



EMPLOYMENT TRIBUNALS

Claimant: Ms Dawn Piper
Respondent: Rentokil Initial Ltd
Heard at: London South
On: 2 and 3 March 2026
Before: Employment Judge Yardley

Representation

Claimant: Mr S Maini-Thompson, Counsel
Respondent: Mr J Wynn, Counsel

RESERVED JUDGMENT

The judgment of the Tribunal is as follows:

1. The complaint of constructive unfair dismissal is well-founded and succeeds.
2. The case has been listed for a remedy hearing on **8 June 2026**.

REASONS

Introduction

1. This claim concerns an allegation of constructive unfair dismissal. The Claimant was employed by the Respondent as a Senior Sales Manager and had over thirty years' service. She contends that she was entitled to resign in September 2024 in response to the Respondent's conduct which she says amounted to a fundamental breach of the implied term of mutual trust and confidence.
2. The Respondent disputes the allegation. It maintains that its conduct did not amount to any breach of contract and that the Claimant resigned of her own accord.
3. The Tribunal had before it a bundle of 594 pages (references to "[X]").

4. The Tribunal also had before it witness statements from the Claimant and the following witnesses for the Respondent:
 - 4.1. Andy McLuckie, Operations Director;
 - 4.2. Donna Rodney, HR Manager; and
 - 4.3. Mark Ham, Head of Sales Academy.
5. The Tribunal was provided with a Skeleton Argument from the Respondent which had been served on the Claimant prior to the hearing.

Preliminary Issues

Amendment to Name of the Respondent

6. The name of the Respondent was corrected to “Rentokil Initial UK Limited” with consent of the parties.

Application of Supplemental Statements

7. The Respondent applied for permission to rely on supplemental witness statements from Mr McLuckie and Ms Rodney, served after the ordered exchange of evidence. It submitted that the statements responded directly to matters raised in the Claimant’s witness evidence and that, given the two day listing, it would be more efficient for those responses to appear in writing rather than emerge during questioning.
8. The Respondent explained that the statements were prepared following a change in legal representation and a subsequent review of the evidence. It was argued that the matters would arise in any event in cross-examination and that no prejudice would be caused by their late admission.
9. The Claimant opposed the application. It submitted that the statements amounted in substance to reply evidence served months after exchange and outside the Tribunal’s directions. The Claimant argued that admitting them would create procedural unfairness because the Claimant had no corresponding opportunity to serve responsive evidence. The Respondent could instead test the Claimant’s account through cross-examination.
10. The Tribunal refused the application. The statements constituted additional written evidence produced outside the Tribunal’s timetable at a stage when neither party was entitled to serve further evidence. The Respondent’s explanation did not justify departure from the directions and admitting the statements would risk procedural unfairness.

Timetable

11. The parties had previously jointly sought a three-day hearing, but that request had been refused as relisting the hearing would cause a significant delay to the parties. The Tribunal recognised that completing the evidence within the original timetable might be challenging given the issues, but agreed that in order to preserve the listing, the hearing would proceed over two days, but the evidence would be confined strictly to

liability. It was further agreed that the submissions would be heard at the conclusion of Day 2, after which the Tribunal would reserve its judgment.

List of Issues

12. An agreed List of Issues appears at pages **73.1–73.2** of the bundle. The issues relating to liability are reproduced below:
 1. Did the Claimant resign on 27 September 2024, having given notice on 20 September 2024?
 2. Did the Respondent commit a fundamental breach of the Claimant's contract which entitled her to resign and treat herself as dismissed?
 3. The Claimant claims that the following alleged acts by the Respondent cumulatively amounted to a breach of the implied term of mutual trust and confidence:
 - 3.1. Unilateral changes to the commission structure scheme;
 - 3.2. Initial refusal to pay the Claimant August commission;
 - 3.3. Incorrect deduction of £449.22 commission from July salary and failure to refund said amount in a timely manner; and
 - 3.4. Incorrect deduction of an amount for company car payments and failure to refund the said amounts in a timely manner.
 4. Taking account of the actions or omissions alleged, individually and cumulatively, did the Respondent have reasonable and proper cause for those actions or omissions? If not;
 5. Did the Respondent behave in a way that when viewed objectively was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent?
 6. If so, did the Claimant resign in response to that fundamental breach, or did she resign for another reason?
 7. Did the Claimant affirm the contract before resigning, by delay or otherwise?

