



EMPLOYMENT TRIBUNALS

Claimant: Mr Julius Che

Respondent: Plymouth Hope

Heard at: CVP

On: 22 – 24 September 2025

Before: Employment Judge Winfield

Representation

Claimant: In person

Respondent: Raj Pal, Croner (Legal Representative)

RESERVED JUDGMENT

The judgment of the Tribunal is as follows:

1. It is declared that the Claimant was employed by the respondent under a contract of employment between 6 October 2021 and 4 June 2024 and that the tribunal has the jurisdiction to hear these claims.
2. The complaint of constructive unfair dismissal is well founded. The Claimant was constructively unfairly dismissed.
3. The complaint of breach of contract in relation to notice pay is well-founded.
4. The tribunal shall consider remedy in respect of the Claimant's successful claims and give a further judgment at a remedy hearing to be fixed.

REASONS

Introduction to the Claim

1. The Claimant, who was born on 1 December 1983, was employed by the respondent between 6 October 2021 and 16 June 2024 as a Children and Young People Active Life Coordinator.

2. The Respondent is a charitable organisation that works with children and young people in social and physical activities, exercise and psychological support.
3. The Claimant argues that he was an employee and holds employment status. The Respondent states the Claimant was by choice self-employed, having been offered both options on his appointment and having chosen self-employment (so as not to jeopardise the payment of housing and other benefits). Both parties agree that the Claimant filled in weekly timesheets, following which the Claimant would be paid monthly.
4. By way of an ET1 Claim form dated 7 August 2024, the Claimant brought a claim of constructive unfair dismissal under the Employment Rights Act 1996 to the Tribunal.

List of Issues

5. The Claimant resigned on 16 June 2024. Receipt by ACAS of the EC notification was on 18 June 2024 and the issue took place on 24 June 2024. By a response presented on 27 February 2025, the Respondent resisted the claims. The Respondent made an application for an extension of time to present the response, which was granted on or about 18 March 2025.
6. Through an agreed case management agenda the Claimant indicated his intention to withdraw the claims of whistleblowing and race discrimination; the claims of constructive unfair dismissal and wrongful dismissal are maintained.
7. A preliminary hearing was held on 19 March 2025. The purpose of that hearing was, amongst other things, to summarise the list of issues relating to the constructive dismissal claim that needs to be determined. In addition, that preliminary hearing clarified that associated claims brought by the Claimant in relation to race discrimination and whistleblowing would no longer apply to the claim, following their withdrawal by the Claimant.
8. The Claimant claims that:
 - a. They commenced a contract of employment with the Respondent on 6 October 2021 and have held employee status since that date; and
 - b. the Respondent acted in fundamental breach of contract in respect of the implied term of the contract relating to mutual trust and confidence. The breach(es) are set out in the Claimant's particulars of Claim at the request of the Judge at the preliminary hearing – the Claimant also further summarised these through their witness statement and through their closing submissions as follows:
 - a. Being overworked and feeling overwhelmed in the role, accompanied by undertaking many unpaid hours and none of these issues being addressed during the time working for the Respondent;
 - b. Not receiving any adequate response or a meeting relating to the non-payment of tax on the Claimant's earnings by the Respondent;

- c. A lack of response being provided to a formal grievance complaint;
- d. As a result of items (a) to (c) listed above, becoming unwell and contracting tuberculosis, resulting in hospitalisation; and
- e. Not progressing the items above at (a) to (c) caused a fundamental breach of contract in respect of the implied term of mutual trust and confidence (paragraphs page 22 to 25 on pages 18 and 19 of the Bundle).

9. Then, applying the facts to the legal tests, the Tribunal will need to decide:

- a. Firstly, is the Claimant an employee under section 230 of the Employment Rights Act 1996?

In relation to constructive unfair dismissal:

- b. 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. The Tribunal will need to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at an end; and
- c. Whether it had reasonable and proper cause for doing so.
- d. Did the Claimant resign because of the breach?
- e. Did the Claimant wait too long before resigning and affirm the contract?
- f. In the event that there was a constructive dismissal, was it otherwise fair within the meaning of s. 98 (4) of the Employment Rights Act 1996?

