



EMPLOYMENT TRIBUNALS

Claimant: Mr S Bowen

Respondent: American Golf (Trading) Limited

Heard at: Cardiff **On:** 1, 2 and 3 October 2025

Before: Employment Judge R Brace

Representation:

Claimant: In person

Respondent: Mr G Price (of Counsel)

Judgment having been sent to the parties on 13 October 2025 and written reasons having been requested on 25 October 2025 in accordance with Rule 60 of the Employment Tribunal Procedure Rules 2023, the following reasons are provided:

WRITTEN REASONS

1. The Claimant's request for written reasons were referred to me by Tribunal administration on 24 November 2025.

Introduction

2. The Claimant has brought two claims, but as the claims refer to slightly differing issues they were listed to be heard together.
3. Early conciliation started on 4 December 2024 and ended on 15 January 2025.
4. The first claim form (6003691/2025) was presented on 3 February 2025 ("First Claim") and the second claim form (6008384/2025) on 11 March 2025 ("Second Claim").

The claims

5. In the First Claim, the Claimant stated that his employment ended on 9 December 2024, and in which he brought claims of:
 - (a) constructive unfair dismissal alleging a biased disciplinary treatment, not being paid for on call hours and constantly having the phone on; and
 - (b) a claim in respect of 'unpaid hours for being on call for alarm call outs that were mandatory to attend' [6].
6. He sought compensation in the amount of £80,000 for loss of wages on the unpaid call hours and stress and a claim of £20,000 for '*botherment*' and stress and loss of marriage in relation to being on call and unable to attend social functions. In its response, the Respondent raised time issues regarding the 'on-call' and generally denied the claims.
7. The Claimant filed a second claim number 6008384/2025 on 11 March 2025 [43] asserting that his employment ended on 16 December 2024 but repeating matters set out in the the First Claim, in relation to unfair dismissal and unpaid on call hours for call outs for alarms, but also raised a new claim of breach of contract in that he alleged that the Respondent made it compulsory to attend and answer call outs, that the Claimant was constantly on call and not paid and that there had been no provision of mobile phone or payments to phone rental and that this had not been in his contract [43]('Second Claim').
8. At case management hearing before me on 20 May 2025, it was agreed that the claims should be linked and heard together and that the claims were about the Claimant's dismissal, which he claimed was an unfair constructive dismissal, the Claimant relying on breaches of trust and confidence, and a breach of contract claim.
9. At that hearing, the Claimant also raised that he was also complaining of breach of the Working Time Regulations 1998 ("WTR 1998") for unpaid hours when on-call for alarm callouts which were mandatory to attend. He was permitted to clarify that WTR 1998 claim in writing and explain why such a claim had not been referred to in the ET1s. Likewise, the Respondent was given the opportunity to consider whether any WTR 1998 claim as clarified was an amendment that required permission from the tribunal and if so, whether they consented to the amendment. If they did consent, they had permission to file an amended Grounds of Resistance.

Amendment and list of issues

10. The claims and amendments were discussed at the outset of the final hearing as the Claimant had written in to clarify his WTR 1998 claim [100] indicating that his WTR claim 1998 was in respect of '*the failure to allow him to exercise his worker's right to 11 hours of uninterrupted rest between shifts*'. He made no reference to any breach in relation to the 48 hour working week provisions of the WTR 1998.

11. The Respondent had not and did not object to that amendment and had already filed an Amended ET3 Grounds of Resistance responding to such complaints. That complaint was permitted to proceed.
12. The Respondent did object to a further amendment the Claimant had made to include 'Breach of Health and Safety at Work Act 1974' in that he asserted that he had been called out to attend alarm 'call-outs' without adequate prior information or risk assessment.
13. The Claimant's application had not been dealt with by the Tribunal administration or in turn referred to an employment judge at any time prior to the commencement of the final hearing. As a result, this was discussed at the outset of the final hearing as part of further case management, as was the list of issues attached to the case management order of 20 May 2025 that required amendment in the light of the WTR 1998 complaint in any event.
14. The Claimant was given permission to amend his claim to rely on a complaint under regulation 30(1)(a) WTR 1998 that the Respondent had failed to permit him rest breaks under regulation 10 WTR 1998.
15. After an adjournment, whilst I continued reading to enable the Respondent's counsel to prepare a draft list of issues for the WTR 1998 complaint that had been permitted and for the Claimant to consider whether he wished to make any further application to amend his claim to include a complaint in respect of the 48 hour working week, the Claimant withdrew his application to amend in relation to any breach of the Health and Safety at Work Act 1974 and/or the 48 hour working week of the WTR 1998.
16. The list of issues regarding the WTR 1998 claim was therefore included in the existing list of issues and it was agreed that the issues for determination were those that are now set out in the appendix to these written reasons.

The hearing

17. All witnesses relied on written witness statements and were subject to cross-examination and some additional questioning by the Tribunal. The Tribunal heard oral evidence from the Claimant and from the following witnesses for the Respondent:
 - (a) Mr Toby Neal, Area Manager for Central and the Claimant's line manager;
 - (b) Mr Dean Down, Store Manager (Peterborough) and Disciplinary Investigation Manager; and
 - (c) Mr Steven Turner, Head of Central Operations, and Grievance Manager.
18. I had before me an agreed tribunal bundle of 370 pages which included documents relevant to remedy (the 'Bundle'). On the second day of the hearing, the Claimant sought to introduce a further documents, which were admitted by consent and numbered [371-374].

19. On the basis of the evidence before me and where facts were contested, on balance of probabilities, I made the following findings of fact.

Findings of Fact

20. The Respondent is Europe's largest retailer of golf equipment including clubs, clothing and shoes and trolleys and operates approximately 80 stores across the UK and the Republic of Ireland. It employs around approximately 700 staff. It is a large organisation.
21. The Claimant was employed by the Respondent from 1 December 2000, initially as a sales role and from 2004 as a Store Manager at the Respondent's Cardiff store until his resignation on 12 December 2024.
22. The Claimant was employed on terms and conditions set out in a contract of employment dated [117] that included the following terms:
- (a) *'hours of work were 42.5 hours per week Monday to Sunday (depending on the opening hours of the store) with a 20 minute unpaid break on each full day worked (to be taken in store). You may be required to work additional hours as per the needs and requirements of the business'* and
- (b) His earnings would be a salary made of 90% guaranteed pay and bonus, which was not guaranteed.
23. The Claimant also benefitted from commission arrangements, on personal sales and on the basis of the store sales. No additional payment or allowances were agreed, whether for on-call arrangements or otherwise.
24. His employment was also subject to certain employment policies of the Respondent including a Disciplinary and Performance Procedure that contained terms in relation to the investigation that would be held in most cases indicating that the Respondent had the sole discretion to determine who was the appropriate person to carry out the role of investigating officer ("Investigating Officer")[123];
25. The Claimant reported to a Regional Manager, latterly an Area Manager, Toby Neal who in turn reported to the Sales Director, Elaine Wigley.
26. As Store Manager, the Claimant's duties included:
- (a) Preparing the rotas for staff; and
- (b) Allocating responsibility to staff to hold keys for the store.
27. There is a dispute between the parties regarding the responsibility of the Claimant as Keyholder and Store Manager in relation to on-call responsibility, which I turn to later in these reasons.