Closing Submissions

13. Both parties made oral submissions addressing the issues set out in the agreed List of Issues. The Tribunal has taken those submissions fully into account. To avoid unnecessary repetition, the parties' principal arguments are summarised and addressed where relevant in the Tribunal's findings and conclusions below.

Findings of Fact

14. The Tribunal sets out its findings of fact based on the documentary evidence, the witness statements and the oral testimony. Where evidence was disputed, the Tribunal has assessed the credibility and reliability in

light of contemporaneous documents and the inherent probabilities of the case.

Agreed Background Facts

15. The Claimant, Ms Dawn Piper, worked for the Respondent from 1993 until her resignation on 27 September 2024. She began as a Sales Consultant and, following multiple promotions, held the position of Senior Sales Manager from 2009 onwards.
16. The Claimant had a long and successful career, characterised by consistently exceptional personal sales performance and the generation of substantial revenue for the Respondent over three decades.
17. From October 2022, the Claimant's line manager was Mr Andrew McLuckie. The Claimant managed a team of up to four consultants while also carrying personal sales.
18. In addition to her managerial duties, the Claimant retained an extensive personal portfolio of accounts, generating between £750,000 and £850,000 per year through approximately 1,400–1,500 personal sales.

Remuneration and Commission Structure pre August 2024

19. The Claimant's basic salary as a Senior Sales Manager at the date of termination was £45,480.24.
20. The Claimant considered this salary to be below the market rate for comparable roles. However, she accepted the lower salary because the Respondent's commission scheme enabled her, in practice, to earn substantially higher total remuneration. The Tribunal heard that her average total earnings were approximately £150,000 per year and that, for many years, personal commission constituted the majority of her income.
21. The Respondent operated written commission schemes that were updated annually or periodically. The relevant schemes included:
 - 21.1. the 2020 *Commission Scheme Regional Sales Manager* [75–89];
 - 21.2. the 2021 *Sales Variable Pay Scheme* and *Sales Manager Bonus Scheme* [99-105]; and
 - 21.3. the 2022 *Sales Commission Scheme* [141 - 150].
22. The Respondent relied on a summary document produced by Mr McLuckie which set out changes to the commission schemes between 2020 and 2023 [74]. The Respondent relied on this document primarily to demonstrate that the commission structure changed from year to year and that the schemes included a number of performance metrics which, if not met, could affect the Claimant's entitlement to bonus or commission, in some cases reducing it to nil.
23. The Claimant did not dispute that the written schemes were amended over time or that certain metrics existed which could, in principle, affect

commission entitlement. However, she said that the summary table did not accurately reflect the detail contained within the underlying schemes. In particular, she said that the document failed to capture the full structure of the commission arrangements or the fact that the metrics identified were, in practice, matters within her own control as a salesperson.

24. Mr McLuckie accepted that the table was only intended as a high-level overview to assist the Tribunal and was not a substitute for the underlying scheme documents. The Tribunal therefore considered the primary documents themselves and placed limited weight upon the summary document.
25. Having reviewed the written commission schemes between 2020 and 2023, the Tribunal finds that although the schemes were amended periodically and included additional performance metrics capable, in principle, of affecting entitlement, the essential structure of the Claimant's remuneration did not materially change. Her earnings remained predominantly dependent upon her personal sales performance, and the Tribunal accepts her evidence that the relevant metrics during this period were within her control.

August 2024 Commission Scheme

26. On 1 August 2024, the Respondent introduced a new commission scheme (the **H2 REM**). Under the scheme, Sales Managers would qualify for commission on their own sales subject to passing four "Sales Leadership Compliance Gateways". The scheme provided [217] :

In order for a Sales Manager or Team Leader to qualify for commission on their own sales, they must pass the following Sales Leadership Compliance Gateways:

1. *A monthly review carried out for each consultant and the form completed;*
 2. *A field accompaniment day completed with each consultant monthly and the form submitted;*
 3. *ESP Programme actions completed for relevant consultants and signed off by the Sales Academy;*
 4. *Achievement of a team quote rate of over 60% from Lead and Enquiry prospects.*
27. The combined effect of the gateways was that a Sales Manager could lose 100% of their personal commission if any gateway was failed. The amended scheme applied to four Sales Managers, including the Claimant
 28. The Claimant first learned of the scheme at a meeting on 12 August 2024.
 29. On 14, 27 and 29 August 2024, the Claimant raised concerns about the potential financial impact of the new structure. She estimated that the changes could reduce her earnings by approximately 70–75%. The Claimant's concerns primarily focused on Gateways 1, 2 and 4.

