Case No: 6005624/2024

EMPLOYMENT TRIBUNALS

Claimant: **Mr Andrew Tritton**

Respondent: **DWA Claims Limited**

Heard at: **Southampton Employment Tribunal via CVP**

On: **17 and 18 June 2025**

Before: **Employment Judge Hay**

Representation
Claimant: Ms Emma Steward
Respondent: Mr Ashley Potter – Company Director of the Respondent

JUDGMENT having been sent to the parties on 7 July 2025 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Background

1. By ET/1 presented on 12 July 2024 Mr Tritton brought a claim of constructive unfair dismissal. He alleged that his employer DWA Claims was in breach of the implied term of trust and confidence which is included in every employment contract and this had caused him to resign.

2. Mr Tritton worked as a business development manager for the respondent who are a credit hire company providing hire vehicles. The contract paid Mr Tritton £30,000 per year with an annual review each September at the discretion of the company. The contract also allowed for payment of commission and bonuses and entitled Mr Tritton to take part in the commission scheme. In 2018 he had a pay review and small salary increase. In October 2022 he sought an increase in his pay. That prompted a review by the respondent of the payment structure for the sales team in which Mr Tritton worked. A new commission structure was proposed and, following consultation with the sales team, it was adopted. During that process Mr Tritton repeatedly asked for a pay increase. His salary was increased and then the new commission structure started. Mr Tritton was unhappy with that and resigned.

3. In his ET/1 claim form Mr Tritton alleged the respondent company behaved in a way that was either calculated or likely to destroy or seriously damage the trust and confidence between them. He says he was entitled to treat this as a dismissal. s95 of the

employment rights act states that *"for the purposes of this part an employee is dismissed by his employer if the employee terminates the contract under which they are employed in circumstances in which he is entitled to terminate it without notice by reason of the employers conduct*". This is known as constructive unfair dismissal.

4. As well as a claim for money, Mr Tritton also claimed a release from a non-compete clause in his contract.

5. There was also a claim for unpaid commission but that had been resolved by the time of the hearing and was not pursued.

6. Mr Tritton's effective date of termination was agreed to be the 1st of March 2024. S111 of the ERA requires him to present any complaint of unfair dismissal within 3 months of that date. He contacted the ACAS conciliation service on the 14th of May 2024 which paused the running of that 3 month primary time limit for presenting a claim to the ET. ACAS issued a certificate on the 13th of June 2024. Applying section 207B of the Employment Rights Act 1996, the time limit for presenting a claim was thereby extended to the 12th of July 2024. On that date Mr Tritton presented his ET/1. The claim is therefore in time.

7. There had not been a case management hearing so the factual and legal issues listed below we agreed with the parties at the start of the hearing.

List of issues

Constructive dismissal
i. Did the respondent do the following things:
a. Fail to provide annual pay reviews
b. Leave a gap of nearly a year from October 2022 before responding to the claimants initial discussions about his pay.
c. Reduce the claimants overall pay with no justification.
d. Cause feeling of discrimination, victimisation, confusion, stress and anxiety to the claimant whilst aware that they were doing so.
e. Having treated communication about these feelings raised by the claimant as a formal grievance, failed to progress that grievance process.

ii. Did those things, or any of them, breach the implied term of trust and confidence? The Tribunal will need to decide:
a. whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and
b. whether it had reasonable and proper cause for doing so.

iii. Did the claimant resign in response to the breach of trust and confidence / other term of the contract namely any of the things listed above?
The Tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation.

iv. Did the claimant affirm the contract before resigning? The Tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.

The evidence

8. During the course of a 2 day hearing the Tribunal considered a 98-page bundle, and witness statements from from Mr Tritton, Mr Potter, Mr Willott, and Ms Kleczsz all of whom gave live evidence.

Findings of Fact

9. Mr Tritton's employment began in November 2013. Some of his contract terms were negotiated before he started including a "non-compete" term which prevented him from

working in competition with DWA in various ways for 12 months after resignation or dismissal. He accepted that term but only after he had persuaded DWA to exclude any customers or contacts with whom he had pre-existing relationships whom he had brought with him to the company, from the restrictions it imposed.

10. The contract paid Mr Tritton £30,000 per year with an annual review each September at the discretion of the company. The contract made clear that a salary review was not a guarantee of any increased salary and any increases were entirely at the company's discretion: clause 9.1.

