Neutral Citation Number: [2025] EAT 129

Case No: EA-2023-000977-LA
EA-2023-001255-LA

**EMPLOYMENT APPEAL TRIBUNAL**

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 29 July 2025

**Before**:

**ANDREW BURNS KC**
**DEPUTY JUDGE OF THE HIGH COURT**

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**Between:**

**RAYMOND SAUL & CO LLP** **Appellant**

**- and -**

**MR BILLY RASHBROOK** **Respondent**

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**JOE KENDALL** for the **Appellant**
**No appearance or representation for the Respondent**

Hearing date: 29 July 2025

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# JUDGMENT

## SUMMARY

### UNLAWFUL DEDUCTION FROM WAGES

The Claimant succeeded in his claim for an unlawful deduction of wages by the Respondent's failure to make a commission payment under the contract of employment. The issue on appeal was the correct construction of the commission provisions of the contract. The ET found that there was no term permitting the Respondent to apportion profit costs billed to and paid by clients for the purposes of calculating an employee's commission.

The EAT held that the ET had erred in interpreting the contract. The ET's conclusion was that the Respondent had to pay the claimant commission of 20% on the amount invoiced by the claimant in excess of a threshold of three times his salary. The EAT held this was to overlook the express words of the contract that commission was only payable on amounts "in respect of the work carried out by the employee whilst acting as a solicitor to the company" and therefore was only paid in respect of work carried out by the Claimant himself.

The EAT found that the ET's finding that there was no evidence of the Respondent keeping necessary records for apportionment was perverse in light of the Respondent's evidence about the records of which other solicitors and trainees had worked on the Claimant's files.

The EAT held that applying the *Jafri* principle there was only one answer on the facts open to a reasonable tribunal which was that the Claimant did not and could not realistically have generated sufficient profit costs himself to exceed the commission threshold in his first year of practice when others were supervising, supporting and working with him and therefore there was no need to remit the appeal to the ET. The appeal was allowed and the claim dismissed.

**ANDREW BURNS KC, DEPUTY JUDGE OF THE HIGH COURT:**

1. This is an appeal about the construction of a term of a contract of employment in relation to commission and a consequential finding of fact relating to the amount of that commission.

2. In a judgment of the London Central Employment Tribunal sent to the parties on 20 March 2023 the Employment Tribunal ("the ET") found that the claimant's claim for an unlawful deduction of wages was well-founded and succeeded. The ET ordered the respondent to pay a total of £7,866.16 in commission to the claimant.

3. In a notice of appeal dated 1 September 2023 the respondent before the ET relied on two grounds of appeal. The first was that the ET had misinterpreted or misconstrued the contract term relating to commission and had failed to recognise that commission was only due to the claimant in respect of work carried out by him and not by his colleagues. The second ground suggests that the ET was perverse in holding that there was no evidence of the respondent having any records or evidence to engage in an exercise of apportionment of the fees on the files on which the claimant worked.

4. The appeal was ordered to be heard at this full hearing by His Honour Judge Barklem on 23 June 2024. The respondent is represented today by Mr Kendall who has submitted a helpful skeleton argument. He did not appear below. The claimant, who appeared in person below, has not attended this hearing and has indicated that he relies on his respondent's answer as containing in his complete argument. However that respondent's answer just relies on the grounds relied upon by the ET and adds no further

commentary or argument. I have therefore tried today to explore with Mr Kendall any potential arguments that the claimant could have raised on this appeal and tested Mr Kendall's arguments against those potential points.

5. The ET found that the respondent is a firm of solicitors in the City of London. The claimant was first employed in 2019 progressing to become a trainee solicitor and then in September 2021 a newly qualified solicitor. His contract of employment contained a section dealing with commission which is set out at paragraph 9 of the ET judgment:

