (iv) the general hostility towards him, which was nothing short of bullying and intimidation and which could not continue if the claimant was to remain with the company. The claimant concluded by stating that as there was no-one senior to Mr Topping in the company, he suggested seeking a third party to chair any meeting that occurs between them in relation to the grievances.

39. Mr Topping sought legal advice regarding the grievance and was provided with the name of an HR specialist who could hear the grievance and provide a report. Mr Topping made contact with Mr Michael Youd, Human Resources Specialist and agreed the work to be done and the fee.

40. Mr Topping emailed the claimant on 20 June (page 129) to acknowledge receipt of the grievance, confirm he had taken legal advice about how to deal with it and confirm he had appointed an HR Consultant to hear the grievance and produce a report. Mr Topping invited the claimant to agree with this approach and whilst he agreed the grievance was regrettable, he hoped it could be resolved amicably. Mr Topping confirmed the bonus would be paid in the June salary.

41. Mr Youd met with the claimant on 24 June. The notes of that meeting (confirmed on 3 July) were produced at page 159. The claimant had an opportunity to go through the points of his grievance. The claimant informed Mr Youd that the majority of the work he had been given had been low value

and that he had been busy with non-fee generating work. His frustration with this had increased as time passed. He also felt that due to the working arrangements he had little opportunity to build a working relationship with Mr Topping and this resulted in all decision-making being held by Mr Topping. The claimant also felt that it had been not been appropriate for Mr Topping to shout at him during team meetings.

42. The claimant found Mr Topping's approach to ill health to be unsympathetic, and it was this that had led to the claimant suggesting they no longer speak to each other.

43. The claimant confirmed there had been a change to his contractual terms regarding the car allowance and at the last meeting with Mr Topping there had been changes to the opportunity to purchase equity without consultation with him. The claimant also made reference to fees being down, which impacted on his bonus.

44. The claimant expressed upset at the way in which the relationship between himself and Mr Topping had deteriorated and he no longer understood what his current status was in the business. In terms of resolution the claimant believed a parting of the ways on favourable terms would be beneficial to both parties.

45. Mr Youd met with Mr Topping on 27 June and the notes of that meeting (confirmed on the 3rd July) were produced at page 164. Mr Topping advised Mr Youd that during the first year the claimant had worked on claims referred to him by the sales team and Mr Topping. The claimant's performance in dealing with these claims was good, but Mr Topping noticed that after two years the claimant's performance in relation to developing the business had not been good.

46. Mr Topping accepted he had wanted to know from the claimant what he was working on: the claimant's fees in the last 12 months had been poor. Mr Topping did not consider that in this context there had been bullying.

47. Mr Topping confirmed he was happy for the claimant to remain in the business as a desk-based support adjuster because his performance in this area had been good, and there would be little contact between the two of them.

48. Mr Topping described the opportunity to acquire shares as being a *"conditional aspiration"* based on performance. He believed it to be a proposal and not contractual. Mr Topping agreed he had put forward a second proposal of selling the whole business because he believed a partnership between himself and the claimant was not possible.

49. Mr Topping provided a great deal of information regarding the opportunities for work and the failures of the claimant in this respect.

50. Mr Topping considered there was no evidence of bullying. He wanted to be kept informed of what work the claimant was doing and had asked the claimant to copy emails to brokers and clients to the *info*@ mailbox but he had refused to do this. Mr Topping did not deny telling the claimant to "shut up" during a staff meeting on Teams, but this had arisen because the claimant was continually interrupting others and not allowing them to speak.

51. Mr Youd prepared a Grievance Report (page 137) setting out the information he had been referred to and considered, and his conclusions and recommendations. Mr Youd noted that it appeared the working relationship between the claimant and Mr Topping was particularly strained and would be difficult to recover from. He identified there were different understandings and perceptions of the contractual position; the status of the proposal to purchase shares as part of the offer to join the respondent; the performance elements required to enact the share purchase; the differing understandings of the role of Director and the status and responsibilities of the role; alleged poor performance of the Director in relation to building and developing business and the understanding of what this means by both parties; an alleged lack of leads provided to the Director; the role each person plays in the management of the company and the interaction with each other.

52. Mr Youd partially upheld the grievance in respect of the removal of the purchase agreement based on what would be understood from the document

provided to the claimant with the offer of employment; however it was noted that there was a wider context to consider around financial performance and the requirement to exercise the right to purchase which had not been fulfilled.

