



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Sanjay Mehta  
**Respondent:** Itarmi UK Limited

**Heard at:** Watford Employment Tribunal  
**On:** 13, 14 and 15 January 2026  
**Before:** Employment Judge Alliott

## Representation

**Claimant:** In person  
**Respondent:** Mr Matthew Curtis (counsel)

# RESERVED JUDGMENT

The Judgment of the tribunal is that:

1. The respondent has made unauthorised deductions from the claimant's pay and is ordered to pay him the sum of £ [to be confirmed].
2. The claimant's breach of contract claim [to be confirmed]
3. The claimant's claim of constructive unfair dismissal is dismissed.

# FULL REASONS

## Introduction

1. The claimant was employed by the respondent in February 2020 as Chief Commercial Officer and Chief Legal Officer. On 31 March 2023, the claimant was given notice of the termination of his employment with effect on 24 June 2023. On 10 May 2023, the claimant resigned with immediate effect and that is the EDT of his contract of employment. By a claim form presented on 4 August 2023, following a period of early conciliation from 30 June until 18 July 2023, the claimant presents claims of constructive unfair dismissal, breach of contract and unauthorised deduction of wages. The respondent defends the claims.

## The issues

2. There is neither a list of issues produced by the employment tribunal nor an agreed list of issues.

3. Fundamentally, the issues are:-

3.1 Was the claimant constructively unfairly dismissed?

3.2 Has the respondent made unauthorised deductions from the claimant's wages and/or is the respondent in breach of contract?

4. The respondent produced a list of issues and they are set out here as follows:-

**"Issues – unfair dismissal"**

1. Was the C dismissed? C asserts that the implied term of mutual trust and confidence was breached and relies on the matters set out and numbered (1) to (4) in the ET1 [57]. In summary they are:
  - 3.1. Misleading/incorrect/exaggerated assertions in the correspondence on 28 April and 9 May 2023.
  - 3.2. Failure to consult during the redundancy process.
  - 3.3. Blocking the valid exercise of share options.
  - 3.4. Non-payment of contractual salary and conduct demonstrating that R had no intention of making good the underpayment.
4. To the extent that R behaved as set out above, was that behaviour calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee?
5. If so, did R have reasonable and proper cause for that behaviour.
6. Did C resign in response to the breach (i.e. was the behaviour above a reason for C's resignation)? Did C affirm the contract before resigning?
7. If C was unfairly dismissed, how much should any compensatory award be? The tribunal will decide:
  - 7.1. What financial losses has dismissal caused the Claimant?
  - 7.2. Has R proved that C has failed to take reasonable steps to replace lost earnings, such as by failing to take reasonable steps to find another job?
  - 7.3. For what period of loss should C be compensated?
  - 7.4. Is there a chance that C would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason? In this case R relies upon conduct during notice period (C not being actively working). If so, should C's compensation be reduced? By how much?
  - 7.5. Did C or R unreasonably fail to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures by: C – failing to raise a grievance R – [C to confirm if pursued]. If so, is it just and equitable to reduce any award payable to C? By what proportion, up to 25%?
  - 7.6. Did C cause or contribute to dismissal by blameworthy conduct? If so,

would it be just and equitable to reduce C's compensatory award? By what proportion?

7.7. Does the statutory cap of 52 weeks' pay or £105,707 apply?

**Issues – Unauthorised deduction of wages**

8. The issues are less straightforward than a 'standard' wages claim. There is a dispute as to what the parties agreed in relation to the Claimant's wages. The tribunal will need to determine:

8.1. What did the parties agree would be the claimant's salary? Was it £120,000 per annum from the date of employment (as asserted by C)? Alternatively, was it £2,000 per calendar month, with the intention that it would rise to £120,000 per annum after R received sums by way of investment (as asserted by R)?

8.2. Was there any deduction from the Claimant's wages? If so, when and in what sum?"

**The law**

Unfair dismissal

5. Section 95 of the Employment Rights Act 1996 provides as follows:-

"95 Circumstances in which an employee is dismissed.

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

...

(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.

(2) An employee shall be taken to be dismissed by his employer for the purposes of this Part if—

(a) the employer gives notice to the employee to terminate his contract of employment, and

(b) at a time within the period of that notice the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire;

and the reason for the dismissal is to be taken to be the reason for which the employer's notice is given."