> **" 8.1 The Employee will be paid a commission calculated as follows:**
>
> **(a) in each Commission Year, in relation to the profit costs invoiced by the Employee in the aggregate amount that exceed three times the amount of the Employee's Salary (e.g. 3 x £38,000) of such Commission Year, twenty per cent (20%) of such profit costs that exceed three times the amount of the Employee's Salary of such Commission Year which are invoiced by the Employee and which are subsequently paid to the Company by the relevant clients, in respect of the work carried out by the Employee whilst acting as a solicitor to the Company; and**
>
> **…**
>
> **8.2 On or before the last working day of each calendar month during the Appointment, the Company will agree a statement of account in relation to all sums due to the Employee pursuant to clause 8.1, for the avoidance of doubt all calculations of the sums due to the Employee pursuant to clause**
>
> **8.1 shall be calculated against the relevant net profit costs received by the Company excluding disbursements and VAT on such profit costs.**
>
> **8.3 All relevant sums due to the Employee pursuant to clause 8.1 shall be payable monthly in arrears following the month such sums are received by the Company, on or about the last working day of each calendar month directly into the Employee's bank or building society account, save that the Employee shall not be entitled to receive any sums pursuant to clause 8.1(a), until such time as the profit costs invoiced by the Employee in a particular Commission Year, in respect of the work carried out by the Employee whilst acting as a solicitor to the Company, are in an aggregate amount that exceeds three times the amount of the Employee's Salary in that same Commission Year."**

6. Other provisions of the contract, not referred to in the ET's judgment, are as follows: first, in the interpretation clause 1 'Commission Year' is defined as follows:

> **"During the appointment each 12 month period, the first of which begins on the commencement day and ends 12 months following."**

The commencement day is 4 September 2021, so the ET made an immaterial error reading the contract, in that it said that the Commission Year ran from 1 September 2021. The contract provides that: **"the first six months of the employment shall be a probationary period…"** The duties of the claimant were to **"serve the Company as a solicitor."** Clause 4.2 states:

> **"The Employee will carry out residential property, commercial property and licensing law related work for the Company, in addition to work in other areas of law agreed with the Company and the Company considers to be within the Employee's expertise as a solicitor."**

7. The contract provided that the employee's normal place of work was Fleet House in New Bridge Street in London, working normally 9.30am to 5.30pm Mondays to Fridays for a salary initially of £38,000 per year.

8. The ET did not quote clause 8.1(b) which says:

> **"(b) 10 per cent (10%) of the profit costs invoiced by other fee earners of the Company and which are subsequently paid to the Company by the relevant clients, in respect of the initial piece of work introduced by the Employee and carried out by other fee earners of the Company."**

9. I note that the words in 8.1(b) "in respect of the initial piece of work introduced by the Employee" are the operative words as to when the Employee gets 10% commission on the profit costs. By analogy it could be said that this supports the interpretation that the words "in respect of the work carried out by the Employee…" in

clause 8.1(a) might be said also to be part of the operative words showing when the employee gets 20% commission.

10. The ET found that the claimant saw copies of all the invoices that he billed. He was told by his managing partner towards the end of the Commission Year that the large project he had worked on with others would be subject to apportionment. That was due to the work that his colleagues had done on the project. The claimant initially disputed this as he said that his contract made no mention of apportionment. He subsequently agreed that 60% of the invoices that he billed on that project should be apportioned to him and 40% to the work of one of the partners who had worked on that project.

11. The claimant left the firm on 1 November 2022, having given notice. The amount of commission he was owed was still under review by the respondent. The respondent did not provide monthly statements of commission under clause 8.2. It did so on the basis that (on its case) no commission was due and therefore no monthly statements needed to be submitted.

12. On 14 November 2022 the claimant was informed by the respondent that he was not due any commission as his invoices included fees that were due to partners supervising his work and trainees who worked on his files. He was told that once their work had been deducted from his invoices, he did not reach the commission threshold (i.e. three times his salary).

13. The ET directed itself to section 13(1) of the Employment Rights Act 1996 as set out in paragraph 20 to 24 of the ET judgment:

> **"20. In the same communication the respondent set out, for the first time, its detailed position as to the calculation of commission for the 2021-2022 Commission Year. It stated that the amount apportioned to the claimant for work on Colombia House would be reduced from the previously agreed 60% to 51% and that on all other invoices the apportionment to the claimant would be 65%. This led to an overall figure of £106,784.56 being apportioned to the claimant, short of his commission threshold of £114,00.**
>
> **21. The files listed within the claimant's spreadsheet were files that he had been given by the respondent to run himself as a newly qualified solicitor. Once completed he billed the work and ensured it was invoiced. The invoices were calculated on a fixed fee basis. The claimant was supervised by partners within the firm over the course of this Commission Year and on occasion will have been assisted by trainee solicitors within the firm. The respondent accepted that there was very limited time recording taking place on these files in relation the work that anyone other than the claimant was engaged in.**
>
> **The law**
>
> **22. Pursuant to section 13(1) of the Employment Rights Act 1996 (the 'ERA'):**
>
> ***'An employer shall not make a deduction from wages of a worker employed by him unless –***
>
> ***(a) the deduction is required or authorized to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or***
>
> ***(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.'***
>
> **23. Section 13(2) of the ERA refines 'relevant provision' as a provision of the contract comprised -**
>
> ***(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or***
>
> ***(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.'***