53. Mr Youd dismissed the grievance in respect of the failure to provide fee generating cases and alteration to the contract to include the car allowance.

54. Mr Youd partially upheld the grievance in respect of general hostility towards the claimant from Mr Topping on the basis of the conversation at the staff meeting when Mr Topping told the claimant to shut up.

55. Mr Youd emailed the claimant and Mr Topping on 9 July (page 136) to attach his report and confirm that he had partially upheld the first and fourth points of the grievance.

56. The claimant commenced a period of sickness absence immediately following the grievance outcome. Mr Topping wanted to discuss the grievance outcome with the claimant but did not want to make contact with the claimant regarding this whilst he was off sick.

57. The claimant's representative emailed Mr Topping on 24 July (page 196) noting there had been a clear breakdown in the relationship between the claimant and Mr Topping and that it would be in everyone's best interests to negotiate a settlement agreement.

58. Mr Topping responded (page 195) taking issue with a number of points in the email, but inviting the claimant's representative to propose a heads of terms agreement and noted this would need to include a list of the active outstanding cases the claimant had been dealing with.

59. The claimant's representative responded (page 195) setting out proposals for a settlement agreement.

60. Mr Topping took some time to respond to the email (page 192) noting the terms proposed did not work for him. Mr Topping noted that he struggled with the notion the claimant had suffered as a result of "so called" bullying by a co-Director and asserted that, in contrast, the claimant had continued to withhold

information deliberately regarding the cases he had worked on. Mr Topping concluded his response by stating "*the choice of what David does next is with him. I am afraid I have no proposals to make and would like him to return to work."*

61. The situation reached an impasse whereby Mr Topping wanted the claimant to make contact with him so they reach a resolution; and the claimant wanted Mr Topping to make contact with him to discuss the grievance outcome and provide support with his absence.

62. The respondent's Staff Handbook was produced at page 38. The Handbook had a section in it entitled Sick Leave. This section set out the procedure for notifying sickness absence.

63. The claimant emailed Mr Topping on 10 July (page 185) to confirm he had attended the doctor the previous day and would self-certify for 7 days and, if need be, then provide a sick note from his GP. The claimant suggested that if Mr Topping suspected that he had not attended a medical appointment, he could ask the GP surgery to confirm his attendance. The claimant questioned why Mr Topping did not phone him rather than email. The claimant noted that Mr Topping had asked him to provide a list of the work he had and challenged whether this was an instruction to carry out work whilst off sick.

64. Mr Topping responded (page 187) to the points made by the claimant and to reiterate the claimant had not responded to the request regarding the cases he was handling and still working on. Mr Topping needed details of this urgently because of the work-in-progress value. Mr Topping invited the claimant to immediately return all outstanding work so it could be reassigned.

65. The claimant, notwithstanding the fact he was off on sickness absence, continued to do private client work on three claims in particular which he wished to see through to an end. In one of those cases, the surveyor emailed the claimant on 13 August (page 435) and commenced his email by stating *"Have you found pastures new!"*

66. The claimant emailed Mr Topping on 13 September (page 201) to confirm his resignation with immediate effect. The claimant made reference to the grievance outcome and noted that notwithstanding two points of the grievance being partially upheld, Mr Topping had taken no proactive steps to resolve matters with him. The claimant also felt the grievance process had not been fairly concluded because no witnesses had been spoken to.

67. The claimant asserted he had received no support that would assist in alleviating his concerns regarding Mr Topping's behaviour and consequently his anxiety had grown and had become detrimental to his physical and mental well-being. The claimant noted the proposals put forward by his solicitor had been rejected and he felt that he was simply being expected to return to work as if nothing had happened but on substantially diminished terms. The claimant felt he could not continue with the situation which was untenable and left him no option but to resign in response to the breach of contract.

68. The claimant decided to resign because there was a stalemate: he could not return to work and there was no way forward in circumstances where there had been no response to the grievance.

69. The claimant was fit to work approximately four weeks after 9 September (that is, by 7 October). He started to look for alternative employment through two specialist recruitment agencies and attended for interviews and also approached companies directly. The claimant commenced a new role in mid-March 2025, with a salary of £80,000.

Credibility and notes on the evidence

70. The Tribunal found neither the claimant nor Mr Topping to be entirely credible or reliable witnesses and the primary reason for this was because their relationship had broken down and they were intransigent and uncooperative with each other, which impacted on their evidence. This was a case where each party entirely blamed the other for what had happened but it was clear they had both become difficult with each other and were both, by their actions, responsible for the breakdown in the relationship.