Wrongful dismissal; notice pay

- g. What was the Claimant's notice period?
- h. It is accepted that the claimant was not paid notice as he resigned with immediate effect.

Procedure, Documents and Evidence Heard

10. A List of Issues was produced at a preliminary hearing - this has been described above. The associated case management orders required that:

- a. A bundle was produced that was limited to 350 pages;
- b. Written statements of the Claimant shall be limited to 5,000 words in total (on the basis of only having one witness at the time – the Claimant) and of the Respondent 10,000 words in total (based on calling three witnesses).

11. There was a final hearing bundle (known hereafter as the Bundle) of 265 pages, accompanied by a Bundle index.

12. There were two witnesses and two witness statements from the Claimant, with two witnesses and associated witness statements on behalf of the Respondent. Those witnesses were:
 - a. Julius Che and Danislava Andreeva for the Claimant; and
 - b. David Feinduono and Olusoji Fasuba for the Respondent.
13. The Respondent also submitted the following documents on during the hearing:
 - a. Supplementary Bundle with an accompanying index (56 pages); and
 - b. A Chronology.
14. The above documents were broadly agreed between the parties and were accepted into the Tribunal.
15. The Respondent, in addition, submitted a number of additional documents, which comprised 8 email attachments, which are as follows:
 - a. Emails demonstrating that the Respondent contacted ACAS;
 - b. An email from the Respondent to the Claimant on 13 April 2024, confirming that the grievance would be “parked” until “the ACAS situation is resolved”; and
 - c. Emails relating to the conduct of the Claimant (which Mr Fasuba gave related evidence upon in his witness statement).
16. I heard the views of both parties on these emails. On the matter relating to the grievance correspondence, both parties accepted that this correspondence would be useful and given its brevity, this should be accepted into the Tribunal.
17. Regarding the conduct of the Claimant and associated documentation, I made clear that unless this related to the constructive dismissal or employment status, such emails were only likely to be potentially relevant in the context of remedy and contributory fault. I therefore explained that, whilst I could accept these emails for those purposes, the Claimant would need a chance to be able to review this and properly respond to them.
18. This claim for employment status and constructive unfair dismissal was heard over three days. I have heard oral evidence from the Claimant and from the Respondent. I have seen written submissions from the Respondent and the Claimant. Both parties gave closing submissions, which were written down – and which the Claimant also chose to read out orally. I have carefully considered the documentary evidence provided, together with the parties’ oral evidence.
19. Whilst it was intended to give oral judgment within the three days, due to a number of issues relating to the timing of evidence and availability of witnesses, combined with the need to allow parties time to prepare and review any evidence relating to remedy (should it arise), I explained to the parties that I would reserve judgment.

20. I explained at the beginning of the hearing process to all parties that I had to have regard to the Equal Treatment Benchbook (that includes the Overriding Objective) and the Employment Tribunal Procedure Rules 2024 (the 2024 Rules), to ensure that the case is dealt with, amongst other things, fairly, and that parties are on equal footing.
21. I made clear that the parties could request a break at any point and if they had any additional needs or requirements, they could simply ask the Tribunal. Regular breaks were taken to accommodate the needs of the Claimant, who was suffering with ongoing mental health issues.