> **24. Section 27 of the ERA provides –**
>
> ***(1) in this part 'wages', in relation to a worker, means any sums payable to the worker in connection with his employment, including –***
>
> ***(a) any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise…'"***

14. The ET concluded at paragraph 26:

> **"I interpret the wording of the contract as requiring the respondent, quite simply, to pay the claimant commission of 20% on the amount invoiced by the claimant in excess of a threshold of £114,000."**

15. The ET held that this interpretation was supported by the lack of any specific mention of apportionment within the contract and suggested that the respondent's interpretation was a deviation from the wording of the contract. The ET held that the respondent did not engage in any meaningful exercise of apportionment during the year as it did not send monthly statements as required. The ET held that the respondent told the claimant after the Commission Year had concluded that apportionment would apply to every piece of his work, but was applied as a blanket percentage across all of the claimant's files. As such the ET concluded that it did not and could not have involved an analysis of the specific contributions made by supervising partners and trainees on individual files which the ET thought would inevitably have resulted in a variety of different percentages.

16. The ET held at paragraph 30:

> **"There was no evidence before me of the respondent keeping the necessary records to properly engage in an exercise of apportionment on the claimant's files. Instead the respondent's position was that it had the discretion to identify blanket percentages of apportionment at the conclusion of the Commission Year. If that was correct I would expect**

> **wording to that effect to be contained within the contract and an indication of that approach in the statements of account required by clause 8.2"**

17. The ET found that the claimant was doing the work on the files concerned and the belated apportionment of some of the overall work to others was not based on specific work anyone else had done on his files.

18. The ET reasons were accompanied by a reconsideration as the ET had not addressed an issue which is not relevant to this appeal.

## The first ground of appeal

19. The respondent points out that there is no dispute as to the contractual term that applied. What was, and is, in issue before the ET and the EAT is the proper construction of that term. The respondent essentially says that the ET erred in that the express term provides for the calculation of commission to be based upon work that the employee has actually done. The respondent points out that it was not the claimant's case that he did all the work on the files he billed. His ET1 form said in relation to one of his projects:

> **"Not only did I lead the project every day and do the majority of the work, apportionments of invoices were not in my contract."**

This confirms what must or should have been obvious to the ET: that a solicitor in his very first year of qualification would need his work to be reviewed, edited and supervised by more experienced solicitors. It appears not have been in issue that he sometimes was also assisted by trainee solicitors and/or paralegals on those files.

20. The respondent argues that paragraphs 26 and 27 of the ET's reasons are directly contrary to the plain wording of the contract. The ET concluded that the clause meant that the respondent must **"quite simply"** pay the claimant a commission of 20% on the amount invoiced by the claimant in excess of a threshold of £114,000. Mr Kendall points out that this paragraph of the judgment is the one in which the ET gives its interpretation of the clause and after that it goes on to explain its conclusion. Mr Kendall says that the ET simply gives no meaning to the words "in respect of the work carried out by the Employee whilst acting as a solicitor to the Company" in clause 8.1 of the contract.

21. I have looked at what the claimant said about those words and note what he has said in his written representations to the ET below. I note that his approach was set out in paragraphs 8 and 9 of his written representation to the ET:

> **"8. To conclude my position, I would like to reiterate that the purpose of this claim is that the Employer settles the commission that I believe is owed to me under clause 8 of my Contract. Upon reading the remarks of the Employer in their EC3 form, it is clear that the Employer has a completely different understanding of the relevant clauses and as a result believes that no commission is due. It is admitted that it is inevitable that slightly different interpretations can arise in this context, but I would argue that the interpretation that the Employer seeks to rely on is a substantial deviation from the Contract, that has the effect of varying the Contract.**
>
> **9. If the interpretation applied by the Employer was their genuine intention at the time of drafting the Contract then I would argue that the wording of clause 8 in the Contract has been poorly drafted by the Employer and has created ambiguity, as evidenced by the Employer's need to review how the commission clauses would be "applied in employee's contracts" and "how they would be calculated", as outlined in 7(e) of this statement and para 10 of the EC3 form. As such, had the Contract correctly reflected the Employer's intentions then it is likely that I would not have ever entered into this Contract, and would have sought employment with a different firm. Instead, my expectations during this year of employment were misled."**

It is notable that the claimant does not address the words "in respect of …" in his written representations nor in his answer to the EAT which stands as his argument on this appeal.