11. The contract also allowed for payment of commission and bonuses and said that Mr Tritton would be entitled to take part in the commission scheme. That too was at the company's discretion: clause 9.2. The contract states the details of the commission scheme would be “provided to you by your manager”. The details of that scheme were annexed.

12. In 2018 Mr Tritton had a pay review and a small salary increase. It was agreed that during the time he worked for the respondent that was the only active pay review and increase he had.

13. In 2020 the respondent, like all small businesses, was affected by the Covid pandemic and it was agreed that the company was still trying to recover from those affects in 2022 and 2023, the time of these events.

14. In October of 2022 Mr Tritton raised the issue of a pay increase at a face-to-face meeting with his boss Ashley Potter, a director of the company. That prompted DWA to look at the payment structure. This, along with other features of the business at that time, prompted a review of the commission. A new structure was devised and details of it were shared with the sales team of which Mr Tritton was one of three team members.

15. At the same time Mr Tritton continued to raise the issue of his pay with Mr Potter, as documented in emails from Mr Tritton in March and April 2023. One email sent to Mr Potter included a document illustrating that had Mr Tritton received an inflation linked salary increase, then by 2022 Mr Tritton would have been on a basic salary £41,052.

16. In July Mr Potter sent back to Mr Tritton the new proposed commission structure. It was explained that the purpose of it was to ensure that the company was “encouraging the most profitable workflows and arrangements”. Mr Potter confirmed that there would be a lead in time to these changes to allow for discussion. He also included some sample calculations showing how much commission the sales team would have made under the new proposed scheme had it been applied to their sales in the preceding months. He subsequently also arranged for some sample data and calculations to be sent to Mr Tritton so he could see how the new structure might affect his pay based on his recent performance. Mr Tritton was told that it was intended that the new structure would apply from the 1st of October.

17. Mr Tritton emailed Ashley Potter in September 2023 and again attached his own calculations and indicated that although the company says it would come into effect on the 1st of October his understanding was that until new terms had been “jointly agreed” he expected his existing contractual terms to be adhered to. In fact the commission structure was at the discretion of the company: Mr Tritton was free to accept it or reject it but that doesn't mean that he was free to impose or insist upon his agreement to any of its terms.

18. Nevertheless the company did not immediately impose that new commission structure on him and discussions about it continued in September with further examplar profitability breakdown and calculations being sent to Mr Tritton. By the end of October the company was of the view that they had answered all his questions and had provided confirmation of the calculations and of his anticipated earnings as a way of demonstrating the new structure. It had also been explained to him that the structure was justified by the business needs and although he felt deflated by it the calculation was not that different to the previous one and in fact Mr Tritton could increase his income with this new commission structure. Fundamental to that was a significant salary increase which took his basic salary to £45,000.

19. In October 2023 he was forwarded an email which had been sent to a colleague in the sales team, Georgina Adams. It related to the new proposed structure and noted it would result in a “substantially favourable outcome” in her case.

20. Mr Tritton's response in November was to ask for increase of his basic salary to £55,000, backdated for a year to November 2022. In that e-mail Mr Tritton says that would mean he was at the level he would be at if he had received inflationary pay increases. He didn’t explain how he calculated the figure of £55,000 as opposed to the £41,000 he had previously indicated.

21. An e-mail was sent in response from Mr Potter making it clear that they had been unable to reach an accord over Mr Tritton’s salary and commission and confirming that the new salary and commission would take effect from the 1st of January 2024. That is 3 months after it was intended that the new structure would start to be applied.

22. There was then a meeting on the 21st of November 2023 between Mr Tritton and Mr Potter to discuss that situation. Mr Tritton made it clear that he was disgruntled and felt undervalued. Mr Tritton was also told that Mr Potter was stepping back as his manager and that he would in future be managed by a gentleman called Matt Willott. It was uncontested evidence that when he was told about that change Mr Tritton said that if Matt became his manager he would leave. Mr Tritton did not recall what he said but he did confirm that he was not happy about the possibility of Mr Willott becoming his boss.

23. The following day, 22 November 2023, Mr Tritton sent an e-mail to Mr Potter and the two other directors of the company setting out his disappointment, referring to a number of emails he had sent between Oct 2022 and Sept 23 about his pay and complaining that he had gone 10 years without any type of appraisal or pay review apart from the one small increase in 2018. He asserted that he was aware that other people were awarded pay increases and he wanted to know why he had been discriminated against over pay and reviews. He also noted “*following my meeting with Ash yesterday absolutely no compromise was put forward or offered in relation to him of my proposal*. He finished that e-mail saying *“to sum up I feel highly discriminated against …my decade long commitment to the company appears to hold very little value*”.