Facts Identified

22. I have made the following findings of fact on the balance of probabilities having heard the evidence and considered the documents. These findings of fact are limited to those that are relevant to the issues listed above, and necessary to explain the decision reached. Where there is any disagreement between the Parties on matters relating to fact, I explain this below.
23. The Claimant worked for the Respondent from the beginning of 2018 to 16 June 2024 undertaking the following:
- a. Delivering wellbeing activities to groups;
 - b. Overseeing all aspects of football activity;
 - c. Writing a football handbook; and
 - d. Training other coaches.
24. During this time, his official role title became a Children and Young People Active Life Coordinator.
25. Up until May 2021, the Claimant was awaiting the grant of refugee status and so could not take up paid employment. He volunteered with the Respondent during this period. After May, the Claimant continued the same role for the Respondent without pay between 25th May and August 2021.
26. Over a three-month period, between August and October 2021, the Claimant was paid three amounts of circa £1,000 each month. I find these payments were made for services undertaken whilst the Claimant was volunteering and that then continued to be undertaken by the Claimant from May 2021 onwards. The Claimant maintains that such payments were only for expenses being undertaken whilst a volunteer, which were numerous and could not be specifically quantified (paragraph 3 of the Claimant's witness statement) and of. The Respondent maintains that such payments were for his services as a sessional worker, thereby providing proof of self-employed status. I find that these payments were for services rendered and not specific expenses because: (a) as explained below, the payments commenced at the same time that the draft contract of employment was produced by the parties (thereby indicating that the payments were for continuing services rendered; and (b) the amounts do not correspond however to any specific salary and are "arbitrary" payments; and (c) I find the Claimant's evidence presented credible when explaining that conversations took place whereby it was agreed that the

Claimant would start to be paid for the services previously undertaken and that would continue to be undertaken, however the specific expenses payable could not be quantified.

27. In September 2021 Claimant commenced a course at university and received a student loan. The Claimant did not work on Tuesday each week to attend lectures (paragraph 13 of page 56 of the Bundle). The Claimant worked Saturdays and over the weekend as this was when many of the youth football matches took place.
28. A full-time role became available with the Respondent, which the Claimant applied for on 23 September 2021. He was invited for an interview via email on 27 September 2021. The Claimant was the only applicant and the recruitment process was undertaken internally.
29. On 27 September 2021 the Claimant was interviewed for a full-time role with the Respondent and he was offered a two-year fixed term contract (page 105 of the Bundle). The Claimant was also presented with a job description (pages 98 to 102 of the Bundle). At some point, the Claimant will have also seen a contract of employment - but he did not sign either of those documents. The contract of employment states that employment commenced on "*1 August for a period of two years*" and that "you have accepted the job as a "active life coordinator". It was signed on 15 August 2021 by David Feindouno but not signed or dated by the Claimant (pages 105 to 112 of the Bundle).
30. The Claimant filled in an Employee Starter form (pages 113 to 114 of the Bundle) and an HMRC Starter Checklist Form (pages 115 to 116 of the Bundle). The former document is dated 6 October 2021. The latter document is dated 1 December 1983 – which is an error on the part of the Claimant as he thought he had to fill in his date of birth as part of the declaration. The Starter Checklist also notes that a postgraduate student loan is pending. The Claimant then gave these forms to his line manager, Mr Kiven Emmanuel. Whilst the Claimant handed in the forms to the Respondent, these were never processed by the Respondent. The Respondent has a process in place (explained at page 82 of the Bundle) that new employees are added to payroll once the chair of the HR Committee has approved and sent the forms to the accounting firm (or via an instruction).
31. The Respondent submits that: "*When the Claimant attended his interview with the Respondents, he was advised he could be self-employed or employed. The Claimant did not want employment status to affect his housing and other benefits and therefore did not complete the required forms to be added onto payroll and therefore timesheets were sent to the Claimant to complete for him to then be paid effectively*" (paragraph 13 on page 33 of the Bundle).
32. At this point the Claimant was paid a monthly amount of approximately £1,450 directly into his personal bank account. This amount was not taxed. The Claimant did not receive any P60 or payslips from the Respondent.
33. In order to receive the monthly payment, the Claimant was required to fill in timesheets (see pages 30 onwards of the Supplementary Bundle). Regardless of the hours the Claimant worked or what was written on the timesheet, he was always paid the same amount each month (see pages 1 to 28 of Supplementary

Bundle). The Respondent submits that the Claimant never worked over the 35 hours (page 67 of the Bundle), however even on a sample of the timesheets provided in the Supplementary Bundle, it is clear that the Claimant worked over 35 hours (see pages 31 and 32 of the Supplementary Bundle – 44 hours and 51 hours by way of example).