30. In relation to Gateways 1 (Monthly Reviews) and 2 (Field Accompaniment Days), the Claimant raised concerns about how these requirements would operate where members of her team were absent or working remotely.
31. In relation to Gateway 4 (60% Team Quote Rate), the Claimant said the metric depended on the accuracy of the underlying ticketing data and that the duplicated, erroneous or fictitious tickets artificially reduced the calculated quote rate.
32. Mr McLuckie did not accept the Claimant's concerns. He informed her that under the new scheme her basic salary would increase by 5% (approximately £2,500 per annum) and that improved commission percentages would apply to sales where the gateway requirements were satisfied. He also stated that the Respondent had increased both the value and the maximum earning potential of the Sales Managers' quarterly bonus. Whilst he accepted, in principle that a failure to meet the gateways could result in a reduction in variable earnings, he did not have any concerns that this would impact the Claimant given her previous track record.
33. Having reviewed the gateway requirements in light of the Claimant's concerns, the Tribunal finds that there was a real prospect that the gateways could be failed for reasons not wholly within her control. In particular, Gateways 1 and 2 could be affected by staff absence or remote working arrangements, and Gateway 4 depended upon the accuracy of underlying ticketing data. The Tribunal accepts that data inaccuracies, including duplicated or erroneous tickets, were capable of adversely affecting the calculated quote rate.
34. The Tribunal further finds that, although the gateway requirements applied equally to all Sales Managers, their practical effect was not equal. The Claimant was uniquely exposed to the financial consequences of failure because she generated substantial personal commission, which formed the majority of her earnings. Other Sales Managers did not routinely reach comparable commission-earning levels. Accordingly, the risk of failing a gateway for reasons outside her control was likely to have a materially greater financial impact on the Claimant than on others.

Appeal regarding August Commission

35. The first application of the H2 REM scheme occurred in September 2024, when the Respondent assessed whether the Claimant had satisfied the gateways for August.
36. On 11 September 2024, the Claimant was informed she had failed Gateway 1 (Monthly Reviews) and Gateway 2 (Field Accompaniment Days) and that, as a result, she would not receive her personal commission for August.
37. The Claimant disputed that assessment. In relation to Gateway 1 (Monthly Reviews), she said that one of the alleged failures related to an employee (DS) who had not yet commenced employment at the time and therefore

could not be reviewed. The Respondent did not dispute that the employee had not yet begun employment.

38. In relation to Gateway 2 (Field Accompaniment Days) the Claimant said that she could not complete this requirement for one of her team members (DC), because he had either been absent due to significant mental health difficulties or working remotely with management agreement. The Respondent accepted DC's absence.
39. Following the Claimant's challenge on 11 September 2024, Mr McLuckie informed her on 13 September that he had submitted an appeal on her behalf. Her August commission was then paid in the September payroll following reconsideration of the gateway assessment.
40. The Respondent described the August issues as "teething problems". While the Tribunal accepts that the introduction of a new scheme may give rise to some initial administrative issues, the evidence demonstrates that the difficulties encountered were not merely transitional. They reflected inherent features of the gateway requirements, including their interaction with circumstances outside her control, such as staff absence and inaccuracies in underlying data.
41. In those circumstances, the Tribunal finds that the Claimant's appeal in respect of August commission provides clear support for the legitimacy of her concerns about the operation of the scheme. The initial decision that she had failed the gateways, which would have resulted in the loss of what would otherwise have been substantial commission, was reversed following scrutiny of the underlying facts. This was the first occasion in her career with the Respondent on which she had been told she would not receive commission at that level, and the reversal demonstrates that her concerns as to both the reliability of the gateway assessments and their potential financial impact were well founded.

Email Bounce-Back Deduction

42. On 23 August 2024, the Claimant discovered that £449.22 had been deducted from her July commission. The deduction arose from an incorrect customer email address, which caused a "bounce back" and affected the Respondent's recorded email accuracy rate.
43. Under the commission scheme then in force, email accuracy was assessed using a sample of email addresses with the resulting error rate applied as a modifier to the sales person's commission. In this case Mr McLuckie said that a sample of 34 email addresses had been used to calculate the Claimant's accuracy rate. However the Claimant gave evidence that during that month, she had generated around 100 email addresses and therefore this sampling method artificially inflated the impact of a single error and produced a disproportionate deduction.
44. Mr McLuckie accepted that the sampling approach could produce a disproportionate result in some circumstances but maintained that the calculation had been applied in accordance with the commission scheme

and when the error had been identified was subsequently rectified promptly.

