



## EMPLOYMENT TRIBUNALS

**Claimant:** Miss Melanie Waterhouse

**Respondent:** Peters Dean Care Limited

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

**On:** 19 and 20 June 2025

**Before:** Employment Judge Hay

### Representation

Claimant: Mr Paul Waterhouse (Lay representative and father)

Respondent: Ms Greening (Counsel)

**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 a claim form presented on 21 February 2024, the Claimant brought a complaint of unpaid wages and notice pay.
2. She worked for the respondent as a recruitment specialist for 2½ years and the claim concerned the recovery of certain Commission payments. The Claim Form specified that a sum of £5,300 was owed for the month of September 2023 which would have been paid at the end of October 2023. In a calculation of that loss in a letter dated 27 May 2024, it was said that the calculation was based upon:

the claimant having booked 366 agency shifts prior to having been placed on garden leave on 13 September which would have generated sales of £27619 (in comparison to figures for August where she booked 266 days) and she made 3 permanent placements she valued at; £7,327.80;

The claimant's entitlement was 0% Commission on the first £5,400, 10% on the next £4,300, 15% on the next £4,300 and 20% for anything in excess of that, calculated on her behalf at £5,264.36, 'rounded to £5,300'.

3. In the Response, it was contended that the Commission Policy expressly indicated that the claimant's right to Commission payments was 'forfeited' upon 'termination', and that this was a contractual term. The respondent also says the figures cited and used by the claimant were incorrect, including because they were based on "bookings" whereas Commission would only be payable if and when all of the sales process is complete and not simply on the number of provisional "bookings" made.
4. A question also arises as to whether 'termination' occurred at the point of resignation or the end of the Claimant's notice period, irrespective of garden leave.

### **List of Issues**

5. There had been previous case management hearings and orders and the list of issues was settled as:

Whether the Commission policy and its various iterations / versions had been provided to and / or seen by the claimant.

Whether they had been incorporated into the contract between her and the respondent: Mr Waterhouse argued that the whole policy had been "fabricated".

If the policy HAD been incorporated the definition of "termination" within it was important: specifically whether "termination" occurred at the point of resignation or the end of the claimant's notice period, irrespective of any period of garden leave.

If the word was defined in Ms Waterhouse's favour, what was the value of the Commission earned in September?

6. Mr Waterhouse confirmed the claimant's position regarding the Commission forfeiture clause as being: either the clause was always there but the claimant did not see it and so was not bound by it, or the clause was added in February or March of 2023 and was not specifically brought to the claimant's attention and so she is not bound by it.
7. Mr Waterhouse confirmed, following several discussions in earlier case management hearings and correspondence, that the claimant was not alleging that the policy including that clause had been deliberately fabricated in response to Miss Waterhouse's claim.

### **The evidence at the hearing**

8. The Judge considered a 185-page bundle including the claim form and response, witness statements from Miss Waterhouse, Paul Waterhouse (her father), Clair Parris, Lisa March, Matthew Vokes, and Ian Dean, each of whom gave live evidence.

9. By agreement some additional documents and an amended witness statement from Ian Dean for the respondent were provided on the morning of the hearing and were included in the documents available to the Judge.
10. During the evidence Mr Waterhouse also made numerous references to and comment upon metadata which he said was intrinsic to some of the electronic evidence which had been served. Mr Waterhouse was a witness in the case and was acting as Miss Waterhouse's lay representative. He was not and did not appear as an expert witness. The significance of and interpretation of metadata is not something everyone would be familiar with. It might properly be considered something which requires expert evidence. No permission for expert evidence had been given in this case and Mr Waterhouse did not appear and did not claim to appear as an expert. During the course of submissions the Judge explained to him her own limited knowledge of metadata and that it can be easily manipulated. The Judge explained she could not take judicial notice of anything in connection with the metadata but that in the absence of expert evidence about it Mr Waterhouse's comments would carry limited weight.
11. During the hearing Mr Waterhouse repeatedly suggested there was no evidence of a particular fact or position. For example in closing submissions he said there is "no concrete evidence" that Miss Waterhouse was shown the relevant document. The Judge reminded the claimant Miss Waterhouse that the tribunal is not looking for definitive or concrete evidence although where that exists it would be welcome. The standard of proof applied in the employment tribunal is the balance of probabilities, in other words is it more likely than not. So in answering the various questions identified the Judge asked "is it more likely than not"? The Judge did not require "concrete evidence". This is important because the Judge's role is to apply that standard and that might be a lesser standard than Miss or Mr Waterhouse expects or wants the Tribunal to apply, particularly to the respondent's evidence. Hence the fact the respondent cannot produce a document does not prevent the Judge making a decision on the topic that any such document might have related to. Tribunals can and do make decisions based on oral testimony whether or not it is supported by contemporaneous documentary evidence.