34. Both the Respondent and Claimant agreed that day to day, the Respondent did not treat members of the team differently from one another, regardless of their employment status. In addition, it should also be noted that all staff members are described as employees in the company policies (for example, page 137 of the Bundle). As the tribunal evidence of Ms Andreeva confirmed, when she worked for the Respondent, she simply assumed that the Claimant was an employed member of staff. The Claimant had an email address of the Respondent and equipment such as a laptop. The Respondent however had a general policy of issuing these to everyone that undertook work for them, particularly to ensure appropriate security, data protection and safeguarding practices.
35. The Respondent, being a charity, only had limited resources available to it. The Claimant's line manager resigned on 3 November 2022 (Kiven Emmanuel) (page 196 of the Bundle), David Feindouno was abroad for much of the time as he undertook work for the Red Cross and the Claimant's manager from November 2022 (and most of the other members of staff), Clarisse Feindouno, was also not frequently available in person. The main contact time with these staff members was in a monthly team meeting. As explained through the evidence of witness statement of Ms Andreeva - staff – including the Claimant – raised on more than one occasion the issue of an overwhelming workload.
36. On 22 February 2024, the Respondent wrote to the Claimant stating that they were not satisfied with his performance, asking him to reflect on a number of matters in order that there could be a formal review of his role. On 23 February 2024, the Claimant by way of response emailed Mr Feindouno (cc Kandas Dougouno and Clarisse Feindouo), which did the following: (a) summarised all of the work and commitments that the Claimant had undertaken; (b) raised concerns around the workload and ways of working, which left him feeling overwhelmed (pages 197 – 200 of the Bundle).
37. The Respondent took the view that because the Claimant was undertaking a master's course and undertaking additional work at a local football centre, this was the cause of the Claimant feeling overwhelmed and nothing further was done by the Respondent on this specific item (paragraph 15 and page 34 of the Bundle). Both parties agreed that Tuesday was the agreed day that the Claimant could use for the university course.
38. A meeting took place between the Claimant and Mr Feindouno on 26th February 2024. Whilst there are no notes of the meeting, a follow up email was written by Mr Feindouno to the Claimant regarding a review of working hours (page 210 of the Bundle).
39. On 29 February 2024, the Claimant asked for information from the company payroll clerk regarding his income and tax deductions, as this had been requested by the student loan company (page 210 of the Bundle). The Claimant

chased up this query again on 6 March 2024 (page 212). Mr Feindouno replied to that email stating that:

“ your January pay went to the old bank account you had, the one in red. you have told me that all your accounts are working, so you need to check your account because the money definitely left PH accounts.

In terms of your employment status, you are self-employed with PH Julius.

When we gave you the job, you were asked whether you wanted to be on a payee system and you said you would think about it. You never came back to us, so you have been paid your wages directly. This is why you have never been given a payslip because you are not on our payee system.

If you want to be a payee with PH, you will need to complete the HMRC starter form.

It is up to you to do your tax return and inform the company house accordingly”.

40. The Claimant emailed on the same day stating that he had “no clue” he had been self-employed until now and also stating *“I guess this has to be discussed properly”* (page 216 to 217 of the Bundle). The Claimant also raised a number of queries with the Respondent. The Respondent replied on 7 March 2024 repeating the above points and also stated *“I will be at the office tomorrow if you want to discuss or feel free to go see Akim. But please this isnt changing”*.
41. On 9 March 2024, the Claimant wrote again to Mr Feindouno and stated *“Please, I would like to request a meeting to properly discuss this matter. It is still unclear to me. I have never had a conversation since I started the job about me being self employed. I know that when one is self-employed he has to be paying taxes - but I am not, because I am not self-employed”* (page 217 of the Bundle).
42. There are various emails that go back and forth between the Claimant and the Respondent over this short period. The Claimant requests an in person meeting with the Operations and Strategic Manager (Clarisse Feindouno – at this point the Claimant’s line manager) and is offered a zoom meeting in response on 11 March 2024. The Claimant agrees to a Zoom meeting (page 219 of the Bundle). No formal meeting takes place and then the Claimant follows up chasing a meeting on 19 March 2024. On 20 March 2024 ultimately the Respondent reaffirms its position and advises the Claimant to submit a grievance if they are not satisfied with the response (and the Respondent will then have five days to reply) (pages 220 – 222 of the Bundle).
43. On 25 March 2024, the Claimant raised a grievance, which primarily focuses on the lack of a response from the Respondent relating to the employment status. The Claimant was told his grievance would be passed onto the safeguarding officer to conduct.
44. On 3rd April 2024, the Claimant clarified the grievance that he had, stating *“I will provide only two letters, and one of them will be the main reason for my grievance letters”*. The first letter is written in email format and relates to work responsibilities and concerns the number of hours the Claimant works and the number of activities he has to undertake for his role. The Second Letter, also