71. Mr Topping accepted the relationship had broken down and that he had started to look for a replacement for the claimant in July. Mr Topping also suggested, however, that he would have been happy for the claimant to stay on to do a limited type of work and to retain the title and salary of Director. This appeared to conflict with the relationship having broken down.

72. The claimant also accepted the relationship had broken down and we noted that in an email sent to the claimant by a surveyor in August, the person asked whether he had found "pastures new". The claimant's upset that Mr Topping failed to support him in his absence, appeared to conflict with his position that the relationship had broken down and he, in reality, did not want to return to work.

73. The Tribunal found as a matter of fact that the relationship between Mr Topping and the claimant had broken down, and there was no scope for it to be repaired. We also formed the clear impression from this evidence that each party, in making these apparently contradictory statements, was simply endeavouring to play the other in order to protect their position and try to gain an advantage. We noted, for example, that Mr Topping described the claimant's refusal to provide information regarding the files he retained as *"holding him to ransom".* The Tribunal accepted this inasmuch as it was a reference to the claimant taking that action in order to try to improve any offer of settlement.

74. Mrs Thomson and Mr Nicholson were straightforward witnesses but their evidence did not add much to the legal issues to be determined in this case.

Claimant's submissions

75. Ms McJannett submitted there had been a breach of the implied duty of trust and confidence caused by the respondent's failure to resolve/address the partially upheld aspects of the claimant's grievance; the failure to deal with the claimant's sickness absence; general bullying by Mr Topping; a deterioration in the respondent's treatment of the claimant, for example, humiliating him in front of others, using hostile language and creating an intolerable working environment. The claimant's resignation was due to the

cumulative effect of the breaches, and the claimant had resigned in response to that.

76. The respondent had made an offer of employment and equity purchase to the claimant (pages 74/75; 146/147) and on page 148 the contract of employment had been produced. The claimant was employed as the Director of Operations. The respondent did not put in place any process to manage the performance of the claimant. Mr Topping had proposed a scheme so the claimant could "prove the work he was doing".

77. The respondent had delayed in its initial response to the grievance. Two points of the claimant's grievance had been partially upheld. The claimant had hoped the respondent would engage with him regarding these matters, but instead of this, the respondent had ignored the claimant. The respondent started looking for a replacement for the claimant in July (22nd). Mr Topping accepted that he struggled with the concept of bullying, but the evidence demonstrated he criticised the claimant's work and chipped away at him: he bullied him.

78. Ms McJannett referred to the emails exchanged regarding a possible settlement and submitted that even in those circumstances the respondent had to be chased for a response and ultimately had no proposal to make. There was a statement that he wanted the claimant to return to work, but there was nothing to suggest how this could be achieved or how this would work in circumstances where the return would be a demotion and there would no equity purchase.

79. The relationship had broken down and the respondent had taken no steps to support the claimant during his sickness absence and had taken no steps to rebuild the relationship. The claimant had resigned on 13 September in response to the breach of contract.

80. Ms McJannett referred to the schedule of loss. She noted the claimant had been paid statutory sick pay whilst absent, but others had been paid full pay. The losses set out in the schedule of loss flowed from the respondent's failures and the removal of the option of equity purchase, and the grievance

outcome had not been addressed which supported an ACAS uplift. The claimant had taken steps to immediately find alternative employment but had had to chase the respondent to remove him as a Director.

81. Ms McJannett referred to the cases of ***Kaur v Leeds Teaching Hospitals NHS Trust 2018 EWCA Civ 978; Western Excavating Ltd v Sharp 1978 QB 761; London Borough of Waltham Forest v Omilaju 2004 EWCA Civ 1493; Williams v The Governing Body or Laderman Daves Church in Wales Primary School 2020 WL 02129825*** and ***Horkulak v Cantor Fitzgerald International 2003 WL 21729225.***

Respondent's submissions

82. Mr Topping submitted that many of the things alleged by the claimant were simply the claimant's version of events and there had been no corroboration. Further, it had been shown repeatedly that his version of events was incorrect and untrue.

83. Mr Topping accepted there had been an offer of an eventual partnership to jointly own and run the company. The offer was not unconditional: the price/value of the company was fixed as an incentive. A share purchase agreement would need to have been signed. Mr Topping submitted there was no final, conclusive binding agreement: it was not unconditional and automatic. It was not part of the contract of employment.