45. The Claimant also gave evidence that, prior to mid-2024, she had been able to access the commission spreadsheets directly, but from summer 2024 attempts to open the documents produced an “access denied” message.
46. The Claimant said she made repeated requests to Mr McLuckie and to IT on 12, 14 and 16 August 2024, but received no explanation and no access until late August when the spreadsheets were finally emailed to her. She said that this hindered her ability to understand and check deductions at the time they were made.
47. Mr McLuckie accepted that direct access to the spreadsheets had been restricted. He explained that this was due to audit compliance requirements following the Respondent’s US acquisition, which prohibited staff from accessing approval documents relating to their own remuneration. He said the restriction arose from system controls rather than any deliberate decision to prevent the Claimant from reviewing her commission.
48. The Tribunal accepts the Respondent’s evidence that the restriction on access arose from audit compliance requirements and was not imposed to impede the Claimant. However, its practical effect was to prevent her from verifying deductions in real time, thereby limiting her ability to identify and challenge errors promptly. In the context of a remuneration structure heavily dependent on commission, this reduced transparency materially limited her ability to identify and challenge errors as they arose.
49. The Tribunal finds that, once the incorrect email address was identified and corrected, the Respondent accepted the error and arranged for the deducted commission to be paid in the following payroll. However, the deduction had initially been applied and remained uncorrected until after the Claimant raised it, reinforcing her concern that errors could arise and affect her earnings without prompt detection.

Car Deductions and Grade Error

50. The Claimant also relied on an issue concerning deductions from her salary in relation to her company car. The Respondent operated a company car scheme under which employees could select a vehicle above their grade entitlement and make a monthly “trade up” contribution towards the additional cost.
51. In October 2022 the Claimant selected a higher-grade vehicle and signed a trade-up agreement which resulted in a deduction of £30 per month from her salary.
52. It later emerged that the Claimant’s job grade had been incorrectly recorded in the Respondent’s HR and payroll system when employee data had previously been migrated between systems. As a result of that error, the system treated the Claimant as not being entitled to the vehicle she

had selected and the monthly trade-up deduction was applied when it should not have been.

53. The Claimant's evidence was that she had raised concerns informally about the deductions from around 2022 onwards. Ms Rodney said that the first recorded communication received by HR about the issue was the Claimant's email of 23 November 2023. The Tribunal accepts that the Claimant believed she had raised concerns informally before November 2023, but finds that the first documented notification to HR was her email of 23 November 2023.
54. Following that email, the Respondent began investigating the Claimant's grading and the deductions being applied. Mr McLuckie initially believed the deduction was correct because the Claimant had signed the trade-up agreement. Further enquiries with HR and the fleet team later established that the Claimant's grade had been incorrectly recorded in the system.
55. Once the error had been identified, the Respondent arranged for the incorrect deductions to be reimbursed. The repayment required authorisation from HR, payroll and finance.
56. The Respondent reimbursed the Claimant approximately £1,320 on 2 October 2024 representing the incorrect deductions made since 2019. A further deduction of £30 was mistakenly taken in the September 2024 but was repaid to the Claimant on 21 October 2024.
57. The Tribunal finds that the incorrect deductions arose from an administrative error in recording the Claimant's job grade. Although the error was ultimately identified and reimbursed, it persisted over a substantial period, including after the Claimant had raised concerns with HR. The resolution required further investigation and intervention across multiple departments before repayment was processed. In the interim, deductions continued to be made, including a further erroneous deduction in September 2024.
58. The Tribunal finds that this prolonged failure to identify and correct an error affecting the Claimant's salary, despite her having raised it, contributed to a lack of transparency and reliability in the Respondent's payroll processes.