6. As per Harvey on Industrial Relations and Employment Law at Division 1:-

"403

In order for the employee to be able to claim constructive dismissal, four conditions

must be met:

- (1) There must be a breach of contract by the employer. This may be either an actual breach or an anticipatory breach.
- (2) That breach must be sufficiently important to justify the employee resigning, or else it must be the last in a series of incidents which justify his leaving. Possibly a genuine, albeit erroneous, interpretation of the contract by the employer will not be capable of constituting a repudiation in law.
- (3) He must leave in response to the breach and not for some other, unconnected reasons.
- (4) He must not delay too long in terminating the contract in response to the employer's breach, otherwise he may be deemed to have waived the breach and agreed to vary the contract."

7. A constructive dismissal is not necessarily an unfair one.

8. As per the IDS Handbook on Employment Law Contracts of Employment:-

"At 10.28:

"Where an employee is under notice, he or she is entitled to leave immediately and claim unfair constructive dismissal if the contract is repudiated by the employer by, for instance, unilaterally cutting the employee's pay or demoting him or her in breach of contract – See Ford v Milthorn Toleman Limited [1980] IRLR 30, CA."

9. Although that case involved the employer giving notice rather than the employee, in my judgment, an employee would be entitled to bring a constructive dismissal claim during a notice period where the employee has terminated the contract of employment on notice.
10. Whilst the claimant resigned with immediate effect on 10 May 2023, he did so claiming constructive dismissal. In my judgment, the letter was not a "counter-notice" under section 95(2) and, consequently, it is open to the claimant to bring a claim of constructive unfair dismissal. It is not a deemed dismissal for redundancy.

#### Unauthorised deduction of wages/breach of contract

11. Section 13 of the Employment Rights Act 1996 provides as follows:-

"13 Right not to suffer unauthorised deductions.

- (1) An employer shall not make a deduction from wages of a worker employed by him unless—
  - (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
  - (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

...

- (3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion."

12. As per the IDS Employment Law Handbook "Wages":-

"Determining what is properly payable

- 2.57 Deciding whether wages are "properly payable" will require employment tribunals to resolve any disputes as to the meaning of a contract, including questions of interpretation and implication."

And

- "2.58 The approach tribunals should take in resolving disputes over what the worker is contractually entitled to receive by way of wages is that adopted by the civil courts in contractual actions – Greg May (Carpet Fitters & Contractors) Ltd v Dring [1990] ICR 188, EAT. In other words, tribunals must decide, on the ordinary principles of common law and contract, the total amount of wages that was properly payable to the worker on the relevant occasion.

...

Determining what wages are "properly payable" requires consideration of all the relevant terms of the contract, including any implied terms – Camden Primary Care Trust v Atchoe [2007] EWCA Civ 714, CA".

Rectification of a written document.

13. Whilst an employment tribunal does not have power to order rectification, it may nonetheless treat a document as rectified for the purpose of determining the rights of the parties before it, provided that the conditions for rectification have been met (Chitty at 5-097).
14. Rectification of a written document may be made where there has been mutual mistake and, in certain circumstances, where there has been a unilateral mistake.
15. As per Chitty at 5-058:

"...Where a contract has by reason of a mistake common to the contracting parties been drawn up so as to militate against the terms intended by both as revealed in their previous oral or written agreement, the court will rectify the document so as to carry out such intentions. So if the subsequent agreement was intended to reflect the terms of the earlier agreement but fails to do so, a party will be entitled to rectification unless it was shown that the parties intended to vary the terms of the earlier agreement."

"The analysis as to what the parties intended, or must be taken to have intended, must be an objective one. Evidence of prior negotiations is admissible. Evidence of

subsequent conduct may also have some evidential value.”

### **The evidence**

16. I had a hearing bundle of 974 pages.
17. The claimant provided me with a skeleton argument. The respondent provided me with an opening note, a list of issues and a chronology.
18. I had written statements and heard evidence from:
  - 16.1 The claimant.
  - 16.2 Mr Brett Riley, Chief Executive Officer of the respondent.
  - 16.3 Mrs Jenni Riley, Director and Chief People Officer of the respondent.
19. Both the claimant and the respondent provided me with written closing submissions for which I am grateful.

### **The facts**

20. The respondent is a company involved in the supply of IT professionals. It was founded in April 2017 by Brett Riley and Jenni Riley. The respondent is a subsidiary of Itarmi Holdco Limited.
21. The claimant is a practicing solicitor specialising in Tax law. In 2019 the claimant was a partner in a law firm but the partnership came to an end around April 2019.
22. Brett Riley is an experienced businessman who has had business roles for 25 years.
23. The claimant was an early investor in the respondent acquiring 1,250 shares in 2018. Initially the claimant acted as an unpaid advisor. At some point in 2019 the claimant was approached by Brett Riley about joining the respondent in an executive capacity. From November 2019 the claimant acted as a self-employed consultant on a fixed fee of £2,000 per month.