in the same email, is titled "Work Contract". It states "*this letter two is the main reason for this grievance complaint*" and relates to the Claimant's employment status (pages 229 and 230 of the Bundle).

45. On 8 April 2024, the safeguarding officer emailed David Feinduono, cc'ing in Kandas Dougouno and Clarisse Feindouno the following:

"I can't really pick this up at the moment as work is frantic and I'm off most of this week with the girls, however if you need anything pls do text or call and I'll try to pick up - however I definitely won't be able to help tomorrow as I'm out of Area seeing children but rest of week is ok ish. Next week I'm in court a lot but again try me and I'll answer when I can.

It may be better for Kandas to deal with this overall as he's not the person Julius is upset with, however you do know all the inner workings of things which is an advantage that Kandas and I don't have

I'd take a very apologetic stance re the self-employment thing and say a result we will review all internal processes with details of employment/self employment. This is absolutely our mistake as it's not clear at all on his contract when it should have been. Moving forward all contracts must explicitly state if employed or self employed and if self-employed what this means in terms of paying own taxes and NI etc. Plus we will need ensure from April onwards that ALL staff get a payslip in their emails or in their hand so it's clear what's what.

It's absolutely not ok that payslips are not provided to any employees regardless of employed/self employed status So be apologetic about that!

I'd also suggest Julius' missing pay is explored with Akim asap and say this will be back payed in April pay/ Obviously Akim will need to Prioritise this as there is no dispute that Julius has worked the hours so he must be paid. That's a pretty serious issue too.

All in all we need to be extremely careful as there is a risk of litigation. An olive branch may be that we agree to sort his previously owed taxes for him (Maybe Akim can help) as a gesture of good will & then from April he needs to Sort this himself. I've no idea if Akim can help with this but I'd be inclined to ask him and take that info to any meeting with ACAS & Julius as this will smooth things over....

We also need a plan re extra time worked- for example to staff log this and claim it back ? Or can they get paid for a maximum of extra hours per financial year? If there is a staff policy this will make this area better. We can also explain to Julius & ACAS that we are exploring this too. hope that's all useful"

46. On 12 April 2024, the Claimant confirmed to his line manager he would be going to hospital and he chased up the status of his grievance complaint.
47. The Claimant then contacted ACAS regarding the lack of response from the Respondent at around the same time and to try and resolve the issue surrounding employment status (the specific date was not known but both parties agreed this took place).

48. On 13 April 2024, the Respondent contacted the Claimant to state that the grievance would be “parked” until the ACAS issue was resolved (new email submission during the hearing).
49. On 13 April 2024, the Claimant was admitted to hospital with tuberculosis and did not return to work. The Respondent continued to pay the Claimant whilst he was in hospital and then when he was discharged and recovering at home.
50. On 17 April 2024 the Respondent further noted that the Claimant had put in the aforementioned complaint to ACAS and *“he didn’t wait for the grievance to be sorted internally, he will now have to follow what is happening with ACAS. Unless you prefer to deal with his internal grievance separately”* (page 228 of the Bundle). This in effect “pauses” the grievance process and the Respondent does not engage further with the Claimant on it in any material way.
51. On 16 June 2024, the Claimant resigned by way of letter (page 235-241 of the Bundle). The letter of resignation contains a section, titled “reasons for resigning”. This states, *“I am resigning because I have raised a grievance complaint to address matters worrying me as an employee and the organisation / CEO has repeatedly ignored me. With PH not engaging with my request to continue the grievance procedure, after I sent multiple emails and have not gotten a response – the last email being 03 June 2024, this is the final and most recent failure to act in this continuing course of poor treatment to me. I now have no choice but to resign as PH has still not done anything to change the situation or even engage”*.