Resignation and notice

59. The Claimant resigned on 20 September 2024 giving one week's notice.
60. The Claimant said she resigned because:
 - a) her personal commission, approximately 70% of her income, was placed at risk;
 - b) the Respondent insisted on retaining the gateways;
 - c) the Respondent's data systems were inaccurate and unreliable;

- d) she had lost trust and confidence due to deductions, delayed payments and lack of transparency; and
 - e) she faced the prospect of repeated monthly appeals while working 60-hour weeks.
61. The resignation email [321] referred to her concerns about the 2024 scheme and its financial consequences.
62. The Respondent maintained that the Claimant resigned voluntarily and not in response to any fundamental breach.
63. The Tribunal finds that the Claimant raised sustained concerns throughout August and September 2024 regarding both the operation and the financial impact of the new commission scheme. Those concerns intensified following the communication on 11 September 2024 that she had failed the gateway and would not receive commission for August. The Tribunal accepts that these matters were of real and immediate significance to the Claimant, given the extent to which her earnings depended upon commission.
64. The Tribunal accepts that the reasons given by the Claimant for her resignation were genuinely held and are supported by the contemporaneous evidence. By 20 September 2024, the new commission scheme, together with the earlier July commission deduction and the ongoing car deduction issue, formed the background to her decision to resign. Although her August commission was ultimately paid, her concerns regarding the operation of the gateway system, the reliability of the Respondent's data and payroll processes and the risk of repeated financial loss remained unresolved and were reasonably perceived as likely to recur.

Grievance process

65. The Respondent treated the resignation as raising a grievance. The grievance investigation and hearing were conducted by Mr Ham, who also interviewed Mr McLuckie on 27 September. The Tribunal finds that as the Claimant resigned before the grievance meeting took place, matters raised or discussed in that process did not inform her decision to resign
66. The grievance investigation notes recorded the phrase "*This is uniquely targeting Dawn.*" The Claimant relied on this as evidence that the new commission scheme was directed at her personally. The Respondent disputed that interpretation and said the note contained a typographical error.
67. Mr Ham gave evidence that, had he he understood the scheme to be uniquely targeting the Claimant, this would have fundamentally altered the outcome of his decision.
68. Having considered the note in its full context, together with the surrounding evidence and the overall structure of the scheme as applied to all Sales Managers, the Tribunal finds that the phrase recorded in the

notes was a typographical error. The Tribunal accepts that the intended wording was “this is not uniquely targeting Dawn” and finds that the commission scheme was not designed to target the Claimant individually.

69. The grievance outcome letter of 3 October 2024 partially upheld the complaint regarding the delay in resolving the car deduction but did not uphold the Claimant’s wider concerns. The Tribunal finds that the letter addressed the principal issues raised, although it did not accept the Claimant’s broader concerns about the operation of the commission scheme.

Post-resignation payments and expenses

70. Some payments and expenses remained outstanding after the Claimant’s resignation and were only resolved after she escalated matters to senior management later in 2024.

Law

71. By section 95 of the Employment Rights Act 1996 (ERA):

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

(a) the contract under which he is employed is terminated by the employer (whether with or without notice),

(b) he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or

(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.

72. In **Western Excavating (ECC) Ltd v. Sharp [1978] ICR 221, CA**, it was said:

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 employee 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.

73. The burden is on the employee to prove constructive dismissal within s. 95(1)(c) ERA. The employee must show:

a) there was a fundamental breach of contract on the part of the employer that repudiated the contract of employment;

b) the employer’s breach caused the employee to resign, and

- c) the employee did not delay too long before resigning, thereby affirming the contract and losing the right to claim constructive dismissal.
74. The breach of contract may consist of a breach of the implied term of trust and confidence, which provides that employers (and employees) will not without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties (**Malik v Bank of Credit and Commerce International SA 1997 ICR 606 HL**).
75. In cases where a breach of the implied term is alleged, the Tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it (**Woods v WM Car Services (Peterborough) Limited [1981] IRLR 347**).
76. The Tribunal has to decide whether the conduct in question in a particular case amounts to a breach of the term, by considering:
- a) Whether there was a 'reasonable and proper cause' for the conduct; and
 - b) If not, whether the conduct was 'calculated or likely to destroy or seriously damage trust and confidence'. Here, the Tribunal should consider the circumstances objectively, from the perspective of a reasonable person in the Claimant's position (**Tullett Prebon plc v BGC Brokers LP 2011 IRLR 420, CA**). The test is met where the employer's intention is to destroy or seriously damage trust and confidence, or where the employer's conduct was likely to have that effect.
77. A breach of the implied term of trust and confidence may arise from a single act or from the cumulative effect of a number of several acts or a course of conduct. A 'last straw' need not itself amount to a breach, but it must contribute something to the cumulative breach (**Omilaju v Waltham Forest London Borough Council 2005 ICR 481 CA**).
78. The Respondent relied on three authorities concerning discretionary remuneration and entitlement to pay.