Disciplinary investigation

28. Historically, the Respondent sold second-hand products to their stores' customers alongside new. Any customer purchasing new equipment from the Respondent had the option of 'trading in' their used equipment to the Respondent in exchange for new equipment from the Respondent.
29. In September 2022, as part of a new sales strategy, the Respondent partnered with and entered into a commercial contract with a third party retailer that retailed in second-hand golf equipment, 'Golf Bidder'. As part of the commercial contract with Golf Bidder, the Respondent received a commission for any second hand goods that had been traded in by the customer to the Respondent that they passed onto Golf Bidder for onward sale. After this time, if the Respondent sold the second-hand goods directly to its customers, rather than passing them onto Golf Bidder for onward sale, this would be in breach of the Respondent's contractual obligation with Golf Bidder.
30. In September 2024, it was brought to the Respondent's attention that the Cardiff store may have failed to adhere to this 'trade-in' process and instead had, in breach of the Respondent's contract with Golf Bidder, sold directly to the Respondent's customer some second-hand equipment. This had arisen as a result of
- (a) a specific customer complaint;
 - (b) some store visits by senior management, including Elaine Wigley (Sales/HR Director); and
 - (c) audits from the Respondent's Loss Prevention team noting that there had been such sales [182].
31. As a result, Darren Child, Area Profit Protection Manager, requested Dean Down conduct an investigation into allegations that staff at the Cardiff store may have been selling second hand products in breach of the Respondent's contract with Golf Bidder [331]. Dean Down supported the Respondent's Loss Prevention Team with investigations and disciplinaries and was, in addition, Store Manager for the Respondent's Peterborough Store.

Failure to appoint an independent investigator

32. The Claimant has alleged that the Respondent had failed to appoint an independent investigator and clarified in live evidence that he had no personal issue with Dean Downs and that what he meant by this was that:
- (a) there had been a failure to appoint an individual or body that was entirely outside the Respondent's organisation; and
 - (b) Elaine Wigley had raised the concern yet had overarching management responsibility.
33. Whilst I accepted that the Claimant held the view that the investigator should be outside of the Respondent, my attention was taken to the Respondent's

Disciplinary Policy. This contained no requirement for a third party, independent and outside of the Respondent, to be appointed to investigate. Furthermore, there is no general equity requirement or requirement in the ACAS Code for such a step to be taken. In those circumstances and objectively, I found that this was not a reasonable view for the Claimant to have held.

34. Furthermore, I found that Dean Down was a sufficiently independent manager to be an Investigating Officer within the Respondent, being a manager from outside the region. There was no evidence that he reported to Elaine Wigley, who had first indicated concerns about the second hand sales from the Cardiff store. In any event, this did not in itself render Dean Down lacking in independence. The Respondent had reasonable and proper cause for appointing a manager who was independent from another area to undertake the investigation.

HR conducting investigation meetings with co-workers from September 2024

35. Dean Down's investigation was initially store wide, with his evidence being that his approach to the investigation was to speak to all team members in the Cardiff store to get an understanding how that store was being run and there was no reason in principle why the Claimant should be interviewed first.
36. In the context of that initial investigation into the Cardiff store, this was a reasonable step for him to have taken.
37. Whilst Mr Down gave evidence that he believed the Claimant was on annual leave when he commenced investigating in early September by speaking to store staff, I accepted the evidence from the Claimant that he had not been.
38. Either way and by 27 September 2024, the Claimant was interviewed as was Tony Neil and Darren Child.

Leading questions were asked and no fact-finding investigation

39. Dean Down conducted an initial fact-finding by interviewing Cardiff store staff, Area Managers as well as Darren Child and included obtaining and reviewing relevant documents including:
- (a) the Cardiff stores' accounts and the business communications that had been sent contemporaneously regarding the second-hand sales arrangements;
 - (b) email communications regarding the Golf Bidder process from 2022, including emails to the Cardiff store; and
 - (c) the Claimant's communications with management regarding process.
40. His investigation also included consideration of the Claimant's explanation that his previous Area Manager had determined that the Cardiff store would be a second-hand hub for the region, despite the Gold Bidder arrangement.

41. I was taken in live evidence to some of the documents which reflected the questioning of the Claimant that had taken place during the investigation. From the face of those documents, I found that none of those questions could be said to be leading. Likewise, when considering the questioning again of the Claimant later in October, whilst the questions were certainly more pointed, it could not be said that there were leading questions. I was taken to none by the Claimant.

Pre-determined decision to the disciplinary

42. Finally, the Claimant has alleged that there was a pre-determined decision to the disciplinary.
43. In live evidence he gave an example of a previous disciplinary he had been subjected to in 2015, when emails had suggested that the managers responsible for disciplinary at that time had pre-determined the outcome of that disciplinary.
44. Whether or not that had been the case, it was clear that there was no such evidence on this occasion.
45. On 7 October 2024, the Claimant was informed that it was now necessary to conduct a further specific investigation into his personal failure to adhere to the trade in process and potentially the damaged relationship with customers and third parties.
46. He was invited to an investigation meeting on 11 October 2024 [187].
47. By 11 October 2024, Dean Down had completed his investigation report ("Investigation Report") [182], a report that set out the evidence that he considered as part of his investigation. He recommended that there was a disciplinary case to answer by the Claimant, reporting that his conclusions had been that the Claimant:
- (a) had communications from various persons in the business;
 - (b) communications of LP audits/stocktakes, which the Claimant had either chosen not to read or could not recall reading; and
 - (c) multiple visits where his Regional Manager had informed him he cannot sell second hand product, albeit the Claimant could not recall being directly told this.
48. He also concluded that at no time had the Claimant taken accountability for his actions and that by allowing the sale of second hand products in the Cardiff store, the Claimant had:
- (a) failed to comply to management and business instruction on multiple occasions;
 - (b) Failed to adhere to the Golf Bidder process;

- (c) Risked company reputation in line with its contractual obligations with Golf Bidder;
- (d) Had incorrectly gained commission; and
- (e) Breached GDPR Policy.

Grievance

- 49. On 17 October 2024, the Claimant raised a grievance under the Respondent's Grievance policy alleging that the investigation process had not been conducted in line with ACAS guidelines and employment law. The Claimant did not raise any issue or concern regarding his pay or on-call arrangements.
- 50. As a result, the disciplinary process against him was placed on hold.
- 51. A grievance hearing was held on 30 October 2024 before Steven Turner. The Claimant was accompanied. The Claimant's grievance was not upheld and the Claimant was advised of his right of appeal. The Claimant did not appeal.

Disciplinary hearing

- 52. As a result and prior to the expiry of time that the Claimant had to appeal the grievance, the disciplinary process was resumed and on 18 November 2024, the Claimant was invited to a disciplinary hearing, scheduled for 20 November 2024 [179], setting out the allegations of:
 - (a) Failure to comply with management and business instruction on multiple occasions;
 - (b) Multiple acts of insubordination;
 - (c) Failure to adhere to Golf Bidder process;
 - (d) Putting the Respondent into disrepute in line with the contractual obligations with Golf Bidder;
 - (e) Manipulating the KPIs to gain commission;
 - (f) Knowingly breached the respondents GDPR policy; and finally
 - (g) Failure to maintain a duty of care for colleagues by putting them in a 'poor position; due to second hand sales.
- 53. The letter confirmed that dismissal was contemplated and that the hearing would be conducted by the Area Manager for the North region. The Claimant was provided with a copy of Dean Down's Investigation Report and the various appendices attached to that Investigation Report as reflected in the invite letter.