### **Background**

24. The background to the claimant’s employment with the respondent includes the following relevant factors:
  - 24.1 It is clear to me that the claimant and Brett Riley were friends, their relationship was good and positive and they trusted each other.
  - 24.2 Negotiations for the claimant’s potential employment had been going on since at least September 2019. There is an email dated 10 September 2019 from the claimant to Brett Riley which states:-

“Some high level points for my equity if I come on board.”
  - 24.3 There then follows a detailed discussion as to how the claimant’s Share

Option Agreement should be structured. In particular, in order to gain favourable Capital Gains treatment under the HMRC EMI Scheme.

24.4 The emails that I have seen concerning the negotiations about the claimant's Share Option Agreement demonstrate to me that the claimant and Brett Riley were well able to understand, articulate and negotiate complex legal agreements.

24.5 Brett Riley was very keen to get the claimant to join the respondent. In an email to the claimant dated 20 February 2020 Brett Riley states:-

"I honestly feel that you are MD material and my plan is to get this company to a position in the UK post funding."

And, following the signing of the claimant's contract of employment on 24 February 2020, Brett Riley sent an email to the claimant stating:-

"I have dreamt of this for over a year now and I cannot believe that it actually happened. I am excited beyond belief that you are joining us and having you on board is seriously boosting our probability of reaching our goals and dreams.

Welcome on board mate in an official capacity."

24.6 I have no doubt and find that both the claimant and Brett Riley were excited and optimistic about the prospects of the respondent as a start up succeeding and making them lots of money, Further, it is clear that Brett Riley was seeking funding from outside investors around this time and, again, was no doubt optimistic that funding would be achieved in the short term.

### **The making of the contract of employment**

25. The claimant entered into a Deed of Grant of EMI Option for shares with Itarmi Holdco Limited. The Deed is dated 30 December 2019 and has been signed by both Brett Riley and the claimant. Both signatures were witnessed but there is no date attached to the signatures. Brett Riley thought that the deed was signed on 30 December 2019 and a calendar screen shot has been produced of a "legal meeting" that Brett Riley had with the claimant at IET London: Savoy Place, on 30 December 2019. However, the share option references a maximum 6,700 shares and that figure was still being negotiated in an email dated 2 March 2020. That suggests that the Share Option Deed was either signed much later than 30 December 2019 or that significant parts of it were inserted into it much later than 30 December 2019.

26. In an email dated 31 January 2020 from the claimant to Brett Riley which is principally negotiating the terms of the share option, reference is made to "EIS tax benefit gets reversed out for me if/when I become an employee."

27. Over the course of the next few days, it appears that it was decided that the claimant was going to be employed and the claimant prepared a draft contract of employment. On 9 February 2020, the claimant sent a draft of his contract of employment to Brett Riley and in the covering email highlighted a number of

issues. These included:-

- “• We need to include a job title (I have a couple of ideas) and a pre-investment salary which is mutually manageable (and we need a gent’s agreement on post-investment salary)”

28. It is clear to me and I find that the claimant and Brett Riley were obviously negotiating what his salary would be. The reference to “pre” and “post” investment salaries I find to have been against a context where the respondent was not going to be able to afford to pay the claimant the sort of salary he was expecting until funding had been secured. I find that what the claimant was articulating in that email at that stage was that a lower salary would be entered into his contract of employment and that there would be a gentleman’s agreement that, once funding had been achieved, his salary would be raised. The basic annual salary was left blank in the draft contract of employment.
29. On 19 and 20 February 2020, the claimant and Brett Riley exchanged emails discussing what his job titles should be.
30. On 21 February 2020, Brett Riley sent the draft contract of employment back to the claimant with the covering email stating:-

“Subject: Confidential: Draft SM employment docs (09.02.20)

Hello Mate,

Here we go, some minor changes.

120k base, I think after the first round that’s what we will be able to afford.

Notice period of three months, you are very senior and losing you would incur a significant risk.

Lastly I have changed the reporting line as direct into me.

Let me know your thoughts.

Brett.”

31. On 24 February 2020, the claimant returned the contract of employment electronically signed, eliciting the second email referred to in paragraph 24.5 above.
32. The claimant’s contract of employment is dated 3 February 2020 but was clearly signed on 24 February 2020. It states:-

“4 Salary & Performance

- 4.1 Your basic annual salary is £120,000 which shall accrue on a daily basis and shall be payable monthly in arrears on the last working day of each month directly into your bank or building society account.”