Discretionary bonus schemes

79. The Respondent relied on **Clark v Nomura International plc [2000] IRLR 766**, for the proposition that where remuneration is governed by a discretionary scheme, the Tribunal's task is to consider whether the employer's decision was irrational or perverse rather than substituting its own view.
80. Burton J held that although a bonus scheme may be described as discretionary, the employer's discretion is not unfettered. An employer will be in breach of contract if the discretion is exercised in a manner that no reasonable employer would adopt. He stated at 767:

“An employer exercising a discretion which on the face of the contract of employment is unfettered or absolute, will be in breach of contract if no reasonable employer would have exercised the discretion in that way.”

Non-payment of remuneration and repudiatory breach

81. The Respondent relied on **Cantor Fitzgerald International v Callaghan [1999] ICR 639**, to submit that only a deliberate and determined refusal to comply with remuneration obligations is likely to amount to repudiatory conduct .

82. In that case, the Court of Appeal considered whether an employer's failure to honour remuneration arrangements constituted a repudiatory breach. The Court held that the significance of non-payment depends on whether there has been a deliberate refusal to honour contractual obligations, as opposed to delay or dispute

83. Judge LJ explained (at 649E–H):

“The question of whether non-payment of agreed wages was or was not fundamental... depended on the distinction between an employer's failure or delay in paying and his deliberate refusal to do so.”

Entitlement to pay and performance of duties

84. The Respondent also relied on **Miles v Wakefield MDC [1987] ICR 368** for the proposition that where an employee fails to fulfil required duties, the employer may lawfully withhold or reduce remuneration

85. In that case, the House of Lords held that an employee's entitlement to remuneration is ordinarily conditional upon performing, or being willing to perform, the work required by the contract.

Findings on Disputed Issues

Alleged breaches of the implied term of trust and confidence

86. The Tribunal must determine whether, taking the alleged actions or omissions individually and cumulatively, the Respondent had reasonable and proper cause for them.

87. In determining this issue the Tribunal has considered both parties' submissions and the evidence relied upon. The Tribunal has also assessed whether the Respondent's actions were supported by a legitimate business rationale and whether, viewed objectively, the manner in which those actions were implemented was reasonable.

88. The Tribunal has assessed each of the matters relied upon by the Claimant individually before considering their cumulative effect. The Tribunal recognises that not every error or delay concerning remuneration will amount to a repudiatory breach. However, the implied term of trust and confidence requires the Tribunal to consider the overall effect of the employer's conduct on the employment relationship.

Issue 3.1: Unilateral changes to the commission structure scheme

89. The content and operation of the H2 REM scheme, and its material differences from prior remuneration arrangements, have been set out at paragraphs 26–34 above.
90. The Respondent submitted that the H2 REM scheme was a lawful and rational development of earlier commission schemes rather than an unprecedented departure from them and applied to all Sales Managers. It submitted that gateway-style requirements had previously existed and that the four gateways reflected managerial responsibilities which the Claimant was already expected to perform.
91. The Tribunal accepts part of that submission. The Tribunal accepts that the Respondent had a legitimate business interest in promoting management compliance and team performance. The Tribunal also accepts that the scheme applied to all Sales Managers and that the grievance note referring to the scheme “*uniquely targeting Dawn*” was, for the reasons already given, a typographical error.
92. However, the Tribunal does not accept the Respondent’s submission that the 2024 scheme represented merely an incremental development of earlier arrangements. The critical distinction is that the earlier schemes did not materially alter the essential basis on which the Claimant earned her personal commission. Prior to August 2024 the Claimant’s commission remained, in substance, dependent on matters within her own control, namely her personal sales performance.
93. Although the scheme applied to all Sales Managers, the Tribunal has found that its practical effect was not equal, because the Claimant’s high level of personal commission meant that the financial consequences of gateway failure were materially more severe for her than for others. Under the H2 REM scheme, the Claimant stood to lose 100% of her commission on her own sales if any of the four gateways was failed, including gateways dependent on staff availability and team-level data accuracy.
94. The Respondent submitted that the Claimant could satisfy the gateways through ordinary management practices and that the requirements were achievable through reassignment of work or adaptation where necessary.
95. The Tribunal accepts that some aspects of the gateways reflected ordinary management tasks. However, the evidence demonstrated that elements of the scheme exposed the Claimant’s personal commission to matters outside her control. In particular, Gateway 2 was affected by DC’s sickness absence and remote working and Gateway 4 depended upon ticket data which the Tribunal has found to be inaccurate to some degree.
96. The Tribunal places particular weight on the fact that approximately 70–75% of the Claimant’s remuneration derived from her personal commission. A scheme exposing that level of income to complete loss based on factors not wholly within her control represented a fundamental alteration to the financial basis of the employment relationship.