54. The Claimant advised he needed more time to prepare and therefore the hearing was postponed to 22 November 2024. On 21 November 2024, the Claimant reported as unfit for work with work-related stress and the hearing for 22 November 2024 hearing was also postponed.
55. On 4 December 2024, the Claimant was requested to attend an occupational health assessment to understand how the Respondent could support the Claimant and implement any assistance and fitness to attend a disciplinary. The Claimant declined to participate in the assessment.

Resignation

56. On 12 December 2024, the Claimant resigned with immediate effect and before the disciplinary hearing could take place [267].
57. Whilst there was some initial confusion within the Claimant's two ET1s as to date of employment, it is agreed between the parties, and I found in any event, that the Claimant's employment terminated with effect from that date i.e. 12 December 2024.
58. In his resignation letter, the Claimant confirmed that the significant and on-going work-related stress had left him unable to continue working in his role, setting out eight reasons for the cause of the stress of:
- (a) Insufficient support during the absence of a colleague Dave Woodman and Thea Howell's absence;
 - (b) Increased workload with the implementation of the Fluent system;
 - (c) Lack of recognition and support;
 - (d) Expectation to complete other non-contractual duties, such as planting and painting;
 - (e) Lack of support prior to his grievance;
 - (f) Failure to provide a proper handover between regional managers leading to a lack of communication; and
 - (g) That the disciplinary investigation was biased in that the investigation was undertaken by members of Elaine Wrigley's department and there had been a failure to appoint an outside neutral investigator.
59. The Claimant did not complain in that letter about the on-call arrangements that he had been working to since being a Store Manager in 2004, namely for the previous 20 years. He did not complain about not receiving payment for such on-call duties.
60. The letter was detailed and I considered that he had given thought to his explanation for why he was resigning. He had referred to some gardening and painting duties only as being outside of his contractual duties and I found that

if on-call duties had been had been in mind at the point of resignation, he would have referred to it in his resignation letter. He had not.

61. Further, the Claimant gave live evidence that at point of resignation on 12 December 2024, he had not appreciated that there was no express written reference to the on-call arrangements in his written contract as he did not discover this until the day when his contractual documents were sent to him as he confirmed in live evidence on cross-examination.
62. I was not persuaded by the Claimant's live evidence that when he drafted the fifth reason for his resignation, namely the expectation to complete other non-contractual duties, the on-call duties and lack of payment for such duties had been in his mind and therefore found that neither obliging the Claimant to work on-call nor lack of payment for on-call work formed any part of the reason that the Claimant tendered his resignation.

Further grievance

63. On 13 December 2024 and the day after his resignation, the Claimant raised a further grievance after receiving his contractual documents from HR.
64. This time he did complain about the on call-requirements being imposed on him during his employment which he also alleged had a significant impact on his personal life, his well-being and overall work-life balance [271]. Specifically he raised:
 - (a) Constant standby severely curtailing his social life;
 - (b) The need to keep his phone on overnight, disrupting his sleep patterns and health;
 - (c) Being informed he had no choice but to comply with on-call arrangements and that failure to do so would result in disciplinary action; and
 - (d) That on-call significantly reduced his rest time further exacerbating the impact on his work-life balance and overall health.
65. By way of resolution, he sought compensation for the additional hours on standby over the previous 20 years, a review of the Respondent's On-call policy and implementation of fairer on-call procedures.
66. After acknowledging receipt of the resignation on 12 December 2024 [269], on 24 December 2024 the Respondent again acknowledged both the resignation and grievance and asked if he wished to provide further details of his concerns regarding on-call so that could be fed back to the Respondent's business [272]. The Claimant was also offered until 3 January 2025 the opportunity to reconsider his resignation. The Claimant did not respond.

New employment

67. In the interim and on Monday 16 December 2024, the Claimant obtained new employment with Greggs having applied to them for a role w/c 8 December

2024 and having been contacted by them on the afternoon of 12 December 2024, after he had resigned. He had been interviewed for the role on the following day, Saturday 13 December 2024.

On call issues

68. From the time that the Claimant became Store Manager, he became a keyholder ("Keyholder") with responsibilities regarding the protection of the Respondent's Cardiff store that included:
- (a) Opening and closing the store; and
 - (b) Providing the Respondent's alarm management company with mobile and landline numbers.
69. The Respondent's Operations Manual included the Respondent's process for managing site alarms that indicated that this was a duty of all Keyholders [128] and that Store Managers had to ensure that the list of Keyholders was provided to 'Amberstone', their alarm provider. Each store, including the Cardiff Store had a number of Keyholders.
70. In the case of the Cardiff Store the Claimant was Keyholder 1, with the Assistant Manager being Keyholder 2 and a third employee being Keyholder 3.
71. Additional relevant provisions were as follows:
- (a) Clause 2.3 provided that in the event of an alarm activation, the alarm provider would contact the key holders in order on the database and that Keyholder 1 should be the contact who was able to get to the store in the quickest timeframe and in most instances this would be an employee who lived closest to the site and could also drive a car;
 - (b) Store Managers had to ensure that the list of Keyholders for the store was up to date with the alarm provider; and
 - (c) Clause 2.8 of that Operations Manual provided that all Keyholders had a duty to respond to alarm calls and that they should always ensure that their mobile phones were on and not silent during the night and that failure to respond to an alarm call may lead to disciplinary action [130].
72. Whilst the policy did indicated that Keyholder 1 *should* be the individual closest, it did not dictate where any Keyholder should live either by reference to distance or time taken to get to the store.
73. The Claimant says that it was mandatory to be available 24/7 and was imposed as a condition of holding store keys and that this severely impacted on his personal life, requiring constant phone availability and preventing alcohol consumption, and that the constant expectation of calls affected his sleep and social life; that as a result he and his wife avoided events where they could not fully relax; that he felt perpetually on duty.

74. The evidence from the Respondent's witness, Toby Neal, was that the Claimant, as Store Manager, had full accountability and responsibility to prepare rotas and that this included who was going to be on-call at any time when the store was closed¹. Whilst he accepted that as the named Keyholder 1, the Claimant would always be called automatically first if the alarm was triggered, it was not an obligation for him to answer the call or respond to the alarm if he was not on duty that night.
75. His position, which was not challenged by the Claimant, was that Store Managers had full control over day to day operations of the store including ensuring that on-call hours had adequate cover and that further there was an option of Store Managers removing themselves from the alarm list if on leave or have a period of unavailability
76. Dean Down, also a Store Manager, gave similar evidence, which again was not challenged.
77. In live evidence, the Claimant indicated that for the last 20 years, he had been on-call if the alarm had gone off. When it was put to him on questioning, that as Store Manager, he had power to determine who would attend first in the event of an alarm call by rostering Keyholders to be on-call, he did not answer the question, but asked where in the Bundle of documents that power could be found. Only when required by me to answer the question, did he respond '*I am going to say no*'. When the question was put to him again whether it was his honest answer that in 20 years as Store Manager he had no authority to determine who would respond to on-call, his answer was that he could, that he thought that the Respondent's counsel had been asking him if there was a documented policy.
78. I did not accept that latter response as credible in the context of the live questions which had been clear and straightforward. I found that the Claimant did know that he did have authority and that it was his responsibility to determine rosters for on-call Keyholders but had been reluctant to admit this in live evidence.
79. Whilst the Claimant may have found it difficult to delegate to his Assistant Manager and other keyholder, it was within his responsibility to delegate on-call to the other Keyholders in his store and for reasons known to him, chose not to.
80. In any event, even if other Keyholders had been rostered, the alarm call had gone through to the Claimant at first 'port of call' as he was Keyholder 1. Responsibility for responding to that call would only arise on nights when the Keyholder was rostered to be on call as determined by the Store Manager. If the Claimant had made the decision to be on-call more than he desired, or even at all times, that was his decision as within his responsibility to manage, and not the Respondent's more generally.