The Law

52. Section 230 of the Employment Rights Act 1996 defines an employee and a contract of employment:

Section 230 – Employees, workers etc.

(1) In this Act “employee” means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

(2) In this Act “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

53. The judgment of *Ready Mix Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 1 All ER 433 (QBD)* (approved by higher Courts) held that the three key elements must be present to establish what was then termed a “contract of service”:

“(i) The servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master.

(ii) He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master.

(iii) *The other provisions of the contract are consistent with its being a contract of service.*"

54. Hall (Inspector of Taxes) v Lorimer [1994] 1 WLR 209 Nolan LJ (at [217]) approved the following dicta of Mummery J (reported at: [1992] 1 WLR 939) at [944]: *"In order to decide whether a person carries on business on his own account it is necessary to consider many different aspects of that person's work activity. This is not a mechanical exercise of running through items on a check list to see whether they are present in, or absent from, a given situation. The object of the exercise is to paint a picture from the accumulation of detail. The overall effect can only be appreciated by standing back from the detailed picture which has been painted, by viewing it from a distance and by making an informed, considered, qualitative appreciation of the whole. It is a matter of evaluation of the overall effect of the detail, which is not necessarily the same as the sum total of the individual details. Not all details are of equal weight or importance in any given situation. The details may also vary in importance from one situation to another. The process involves painting a picture in each individual case. As Vinelott J said in Walls v. Sinnett [1986] 60 TC 150, 164: 'It is, in my judgment, quite impossible in a field where a very large number of factors have to be weighed to gain any real assistance by looking at the facts of another case and comparing them one by one to see what facts are common, what are different and what particular weight is given by another tribunal to the common facts. The facts as a whole must be looked at, and what may be compelling in one case in the light of all the facts may not be compelling in the context of another case.'"*

55. Having reviewed the field of case law on these matters – and summarised in the above – I note that I cannot adopt a "checklist" exercise when considering what does, or does not, amount to a contract of employment.

56. Section 95 of the Employment Rights Act 1996 provides:

95. *Circumstances in which an employee is dismissed*

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

(a) ...

(b) ...

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

57. In Western Excavating (ECC) Limited v Sharp [1978] ICR 221, CA, the Court of Appeal ruled that for an employer's conduct to give rise to a constructive dismissal it must involve a repudiatory breach of contract. It is therefore a contractual matter. Lord Denning stated as follows in this judgment:

"If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further

performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed".

58. Therefore in order to claim constructive dismissal, the employee must establish that:

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

59. Importantly, in order to find a claim of constructive dismissal, there must be a causal link between the employer's breach and the employee's resignation. The employee must have resigned because of the employer's breach and not for some other reason. It is a question of fact for the employment tribunal to determine what the real reason for the resignation was.

60. Malik v Bank of Credit and Commerce International SA (in compulsory liquidation) 1997 ICR 606, HL is the principal case that establishes the implied term of mutual trust and confidence. This is a duty that neither party will, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.

61. The first part of the test, "*without reasonable and proper cause*", is in itself an item that the tribunal must consider if there is conduct that is calculated or likely to destroy or seriously damage the relationship of trust and confidence (for example, Sharfudeen v TJ Morris Ltd t/a Home Bargains EAT 0272/16, the EAT confirmed that there may be no breach if — viewed objectively — the employer's conduct was not unreasonable).

62. The second part of the test "*in a manner calculated or likely to destroy or seriously damage*", is viewed objectively i.e. from the perspective of a reasonable person in the Claimant's shoes - Tullett Prebon plc and ors v BGC Brokers LP and ors 2011 IRLR 420, CA.