84. Mr Topping submitted that it was in fact the claimant who had been in breach of contract because he had not been a good employee. He had not shown leadership; he had not achieved sales through his own fee-earning; he had not made new contacts and he had simply serviced existing clients which would never have been enough to justify an equity purchase. The claimant, by his actions, his lack of performance and his deliberate refusal to share information and copy emails to the *info*@ address, breached the implied duty of trust and confidence.

85. Mr Topping submitted it had been clear from what the claimant told Mr Youd, that he would not return to work. Mr Topping accepted discussions were

required regarding the grievance outcome, but the claimant went off sick immediately. Mr Topping considered the allegations of bullying were unproven and false. He acknowledged that perhaps he had said "shut up" but there had been no malice in this and it was simply common parlance.

86. The claimant's sickness had prevented any progress being made. Mr Topping believed that any attempt to contact the claimant would likely have been viewed as aggressive. The claimant had been contacting clients whilst off sick and Mr Topping believed the claimant's sickness had been part of his strategy to improve an exit package. The proposals put forward by his representative, took no account of the claimant's flaws in terms of performance and not making his bonus.

87. Mr Topping noted the claimant had not made any contact with him notwithstanding he had been able to work whilst off sick and make contact with Mrs Thomson.

88. Mr Topping had offered to remove all claims from the claimant whilst he was off sick so he could "de-stress", but the claimant refused to give him the details of the work he had. He had chosen to keep all of the claims, and had effectively held the respondent to ransom.

89. The term "supporting the claimant back to work" was mystifying because the claimant continued to work.

90. Mr Topping invited the Tribunal to dismiss the claim.

Discussion and decision

91. The Tribunal had regard to the relevant statutory provisions set out in section 95 Employment Rights Act and to subsection (c) which provides that there is a dismissal when the employee terminates the contract under which they were employed (with or without notice) in circumstances such that they are entitled to terminate it without notice by reason of the employer's conduct.

92. In order to claim constructive dismissal an employee must establish:

- there was a fundamental breach of contract on the part of the employer;
- the employer's breach caused the employee to resign and
- the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.

93. The Tribunal next had regard to relevant case law and, in particular, the case of ***Western Excavating Ltd v Sharp 1978 ICR 221*** where the Court of Appeal held that the employer's conduct which gives rise to a constructive dismissal must involve a repudiatory breach of contract.

94. The Tribunal had regard to the case of ***Courtaulds Northern Textiles Ltd v Andrew 1979 IRLR 84*** where the Employment Appeal Tribunal held that it was a fundamental breach of contract for the employer, without reasonable and proper cause, to conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties. In the case of ***Woods v WM Car Services Ltd 1981 ICR 666*** it was said that *"to constitute a breach of this implied term it is not necessary to show that the employer intended any repudiation of the contract: the Tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it."*

95. The House of Lords, in the case of ***Malik v Bank of Credit and Commerce International SA (in compulsory liquidation) 1997 ICR 606*** emphasised there is only a breach where there is no reasonable and proper cause for the employer's conduct and then only if the conduct is calculated and likely to destroy or seriously damage the relationship of trust and confidence.

96. The concept of a last straw was explained in the case ***of Lewis v Motorworld Garages Ltd 1986 ICR 157*** where it was said that the repudiatory conduct may consist of a series of acts or incidents, some of them perhaps quite trivial, which cumulatively amount to a repudiatory breach of the implied duty of trust and confidence. In ***Omilaju v Waltham Forest London Borough Council***

2005 ICR 481 the Court of Appeal explained that the act constituting the last straw does not have to be of the same character as the earlier acts, nor must it constitute unreasonable or blameworthy conduct, although in most cases it will do so. The last straw must contribute, however slightly, to the breach of the implied duty of trust and confidence. An entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely but mistakenly interprets the act as harmful and destructive of his trust and confidence in the employer. The test of whether the employee's trust and confidence is undermined is objective.