¹ TNWS§5

81. He was therefore not required by the Respondent to constantly undertake on-call work.
82. In 2024, the Claimant had been called out on four occasions. He was not paid any additional amounts for such on-call work. Rather, the expectation for Store Managers in undertaking such work was that this formed part of their general responsibilities for which they received an annual salary.
83. I found that whilst there was a requirement to undertake some on-call, there was no requirement to be constantly undertaking on-call.
84. I further found that whilst the Claimant complained from time to time to Area Managers about the on-call arrangements, this was on the basis that no additional on-call payment was made, rather than the obligation to be on-call itself.
85. Evidence was given by Toby Neal that if a Keyholder had been required to attend an alarm call, they were permitted to take time back in lieu when convenient and that it was an expectation that managers would co-ordinate that and manage that time. Again, this evidence was also given by Dean Down, who confirmed that the Area Managers made it clear that they had to take back time in lieu².
86. The Claimant gave live evidence that he was not aware of such a practice. I was not persuaded by his evidence having found the Claimant reluctant to make admissions as to the state of his knowledge of practices and arrangements and I accepted the Respondent's evidence and found that managers, including the Claimant, who had been called out to deal with an alarm when they were on call, were aware that they could take time off in lieu
87. Dean Down gave evidence that there was no cost to receive the call albeit that on occasions if a return call had to be made to the alarm provider, the Respondent had an expense policy to recover such personal expense.

Staff Absence

88. Finally, the Claimant had in his resignation letter complained of insufficient support during the absence of two colleagues and the increased workload with the implementation of the 'Fluent' system, a new internet sales system. In his constructive dismissal complaint, he alleged that there was a failure to provide support during staff absence in 2024, that placed increased and unreasonable work load on him.
89. The Claimant's statement evidence was that a team member had gone on long term sick leave in December 2023 for 8 months leaving the store severely understaffed. Toby Neal had given detailed witness statement evidence that managerial duties were shared between the Store manager and Assistant Manager and that it was the Claimant's role, having worked with the Assistant Manager for 8 years to contact and use him for support if needed and that he could and did 'flex-up' i.e. increase part-time hours if needed [330]. Further,

² DDWS§36

he had given evidence that when one member of staff presented on long term sick leave in the December of 2023, permission had been requested by the Area Manager for a short-term contract of 31 hours to support the store in covering that absence and documents corroborated that statement indicating that this had been requested that support by the beginning of February 2024 [318], with that person commencing employment on 6 March 2024 [319].

90. On cross-examination, the Claimant accepted that he had been entitled to flex-up staffing hours and that a temporary employee had been recruited to support the store who had remained until December 2024, albeit he was unhappy at the length of time that this had taken.
91. I found that there had been no failure by the Respondent to provide support during staff absence as a result.
92. With regard to the implementation of Fluent in 2024, the Claimant asserted he had not been trained and that Toby Neal had provided no support during the week of implementation. The Respondent's evidence was that this was a nationwide programme that was implemented across all stores. I heard no detailed evidence on this issue as neither party cross-examined each other on this issue. This was not a particular issue in this case but insofar as it relates to lack of support, I was not persuaded that this was reliable evidence from the Claimant to make a positive finding that this indicated a lack of support or failure by the Respondent.
93. On 4 December 2024, the Claimant entered into early conciliation that ended on 15 January 2025 [6] and on 3 February 2025 filed claim no 6003691 ("First Claim").

The Law

Unfair Dismissal

94. Section 95 ERA 1996 ("ERA 1996") provides:

(1) For the purposes of unfair dismissal, an employee is dismissed by his employer (and subject to subsection (2)... only if

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate without notice by reason of the employer's conduct.
95. Section 98(4) ERA 1996 states:

(4) Where the employer has fulfilled the requirements of subsection(1), the determination of the questions whether the dismissal is fair or unfair (having regard to the reason shown by the employer)
(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted

reasonably or unreasonable in treating it as a sufficient reason for dismissing the employee, and
(b) shall be determined in accordance with equity and the substantial merits of the case

96. Lord Denning, in **Western Excavating (ECC) Ltd v Sharp** [1978] 1 All ER 713 sets out the approach to constructive dismissal as follows: *'If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that 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.'*
97. Whilst conduct of the employer must be more than unreasonable, Lord Steyn in **Malik v Bank of Credit; Mahmud v Bank of Credit** [1998] AC 20 gave guidance for determining if there has been a breach of trust and confidence, when he said that an employer shall not: *'...without reasonable and proper cause, conduct itself in a matter calculated (or) likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.'*
98. The burden of proof is on the employee to demonstrate that the employer's actions have destroyed or seriously damaged trust and confidence or were calculated or likely to do so and that the employer had no proper cause for the actions in question
99. The claimant needs to establish his decision to resign, on the basis of the 'last straw', which need not in itself be a breach of contract. Dyson LJ in **Omilaju v Waltham Forest London BC** [2005] All ER75 said that: *'If the final straw is not capable of contributing to a series of earlier acts which cumulatively amount to a breach of the implied term of trust and confidence, there is no need to examine the earlier history to see whether the alleged final straw does in fact have that effect. Suppose that an employer has committed a series of acts which amount to a breach of the implied term of trust and confidence, but the employee does not resign his employment. Instead, he soldiers on and affirms the contract. He cannot subsequently rely on these acts to justify a constructive dismissal unless he can point to a later act which enables him to do so. If the later act on which he seeks to rely is entirely innocuous, it is not necessary to examine the earlier conduct in order to determine that the later act does not permit the employee to invoke the final straw principle.'*
100. The tribunal is therefore required to decide whether the respondent's conduct in this case could objectively be said to be calculated, or in the alternative likely, to *seriously* damage confidence and trust between the claimant and the respondent. Thereafter we are required to examine whether the claimant resigned in response to that conduct, and that conduct must include a final event which contributes to earlier actions so as to make the entirety of the conduct, taken together, sufficiently serious so as to damage the relationship of confidence and trust between employer and employee.