22. A clause in a contract should generally be construed neutrally on its natural and ordinary meaning using the proper context available to the parties and usual commercial business common sense (*Wood v Capita* [2017] 2WLR 1095). The ultimate aim of interpreting a provision in a contract is to determine what the parties meant by the language used which involves ascertaining what a reasonable person would have understood the parties to have meant. A reasonable person is one who has all the background knowledge which would have reasonably been available to the parties at the time the contract was made.

23. The ET has not interpreted this clause according to the natural and ordinary meaning. The contract provides that the employee will be paid a commission. In clause 8.1(a) the calculation of commission is set out. Commission is payable in relation to the profit costs invoiced by the Employee which in an aggregate amount exceed three times his salary. It provides that he will receive 20% of such profit costs that exceed that threshold. However, that is subject to three express conditions. The first I have already mentioned : that the amounts must be invoiced by the employee. The second is that the amounts are subsequently paid to the respondent by the relevant clients. The third is that the amounts are in respect of the work carried out by the employee whilst acting as a solicitor to the Company.

24. The natural and ordinary meaning of those words is that the claimant was only due commission on amounts which were invoiced by him, paid by the clients and in respect of work carried out by him whilst acting as a solicitor. Any amounts which were not in respect of work carried out by him would not fall to be aggregated for the purposes of his commission.

25. Not only is this the ordinary meaning of the words used, but it is also to give a commercial and common sense interpretation to the clause. It provides for a workable apportionment of fees for the purposes of commission between two solicitors who may often work together on the same file or matter. Mr Kendall submits, and I agree, that it would have been known to both parties at the time of entering into this contract that in a City solicitor's firm there would be property and commercial transactions in which multiple fee earners contributed.

26. It was an error for the ET to rely on a purported breach of clause 8.2 of the contract in support of its interpretation of clause 8.1. Applying the correct interpretation of clause 8.1 the claimant, as a newly qualified solicitor working as he did under the supervision of partners who worked on his files with him, and supported by others, would be highly unlikely to reach the threshold of billing more than three times his own salary early in his Commission Year, if at all. In fact there were never any sums due to the claimant pursuant to clause 8.1 for which there needed to be a monthly statement of account under clause 8.2. The ET used a 'bootstrap' justification for its erroneous interpretation of the contract.

27. The correct interpretation is also confirmed by clause 8.3. The claimant was not entitled to receive any sums pursuant to 8.1(a) until such time as the profit costs

invoiced by him in a particular Commission Year in respect of work carried out by him whilst acting as a solicitor were, in the aggregate more than three times his salary. This reiterates the requirement that the profit costs must be in respect of work carried out by him (and not by his colleagues) in order to qualify for his commission calculation. The ET's finding that there was no mention of apportionment overlooks two references in clause 8.1 and 8.3 to profit costs being in respect of the work carried out by the particular employee.

28. I therefore allow the appeal on the first ground and hold that the contract should be construed so that the claimant only earns commission from the profit costs exceeding the threshold which were in respect of his work and not the work of any of his colleagues, including partners, fee earners and trainee solicitors.

29. This does leave a second issue as to whether the ET were correct that the respondent was in breach of contract in the way that it purported to apportion the profit costs between the claimant and his colleagues.

**The second ground of appeal**

30. The ET found that on the respondent's construction (which I have found is the correct approach) "apportionment would apply to every single piece of his work to mark the supervision he received from partners and assistants, received from trainee solicitors". That appears to me to be entirely correct and commercial. It is clear from this that the ET accepted that he received supervision from partners and assistance from trainee solicitors on every single piece of his work.