33. There is no qualification within the contract of employment to that salary. Brett Riley accepted that he had put in the figure of £120,000 (albeit initially with an

extra zero which had to be corrected). When asked why he had put the figure of £120,000 in the contract of employment, Brett Riley replied that “he wouldn’t accept anything less – in our discussions he said he was worth north of £100,000”.

34. That evidence contrasts with Brett Riley’s witness statement wherein he says:

“The contract itself appears at page 233 of the bundle and I see now that the contract reflected the anticipated post-investment salary, not the agreed upon pre-investment salary of £2,000 per month, an error which was not reflective of the agreement I had reached with the claimant and which can be described as nothing other than a fundamental mistake.”

35. I reject Brett Riley’s witness statement evidence that he entered £120,000 by mistake. It was clear to me and I find that he did it intentionally as he wanted the claimant to become an employee. I find it improbable that an astute an experienced businessman such as Brett Riley would think that in some way the figure and the clause itself was conditional upon funding and that a lesser figure was the claimant’s salary in the interim. The clause is clear and unambiguous.
36. There is no dispute that the claimant was paid at a rate of £24,000 p.a. until June 2020, at a rate of £45,000 until March 2022 and at a rate of £100,000 until April 2023 (end of employment).
37. The WhatsApp messaging between the claimant and Brett Riley surrounding the issue of increased remuneration is couched in terms of a pay rise. For example:-

“26/03/2021, 07:08:24 Brett Riley: I am expecting the R&D in any day now, at the end of next month I have asked to put you up to 80k.

07:09:04 Brett Riley: Hope that’s ok now until we get our funding in.

07:21:14 Sanjay Matah: Yes that would be good if it can happen – but not if it puts the company at risk.”

And

“28/04/2021, 12:24:14 Sanjay Matah: Btw, am I still on for interim pay rise to 80k in May?

28/04/2021, 13:24:01 Brett Riley: We are on target for that mate.

28/04/2021, 13:54:07 Sanjay Matah: ...so a pay rise would be amazing if possible.”

And

“29/07/2021, 11:22:45 Sanjay Matah: Salary not gone up”.

And

“11/04/2022, 23:14:07 Sanjay Matah: Hey... re: salary – been waiting, can’t stay on 45k.

...

07:04:25 Brett Riley: Hi Mate we will all go up this month to a 100k.”

38. The claimant accepted that the first time he referenced being paid the accumulated salary underpayment in writing was in his resignation letter dated 10 May 2023.

**Probity and credibility**

39. The claimant is a solicitor and as a professional man his probity should not be in doubt.

40. However, the respondent has pleaded in its revised response the following:-

“10. To the extent that it is relevant, in or around March 2020, the claimant produced another contract of employment for himself and backdated this to 28 October 2019 so that it would appear as though he was employed by the respondent earlier than he was. It is understood the claimant did this intentionally so that he might attempt to benefit from an Enterprise Management Incentive Plan operated by Itarmi Holdco Limited and/or to attempt to ensure that any options granted to him thereunder were qualifying options (as defined in paragraph 1(2) of Schedule 5 to the Income Tax (Earnings and Pensions) Act 2003 (ITEPA).”

41. A copy of the claimants contract of employment, re-dated to state it commenced on 28 October 2019, is in the bundle.

42. In order to qualify for the relevant relief, the claimant had to have been an employee at the time of the grant of the share option. As recited above, on the face of it, the share option Deed is dated 30 December 2019.

43. There are emails from 6 March 2020 evidencing the claimant’s attempts to register the EMI Plan with HMRC.

44. There is an email from a Lisa Gadsby to Jenni and Brett Riley dated 26 March 2020 referencing the claimant stating:-

“I think xero will allow me to post Sanjay’s employment start date as 28 Oct 19 even though he hasn’t appeared on the payroll until March 20.”

45. There is a reply by Brett Riley on 26 March 2020 as follows:-

“I still am not sure why we have backdate to October...”

46. I am aware that the claimant has been referred to the Solicitor’s Regulation Authority concerning this matter.

47. The claimant deals with this in his closing submissions by emphasising that he places no reliance whatsoever on the contract of employment dated 28 October 2019.

48. I make no findings of fact of dishonesty concerning this issue.

49. However, during the course of the claimant’s evidence, when he was questioned about backdating his contract of employment to October 2019, I warned the

claimant that he had a right against self-incrimination and that he did not have to answer such questions. The claimant exercised his right and did not answer a number of questions, including when it was put to him that he had created a backdated employment contract so that the options qualified for EMI Scheme and in doing so was knowingly creating false information.