24. The company told him by way of e-mail that they would be treating his complaint as a formal grievance. He immediately responded saying “*I'm surprised you viewed my e-mail as a formal grievance as this is not what I have requested. For clarification I have not issued a formal grievance I'm quite happy to have a written response”.*

25. The next day, 24 November 2023, Mr Tritton asked who the investigating manager would be and clarification about what information they would be looking to obtain. At that stage Mr Potter couldn't tell him. In fact Mr Potter never told him anything further about that grievance. Mr Tritton himself never asked anything further about it, he never raised the status of it, he never raised a query about when any meetings might be, and he never asked about any outcome.

26. In the months that followed Mr Willott became his new manager. Oral evidence from Matt Willott and Ashley Potter, supported by some emails from Mr Tritton, indicate that Mr Tritton appeared to be feeling more positive and “engaged” than the November emails suggested. There was no evidence that Mr Tritton continued to raise the issues that were reflected in his emails in November. Instead he was actively engaging with his role at the company, for example bringing to Matt Willott’s attention a problem with one of their IT systems which was affecting the company's performance and referring to a new customer who might have a series of work streams for them.

27. On the 1st of February he sent an e-mail to Matt Willott and the remainder of the sales team referencing conversations with competitors and increases in rates which would increase profitability, all of which are the sorts of things that the company no doubt would have wanted to see from him as part of his role. The response from Matt Willott was “sounds good Andrew thank you”. However on that same day Mr Tritton tendered his resignation saying he understood he was required to give one months’ notice and therefore his last working day would be the 1st of March.

28. Mr Potter to whom that resignation was tendered gave him 24 hours to think about it and then submitted it to HR and on the 2nd of February Mr Potter wrote to Mr Tritton confirming the resignation and the terms of it were that Mr Tritton would be paid up to and including the 1st of March, he would be placed on garden leave in accordance with the contract, and would be required to take his holiday pay. Mr Potter also reminded Mr Tritton he was bound by the other relevant causes in this contract in particular clause 19 which detailed Mr Tritton's post termination obligations (the non-compete clause). That letter also confirmed the company would not be assigning him any duties during the garden leave and that he was required not to contact any customers suppliers or employees.

29. Mr Tritton's last day of employment was the 1st of March 2024.

Findings on the disputed issues

30. Mr Tritton says that the way the company dealt with him was a breach of the implied term of trust and confidence and that the failure to deal with his grievance was the reason he resigned.

31. The Respondent disagrees and says Mr Tritton was obviously unhappy with the new discretionary pay commission structure unhappy about Matt Willott being his boss and resigned for his own reasons. They say they have not breached the implied term of trust and confidence.

32. The fundamental issue for the Tribunal was why Mr Tritton resigned.

33. The Tribunal concluded that the reasons Mr Tritton resigned is because the respondent would not pay him what he thought he was worth, because there were changes to his manager, and was unhappy that respondent would not negotiate with him over the new Commission structure.

34. Those conclusions were drawn from the following:

i. Mr Tritton made a proposal for an inflation-linked valuation of his salary which would have given him a salary of £41,000. He was then given a salary increase to £45,000 plus commission which was significantly more than he was initially asking for. His response to that was to ask instead for £55,000. There was no explanation from him why he then decided he was worth the additional £14,000. He claimed to the Tribunal that was no more than an “opening offer” in a negotiation but he did not frame it in that way when he communicated it to the respondent.

ii. It was argued by the claimant that because he had signed each page of the main contract, but had not specifically signed the page detailing the commission structure, that the commission was not part of his contract and could not be varied. The Tribunal rejected that argument. If that were true he would have no contractual rights to commission paid to him as part of his renumeration. Had the respondent not paid him his commission he would have brought a claim about that, as indeed initially he did. Mr Tritton must therefore accept that the commission structure is part of the contract. And he if he accepted that, as he was bound to do, he must also have accepted that the way in which the commission is structured is at the discretion of the company. That is made clear in the Commission Plan document which says “*the company may vary or suspend the commission structure at any time at the directors’ sole discretion you will be given one month written notice of any changes or withdrawal of the scheme.*”

iii. It was apparent that Mr Tritton felt he should be able to dictate the terms on which he was paid. In an e-mail from him on the 21st of September 2023 he said “*please be advised that until we have jointly agreed new terms I would expect to have my existing contractual terms applied to*”. This demonstrated his belief that he could influence or dictate the terms of the commission structure. But that was not provided for in his contract. The Commission Plan annexed to his employment contract made that clear. At various times he said that his complaints or emails were really an

attempt at negotiation. He is entitled to attempt to negotiate with his employer but his employer is not required to accede to the terms of his negotiation.