101. Finally, the breach must cause the employee to resign which is a question of fact for the tribunal based on the evidence before it.
102. If the Claimant was unfairly dismissed and the remedy is compensation:
- (a) If the dismissal was procedurally unfair, what adjustment, if any, should be made to any compensatory award to reflect the possibility that the claimant would have been dismissed had a fair and reasonable procedure been followed? [See: **Polkey v AE Dayton Services Ltd** [1987] UKHL 8; paragraph 54 of **Software 2000 Ltd v Andrews** [2007] ICR 825; **W Devis & Sons Ltd v Atkins** [1977] 3 All ER 40; **Crédit Agricole Corporate and Investment Bank v Wardle** [2011] IRLR 604];
 - (b) Would it be just and equitable to reduce the amount of the claimant's basic award because of any blameworthy or culpable conduct before the dismissal, pursuant to Section 122(2) ERA; and if so to what extent?
 - (c) Did the claimant, by blameworthy or culpable actions, cause or contribute to the dismissal to any extent; and if so, by what proportion, if at all, would it be just and equitable to reduce the amount of any compensatory award, pursuant to Section 123(6) ERA?
 - (d) did either party unreasonably fail to comply with a relevant ACAS Code of Practice, if so, would it be just and equitable in all the circumstances to increase or decrease any compensatory award, and if so, by what percentage, up to a maximum of 25%, pursuant to section 207A of the Trade Union & Labour Relations (Consolidation) Act 1992 ("section 207A")?

Working Time Regulations 1998 ("WTR 1998")

103. Under regulation 2(1) WTR 1998 a 'rest period' is described as a period which is not working time, other than a rest break or leave to which a worker is entitled under the regulations.
104. Regulation 10(1) WTR 1998 provides that a worker is entitled to a rest period of not less than twelve consecutive hours in each 24-hour period during which he works for his employer.
105. Regulation 21(e) WTR 1998 provides that subject to regulation 24 WTR 1008, regulation 10(1) WTR 1008 does not apply in relation to a worker where the worker's activities are affected by
- (i) An occurrence due to unusual and foreseeable circumstances beyond the control of the worker's employer;
 - (ii) Exceptional events, the consequences of which could not have been avoided despite the exercise of all due care by the employer; or
 - (iii) An accident or the imminent risk of an accident.
106. Regulation 24 WTR 1998 provides that where the application of the regulations is excluded by regulation 21 and a worker is accordingly required by his employer to work during a period which would otherwise be a rest period

- (a) His employer shall wherever possible allow him to take an equivalent period of compensatory rest, and
 - (b) In exceptional cases in which it is not possible, for objective reasons, to grant such a period of rest, his employer shall afford him such protection as may be appropriate in order to safeguard the worker's health and safety.
107. Regulation 30(1) WTR 1998 provides that a worker may present a complaint to an employment tribunal that his employer has refused to permit him to exercise any right he has under regulation 10(1) WTR 1998.
108. Finally, regulation 30(2) WTR 1998 sets out the time limits for presenting such a complaint and that the tribunal shall consider such a complaint unless it is presented before the end of the period of three months beginning with the date on which it is alleged that the exercise of the right should have been permitted (or in the case of a rest period, the date on which it should have been permitted to begin; or within such period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months. Extension of time limits to facilitate conciliation before instituting proceedings apply.
109. Time on-call and standby had been the subject of much scrutiny and the parties were invited to consider the following prior to submissions:
- (a) In **Truslove v Scottish Ambulance Service** UKEATEST/005/13 (**Truslove**), the Court of Appeal indicated that in determining whether time spent on call was "working time" within the WTR 1998, the correct course was to adopt the approach in **Landeshauptstadt Kiel v Jaeger** (C-151/02) EU:C:2003:437, [2003] E.C.R. I-8389, [2003] 9 WLUK 134 (**Jaeger**) that made it clear that periods during which a worker is on call at a place determined by the employer are to be counted as working time irrespective of whether the person concerns actually works during those periods provided he or she is ready to do so. In that case the time spent by a doctor on call at a hospital, including periods of inactivity when sleeping, constituted working time. See also **Ville de Nivelles v Matzk** 2018 ICR 869, that this could include the workers' home where the geographical and temporal constraints imposed by the employer limit the worker's opportunities to pursue personal and social interests.
 - (b) **Sindicato de Medicos de Asistencia Publica v Consellaria de Sanidad and anor (SIMAP)** (2001 ICR 1116 noted that where a worker was obligated to be on standby but reachable at all times but not required to remain at a place determined by the employer, workers can manage time with fewer constraints and pursue their own interests. In that case, only time linked to the actual provision of services is to be regarded as working time (and that this would include the time taken to travel to the place where the services are to be provided).
 - (c) **Blakely v South Eastern Health and Social Services Trust** 2009 NICA 62, the Northern Ireland Court of Appeal ("**Blakely**") a case involving an estates officer who was required to be on a rota for on-call but was not when on-call required to be at the employer's premises and was free to

spend his time on non-work activities. NICA overturned a decision by the industrial tribunal that the entirety of the on-call periods comprised working time. Whilst accepting that there constraints on the claimant's freedom of action while on call, that these were not absolute as being contactable without obligation to be present and available at the workplace or other location led to a conclusion that he was only to be treated as working when he was called on to actually provide services during a period of on-call.

- (d) **MacCartney v Oversley House Management [2006]** IRLR 514 a case involving the resident manager at a care home who was required to remain at or within a very short distance of her home, which was located within her place of work and contained her office. She was never off duty. The extent to which a worker was likely to be called out could not be decisive of whether she was working, unless the likelihood of call out was so insignificant as to be trifling. Nor was it satisfactory to ask whether the accommodation provided by the employer was intended to be, or might constitute, the worker's home. The characteristics of compensating rest periods for the purposes of Council Directive 93/104 Art.17 were not met where a worker was required to be on call in tied accommodation that was part of her work place. A manager or warden of sheltered accommodation who was required by her employer to remain on call to residents and for that purpose to remain on or close to her place of work was "working" while on call even if her employer provided her with a home at her place of work. M's claims under reg.10 and reg.12 of the 1998 Regulations were well founded. (2) M undertook "salaried hours work" within the meaning of reg.4 of the 1999 Regulations. She was entitled to be paid for an ascertainable basic number of hours in a year and was entitled to be paid an annual salary regardless of hours worked.

110. In relation to whether the employer had 'refused to permit' the worker to exercise a relevant WTR 1998 right **Miles v Linkage Community Trust Ltd [2008]** IRLR 602 (**Miles**) and **Grange v Abellio London Ltd [2019]** I.C.R. D22 (**Abellio**), conflicting EAT authority were relevant. where the EAT found that an employment tribunal had been entitled to award £750 to an employee who was not given rest breaks and suffered physical discomfort and/or the worsening of his underlying health condition as a result. While compensation under the WTR 1998 could not include an award for injury to feelings, the judgment in **Santos Gomes v Higher Level Care Ltd [2018]** EWCA Civ 418, had not ruled out awards for personal injury.

Submissions

111. Lengthy oral submissions were given on the morning of the third day and the detailed submissions were taken into account by me when reaching my decision. As indicated and in relation to the WTR 1998 claim I had indicated to the parties some of the case law that would be relevant.