50. However, the information before me leads me to question the claimant's probity and that, in turn, impacts on his credibility.
51. On the other hand, when the claimant sought to exercise his share options on 31 March 2023, Brett Riley prevaricated by stating that it was premature and would be dealt with later. I understand the claimant has been unable to exercise his share options to date.
52. Again, I make no findings. However, from the information provided to me, that leads me to question Brett Riley's probity and that, in turn, impacts on his credibility.
53. Furthermore, both the claimant and Brett Riley have, at the very least, shown a cavalier attitude towards the accurate dating of documents.
54. It is against this background that it falls to myself to determine what was properly due to the claimant pursuant to his contract of employment.

### **The contract of employment**

55. Whilst the total amount of wages properly payable stands to be decided on ordinary principles of common law and contract, in my judgment, the starting point is the statutory protection that parliament has laid down for employees. The relative power imbalance between the employer and the employee and the fundamental importance of how much pay is received is, in my judgment, reflected in sections 1 and 13 of the Employment Rights Act 1996:-

#### **"Statement of initial employment particulars.**

- (1) Where a worker begins employment with an employer, the employer shall give to the worker a written statement of particulars of employment.
- (2) Subject to sections 2(2) to (4)—
  - (a) the particulars required by subsections (3) and (4) must be included in a single document;
- ...
- (4) The statement shall also contain particulars, as at a specified date not more than seven days before the statement ... is given, of—
  - (a) the scale or rate of remuneration or the method of calculating remuneration"

56. Section 13, as recited above, precludes deductions from wages unless the worker has previously signified in writing his agreement or consent to the making of the deduction.
57. In my judgment, the requirements for the scale or rate of remuneration to be included in a single document and the requirement for any deductions to be

agreed in advance in writing, were designed to prevent just the sort of dispute that there is in this case.

58. In my judgment, in determining what was or was not agreed between the claimant and Brett Riley, it is highly relevant that Brett Riley thought he was very close to securing external investment of at least £2 million at around the time the claimant began his employment. In his witness statement the claimant puts it as follows:-

“In the period leading up to the signing of the contract in February 2020, Mr Riley assured me that the respondent was very close to securing external investment of at least £2 million. Mr Riley had shared a few of the investor emails with me and told me about other discussions with Venture Capital Funds, high network individuals, and a Bitcoin multi-billionaire whom he said was “circling.” Mr Riley shared a non-binding investment offer from a high net worth individual, who I referred to as “Mark G” on 31 January 2020. Mr Riley said the investor was very interested in making a large investment.”

59. The claimant sent an email on 31 January 2020 which corroborates that as it refers to “Mark G” “2M investment”.
60. I find that it was because Brett Riley was confident that funding would be obtained very shortly and that the respondent would be able to pay the claimant a salary of £120,000 very shortly so Brett Riley entered the salary level of £120,000 into the claimant’s contract of employment.
61. It is clear and I find that the claimant and Brett Riley agreed that the claimant would only receive a lower amount of money until the expected investment materialised.
62. Therefore, the only issue is whether or not the difference between what the claimant was actually paid and his £120,000 contractual salary was to accrue month on month to be paid at some unspecified time in the future, effectively at Brett Riley’s discretion. The claimant puts it as follows:-

“Therefore, Mr Riley and I agreed that initially I would receive a gross payment of £2,000 per month, with the balance of my contractual salary being temporarily deferred until the expected investment, revenue growth, cash flow would allow the arrears/deferred salary to be paid in full, in accordance with my contract.”

63. Unfortunately, the expected funding did not materialise until much later.
64. Given that, on the claimant’s case, by, say, January 2021, i.e., after a year’s employment, £83,750 was due and owing to him and that the funding had not been achieved, I find it extraordinary that the claimant did not clarify the situation in writing.
65. That said, in determining what was agreed between the parties, I have relied significantly on the oral evidence of Brett Riley and Jenni Riley concerning their interaction when Jenni Riley became aware of the claimant’s contract of employment and salary in it.
66. Contrary to Jenni Riley’s statement in which she says:-

“I had also never seen a copy of the claimant’s contract of employment – either before or after it was signed”.

It was clear from Brett Riley’s evidence that Jenni Riley saw the contract in or about October/November 2020. Brett Riley told me that the claimant’s salary was raised between them when Jenni Riley got the contract. Brett Riley told me that her reaction was to say, “What have you done” and that she was highly upset.

67. My note of Brett Riley’s evidence goes on :-

“We couldn’t do anything about it – we had a strong relationship – we didn’t rock the boat. I fought his corner quite hard – I didn’t want anything to happen to affect the claimant’s employment. We carried on.”