97. The Respondent submitted that it would make no commercial sense deliberately to deprive the Claimant of commission given her exceptional sales performance. The Tribunal accepts that the Respondent did not intend to force the Claimant out or deliberately deprive her of income.
98. However intention is not required. The question under the implied term is whether the Respondent's conduct, viewed objectively and without reasonable and proper cause, was likely to destroy or seriously damage trust and confidence.
99. The Tribunal has considered the Respondent's reliance on **Clark v Nomura International plc**, which concerned the exercise of discretion under a bonus scheme. The Tribunal accepts the principle in **Clark** that an employer's discretion is not unfettered, and that the question is whether the employer's decision was one no reasonable employer would have made.
100. However the present case is materially different. **Clark** concerned the exercise of discretion within an existing bonus scheme. The present case concerns the introduction and implementation of a new remuneration structure which fundamentally altered the basis on which the Claimant earned commission.
101. Applying the principle identified in **Clark**, the Tribunal finds that no reasonable employer would introduce or maintain a remuneration structure which exposed the overwhelming majority of an employee's income to complete loss through criteria not confined to that employee's own performance without consultation or safeguards.
102. The Tribunal therefore finds that although the Respondent had a legitimate business aim in promoting management compliance and team performance, it did not have reasonable and proper cause to introduce and implement the H2 REM scheme in the form and manner adopted in August 2024.

Issue 3.2: Initial refusal to pay the Claimant August commission

103. As set out at paragraphs 35–41 above, the Claimant was informed on 11 September that she had failed Gateways 1 and 2 and would not receive August commission, before that decision was reversed following challenge. The Tribunal adopts those findings and notes that this was the first time in her 30-year career that she had been told she would receive no commission on her own sales
104. The Tribunal does not accept the Respondent's submission that this was simply a standard reconciliation exercise. Within weeks of the scheme taking effect the Claimant was informed that she would lose commission on her own sales on a basis which was subsequently reversed after challenge.
105. The Tribunal accepts the principle in **Cantor Fitzgerald** that not every delay or error in remuneration amounts to a repudiatory breach. However, the Tribunal does not treat the August incident as a simple delay. The

significance lies in the fact that the risk created by the new scheme materialised immediately in practice and this forms part of the cumulative conduct relied upon by the Claimant.

Issue 3.3 - Incorrect deduction of £449.22 commission from July salary and failure to refund said amount in a timely manner

106. For the reasons given at paragraphs 42–49, the Tribunal accepts that the July deduction resulted from the sampling methodology then in place and was later repaid. However, as previously found, the Claimant's restricted access to commission data impeded her ability to verify the deduction and contributed to a pattern of opacity affecting remuneration.
107. The Tribunal finds that, taken alone, the July deduction might not have amounted to a repudiatory breach. However, it formed part of a sequence of opaque remuneration issues that contributed to the Claimant's loss of confidence

Issue 3.4.- Incorrect deduction of an amount for company car payments and failure to refund the said amounts in a timely manner.

108. As set out at paragraphs 50–58, the incorrect car deductions arose from an administrative error in the Respondent's grading records, which persisted despite the Claimant raising concerns and was only rectified after further investigation.
109. The Tribunal adopts those findings and concludes that in the context of other contemporaneous remuneration issues, that delay reasonably contributed to the Claimant's cumulative loss of confidence in the Respondent's handling of matters affecting her remuneration.