31. The ET made a finding of fact that:

> **"This second stage of apportionment was applied as a blanket percentage across all of the claimant's files and as such did not and could not have involved an analysis of the specific contributions made by supervising partners and trainees on individual files which inevitably would have led to a variety of different percentages".**

Pausing there, once again the ET have made an implicit finding that supervising partners and trainees did contribute to the individual files. The ET held that:

> **"There was no evidence before me of the respondent keeping the necessary records to properly engage in an exercise of apportionment on the claimant's files. Instead the respondent's position was that it had the discretion to identify blanket percentages of apportionment at the conclusion of the Commission Year."**

32. This second ground of appeal is against the facts found by the ET about how that apportionment was actually done. Perversity appeals have a high threshold and ET's findings are only perverse if there is no evidence to support them. The EAT will only interfere where an overwhelming case is made out that the ET reached a decision which no reasonable tribunal on a proper appreciation of the evidence and law would have reached, following the familiar authority of *Yeboah v Crofton* [2002] IRLR 634.

33. The respondent says that its evidence before the ET reflects the case set out in the ET3 at paragraph 17 and the contemporaneous email sent by the respondent to the claimant on 19 November 2022. Its position is that even if the respondent made generous assumptions about what proportions of the profit costs were in respect of the claimant's work he still did not come close to exceeding the three times salary threshold in order to start earning commission. The respondent suggests that this is unsurprising for a newly qualified solicitor in his first year who would be expected to need more

support and input on his files than a more senior or experienced solicitor who would need less input from partners or others in the firm. I note that this was essentially the evidence of Mr Facoya at paragraphs 8 to 10 of his witness statement to the ET which said as follows:

> **"8. The Claimant mostly worked as my assistant, so I was acutely aware of what he could do having also been his Training Principal. We had weekly or fortnightly meetings to discuss all matters he was working on, as set out in his updated list of current matters that he was required to produce every week. During those meetings I gave directions and confirmed where pa rtner input and billable time would be needed . Also, where the input and billable time of other fee earners would be needed. We also had ad hoe meetings daily, as and when was necessary to progress the relevant matter.**
>
> **…**
>
> **10. The Claimant whilst hardworking carried out his work within the professional limitations of a newly qualified solicitor as follows: the Claimant could only produce first drafts of key documents and first drafts of complex correspondence to other parties, each needing subsequent amendment and checking by supervising partners; the Claimant wasn't able to negotiate a commercial lease or other commercial documents over the phone or on his own; on all commercial property transactions and any other commercial or finance matters the Claimant provided assistance only, as he didn't have the requisite knowledge to run the transaction; the Claimant often didn't grasp the overall transaction structure in more complex multi layered transactions; the Claimant lacked the commercial/business acumen to advise clients completely; and lacked relevant background legal knowledge. I make these points as these are common limitations of junior lawyers that also applied to the Claimant, it is what I would have expected from a newly qualified solicitor requiring constant supervision such as the Claimant."**

34. The ET also had the evidence of Mr Facoya who said at paragraph 14 that he had included a more detailed breakdown of the team effort in relation to the matters that the claimant worked on in his Exhibit D. His evidence was that he reviewed the corresponding digital matters on the Office Management System and conferred with the relevant supervising partners, reviewing the transaction history and also looking at the email correspondence. He says he did this in order to ascertain the profit costs in

respect of the claimant's work rather than others. He also noted that on occasion the claimant's spreadsheet was in error, as all or some of the alleged overall work was completed outside the Commission Year. The respondent added columns to the claimant's spreadsheet containing reductions which often applied the same percentage to each file to reflect the contribution of other fee earners.

35. I am satisfied that the ET was in error in finding that there was no evidence of the respondent keeping the necessary records to properly engage in an exercise of apportionment on the claimant's files. It clearly had some evidence of these records in its bundle. The ET did not take into account evidence that was relevant, in particular the column in Exhibit D, where the respondent noted each other fee earner which worked on the files on which the claimant worked.

36. It was perverse for the ET to say that it had no evidence of the respondent keeping the necessary records when it was undisputed evidence before the ET that the respondent had a time recording system. The claimant regularly contributed to this and it was used by the respondent in its Exhibit D (and the statement of Mr Fakoya) to support its position as to apportionment. It is right that Mr Fakoya in his November 2022 email did explain to the claimant (and therefore to the ET) that he had used a 'conservative estimate' in order to apportion the majority of the work on the claimant's file to the claimant and a minority of 35% to trainee solicitors, other fee earners or partners who were involved in those files. He did so in order to show (as the respondent suggested) that even on a conservative approach the commission threshold was not reached. The ET made a clear error as there was evidence on which the ET could have

reviewed the exercise of apportionment. Therefore, I allow the appeal on this ground also.