68. In her evidence Jenni Riley told me that she was angry and highly upset as “the contract had gone out when we could not afford it.”

69. She went on:-

“He assured me that he had worked something out – he had an arrangement that the claimant would be paid a lower amount until the first investment came in when the claimant would be put on that salary. There was no mention of salary deferment. Should he enforce it - no way to prove it. I was not happy and he asked me not to rock the boat.”

70. I find that their reaction demonstrates to me that they knew/realised that the respondent had an historic and enduring liability to pay the claimant his salary of £120,000 p.a. and that they decided not to do anything about it or ‘rock the boat’ in case the claimant left. The claimant had already agreed to receive a lesser amount of money so the only ‘rocking of the boat’ that would have caused the claimant to leave would be to tell him that his unpaid salary was not accruing and would not be paid at some stage in the future. However, had there been a clear and unequivocal agreement that the claimant would not be entitled to accrue his unpaid salary and be paid it at some time in the future, then that would not have precipitated the claimant’s departure as he would not have been expecting it.

71. Consequently, I find on the balance of probabilities that there was no agreement that the claimant’s actual salary would be £2,000 per calendar month rising occasionally thereafter. I find that the common intention of the parties at the time of the making of the contract was that the claimant’s salary was £120,000 p.a.. Further, I find that there was no agreement that any shortfall in what was actually agreed to be paid would not accrue and be payable at some point in the future ‘post investment’. I place no reliance on the WhatsApp messages talking in terms of a pay rise – I find that that was just shorthand for raising the amounts actually received by the claimant. As such, I find that there was no mutual or unilateral mistake in the contract of employment and rectification of it would not be justified.

72. The statutory requirement for the claimant’s scale or rate of remuneration to be contained in one document precludes any form of collateral contract or warranty.

73. Under ordinary common law contractual principles there can be oral variations to

a written contract. However, in my judgment, that sits uneasily with a variation if it has the effect of being a deduction from an employee's wages which has to be agreed in advance in writing.

74. In any event, I find that there was no such variation to the claimant's contract of employment. The agreement was that the claimant would actually receive less than his contractual salary which is what happened. It was not that the unpaid portion of his salary would not accrue and be payable at some point the future.
75. The claimant gives evidence that during the telephone call between him and Brett Riley on 21 February 2023 when the claimant was warned of potential redundancy, the following exchange took place:-

"I reminded him that I was owed £120,000 going back to February 2020 and that I could pursue recovery of those unpaid wages. Mr Riley seemed prepared for this as, without much hesitation, he said he knew I could recover that sum but: "You have 10% of the company so you wouldn't do that"".

76. Whilst that evidence was disputed by Brett Riley, I find that it probably did take place and, in turn, it confirms that Brett Riley was aware that the claimant was owed salary arrears.
77. Consequently, I find that the respondent has made unauthorised deductions from the claimant's wages. On the current law, that is limited to two years prior to the presentation of the ET1 form on 4 August 2023.

#### Breach of contract

78. As far as the breach of contract claim is concerned, I find that the claimant did not waive or affirm the breach as the agreement was that it would be paid at some time in the future. I leave open to the remedy hearing submissions from the parties as to what trigger event stands to be implied into the contract of employment in order to determine whether there has been a breach of contract as of the EDT.

#### Unfair dismissal

79. It is quite clear that the claimant's claim is for constructive unfair dismissal.
80. In his closing submissions, the claimant has sought to introduce an allegation that the redundancy was a sham. However, that is not a case advanced in the claimant's claim form, this is not a case of ordinary unfair dismissal and it was, as will be seen, not a reason advanced by the claimant in his resignation letter.
81. On 21 February 2023, Brett Riley telephoned the claimant to inform him that he was potentially redundant. This was the same conversation as set out in paragraph 75 above.
82. On 22 February 2023, the claimant was sent a "provisional selection for redundancy" letter. This contains the following:-

"Having reflected on our conversation and after considering all possible options, we

have concluded we may be in a redundancy situation because there appears to be insufficient work available to continue to employ in-house/general counsel.

We appreciate that your job title is “Chief Commercial Officer and Chief Legal Officer” and that you carry out some duties which do not fall within the remit of in-house/general counsel but we are concerned that there is insufficient work for you to carry out the dual role on a full-time basis.

As a result the company has provisionally decided that the dual role of Chief Commercial Officer and Chief Legal Officer should cease. Since you are the only person carrying out this unique role, it is proposed that you be the only employee in the pool for selection for redundancy.

This is only a provisional decision and no final decision has yet been made.

We have therefore arranged a consultation meeting at the IET the week commencing 27 February 2023 at a day and time convenient for you.