Overriding Submissions

110. The Respondent submitted more generally that the Claimant had conflated a number of separate matters: her objection to the introduction of the new commission scheme, the August commission review, the July bounce-back deduction and the delay in correcting the company car deductions. It argued that these were discrete issues arising for different reasons and that none of them individually amounted to a repudiatory breach of contract.
111. The Tribunal accepts that the matters were not identical, but the implied-term analysis requires assessment of both individual acts and their cumulative effect, particularly where each related to remuneration and occurred within a short period
112. The Respondent also submitted that the Claimant's true complaint was her objection in principle to commission depending on managerial responsibilities rather than her own personal sales performance. The Tribunal accepts that she strongly objected to that proposition, but finds that her concerns were objectively justified because the new scheme materially altered the financial basis of her employment and because the risk of losing commission quickly materialised.

113. The Respondent further relied on **Miles v Wakefield MDC**, submitting that an employer may lawfully withhold remuneration where an employee fails to perform the duties required by the contract and that the Claimant's entitlement to commission was conditional upon fulfilling the managerial responsibilities associated with her role.
114. The Tribunal accepts the general principle derived from **Miles**, namely that an employee's entitlement to remuneration ordinarily depends upon performing, or being willing to perform, the work required by the contract.
115. However, **Miles** is materially distinguishable. In **Miles** the employee refused to perform part of the work he was contractually required to do. Here, the Claimant did not refuse to perform her duties. She continued to carry out both her managerial responsibilities and her personal sales work.
116. The difficulty here arose because the Claimant's commission on her own sales was made wholly contingent upon gateway conditions which were not confined to her own conduct and which depended in part upon matters outside her control, including staff absence and data inaccuracies. The Tribunal therefore finds that the principle in **Miles** does not assist the Respondent.

Did the Respondent behave in a way that, when viewed objectively, was calculated or likely to destroy or seriously damage the trust and confidence?

117. The Tribunal must assess the Respondent's conduct cumulatively. Some individual issues might not amount to a repudiatory breach when viewed alone, but their combined effect is the relevant question under the implied term.
118. When viewed cumulatively, the Claimant experienced the introduction of a commission scheme which fundamentally altered the financial basis of her employment and exposed approximately 70–75% of her income to loss through criteria not wholly within her control. Within weeks of the scheme's introduction she was informed that she had failed the gateways and would not receive commission for August, a decision which was subsequently reversed after challenge.
119. At the same time the Claimant encountered a substantial commission deduction from her July commission which she could not readily verify due to restricted data access, together with a prolonged delay in correcting an admitted payroll error relating to car deductions.
120. Each of these matters concerned the transparency, reliability and security of the Claimant's remuneration. Viewed objectively and applying the principles in **Malik** and **Woods**, the Tribunal finds that the Respondent did not have reasonable and proper cause for the cumulative situation which had arisen. The Respondent's conduct was likely to destroy or seriously damage the relationship of trust and confidence between the parties.

Did the Claimant resign in response to that breach?

121. The Respondent submitted that post-20 September 2024 payment issues could not have caused the resignation because the Claimant had already communicated her resignation by then. The Tribunal accepts that proposition and has not relied on post-resignation matters as causing the resignation although they may illuminate the wider context.
122. The Tribunal finds that the Claimant resigned in response to the cumulative breach of the implied term identified above. The chronology, her resignation email and her oral evidence all support that conclusion.

Did the Claimant affirm the contract before resigning, by delay or otherwise?

123. The Respondent submitted that historic matters, including the grading issue, had been affirmed by the Claimant. The Tribunal accepts that historic matters long predating the relevant events could not, by themselves, found a constructive dismissal claim in September 2024.
124. However, the claim does not depend on historic issues standing alone. The consequences of the grading error continued into 2024 and the delay in correcting the admitted error contributed to the cumulative loss of trust. The operative breach consisted of cumulative conduct arising in August and September 2024.
125. The Claimant resigned on 20 September 2024, shortly after these events. She did not delay so as to affirm the contract. Giving one week's notice was consistent with bringing the employment relationship to an orderly end rather than affirming the contract.

Conclusion on Liability

126. For those reasons, the Tribunal concludes that the Respondent committed a fundamental breach of the implied term of mutual trust and confidence.
127. The Tribunal further concludes that the Claimant resigned in response to that breach and did not affirm the contract.
128. The Claimant was therefore constructively dismissed within the meaning of section 95(1)(c) of the Employment Rights Act 1996.
129. The complaint of constructive unfair dismissal is accordingly well-founded.

Employment Judge Yardley

Date: 16 March 2026

Case No: 6000947/2025

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