97. The Tribunal finally had regard to the case of ***Kaur v Leeds Teaching Hospitals NHS Trust 2018 WL 02008605*** where it was stated that in the normal case where an employee claims to have been constructively dismissed, it is sufficient for a Tribunal to ask itself the following questions:

"1. What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his resignation;

2. Has he affirmed the contract since that act;

3. If not, was that act (or omission) by itself a repudiatory breach of contract;

4. If not, was it nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the Malik term and

5. Did the employee resign in response (or partly in response) to that breach."

98. The Tribunal noted that the claimant in this case relied on a number of acts/omissions, the cumulative effect of which, it was submitted, breached the implied term of trust and confidence. The first issue for the Tribunal to determine is whether there was a fundamental breach of contract on the part of the employer: did the employer breach the implied duty of trust and confidence? The claimant, in arguing that the respondent had breached this term, relied on the following factors, which, it was said, cumulatively amounted

to a breach: (i) reneging on the equity purchase agreement; (ii) failing to take action to address the aspects of the grievance which had been partially upheld; (iii) failing to take action to manage his sickness absence and (iv) bullying behaviour, all of which led to a breakdown in the relationship. The Tribunal had regard to each of these points.

99. The Tribunal noted there was no dispute regarding the fact Mr Topping and the claimant had discussions and agreed the claimant would commence employment with the respondent as a Director – Operations on the 1 April 2022 and that he would be entitled to acquire up to 50% of the share capital of the business for a set price. This was set out in the letter dated 27 March 2022 (page 76) and in the main Statement of Employment Particulars (page 62) at clause 4.6 which provided that *"The terms of the bonus scheme and your entitlement to acquire shares in the company are set out in the accompanying letter from the company".* The claimant's expectation was that the bonus he earned on the fees earned would be put towards purchasing equity in the company.

100. Mr Topping sought to argue that the agreement to purchase equity was not contractual or binding or conclusive or automatic: he considered that it was conditional on the claimant, essentially, proving himself in terms of performance. The letter of 27 March did not give any indication of this. The Tribunal concluded that at best the agreement was contractual, but even if the agreement was not contractual, it was a clear statement of intent which was of importance to the claimant and which he was entitled to rely on.

101. The relationship between the claimant and Mr Topping broke down and, put simply, Mr Topping did not want to go into partnership with the claimant to jointly own and run the company. Mr Topping, on that basis, withdrew the offer of equity purchase and invited the claimant to purchase the whole company. The claimant did not want to do this and this led to the position where, ultimately, there was no offer/opportunity to purchase any equity in the company available to the claimant.

102. The Tribunal, having regard to the ***Courtaulds, Woods*** and ***Malik*** cases above, noted that there is only a breach where there is no reasonable and proper cause for the employer's conduct and then only if the conduct is calculated and likely to destroy or seriously damage the relationship of trust and confidence. The Tribunal, accordingly, asked itself whether there was reasonable and proper cause for Mr Topping's conduct in withdrawing the equity purchase agreement? The Tribunal acknowledged Mr Topping had no desire to enter into an arrangement with the claimant whereby they jointly owned and operated the company, and would have to work together. Mr Topping considered the claimant lacked leadership and had failed to develop the business. It was clear, by the time the equity purchase was withdrawn, that Mr Topping and the claimant were a *"very small unhappy team".* The claimant, for his part, considered Mr Topping stuck in his ways, rude and that he continued to *"rule"* the business with no consultation with the claimant.

103. The Tribunal concluded, from these points, that whilst Mr Topping may have had reasonable and proper cause not to want to enter into a partnership with the claimant, he did not have reasonable and proper cause to vary and then withdraw the equity purchase agreement without discussing this with the claimant. Mr Topping proceeded, without consultation, to not only withdraw the equity purchase agreement, but to then offer the claimant an opportunity to purchase the whole company, before subsequently withdrawing that because the claimant was not interested in it, and ultimately confirming the claimant could continue as an employee without any opportunity to purchase equity.

104. Mr Topping understood, from the pre-employment discussions, how important purchase of equity was for the claimant and he must, or ought reasonably to, have been aware that his actions were likely to seriously damage or destroy the relationship of trust and confidence between himself and the claimant.

105. The Tribunal next considered the claimant's assertion that the respondent failed to take action to resolve the points of the grievance which had been partially upheld. There was no dispute regarding the fact that two of the four points raised by the claimant in his grievance were partially upheld. Mr Youd

partially upheld the claimant's grievance regarding the removal of the share purchase agreement and general hostility by Mr Topping towards the claimant. Mr Youd emailed both Mr Topping and the claimant (page 136) on 9 July to confirm this outcome.