Respondent's submissions

112. In relation to the WTR 1998 claim, counsel for the Respondent was unable to provide any appellate authority to assist on what amounted the cases set out in Reg 21(e) WTR 1998. He submitted that break-ins and/or the alarms being

triggered would fall within what could be termed 'unusual' or 'unforeseeable' in that whilst, in one sense, they were clearly not unforeseeable not least as the Respondent's had a policy for such events, each particular occurrence was unforeseeable in that there was no knowledge of when they would arise; that such events were beyond the control of the employer and that the Claimant's activities were affected, as in the event of an alarm if on the rota and he had not told Amberstone not to take him off, his activities would be affected. The Respondent was not relying on exceptional events

113. If that argument was accepted, Reg 24 WTR 1998 applied submitting that there was no restriction on time as to when it had to occur and that it had to be equivalent, and that must mean the period of time, where the rest was interrupted, the Respondent provided a compensatory period. He invited me not to accept the Claimant's evidence on whether there was a possibility to take time off in lieu as implausible.
114. He made further submissions in relation to whether the employer had 'refused to permit' the worker to exercise a relevant WTR 1998 right reminding me of **Miles** (§26 and §27) and **Abellio** (§47) inviting me to find that on none of the four occasions that the Claimant had been on call had the Claimant exercised his right to refuse and without the request, there could be no refusal of permission by the employer. He invited me to prefer the approach in **Miles** and that there was no evidence of a request.
115. He further submitted that if I preferred the approach in **Abellio** the issue was whether the Respondent had refused that request inviting me to consider **Truslove** (§29) and the summary of key cases and **Blakely**. He also invited me to consider **Jaegar** arguing that the Claimant had no constraints on where he lived and what he chose to do or time that he had to attend site; that there was no evidence that if a call out happened that the Claimant had to be there within a certain time or that the Respondent imposed a constraint on that. He reminded me that there were four occasions in Cardiff over 16 month period of which two instances had not interrupted the Claimant's rest.
116. It was conceded that as the amendment application had been permitted as a relabelling, there was no longer a contested time point as both instances of interrupted rest, on 15/9 and 9/9, fell within the primary limitation.
117. In terms of remedy, I was reminded that a declaration was mandatory if the Claimant succeeded but compensation was discretionary and such amount was just and equitable in the circumstances.
118. In relation to the breach of contract claim, it was submitted that on the basis of the Claimant's own claim, this should fail as the Claimant was contending that there was no contractual obligation to attend or be paid for on call and that this applied to hours on call as well as the claim for mobile phone expenses. He invited me to find that in respect of the mobile phone expenses, there had been no evidence that the Claimant had incurred additional loss when he had to respond to Amberstone.

119. In relation to the constructive unfair dismissal claim, he reminded me of what the Claimant had set out in his resignation letter and that the letter was silent on the two issues that the Claimant says caused him to resign, that the Claimant learned of matters after he had submitted his resignation and after speaking to ACAS. In relation to lack of support, he submitted that the lack of Fluent training was not one of the matters that the Claimant said had caused him to resign that on the facts, when the Claimant wanted support with replacements he received that support.
120. In relation to the investigation it was submitted that a suitable person had been appointed in accordance with policy, uninfluenced by more senior managers. It was accepted that more pointed questions had been asked as the investigation continued, but it was submitted that this was reasonable in the circumstances as the Claimant's was evasive. In relation to the order of the interviews, it was submitted that this was a matter for investigator and that it was a reasonable response to speak to people in store.
121. It was submitted that in any event the Claimant had for 20 years, taking pay, had accepted any breach particularly after he had been disciplined for a breach of the on-call in 2015. I was further invited to find on the evidence that the Claimant had never complained about work, rather his complaint was that he had not received pay for on-call.
122. In relation to remedy, there were no arguments that the Claimant had failed to mitigate his loss but it was submitted that there was no evidence from the Claimant regarding his pension losses. Basic award was agreed subject to contributory conduct arguments (equally applicable for **Polkey** reduction) that the Claimant engaged in conduct such that it was just and equitable to reduce compensation for serious contraventions of direct instructions/jeopardising business relationships with a third party. I was invited to consider a deduction of 70%. ACAS apply in theory to decrease any compensation for the Claimant's failure to attend the disciplinary hearing and choosing to resign.

Claimant's submissions

123. The Claimant relies on reg 10 WTR 1998 and argues that he was expected to be available and had to be with his phone at all times not on silent. He accepts that there was operational rota in Cardiff and that he had not implemented one, but submits that the Respondent had not shown that had been required to do so. He reminded me of the policy's constraints, that he must have car and had to be able to attend in quickest time and that this designation meant he was first contacted when alarm triggered. He maintained that whilst the policy did not expressly state a 'fit to drive' requirement, it did mean that he had to be fit to drive and that the policy severely restricted him in his ability to drink alcohol and do personal activities; that he was at the Respondent's disposal and that this was a contractual duty enforced historically with the disciplinary warning, which he considered a further constraint, he had been given. He maintained that being the keyholder meant that often after a 6 day week he would have to be straight on standby and had to stay alert and be ready to respond.

124. He argued that the disciplinary action was the final straw, that the process was flawed, that meeting times and notes were inconsistent and not signed off. He accepted that he had not appealed the grievance outcome, but argued that he had been sent the disciplinary invite whilst he was still in time for appealing the grievance and that the overlap between the two procedures led to stress and created confusion and pressure. In relation to the investigation, he was concerned that staff had been interviewed at a time when he had not been on holiday, but was back in the business and damaged his trust; that managers could have spoken to him and that a simple conversation would have sufficed.
125. He considered that **Jaegar** and **Thomas v CC of Humberside** (a first instance employment tribunal judgment) was parallel to his case and that in obliging him to respond in the quickest time under the policy was akin to a geographical constraint. He submitted that the expectations put on him even when not working did impact on his social life and led to a divorce. He didn't consider that the call-outs amounted to a 'special case' as he was on standby at all times and it was in the employer's control and not unforeseeable. He submitted that there was no documented evidence of the employer allowing compensatory rest and invited me not to accept the Respondent's evidence.
126. He claimed wages for over 20 years for breach of unpaid call-out allowances arguing that the breach of contract arose as a result of the breach of the WTR 1998 which amounted to a contractual duty that I had to attend; that as he had to have a mobile phone as a result of the alarm process, he should be able to recover such costs.
127. In terms of the Fluent work, he considered this increased additional work and workload. He accepted that he did not have evidence to support his pension losses.
128. He ended his submissions by reminding me that he had given the Respondent 24 years of service with what he considered a clean record and only having been sick once.

Conclusions

129. I deal with the WTR 1998 complaint first, followed by the breach of contract complaint before turning to the constructive unfair dismissal complaint.

Breach of Reg 10(1) Working Time Regulations 1998

130. The Respondent conceded that there were no time jurisdictional points in issue as the evidence had indicated that the Claimant had last been called out to respond to an alarm on 15 September 2024. I agree, any complaint had been brought in time.
131. These cases are very fact specific and whilst the Claimant has relied on the Tribunal decision in **Thomas v CC of Humberside**, in addition to that being a first instance case, I would say that the facts of that case were very different to this in that it was found in that case that there were express conditions in

relation to the behaviour of those claimants whilst on call and there was a requirement to actually work for approximately 3-6 hours following a call out.