### **Findings of fact**

12. Having considered all of the evidence presented the Judge reached the following conclusions.
13. COMMENCEMENT: When Miss Waterhouse joined the company in April 2021 her salary was comprised of two components: a basic salary and Commission payments. As part of her induction she spent some time in her first three days sat in front of a computer reading through various company policies. She agreed she was told to print out the first page of each of those policies and to sign it. She did that. One of those policies was the Commission policy. As far as she could remember it was only a single page. She says consistently she never saw the term now relied on by the respondent which told her once she had terminated her

employment she would forfeit any Commission. It maybe she didn't notice or read it but that term was there.

14. **ROLE AND DATES:** Miss Waterhouse worked as a recruitment specialist until she gave her notice of resignation on the 30th of August 2023. She gave an effective termination date of the 29th of September 2023 consistent with her employment contract which required one month's notice. On 13th of September 2023 she was placed on garden leave which was in accordance with the terms of her contract.
15. **FINAL PAY:** When she received her final pay packet she was told that a deduction would be made being a partial repayment by her of fees for a training course for which the respondent company had paid. The company did not require her to repay the whole of those fees although they could have. Instead they required her to repay only 50% of them. The company paid her Commission from sales conducted by her in August of 2023. They did not pay her Commission for any sales which took place in September 2023.
16. **SPRING 2023:** In the spring of 2023 the respondent was a change to the banding and the way that Commission was calculated. That was communicated to the sales team at a meeting which Miss Waterhouse attended. Ms Waterhouse said nothing was given to her in that meeting. Her witness Miss Pariss said that attendees were given a piece of paper but denied it was 3 or 4 pages long. Mr Dean and Mr Vokes for the respondent both said that full copies of the amended Commission policy were distributed and it was discussed in that meeting. The Judge was satisfied that it is more likely than not that a copy of that policy was distributed at that meeting. That was the purpose of the meeting. It lasted approximately 30 minutes which is sufficient time to allow staff to ask questions about it. Although there was a dispute whether that took place in February or March the precise date of that meeting did not really matter.
17. In addition on the 27th of February Mr Dean sent to Miss Waterhouse an e-mail which attached "policy 8" (the Commission policy) along with details of her new increased salary. The email also attached the updated incentive arrangements policy specifically drawing her attention to the loyalty incentives. In due course she took advantage of those incentives.
18. In March of 2023 a further amended policy was sent by e-mail which had attached to it a copy of the amended Commission policy. That was sent whilst Ms Waterhouse was on holiday. There's a dispute about whether she would have seen it but whether she saw that email or not she was aware a change was being made to the Commission policy. This is because if Miss Waterhouse's memory is correct and the meeting was in March then she was at it. If the respondent is right and the meeting was in February then this e-mail brought a subsequent March amendment to her attention. If she didn't see this e-mail she nevertheless benefited from the increased Commission rates that it told her about. And she was aware she could access the policy on the shared folders if she wanted to check it. The Judge was therefore satisfied that at every stage Miss Waterhouse was given appropriate opportunities to read and understand the policy which applied to the way she earned Commission.

19. COMMISSIONS: Miss Waterhouse described Commission as “fully earned” once a relevant shift has been booked, undertaken, and invoiced for. Commission payments are only earned if the sales person conducts the whole of that process. That “process” includes booking shifts, managing agency workers, sending assignment details, coordinating with workers and services, dealing with booking issues, preparing for payroll, and offering after sales support. Miss Waterhouse accepted simply booking a shift did not qualify as a “sale” for the purposes of her Commission. In his closing submissions Mr Waterhouse, her lay representative did not accept or agree with that, notwithstanding that evidence came from the claimant herself.
20. There's no dispute that Miss Waterhouse was not at work undertaking those tasks for the whole of September. She cannot say how many such shifts she was responsible for in September. She didn't dispute that her clients were re-allocated and a series of text messages between her and someone called “Owen” dating from Sept 2023 show that this was happening. Ms Waterhouse would not therefore have “fully earned” Commission for the whole of the month of September, even on her own case.
21. It was evidence from all three of the respondents' witnesses that that policy applied on her termination is the same policy she signed on joining, other than the changes which had been brought to Miss Waterhouse's attention. The respondents' evidence about that document was clear and unambiguous. Her written evidence was that it only contained one page “detailing the Commission bands”. Her oral evidence on that point was that so far as she recalls it was only one page. The Judge gave less weight to the written evidence of Miss Waterhouse because it was obvious from the use of language in some parts of that statement but it wasn't written entirely by her and that in fact it was written by or certainly influenced by her father. That fact was demonstrated by the comparison of for example paragraph 65 of Miss Waterhouse's statement in which she says *there is a veritable mountain of easily verifiable incontrovertible conclusive evidence that the respondent has fabricated and subsequently misrepresented as authentic two documents and that's the fabrication undertaken was intentional rather than the result of some bizarre accident* with paragraph 10 of her father's statement which reads *“it is factual easily verifiable incontrovertible evidence that the respondent fabricated and misrepresented as authentic 2 documents and that the fabrication was intentional rather than the result of some bizarre accident”*. These two paragraphs are not entirely but almost identical. The Judge concluded that neither of these were statements written independently by these two witnesses but they were written together, or written by one of them. This was most likely Mr Waterhouse since from the correspondence in the bundle this language was stylistically his and was then simply adopted by Miss Waterhouse. For those reasons they carry less weight than the written evidence of the respondent's witnesses.
22. The Judge acknowledged that in spring 2023 the name of that document had changed from “Commission arrangements” to “incentives