You may bring a trade union representative or colleague to the meeting as your companion. If you wish to do so, please let me know the name of your companion as soon as possible.

The aim of the meeting is to give you a chance to discuss the proposed redundancy in more detail.

Issues for discussion may include:

- Why your position has been provisionally selected for redundancy.
- The selection pool.
- The terms on which any redundancy would take place.
- Possibilities for alternative employment within the company.”

83. On 24 February 2023, the claimant sent a message to Brett Riley on WhatsApp as follows:-

“I can come to Leatherhead on Monday or Tuesday for a chat, one to one. On a “without prejudice” basis (i.e. off the record and can’t be quoted). Ahead of redundancy meeting (which we can arrange for another day). Purpose would be to work out fair terms for me so that the company is not put at risk, I am not hurt, we (company and me) have an ongoing relationship and I can continue to support its growth, and, ideally, we (you and I) stay friends.”

84. The meeting was arranged for 28 February and held in a local pub in Leatherhead.

85. It is clear to me that at the meeting the redundancy was discussed as well as without prejudiced negotiations. In cross examination the claimant accepted that they discussed the financial position of the company and that Brett Riley told him that they had cash flow problems and that the financial position of the company was not robust.

86. Thereafter the parties entered into without prejudice correspondence.
87. On 15 March 2023, the claimant was sent a second consultation meeting letter. The reasons for the proposed redundancy were reiterated the aim was to discuss whether there were any alternatives to the claimant losing his job.
88. The meeting took place on 30 March 2023. Brett Riley, Jenni Riley, and the claimant were present.
89. In cross examination, the claimant accepted that the respondent's cash flow was discussed and he agreed it was possible that they discussed the fact that the respondent's sales were down and that the respondent was not hitting targets. He agreed that it may have been said to him that the respondent was making a loss. When he was asked if he agreed that the respondent's finances were not good, the claimant replied, "If Brett Riley said that I would accept it."
90. Again, it is clear to me that the meeting was a mixture of a discussion about the claimant's proposed redundancy as well as without prejudice conversations.
91. In a letter dated 5 June 2023, counsel acting on behalf of the claimant stated as follows:-
- "He [the claimant] was, however, provided with the February 2023 Finance Management Pack by Mr Riley on 30 March 2023 via email.
92. Following the meeting on 30 March 2023, the claimant sent an email seeking to exercise his share option. At 17.14 on 31 March 2023 Brett Riley replied:-
- "Thanks for the email, this is a little premature but we will deal with this later."
93. At 17.40 on 31 March 2023, the claimant was sent a notice of termination of employment letter. The claimant was given 12 weeks' notice to 24 June 2023.
94. Hence, the claimant was informed of the respondent's rationale for redundancy, reason for selecting his role, rationale for the pool and told that no suitable alternatives could be identified. Since part of the rationale was financial, in my judgment it is highly unlikely that there would have been any suitable alternative roles as the claimant would have been disinclined to accept a lesser salary.
95. I find that on the basis of how the claimant has cast his case as constructive unfair dismissal, it is not open to the claimant to challenge the genuineness of the redundancy. This is because had he done so, I would have expected much more evidence relevant to that issue to have been placed before me. For example, I have not seen the financial documents. In addition, the claimant is seeking to suggest that investor pressure led to him being dismissed due to investors expressing concerns about the claimant's contractual salary level, the accruing liability and the number of share options that had been granted to the claimant. That appears to be new and is not foreshadowed in the claimant's claim form or his witness statement.
96. In my judgment, the respondent would be prejudiced by allowing the claimant to, in effect, change his claim to one of unfair dismissal based on a sham

redundancy as, had that been in issue the respondent could and probably would have called more evidence on the pressures relating to finances and workload, and, possibly, investor involvement.

97. As it is, from the material placed before me, I find that there was a genuine redundancy situation. The claimant points to a reduction in contact and being “frozen out of work” from the autumn of 2022. However, that is commensurate with the requirements of the business for employees to carry out the work that the claimant was doing diminishing. Further, the claimant accepted the evidence as to the respondent’s financial position at the material time.
98. Having found that the redundancy situation was genuine, the legal position is that the claimant’s employment would have terminated on 24 June 2023. The claimant’s act of resigning on 10 May 2023 deprived him of his redundancy payment. The constructive dismissal claim is, subject to success, therefore confined to a basic award (which is calculated in exactly the same way as the claimant’s redundancy payment would have been) and loss of earnings between 10 May 2023 and 24 June 2023.
99. The claimant resigned on 10 May 2023. The letter of resignation gives the reason for resignation as follows:-