iv. Mr Tritton's belief that he could dictate terms was also indicated by an answer he gave in oral evidence about the non-compete term. That was a specific term he had negotiated over before signing his employment contract. He made some adverse comments about it in his evidence. He was asked if he was complaining about that and he confirmed he was complaining that although he had agreed to it, his complaint was that DWA wanted to "stick to" (abide by) that contractual term when he did not want them to. That was powerful evidence of Mr Tritton's attitude towards his employment contract and his belief but he should be permitted to dictate its terms.

v. He was not treated less well than anybody else. He was on a greater basic salary than the other sales employee Georgina Adams and he was on the same commission plan as she was. She is the only person for the Tribunal to compare him with and his terms were better than hers. The Tribunal could not use Mr Potter for comparison because although part of his job was with the sales team he is a managing director of the company and not solely involved in sales.

vi. Mr Tritton accepted in the heat of the moment he might have said that if Matt Willott became his manager he would leave. That did happen and he did leave. Although it seemed that in the period immediately before his resignation that Mr Tritton and Mr Willott were working reasonably well together there was also evidence that Mr Tritton did not like the data-driven approach that Mr Willott would introduce. The Tribunal concluded that too contributed to Mr Tritton's decision to resign.

35. The Tribunal did not accept that the failure of the company to properly conduct a grievance procedure is a reason Mr Tritton resigned. His assertion on that point was rejected for the following reasons:

i. He did not raise a grievance.

ii. When told his complaint was being treated as a grievance he said I do not want that, I just want a written explanation why I have been overlooked for formal pay or performance reviews.

iii. Having been told that there would be an investigation, in the months that followed Mr Tritton never once queried what was happening, asked when there would be a meeting, or showed any interest in pursuing a grievance.

iv. He didn't raise it in his resignation e-mail and he didn't raise it with Mr Potter when he spoke to him the following day.

v. Once he was placed on garden leave, and was waiting out his period of notice, he did not raise it then. Apart from those two brief emails on 24 November 2023 he showed absolutely no interest in it. From that the Tribunal concluded Mr Tritton did not really care about the company's response to his complaints.

36. The Tribunal did find as a fact that the failure by the respondent DWA to follow any procedure in relation to that grievance was a significant breach of Mr Tritton's employment rights. Despite Mr Potter trying to avoid having to acknowledge that fact, the evidence clearly shows once the complaint was dealt with as a grievance none of the usual consequences of such an action followed. The relevant term of the grievance procedures included as part of DWA's own business procedures says:

a. the grievance will be fully investigated with due care and confidentiality and any information gathered will be shared with you and
b. you will be invited to a formal grievance meeting as soon as practicable during which your manager or another appropriate person will ask you to explain your complaint and what actions you feel should be taken to resolve the matter.

37. Neither of those happened. The only evidence that anything happened in connection with Mr Tritton's emailed complaints is a note referred to as "grievance review notes" and given a date of 8 January 2024. Although he produced those notes Mr Potter wasn't sure

when they were created or why. The purpose seems to have been solely to potentially try and protect the position of DWA. They do not reflect a proper investigation because a company cannot have a proper investigation (into a grievance) if they do not speak to the person bringing the complaint. Those notes were no more than DWA "marking their own homework" and it is entirely unsurprising they concluded that they had done nothing wrong. That was a gross dereliction of their duty towards an employee.

38. They compounded that by failing to provide any outcome to Mr Tritton and by failing to provide him with the outcome they deprived him of any right to appeal. That too was a conclusion that Mr Potter struggled to arrive at notwithstanding it is the only logical conclusion that can be drawn from these facts. However for the reasons already explained the Tribunal concluded it was more likely than not that Mr Tritton didn't really care about the grievance one way or the other. It played no part in his decision to resign.

The Law

Mutual trust and confidence:

39. It was established by the House of Lords in the case of *Malik V Bank of Credit and Commerce International SA (in compulsory liquidation) 1997 ICR 606* that in an employment relationship neither employer nor employee will, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between them. This is known as the implied term of mutual trust and confidence.