arrangements” but the content of the document is the same and obviously referred to Commission payment structure.

23. That Commission policy also included loyalty bonuses which from April 2023 could be taken either as an extra day of paid leave or as a cash payment or payment paid in vouchers. That part of the policy was not included in the single page Miss Waterhouse signed but was a part of the policy from which she benefited. She accepted that had been communicated to her but did not say how. She said she was asked verbally how she wanted those improved benefits paid to her. The inference was she did not need to look at the policy to benefit from it. The fact that she accepted the benefit of the amended policy without troubling herself to read the policy itself is powerful evidence that she was not concerned with the details so long as it benefitted her. That is understandable but is also consistent with her therefore ignoring or failing to register any parts of the Commission or incentive policy which was not to her advantage, which included the forfeiture clause.
24. The Judge accepted that during her employment Miss Waterhouse was able to access and remind herself of the terms of the Commission policy. It was unchallenged evidence that there was a system of folders containing all relevant employment policies which she had access to. There was evidence that emails were sent to her address which contained the policies as a specific attachment. The claimant and her representative suggested that the content of the email message was trying to dissuade her from opening the attachment but the Judge did not accept that. The Judge acknowledged that the body of the emails contained at a summary of the changes but found there was nothing in it which would actively put somebody off from reading the policy itself.
25. The fact that clause was always part of that policy explains why at the meeting in spring of 2023 (whether it was February or March) no mention was made of that part of the policy. There was no need to mention it because it was not being changed. Miss Waterhouse complains that that “proposal” was never brought to her attention in that meeting. The reason it wasn’t brought to her attention is because it wasn’t a proposed change; it was an existing part of the policy.
26. On behalf of the claimant it was suggested that the policy documents provided to the Tribunal have been created subsequent to her claim. Copies of that policy were provided to the tribunal and at some stage prior to final hearing the respondent acknowledged that was an error because a later version was provided than should have been. The Judge considered a letter from Mr Waterhouse dated the 19th of November 2024 which was a lengthy response to the evidence provided by the respondent which Mr Waterhouse says proves the policies subsequently produced are fraudulent. But that letter is not evidence from Mr Waterhouse, it is his assertions about and purported analysis of E-mail evidence and is really an attempt by him to give his opinion interpreting the emails and the metadata he says is attached to them. Mr Waterhouse, insofar as he is a witness, is a witness of facts not opinion. That letter is effectively all opinion evidence as was most of the evidence Mr Waterhouse gave in the hearing. He is not an expert and he was not called as an expert witness.

That opinion is not evidence he's entitled to give nor evidence the tribunal has given permission for. Although the Judge did not criticise Mr Waterhouse for doing his best for his daughter, the Judge did not share his conviction about that evidence.