63. The employer's conduct has to be calculated or likely to at least seriously damage the relationship of trust and confidence. This is not simply unreasonable behaviour and this is a high hurdle: Frenkel Topping Ltd v King EAT 0106/15 the EAT.

64. The focus of a tribunal should be solely on the conduct of the employer when reviewing a constructive unfair dismissal case — Tolson v Governing Body of Mixenden Community School 2003 IRLR 842, EAT and Nelson v Renfrewshire Council 2024 EAT 132.

65. The test for unfair constructive dismissal is purely contractual i.e. whether, as a result of the employer's conduct, the contract of employment had been repudiated (Bournemouth University Higher Education Corporation v Buckland 2010 ICR 908, CA).

Conclusions

1. I set out below the relevant findings of fact which I have decided in order to make my decision. Where a fact is in dispute I will set out my reasons why I have made a particular finding in favour of one party over the other. In doing so I remind myself that the standard of proof is the balance of probabilities; namely is any particular fact more likely than not to have happened.

Employment Status

2. As is clearly explained in the facts found above, the Claimant was consistently paid the same salary every month, regardless of the hours he worked. This wage was provided for the Claimant to provide services as a Children and Young People Active Life Coordinator.
3. The Claimant had specific responsibilities that he had to undertake, in accordance with a job description. The Claimant did not have another job. There was no distinction in services or treatment between the Claimant and other members of staff. The Claimant took very obvious steps to demonstrate they were commencing services as an employee, including signing an HMRC Starter Checklist form.
4. Both parties behaved and acted as though the Claimant had employee status, whether intentionally or otherwise: he was subject to all employee procedures and processes, including staff handbooks, monthly meetings and performance reviews. The Respondent signed a contract of employment in relation to the Claimant and the Claimant was contracted with on those basic terms of the offer.
5. I do not find that the fact there was an agreement between the parties that the Claimant could undertake a university course on a Tuesday as being a counterbalance to the overall picture one sees when reviewing the Claimant's employment status. The Claimant worked on Saturdays and so it is logical that he would agree as part of his working pattern not to work on Tuesdays. Studying in that time does not demonstrate a self-employed status.
6. Furthermore, the evidence that the Claimant provides explaining his role and complaints relating to the hours worked which, whilst disputed by the Respondent in part, provides evidence that the Claimant did not feel he was in control of the work that he did, rather that he needed the Respondent to rectify the working hours and the types of activities he undertook.
7. In considering all the above, I find that the Claimant did have employment status.

Constructive Unfair Dismissal

8. Returning to the list of issues identified by the Claimant:
9. *Being overworked and feeling overwhelmed in the role, accompanied by undertaking many unpaid hours and none of these issues being addressed during the time working for the Respondent;*

- a. Evidence has been provided by the Claimant that he performed a wide variety of tasks, that this constituted long working hours and that he felt overwhelmed. Whilst this may be the case, there is a lack of a causal relationship and link between this specific issue and the actual reason for the resignation ultimately submitted by the Claimant. I explain the reasons for this below.
- b. The Claimant himself, for example per page 230 of the Bundle, is clear that the primary reason for his grievance against his employer is not the work activities, or the hours worked, but rather the employment status and the lack of response provided by the Respondent. This continues up until the point that the Claimant resigns. When the Claimant resigns, the final section of his letter titled "reasons for resigning" does not mention the long hours worked and scope of work. Rather, it references the response to the self-employed status and the response to the grievance complaint (page 240 of the Bundle).
- c. After submitting the grievance, following this date the Claimant is away from work for some time with illness and ultimately does not work again for the Respondent in any material capacity.
- d. Given the above, I cannot find that the behaviour of the Respondent was calculated, or was likely to, destroy or seriously damage, the trust and confidence between the Respondent and the Claimant due to the lack of a causal link. I do not therefore find that this specific issue does meet the necessary threshold to succeed on the grounds of constructive unfair dismissal.