40. Later cases including one called *Sharfudeen v TJ Morris Limited trading as Home Bargain,s EAT 0272/16* confirm that even if the employee's trust and confidence in their employer is in fact undermined there may be no breach if, viewed objectively, the employer's conduct was not unreasonable. This means that a breach of this implied term will not occur simply because the employee feels that such a breach has occurred no matter how genuine their view. The legal test requires the tribunal to look at the circumstances objectively to decide if the employer had reasonable and proper cause for the actions they took.

41. It is also necessary for a claimant to show that the conduct relied on must have been calculated or likely to seriously damage or destroy trust and confidence. This is not the same as an employer having to intend that conduct to have that effect although that may be the consequence, even in circumstances where the employer does not want their action to have that effect. In *Frankel Topping Limited v King EAT 0106 /15* the Employment Appeal Tribunal observed this is a high hurdle. Acting in an unreasonable manner is not itself sufficient. The Court in the Frankel Topping case noted that the test set out in *Malik "is apt to cover the great diversity of situations in which a balance has to be struck between an employer's interest in managing his business and the employee's interest in not being unfairly and improperly exploited"*. The EAT reinforced the stringency of that test.

42. Whether any unreasonable behaviour on the part of the employer is sufficiently serious to constitute a breach of the implied term of mutual trust and confidence is a fact specific decision in each case. It can be finely balanced and different judges may reach different decisions. For that reason the Judge advised the claimants representative at the start of the hearing that producing several first instance decisions would not assist either the claimant or the Tribunal.

Terms specifically relating to pay:

43. It is long established that the right to be paid and other ancillary terms surrounding pay and benefits are central to the employment relationship and will be covered by express terms. There is in addition a specific implied term that employers will not treat employees "arbitrarily, capriciously, or inequitably" when it comes to renumeration: *SC Gardner Limited V Berrisford 1978 IRLR 63 EAT*. Later cases have concluded that claims can arise in respect of renumeration such as failures to provide pay rises, caps on pay increases, cuts in pay and unlawful deduction from wages. So as a matter of law the complaints that Mr Tritton brought are capable of amounting to a breach of trust and confidence. But it does not follow that they necessarily will.

Terms specifically relating to the grievance process:

44. According to *WA Goold (Pearmak) Limited vs McConnell and another [1995] IRLR 516* an employer is under an implied duty to reasonably and promptly afford a reasonable opportunity to their employees to obtain redress of any grievance they may have. That case concerned a wholesale failure to conduct a grievance procedure at all. In *Blackburn V ALDI Stores Limited [2013] UKEAT/0185/12/JOJ* the Appeal Tribunal confirmed that a failure to adhere to a proper procedure is capable of amounting or contributing to a breach of the implied term of trust and confidence. The appeal court made it clear that it's for an Employment Tribunal to assess in each particular case whether what was what occurred was sufficiently serious as to amount to a breach of that implied term since the failure to comply with the grievance procedure may take different forms and therefore have different consequences. In that case the EAT opined that a failure to stick to a short timetable for determining a grievance would not necessarily amount to a breach of the implied term but a wholesale failure to respond to a grievance could amount or contribute to such a breach.

45. Of relevance to this case is the use of the term “could” and not the term “will”. It's clear in that case whether or not the failure to adhere to a grievance procedure was a breach of trust and confidence was a matter for an individual Tribunal.

46. It is also settled law that if an employee continues in employment following a breach, they have impliedly accepted the breach and affirmed the contract.

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The decision

Applying the law to the list of issues the Tribunal answers the questions as follows:

47. Did the respondent do the following things and if so, were they calculated or likely to destroy or damage the trust and confidence between them? Has the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between them, and if so did it have reasonable and proper cause for doing so? Did the claimant resign in response to the breach of trust and confidence or other term of the contract? Did the claimant affirm the contract before resigning?

a. Fail to provide annual pay reviews? strictly speaking the respondent did do this because there was no evidence from the respondent that there were formal annual pay reviews as provided for in the contract. But Mr Tritton had accepted that position for years and continued in his employment quite happily so this was of so little consequence to Mr Tritton in view of his overall earnings that it did not destroy or damage the trust and confidence between them. Alternatively by remaining employed for the number of years that he did in which there was no such formal review, then to the extent this was a breach Mr Tritton had accepted that breach and affirmed that part of the contract.

b. Leave a gap of nearly a year from October 2022 before responding to the claimants initial discussions about his pay? Factually this is not established because a response was underway by July 2023 when the new commission structure was being suggested and continued.