27. Mr Waterhouse also argued that because of a missing space in a footer which appears on the signature page, but not on the policy pages which follow, that the Commission document is unreliable. It was not clear why the footer on one page contains a space in the postcode and the footer on other pages don't, but it was obvious that the signature page may not need to be re-written or amended, save to record which version of the relevant policy is being signed to acknowledge. The pages containing the actual policy, updated as it goes along, may need to be changed. Maybe this explains this discrepancy. It doesn't really matter because the Judge was satisfied on the balance of probabilities based on the evidence given by the respondent witnesses about it that this was the policy in place at the time Miss Waterhouse signed it.
28. The Judge therefore rejected the claimant's assertion that the inclusion of that term and the policy to which it applies has been a fabrication. That was rejected because the claimant simply doesn't know what that policy included because she only remembers the first page of it. Miss Waterhouse was compelled to say she remembers the first page because she signed it. But that clearly was not the only page of the policy.
29. That the policy was more than the single page Miss Waterhouse remembers is obvious because that single page doesn't include any reference to the Commission payable for permanent placements. Permanent placements were an important part of the claimant's role and would have attracted Commission payments. She would have been entitled to know what they were and that would have been covered in the subsequent pages of the policy. Secondly the policy refers to a paragraph which is not included on that first page which makes it obvious that there is more to the policy than that single page. Thirdly the suggestion that the company have later deliberately fabricated a clause in that policy in order to avoid paying her what she was lawfully due is contradicted by the approach that the company took to other payments they made to her.
30. Under the terms of the contract the respondent was entitled to deduct from her final pay the cost of the training which had been provided to her. They didn't do that. They could have deducted the entirety of that cost but in fact they deducted only a portion of it. That demonstrated this was not a company seeking to minimise the amount that they had to pay the claimant but rather a company who dealt with her fairly.
31. The Judge also rejected the assertion that the forfeiture clause is unusual or "wrong". The Judge accepted evidence from respondent that the clause came from a template suggested by their professional organization, "Recruitment and Employment Confederation", and that it is "standard". Although Miss Waterhouse, Ms Parris and even Mr Waterhouse may be surprised by this but there was no evidence to rebut it. Applying the balance of probabilities test, the Judge accepted that this clause is not an

unusual one and noted even if it was an unusual clause, that does not render it unenforceable.

### **The Law**

32. The law which applies starts with *Lestrangle v Graucob* [1934] 2 KB 394 a case which established that a party to a contract is bound by its terms, even if they don't read them. That proposition was considered in an employment context in a case called *Arley Homes North West Ltd v Cosgrave* EAT 0019/16. That was heard and determined by the Employment Appeal Tribunal, a superior appeal court which the Employment Tribunal is required to follow. They confirmed that terms and conditions immediately visible to the other contracting party will form part of the relevant contract even if the other party has not actually read the document. Applying that legal principle means the forfeiture clause is not excluded from this employment contract just because Miss Waterhouse did not read it.
33. The fact that a contractual term is part of a document which also includes non-contractual matters does not prevent it from being incorporated into the contract of employment: *Keeley v Fosroc Intl Ltd* 2006 IRLR 961 CA. The Court of Appeal found where a contract of employment expressly incorporated an instrument such as a collective agreement or staff handbook, it did not necessarily follow that all the provisions in that instrument or document would be terms of the contract. It was necessary to consider in their respective contexts the incorporating words and the provision in question incorporated by them. That means some parts of a separate document can create a contractual entitlement and some may not.
34. Applied to these facts, considering both the context and the provision, the Judge concluded given the wording of the provision, and that it appeared in one of the two documents which would tell Miss Waterhouse what she would be paid (the other being her offer letter) this was a contractual term. The remuneration is a fundamental part of the employment relationship and this term explicitly affected that part of the contract. It was therefore a contractual term. The fact it was contained in a separate document does not change that because the document in which it was contained was "the document" to which any employee would have to look to understand their overall remuneration.

### **The decision**

35. The answers to the list of issues are therefore as follows:

1. Whether the commission policy and its various iterations / versions had been provided to and / or seen by the claimant. Yes both on induction and on variation.
2. Whether they had been incorporated into the contract between her and the respondent: Yes. The contract itself included clause 6 entitled "Salary and



Commission”. Clause 6.5 reads “the employee shall be entitled to receive Commission on temporary and permanent placement which she arranges in accordance with the Commission arrangements set out in schedule 1 to this contract. The company reserved the right to amend the Commission structure in future.” The only document which set out commission arrangements as referred to in the contract of employment was the document that Ms Waterhouse signed on induction. By virtue of clause 6.5 therefore this was a term of her contract.

3. If the policy had been incorporated the definition of “termination” within it was important: specifically whether “termination” occurred at the point of resignation or the end of the claimant’s notice period, irrespective of any period of garden leave. Termination given it’s usual meaning as end of employment, which in this case is 29 September 2023.
  4. If the word was defined in Ms Waterhouse’s favour, what was the value of the commission earned in September? Only reliable evidence of the value of any Commission she might have earned is that from the respondent because that is based on bookings to which the full sales process had applied and not simply to the perspective bookings that she had made before she was placed on garden leave. However, this sum was not payable to her as it was outstanding at the date of her termination and so was forfeited in accordance with the term of her contract.
36. The claim is not well founded and is dismissed.

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Employment Judge Hay  
Date: 25 July 2025

REASONS SENT TO THE PARTIES ON  
11 August 2025

Jade Lobb  
FOR THE TRIBUNAL OFFICE