## Disposal

37. There then follows the question of whether I should remit this case to the ET or whether there is only one answer so that the EAT is entitled to simply allow the appeal and dismiss the claim. I must follow the approach of *Jafri v Lincoln College* [2014] IRLR 544. The EAT can correct errors of law and substitute its own decision in so far as the ET must, but for the error of law, have reached such a decision. If it is an open question of how the ET would have decided the matter if it had directed itself correctly, the EAT can only remit the case for further consideration. If more than one outcome is possible I must remit, however well-placed I am to make the decision myself. Only if there is just one possible decision after the EAT has corrected the misdirection can the EAT substitute its own decision for that of the ET.

38. However, the EAT should be robust rather than timorous in applying the *Jafri* approach. The EAT must not make any factual assessment but only one which necessarily flows from the findings made by the ET, supplemented by undisputed or undisputable facts.

39. Taking this into account, I note that the ET found that the claimant was supervised by partners over the course of this Commission Year and on occasion was assisted by trainee solicitors within the firm. Indeed both parties contended that trainee solicitors worked on the claimant's files with him. It does not appear to have been

disputed that the claimant as a newly qualified solicitor was supervised and assisted throughout the year by partners and other fee earners who worked and contributed to the files on which he worked and which he invoiced.

40. The respondent said it used a conservative estimate that those people cumulatively did an aggregate of 35% of the work on those files. The claimant's evidence did not suggest a percentage because he said that apportionment was not required under his contract of employment. However, he agreed that he had been requested to delegate more work to trainees and he said that their actual contribution could be calculated from the time recordings on the relevant files. In respect to the time recording the ET held in paragraph 21 of its judgment that:

> **"The respondent accepted that there was very limited time recording taking place on these files in relation the work that anyone other than the claimant was engaged in" (sic).**

41. With very limited time recording taking place from other fee earners any ET considering this matter on a potential remission is going to have to employ a broad-based apportionment approach and draw inferences from the evidence to find as a fact the amount of the work that was done by the claimant as opposed to the amount of work done by partners, other fee earners and trainees. Any ET deciding this will have to have regard to the fact that Exhibit D shows that two or three others worked on the relevant files during the relevant year. Any ET deciding this will also have to take into account that the claimant was a first year newly qualified solicitor who required more supervision and support than an experienced solicitor, who could do most of the work alone.

42. Any ET considering this will also have to take into account the ET's findings that when the claimant did agree to apportionment on a particular file about the contribution of one partner, that was agreed to be 40% of the work on the file whereas his contribution was 60% of the work on the file. The respondent pointed out that the claimant did not reduce this percentage further for the work of other partners and trainees who worked on that file (the Colombia file). Any ET considering this on remission would have to take into account, but not necessarily accept, the contemporaneous assessment by the claimant's supervising partner that the claimant did up to 65% of the work on all his other files apart from the Colombia file, which was 60% agreed by the claimant. The respondent's assessment was that others, including partners, other fee earners and trainees, contributed about 35%. Any ET considering this on remission, even if it further discounted the respondent's broad-based and supposedly conservative approach and reducing that by even another 10% would still leave the claimant falling significantly short of his commission threshold (by my calculations derived from the ET's findings).

43. I have avoided any new factual assessment, but I have done an assessment of what necessarily flows from the findings made by the ET and the matters that any reasonable ET would take into account on remission.

44. Taking those findings, the undisputed facts and those matters into account and applying a robust *Jafri* approach, I think it is fanciful to think that the claimant would be able to satisfy any reasonable ET that he did sufficient work during the Commission Year in order to cross the commission threshold. When the supervision and contribution of partners, other fee earners and trainees are taken into account (as they

must because that was undisputed) there is no reasonable prospect of him showing that he did the vast majority of the work on all of these other files in the very first year of his practice.

45. In those circumstances, I do not need to remit this to the ET, as applying the correct interpretation of the contract there is only one available answer to this claim, which is that the claimant could not realistically have generated sufficient profit costs in respect of his work as a solicitor to exceed the commission threshold in his first year of practice. It would be a waste of time and costs to remit this and have a hearing to try to carry out further factual assessment when there is only one realistic answer open to the ET. It would not be in accordance with the overriding objective to remit. Once the correct interpretation of the contract is employed there is only one answer, which is that the claim must be dismissed.