10. Not receiving any adequate response or a meeting relating to the non-payment of tax on the Claimant's earnings by the Respondent and a lack of response being provided to a formal grievance complaint;

- e. This issue and then the consequent lack of response are related items and so I have dealt with these issues together.
- f. The Claimant requested information from the Respondent relating to his student loan in February 2024. He was informed by the Respondent that he was self-employed and that, as a result, no action rested on the Respondent. This is the first time that the Claimant had received this information.
- g. The Claimant then sent several emails over a relatively short period, clearly very concerned about owing a large amount of tax and wanting to get information from the Respondent and speak with them in a meeting.
- h. On 8th April 2024, the safeguarding officer for the Respondent stated internally to the senior stakeholders of the company that they made a mistake, that it is "*not clear at all on his contract*" what it should have been and suggested a number of mitigation measures to take this forward, including paying a proportion of the Claimant's tax. None of these measures were followed up or communicated to the Claimant.

- i. The Claimant is ultimately advised in writing by the Respondent that they can file a grievance and the matter remains unresolved, the position being taken that the Claimant is self-employed and so this is not a matter the Respondent can assist with. Soon after, the Claimant files a grievance because of the lack of any productive engagement.
- j. On 25th March 2024 the Claimant files a grievance and on 3rd April 2024 this is then clarified further to the Respondent via email. The Claimant does not receive any reply to this and then contacts ACAS on or around 13 April 2024. The Respondent then “pauses” the grievance due to the contact with ACAS at their admission. Throughout and until the resignation, the Claimant receives no reply to the grievance they have raised except to receive confirmation that the grievance is not being progressed.
- k. The Claimant is clear and consistent that (a) their grievance is based on the lack of response from the Respondent on the tax and self-employment status issue; and (b) their resignation is due to a lack of any response on the grievance or any meaningful response on the information relating to tax and employment status. As such, a causal link between the breach and the act of resignation is clearly established. I do not find that any reasonable employer would have stopped engaging with their employee during this process simply because there is ongoing ACAS correspondence.
- l. The Claimant did not receive any meaningful response or support from the Respondent throughout the period of February 2024 until their resignation. The issue related to the status of the Claimant as an employee of the business and the potential payment of a large amount of tax as a result. This is a fundamental aspect of the employer/employee relationship in two areas (a) providing the employee with accurate information regarding their employment status and associated pay; and (b) communicating with employees in order to resolve concerns.
- m. The period of time between the initial query regarding employment status and the grievance was circa four weeks. The Claimant then went to hospital and was unwell and was still not well at the point when he resigned in June 2024. During this time, the Claimant did not receive a response on the grievance issue from the Respondent. When this was not forthcoming, he resigned.
- n. I therefore find that, in relation to these two issues, the Claimant has was entitled to resign by way of constructive dismissal.

11. As a result of items (a) to (c) listed above, becoming unwell and contracting tuberculosis, resulting in hospitalisation;

- o. The Claimant maintains that he may have caught the illness from someone else at Plymouth Hope seeking asylum, and/or the stress at work caused him ultimately to contract the illness.

- p. There is no evidence that I can draw upon, in writing or otherwise, showing that the Claimant's illness can be directly attributed to the Respondent in anyway.
- q. I therefore cannot find any link or evidence that leads me to a fundamental breach of contract.

12. The claim for constructive dismissal is well founded succeeds.

Wrongful dismissal; notice pay

- 13. Whilst the contract of employment was never reviewed between the parties, the version that the Claimant never signed refers to a one month notice period (page 109 of the Bundle). My findings of fact are, absent any other evidence elsewhere, that on balance it is reasonable to assume a one month notice period.
- 14. It is accepted that the claimant was not paid notice as he resigned with immediate effect. As such, I find that there has been a wrongful dismissal on the basis of a lack of notice pay being made.
- 15. Remedy will be listed for a later hearing and separate case management orders will be provided regarding the evidence that needs to be submitted by both parties.

Approved by

*Employment Judge
Winfield*

Date 16 December 2025

**Judgment sent to the Parties on
18 December 2025**

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Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>