106. The Tribunal asked whether Mr Topping had reasonable and proper cause to not contact the claimant regarding the partially successful aspects of the grievance. We noted there was no dispute regarding the fact Mr Topping took no action to contact the claimant regarding the outcome of the grievance and the reason he advanced for this was because the claimant commenced a period of sickness absence on 10 July and did not ever return to work. Mr Topping did not consider it appropriate to contact the claimant regarding the outcome of the grievance whilst he was on a period of sickness absence (for work-related stress). The Tribunal noted a number of points regarding Mr Topping's position.

107. First, Mr Youd's report referred to the relationship between the claimant and Mr Topping being *"particularly strained"* and that it would be *"difficult to recover from"*. The claimant agreed with this but told the Tribunal he hoped the relationship was not irreconcilable. This however had to be balanced against the fact the claimant must have instructed his representative to approach Mr Topping regarding an exit package.

108. Mr Topping also agreed the relationship had broken down, but did not want to engage in negotiation of an exit package and stated in his email of 20 August to the claimant's representative (page 192) that *"The choice of what David does next is with him. I am afraid I have no proposals to make and would like him to return to work".* Mr Topping had also previously stated there was scope for the claimant to remain employed by the company, on the same terms and conditions, but with no equity purchase opportunity and doing only the work on which he had been focussed.

109. The Tribunal took from these respective positions that the parties knew the relationship had broken down, but they were jockeying for position and trying to force the hand of the other.

110. Second, there was an email exchange between the claimant and Mr Topping on 10 July, which culminated (page 185) in Mr Topping's email asking the claimant to comply with the request for details of the claims he was handling. The Tribunal did not accept the suggestion this was an instruction for the claimant to carry out work whilst off sick: rather, it was an instruction for the claimant to notify the respondent of the claims he was handling so that those claims could be re-assigned and dealt with by someone else. The claimant refused to comply with the instruction and, instead, carried on working on those claims when off on sickness absence. The Tribunal accepted Mr Topping's position that either the claimant was sick and could not work, or he was fit to work and therefore should have been at work.

111. Third, Mr Topping and the claimant's representative were in contact during the period 24 July to 20 August regarding proposals for an exit package. Unfortunately these exchanges did not result in agreement.

112. The Tribunal asked itself whether Mr Topping had reasonable and proper cause not to contact the claimant regarding the partially upheld aspects of the grievance and we concluded that in the circumstances he did. We reached that conclusion for two reasons: (i) because the reality was that the relationship between the claimant and Mr Topping had broken down and regardless of any meeting or discussion regarding the partially upheld points of the grievance, it would not change that situation or lead to a positive place; and (ii) the claimant was off sick with work-related stress and we considered it appropriate for an employer not to seek to discuss work-related issues with an employee on sickness absence, particularly when one of the issues related to (alleged) hostile behaviour.

113. The Tribunal did consider whether Mr Topping should have written to the claimant to confirm the outcome of the grievance would be discussed upon his return to work. However, the Tribunal considered that against the background of discussions regarding an exit package, it would not have been reasonable or appropriate for Mr Topping to make contact with the claimant to discuss the partially upheld aspects of the grievance. We concluded that in

the circumstances Mr Topping had reasonable cause not to write to the claimant in these terms.

114. The Tribunal next considered the claimant's third point which was that Mr Topping ought to have taken action to manage his sickness absence. The claimant did not, in his evidence, set out what action he expected or wanted Mr Topping to take. There was reference to a sickness absence policy, but the only document produced for the Tribunal was the company Handbook which sets out a procedure for notifying absences (page 51).

115. The Tribunal considered, having regard to the claimant's evidence, that what he wanted from Mr Topping was a little empathy and understanding. Mr Topping's approach to the claimant's absence was more than robust: for example, when asked what steps he had taken to get the claimant back to work, he replied that it was for the claimant to decide when to return to work. The Tribunal inferred from Mr Topping's evidence that he was not convinced the claimant's absence was for legitimate reasons and he considered that it was part of the game-play to improve the chances of a better exit package.

116. The Tribunal had regard to the fact Mr Topping had approached and recruited the claimant: he was the claimant's line manager and it was for Mr Topping to deal with issues as a reasonable employer. The Tribunal did not consider Mr Topping had reasonable and proper cause to wholly fail to deal with the claimant's sickness absence. He did not have reasonable and proper cause to simply take no action and leave it to the claimant to decide if and when to return to work, particularly in circumstances where the relationship had broken down, the share purchase agreement had gone and the partially upheld parts of the grievance were still outstanding.