132. In this case, I repeat my finding that there was no requirement on the Claimant to live within a geographical radius or temporal limit to the Cardiff store.
133. That the policy indicated that Keyholder 1 should generally be the individual that was the closest, did not lead me to conclude that this constrained the Claimant in terms of where he could reside or could be at any time on call. He was not required to be present at particular designated location. He was not required to live within a certain radius of the Cardiff Store and he was not required to be present at his own home whilst on-call. There were no geographical or temporal constraints imposed by the Respondent on the Claimant that limited his opportunities to pursue personal and social interests (see **Jaeger**).
134. Whilst I accepted that once on-call, a Keyholder could and would be disciplined if they failed to respond, as the Claimant found to his cost in 2015, this did not lead me to conclude that this amounted to some form of constraint on the Claimant. Rather, there were no constraints on the Claimant's location whilst on call other than being obligated to respond to an alarm and, if necessary, attend the store.
135. I concluded that being on-call did not, for this Claimant, amount to working time for the totality of any on-call period. Therefore, the total time that the Claimant was on call was not 'working time' for the purposes of regulation 2 WTR 1998. The only time that was 'working time' was any time spent by the Claimant when he was 'on-call' and he had been called to attend to an alarm.
136. The specific times that the Claimant had been on call *and* called out to respond to an alarm, dependent on time of the call, would and did interrupt his regulation 10(1) WTR 1998 entitlement to a rest period of not less than eleven consecutive hours in a 24-hour period. The last such occurrence was September 2024 and I accepted that not all call-outs would have breached that entitlement as this would be fact specific dependent on the time of the alarm and interruption and the Claimant's working hours and any day.
137. I then turned to the issue of whether the Respondent had established that the circumstances amounted to one of the 'special cases' falling within regulation 21 WTR 1998 (the Respondent not relying on unmeasured time exception provided for in regulation 20 WTR 1998). Neither party provided any case law authority for how this regulation should be. Likewise, I was unable to find any appellate authority.
138. Clearly, the Claimant's activities were affected in the event of an alarm being triggered if he was on-call and listed as a Keyholder. I was persuaded by the Respondent's arguments however that whilst generally an alarm being triggered was not in itself unforeseeable, the 'occurrence' itself in this case was each individual event. In that regard, I did conclude that most, even if not all of the occurrences of the Claimant having to respond to an alarm, would clearly arise due to unforeseeable circumstances insofar as the Respondent

would have no advance notice of when the shop would be broken into and/or the alarm would be triggered. By the same token, such circumstances were beyond the control of the Respondent.

139. I then considered whether the regulation 24 WTR 1998 requirements on the Respondent to, if possible, allow the Claimant to take an equivalent period of compensatory rest had been established on the evidence and I had found that they had.
140. In those circumstances, I concluded that the complaint for breach of regulation 10 WTR 1998 was not well founded and was dismissed.

Breach of contract

141. The Claimant's case has been that there was no contractual obligation to attend call-outs but that he was entitled to be paid for time spend on-call. In submissions he indicated that he should have been paid some call-out allowance.
142. The Claimant has not persuaded me that there was any contractual obligation to be paid for any call-out. Rather, the opposite has been the case. The Claimant received an annual salary and had for over 24 years undertaken call-out duties without additional pay.
143. I was not invited to and do not imply any contractual obligations to make additional payments for any time spent working when he had actually attended an alarm whether by reason of the conduct of the parties or by reason of the WTR 1998 itself.
144. I concluded that there was no contractual term, expressly agreed or that could be implied that entitled the Claimant to be paid for time spent working on call outs. In those circumstances, there was no breach of contract in not paying the Claimant any monies in addition to his annual salary and any commission earned.
145. I had no evidence before me to conclude that the Claimant had been owed mobile phone expenses and/or had claimed such an expense that had not been paid. I therefore concluded that the Claimant could not demonstrate a breach of contract with regard to mobile phone expenses.
146. Therefore I concluded that the Claimant's claim of breach of contract claims were not well-founded and they too were dismissed.

Unfair Dismissal

147. Turning finally to the question of whether the Claimant was dismissed the Claimant relied on the following:
- (a) Obligating him to constantly undertake on-call work;

- (b) Not paying him for that on-call work;
 - (c) Failing to provide sufficient support during prolonged staff absence, placing increased and unreasonable workload him; and
 - (d) Subjecting him to a biased disciplinary from September 2024 including:
 - i. HR conducting investigation meetings with co-workers from September 2024;
 - ii. Leading questions being asked and no fact-finding investigation;
 - iii. Failure to appoint an independent investigator
 - iv. Pre-determined decision to the disciplinary.
148. In relation to each I had to consider whether the conduct alleged arose and whether that in turn breached the implied term of trust and confidence, deciding whether the Respondent had behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent and whether it had reasonable and proper cause for doing so.
149. In relation to the on-call, I dealt with the two allegations, of obliging the Claimant to be constantly undertake on call work and not paying the Claimant for on call work, together.
150. Whilst I had found that the Claimant had not been paid over and above his agreed salary for undertaking on-call work, I had also concluded that this was not in breach of contract. Further, I had not found that the Claimant had been obliged to constantly undertake on-call. Rather, I had found that for the whole of the period that the Claimant had been Store Manager it was one of his general obligations to allocate responsibility for staff that reported to him to be on-call. Despite this, the Claimant's evidence was that he had chosen not to, for reasons known only to him despite the Cardiff store having 3 Keyholders, including the Assistant Manager.
151. In submissions the Claimant indicated that he had not put in place a rota. I had not accepted that the Claimant did not know that he could rota responsibility for on-call and if it had been the case that the Claimant had not done so, the responsibility for that lay with the Claimant and not with the Respondent such that I concluded that the Claimant had not been required to constantly be on call.
152. In any event, and perhaps more fundamentally and referring back to my findings, whilst I concluded that the Claimant was aggrieved throughout his employment at not receiving additional payments for call-out, this was not one of the reasons that he resigned. Rather, he resigned for the reasons he sets out in his resignation letter.
153. Whilst I accept that an employee doesn't always set out the true reasons why they resign within a resignation letter, I had made findings that the Claimant

had given conscious thought to why he was resigning when he had drafted that letter, and had set them out in his letter of resignation. I had not been persuaded that the on-call arrangements or lack of pay for on-call had been in his mind when he resigned. Rather, that came to mind after he had resigned, after he had obtained his contract and after he had spoken to ACAS.

154. Further, even if that is wrong or incorrect, after having worked to such arrangements for 20 years it could be said that the Claimant had in any event, affirmed any breach by continuing to work.
155. In relation to the failure to provide sufficient support or that this placed an unreasonable workload on the Claimant, I had not found that the Claimant had proven that there had been such failure. I had found that the Respondent had immediately reacted to the long term sickness absence of a full time employee, by taking steps to recruit without delay such that a full time employee was recruited just over two months later. Further, the Claimant was not restricted in increasing the hours of part-time staff. The Claimant had not persuaded me that the Fluent issue was significant to indicate a lack of sufficient support.
156. On that basis the Claimant had not proven conduct that could objectively be said to be calculated, or in the alternative likely, to *seriously* damage confidence and trust between the Claimant and the Respondent.
157. Finally and turning to the disciplinary, whilst the Claimant had been subjected to a disciplinary I had not found that he had been subjected to a biased disciplinary from September 2024. I had made findings in relation to the independence of the investigator and the commencement of the investigation beginning with investigation meetings with co-workers. The decision-making in both the appointment of Dean Downs and the decision to speak with other members of the Cardiff Store before the Claimant were reasonably made and again could not objectively be said to be calculated, or in the alternative likely, to seriously damage confidence and trust between the Claimant and the Respondent.
158. Even if it did in fact, likely caused by a general mistrust by the Claimant due to historic experience with the Respondent's predecessor, the Respondent had demonstrated that it had reasonable and proper cause for both appointing Dean Down and for him speaking to other staff members in the Cardiff store before the Claimant.
159. I had not been persuaded, on what I had been taken to in evidence, that leading questions had been asked of the Claimant albeit it had been conceded that more probing questions at been asked at the disciplinary investigation stage, when the Claimant had met in October 2024. Whilst I have no doubt that such an interview would have been difficult for the Claimant, such that objectively it might have led him to have some loss of trust by him, the Respondent had reasonable and proper cause for doing so, namely evidence that indicated that the Claimant may have failed to follow instruction with regard to the Golf Bidder arrangement that led them to ask such questions.