c. Reduce the claimant’s overall pay with no justification? Again this is not established. The contractual amount of pay was increased to £45k and although the discretionary part had the calculation altered Mr Tritton did not show that there was an overall reduction in pay.

d. Cause feelings of discrimination, victimisation, confusion, stress and anxiety to the claimant whilst aware that they were doing so? Viewed objectively, the respondent’s actions in relation to claimant’s pay and commission were not unreasonable; they listened to his concerns and provided exemplar calculations showing he would not lose out; they increased his basic and therefore his more secure pay; they applied the same scheme to him and his colleague (so did not deal with him arbitrarily capriciously or inequitably); and they were contractually entitled to dictate the terms of the commission payment. In so far as these feelings were caused by any on-going failure to provide annual pay reviews, this was a feature of his employment that Mr Tritton had accepted because of the number of years in which he had not had such a review or not had it shared with or explained to him.

In addition the best that Mr Tritton could say about other people is that he "suspected" they were having pay reviews when he was not, and this lead to him feeling discriminated against. In so far as he claims that the email to Georgina Adams made him feel demoralised because he interpreted the comment that it would be favourable in her case was an indication that DWA knew it would not be favourable in his, the Tribunal considered whether objectively viewed DWA's conduct was unreasonable. The Tribunal easily concluded it was not unreasonable for them to communicate with Ms Adams in this way. There is nothing in that email which mentions Mr Tritton or compares the two and it was not directed to him or intended for him. It may have upset him because of the way he interpreted it, but as the case law says, a breach of this implied term will not occur simply because the employee feels that such a breach has occurred. Objectively viewed, DWA's conduct in respect of the revised pay structure, including a £13k basic pay increase and a slightly altered discretionary commission structure, which was delayed or postponed (from Sept to Jan) to allow for explanation and discussion, and which was justified on a business case (as the claimant accepted) was not unreasonable. This was not conduct calculated or likely to destroy or damage the trust and confidence between them. To the extent that it did, the respondent had proper cause for the change, that being their decision to restructure pay in response to changing business conditions.

e. Having treated communication about these feelings raised by the claimant as a formal grievance, failed to progress that grievance process. The evidence clearly established that there was no real procedure addressing Mr Tritton's complaints, which the respondent had chosen to treat as a grievance. Having done so there was an obligation on the respondent to deal with it fairly, and they completely failed to do so. They have no reasonable or proper cause for that failure. Case law makes it clear that is capable of being so serious as to amount to a breach of the implied term of trust and confidence. *Blackburn v Aldi* suggests that "minor" failures, in respect of time limits etc, may not be but a wholesale failure to respond to a grievance can be. This was just such a wholesale failure. However, this was not something Mr Tritton cared about at the time and he did not resign in response to that breach. It was not part of his decision to resign.

48. Such is the importance of basic employment rights including compliance with an employer's own procedure and the right to have grievances addressed and redressed, it would be rare for a tribunal to conclude that a failure to respect those basic rights does not amount to a constructive dismissal. The case law does not go so far as to say that <u>every</u> such breach will justify the resignation of the employee who suffered it. This is one of those vanishingly rare cases in which an egregious breach of someone's rights has, on a proper and careful analysis of the facts, actually made no difference.

49. The law says Mr Tritton could have resigned because of this breach, but on the Tribunal's findings of fact, he did not. He resigned for different reasons not connected to this grievance. To succeed in a claim of unfair dismissal because of your employer's conduct and a breach by them of the implied term of trust and confidence, the breach must be a cause of your resignation. It doesn't have to be the only cause, but it must be one of the reasons for it. The law does not allow an employee to seize on a failure which played no part in their decision to resign and use it to subsequently claim the resignation was because of his employer's conduct in that regard. That is what Mr Tritton has attempted to do and his attempt has failed.

50. The claim of unfair dismissal is not well-founded and is dismissed.

51. The associated claim in which Mr Tritton asks to be released from the non-compete clause in his contract with DWA Claims is not one the Employment Tribunal has any power to address. There is no lawful authority for an Employment Tribunal to retrospectively draft and apply terms to an employment contract in circumstances where the employee who negotiated it now wants to avoid the consequences of their own

52. decision. That claim is also dismissed.

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Employment Judge Hay
Date 18 July 2025

REASONS SENT TO THE PARTIES ON
05 August 2025

FOR THE TRIBUNAL OFFICE