117. The Tribunal next had regard to the final issue raised by the claimant which was the general bullying behaviour of Mr Topping. The Tribunal considered this was focussed on the partially upheld grievance complaint relating to being told by Mr Topping, during a staff meeting, to *"shut up".* The Tribunal was satisfied that Mr Topping did not have reasonable and proper cause to tell a fellow Director to *"shut up"* during a staff meeting and in front of other, more

junior, staff. We say that because such conduct would undermine the claimant in front of those staff.

118. The Tribunal next stood back and considered whether the employer's conduct as a whole was such that its effect, judged reasonably and sensibly, was such that the employee cannot be expected to put up with it. The Tribunal was satisfied that Mr Topping's conduct was such that, judged reasonably and sensibly, the claimant could not be expected to put up with it. The Tribunal reached that conclusion because of the cumulative effect of the above points, being the withdrawal of the share purchase opportunity; the breakdown in the relationship; Mr Topping's failure to deal with the claimant's absence and Mr Topping undermining the claimant in front of other staff by telling him to *"shut up"* during a staff meeting.

119. The Tribunal, for the purposes of checking and balancing, addressed the five questions as set out in the ***Kaur*** case.

1/ *What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his resignation.* **This was the failure by Mr Topping to manage the claimant's sickness absence.**

2/ *Has the claimant affirmed the contract since that act.* **No**

3/ *If not, was that act (or omission) by itself a repudiatory breach of contract.* **The Tribunal did not consider, in the circumstances of this case, where there was a break down in the relationship between the claimant and Mr Topping, that his failure to manage the claimant's sickness absence was a repudiatory breach of contract.**

4/ *If not, was it nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the Malik term.* **The Tribunal was satisfied that it was part of a course of conduct comprising several**

acts/omissions which, viewed cumulatively, amounted to a repudiatory breach of the implied term of trust and confidence.

5/ *Did the employee resign in response (or partly in response) to that breach.* **Yes the claimant resigned in response to that breach.**

120. The Tribunal, for the reasons set out above, concluded there was a fundamental breach of contract entitling the claimant to resign, and that the claimant did resign in response to that breach.

121. Mr Topping did not seek to argue that if there was a dismissal there was a potentially fair reason for that dismissal. Accordingly, the Tribunal decided the claimant had been unfairly constructively dismissed.

122. The Tribunal next turned to consider an award of compensation. The claimant is entitled to a basic award of 2 x gross weekly pay. The claimant earned £1154 gross per week, which must be restricted to the maximum of £700 gross per week. We therefore calculate the basic award to be £1400 (being 2 x £700).

123. The Tribunal next turned to consider the calculation of the compensatory award. The claimant lost wages in the period from the date of dismissal to the date of this hearing. We calculate this to be a period of 34 weeks (13th September 2024 – 19th May 2025). The sum for past loss is £27,336 (being 34 weeks x £804 net per week).

124. The claimant obtained alternative employment on 17 March 2025 and his earnings in the period to the date of the Tribunal must be taken into account. The claimant earned the sum of £8914. The net loss in the period since dismissal to the date of the Tribunal is £18,425 (being £27,336 - £8914).

125. The claimant is awarded £400 for loss of statutory employment rights. The total sum for past losses is £27,736 (being £27,336 + £400).

126. The Tribunal made no award of future loss because the claimant has obtained alternative employment at a higher salary.

127. The claimant, in the schedule of loss, made a claim for loss of bonus to the date of the Tribunal (£14,807) and loss of the opportunity to purchase share equity (£25,000). There was no evidence before the Tribunal to explain, or support, the claimant's assertion that he was entitled to bonus in the period to the date of the Tribunal. The only evidence before the Tribunal was that the claimant's fee income had dropped drastically and accordingly, so had his bonus. Further, there was unchallenged evidence that outstanding bonus was paid to the claimant in June 2024. We therefore did not accept there was an entitlement to loss of bonus to the date of the Tribunal.

128. The Tribunal also did not accept the claimant was entitled to seek £25,000 for loss of the opportunity to purchase shares. There was no evidence to support this aspect of the claim in circumstances where the claimant had not exercised his option to purchase share equity and the Share Purchase agreement had not been drawn up. There was also no evidence to support, or explain to the Tribunal, the losses claimed or the way in which they had been calculated. The Tribunal, for these reasons, did not accept an award should be made in this respect.