160. I stepped back and considered the wider concerns that the Claimant held with the investigation. I concluded that the procedure that the Respondent had followed had not lacked integrity: there was a general fact finding before a more focussed disciplinary investigation regarding the Claimant's conduct in the sale at the Cardiff store of second hand equipment. That investigation had been halted for the grievance to be undertaken and, despite the Respondent not waiting for any appeal before recommencing the disciplinary which would have been ideal, this didn't lead me to conclude that the outcome was predetermined or biased.
161. I also considered the confusion relating to the start time of the investigation meeting with the Claimant, and the errors in the notes of the hearing, matters which I accept can reasonably lead to an employee losing some confidence and trust in the process, but again, this was insufficient to persuade me that it could be said that such errors could objectively destroy or seriously damage trust and confidence.
162. I was not persuaded that Elaine Wrigley had played any or any significant part in the decision to commence a fact-finding investigation into why Cardiff were still selling second-hand stock, or a disciplinary investigation on specific allegations against the Claimant, to lead me to concluded there was some pre-determination on the disciplinary action against the Claimant.
163. Finally, there was some evidence before the Respondent that might have led it to have a belief that the Claimant had been responsible for misconduct, namely selling second-hand stock in breach of the Golf Bidder contract and contrary to instructions from management such that:
- (a) It was not unreasonable to consider that an informal or low level warning was inappropriate; and
 - (b) even if the Claimant considered that because of the arrangement that he believed had been put in place by the predecessor Area Manager, the Respondent had reasonable and proper cause for both the fact-finding and the subsequent disciplinary investigation. The Claimant would have been able, had he not resigned, to present his case and he chose not to.
164. I therefore concluded that there had been no pre-determination for the disciplinary.
165. On that basis, even if some of the Respondent's behaviours in the timing of the investigation meeting and errors in the notes had led to some loss of trust and confidence, it could not be said that even when viewed cumulatively that this was conduct that objectively breached the implied term of trust and confidence. There was no fundamental breach i.e. breach so serious that the Claimant was entitled to treat the contract as being at an end.
166. On that basis the claim of unfair dismissal is also not well-founded and is dismissed.

Employment Judge RL Brace

Dated: 10 December 2025

WRITTEN REASONS SENT TO
THE PARTIES ON

11 December 2025

Miriam Drake
FOR THE SECRETARY OF
EMPLOYMENT TRIBUNALS

Appendix
List of Issues

1. Unfair dismissal

1.1 Was the Claimant dismissed?

1.1.1 Did the Respondent do the following things:

- 1.1.1.1 Oblige the Claimant to constantly undertake on-call work;
- 1.1.1.2 Not pay the Claimant for on-call work;
- 1.1.1.3 Failure to provide sufficient support during prolonged staff absence, placing increased and unreasonable workload on the Claimant;
- 1.1.1.4 Subjecting the Claimant to a biased disciplinary from September 2024 including:
 - 1.1.1.4.1 HR conducting investigation meetings with co-workers from September 2024;
 - 1.1.1.4.2 Leading questions being asked and no fact-finding investigation;
 - 1.1.1.4.3 Failure to appoint an independent investigator
 - 1.1.1.4.4 Pre-determined decision to the disciplinary.

1.1.2 Did that breach the implied term of trust and confidence? The Tribunal will need to decide:

1.1.2.1 whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent; and

1.1.2.2 whether it had reasonable and proper cause for doing so.

1.1.3 Was the breach a fundamental one? 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.

1.1.4 Did the Claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the Claimant's resignation.

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

1.2 If the Claimant was dismissed, what was the reason or principal reason for dismissal - i.e. what was the reason for the breach of contract?

1.3 Was it a potentially fair reason?

- 1.4 Did the Respondent act reasonably or unreasonably in all the circumstances, including the Respondent's size and administrative resources, in treating that reason as a sufficient reason to dismiss the Claimant?
- 1.5 The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.

2. Remedy for unfair dismissal

- 2.1 Does the Claimant wish to be reinstated to their previous employment?
- 2.2 Does the Claimant wish to be re-engaged to comparable employment or other suitable employment?
- 2.3 Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.
- 2.4 Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.
- 2.5 What should the terms of the re-engagement order be?
- 2.6 If there is a compensatory award, how much should it be? The Tribunal will decide:
 - 2.6.1 What financial losses has the dismissal caused the Claimant?
 - 2.6.2 Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
 - 2.6.3 If not, for what period of loss should the Claimant be compensated?
 - 2.6.4 Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
 - 2.6.5 If so, should the Claimant's compensation be reduced? By how much?
 - 2.6.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
 - 2.6.7 Did the Respondent or the Claimant unreasonably fail to comply with it?
 - 2.6.8 If so, is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?

- 2.6.9 If the Claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?
- 2.6.10 If so, would it be just and equitable to reduce the Claimant's compensatory award? By what proportion?
- 2.6.11 Does the statutory cap of fifty-two weeks' pay or £115,115 apply?
- 2.7 What basic award is payable to the Claimant, if any?
- 2.8 Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?

3. Breach of Contract

- 3.1 Did this claim arise or was it outstanding when the Claimant's employment ended?
- 3.2 Did the Respondent do the following:
 - 3.2.1 Not pay the Claimant for on-call hours during his employment?
 - 3.2.2 Not pay the Claimant for cost of mobile phone and/or mobile phone calls for on-call hours during his employment?
- 3.3 Was that a breach of contract?
- 3.4 How much should the Claimant be awarded as damages?

4. Breach of Reg 10(1) Working Time Regulations 1998

- 4.1 Pursuant to WTR Reg 21(e)(i) and (ii), were the Claimant's activities affected by:
 - 4.1.1 an occurrence due to unusual and unforeseeable circumstances, beyond the control of the worker's employer; or
 - 4.1.2 exceptional events, the consequences of which could not have been avoided despite the exercise of all due care by the employer
- 4.2 If so, applying WTR Reg 24, did the Respondent, if possible, allow the Claimant to take an equivalent period of compensatory rest? The Respondent does not contend that this is an exceptional case where, for objective reasons, it was not possible to grant such period of compensatory rest.
- 4.3 If not, did the Respondent refuse to permit the Claimant to exercise his right under WTR Reg 10?
- 4.4 If so, applying WTR Reg 30, the tribunal shall make a declaration to that effect. Further, should the Tribunal make an award of compensation to be paid by the employer to the worker? If so, the amount of compensation

shall be such as the tribunal considers just and equitable in all the circumstances having regard to

- 4.4.1 the employer's default in refusing to permit the worker to exercise his right, and
- 4.4.2 any loss sustained by the worker which is attributable to the matters complained of.

5. Time on WTR 1998 claim – Jurisdiction

- 5.1 If so, did the Claimant present his claim to the Tribunal before the end of the period of three months beginning with the date on which it is alleged that the exercise of the right should have been permitted?
- 5.2 If not, was it brought within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three?