129. The claimant sought a 25% uplift to compensation due to the respondent's unreasonable failure to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures. This position was based on the respondent's failure to address the grievance. The Tribunal had regard to the terms of section 207A Trade Union and Labour Relations (Consolidation) Act which provides that where the Code is applicable and where there has been an unreasonable failure to comply with that Code, the employment Tribunal may, if it considers it just and equitable in all the circumstances, increase any award of compensation it makes to the employee by no more than 25%.

130. The Tribunal acknowledged that the claimant raised his grievance on the 7th June and waited until the 20th June to hear from Mr Topping regarding that matter. The Tribunal acknowledged the claimant may have expected an earlier response, but in circumstances where the claimant knew there was no-one in the company to hear a grievance against Mr Topping, and where he had asked for an independent person to be appointed to hear the grievance,

the Tribunal considered it was not unreasonable for time to be taken to put that in place. The Tribunal noted that by the time Mr Topping responded to the claimant, he was able to confirm who had been appointed to hear the grievance. The Tribunal considered that in the circumstances there was no unreasonable failure by Mr Topping.

131. Mr Topping did not contact the claimant following the outcome of the grievance to discuss resolution of the two partially upheld aspects of the grievance. This matter is dealt with above, where the Tribunal concluded Mr Topping had reasonable and proper cause not to contact the claimant regarding this matter when the claimant was off sick with work-related stress. The Tribunal accordingly concluded that there was no unreasonable failure in this respect.

132. The Tribunal, for these reasons, did not accept the submission that there should be an uplift for unreasonable failure to follow the ACAS Code.

133. The Tribunal next had regard to the terms of section 123(6) Employment Rights Act which provides that where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the employee, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding. The case of ***Nelson v BBC (No 2) 1980 ICR 110*** held that:

- the conduct must be culpable or blameworthy;
- the conduct must have actually caused or contributed to the dismissal and
- it must be just and equitable to reduce the award by the proportion specified.

134. The Tribunal, when considering the issue of contributory conduct, had regard to the fact the relationship between Mr Topping and the claimant had broken down and this was the overarching factor and context for the incidents which led to the dismissal. We acknowledged they each blamed the other for this, but we found as a matter of fact that both parties were to blame for the

breakdown in the relationship. The emails exchanged during May and June 2024 demonstrated why Mr Topping and the claimant had become a *"very small unhappy team".*

135. There were three points in particular, which the Tribunal considered contributed to the breakdown in the relationship and thus the dismissal. The first point was the fact that the claimant's lack of leadership, the dramatic drop in the fees earned by the claimant and his apparent focus on work which did not generate the best fees led to the withdrawal of the share purchase opportunity. The second point was the claimant's refusal to copy his emails to brokers to the *info@* inbox. The claimant, whilst acknowledging there was a need for people to know what he and Mr Topping were doing (in other words, what they were spending their time on), he simply refused to comply with the request/instruction to copy emails. The claimant, at this Tribunal, said he did not have access to the inbox and therefore could not see other people's emails. This however missed the point of why the emails of Mr Topping and the claimant were required to be copied to the inbox, which was for the purpose of administrative support and an understanding of how time was being spent.

136. The third point related to the claimant's refusal to provide Mr Topping with the information regarding the files he had retained and was working on during his period of sickness absence. The claimant not only worked whilst off on sickness absence and refused to comply with Mr Topping's request, but he also challenged Mr Topping whether his request was an instruction to work whilst off sick, in circumstances where that was precisely what the claimant was doing. This conduct was challenging and confrontational.

137. The Tribunal decided that having regard to the claimant's part in the breakdown of the relationship between himself and Mr Topping, and having regard to the fact the claimant's fee income had fallen dramatically, his refusal to comply with a reasonable instruction regarding copying his emails and his challenging and confrontational behaviour whilst off sick, there was blameworthy conduct on the part of the claimant. The Tribunal further decided this blameworthy conduct contributed to the dismissal because it contributed

to the decision to withdraw the equity purchase agreement and to the relationship breakdown. The Tribunal further decided it would be just and equitable to reduce the compensatory award by 50%. We reached that decision because we concluded the claimant was 50% responsible for the breakdown in the relationship.

138. The effect of our decision is that the compensatory award is reduced from £27,736 to £13,868.

139. The Tribunal next had regard to the terms of section 122(2) Employment Rights Act, and for the same reasons as set out above, further decided to reduce the basic award by 50%. The basic award of £1400 is reduced to £700.

140. The Tribunal, in conclusion, decided the claimant was unfairly dismissed and the respondent shall pay compensation to the claimant of £14,568.

Date sent to parties **16 June 2025**