“Reasons for resignation (constructive dismissal)

1. I have still not been paid my due salary and, given your recent conduct towards me, it has now become clear that the company does not intend to make good the accumulated salary underpayment (see Appendix 1).
  2. The company failed to consult with me as required by its Redundancy Policy, including failing to hold at least one redundancy consultation meeting facilitating relevant representations (including means of avoiding redundancy and the selection criteria) and therefore also failed to consider representations.
  3. Further to our recent correspondence regarding the exercise of my share options, your blocking of my payment of the option exercise price (repeatedly refusing to provide me with bank account details and rejecting my posted cheque), and your refusal to issue the 670,000 ordinary shares due to me, it has now become clear that the company is resisting the valid exercise of my share option.
  4. Finally, your 28 April letter to me containing misleading, exaggerated, an/or incorrect assertions which were clearly intended to create grounds for sham disciplinary proceedings (including, per your letter, potential summary dismissal for gross misconduct) and a further attempt to deny remuneration due to me. You continued this approach in your 9 May email to me whilst I was signed off for work-related stress caused by your earlier conduct towards me.”
100. In light of my findings on the claimant’s contract of employment, whether or not the failure to pay him his entire salary was a breach of contract is dependent upon whether the trigger point for the payment of arrears had occurred. There will be further submissions on this point. However, given that the claimant had agreed to receive less on an ongoing basis and had made no complaints about receiving less up until the point of resignation, even if it was a breach of contract I find that it was not sufficiently serious to constitute a fundamental breach of

contract.

101. I find that the respondent did not fail to consult with the claimant as required by the redundancy policy. I find that the two meetings on 28 February and 30 March 2023 both concerned the redundancy and without prejudice negotiations. Whilst the mixing of the two may not have been ideal, it suited both parties. I find that the behaviour was not calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. I find therefore that this was not a fundamental breach of contract.

102. The respondent did not block the claimant from exercising his share options as the Share Option Agreement was with a different legal entity, namely Itarmi Holdco Limited. As such, it cannot constitute a breach of contract by the respondent.

103. The letter dated 28 April 2023 from Jenni Riley to the claimant states:-

“Your employment is therefor due to come to an end on 24 June 2023. You remain employed by Itarmi UK Limited (the “Company”) until that date. As explained in the letter of 31 March 2023, you are required to continue working as normal until your final day and you were advised of particular projects you were required to complete.

It has come to our attention that during your normal working hours you have not been active online, responding to emails, participating in scheduled meetings, and you have not been available to a number of individuals within the business despite direct contact. I am therefore writing to remind you that you have not been released for [sic] the requirement to undertake the duties commensurate with your role simply because you are under notice.”

104. The letter then goes on to warn that should it transpire that the claimant had not been carrying out his contractual hours then the company may commence disciplinary proceedings against him.

105. The respondent has produced a “claimant activity log of user logins from 1 Jan 2023-26 May 2023 which shows a number of periods when there was no log on activity. One period for example was between 3 April and 13 April, i.e. seven working days not online.

106. In addition, there is an email dated 11 April 2023 from Brett Riley to the claimant stating:-

“Faraz has been trying to reach you to get some legal text written up for the App, would you be able to respond this morning please so that we can get it published and authorised in the App Store.”

107. Further, there is an email from Brett Riley to the claimant on 24 April 2023 which states:-

“Are you available for a call on Wednesday.”

108. There is a follow up on 25 April 2023 which states:-

“I haven’t had a response from you on this.”

109. Further, on 25 April 2023, Andrew Gadsby sent an email to Brett Riley referencing an email from 19 April to the claimant asking him to take urgent action stating:-

“Has Sanjay responded to this? If not, is he in breach of his notice period – and should we keep paying him for another two months if he is not working?”

110. I find that there were legitimate management concerns about the claimant’s conduct and the extent to which he was working during his notice period. I find that the 28 April 2023 letter did not contain misleading, exaggerated and/or incorrect assertions. I find that the letter was raising legitimate concerns.

111. The 9 May 2023 email from Jenni Riley to the claimant raised concerns that the claimant had failed to follow the company procedures as regards the notification of sickness absence. Again, I find that there were legitimate management concerns about the claimant’s compliance. As such, I find that this was not a fundamental breach of the claimant’s contract of employment.

112. I find that neither individually nor collectively the claimant’s reasons for resignation did not constitute a fundamental breach of the claimant’s contract of employment by breaching the implied term of mutual trust and confidence.

113. Consequently, the claimant’s constructive unfair dismissal claim fails.

Approved by:  
Employment Judge Alliott

Date: 30 March 2026

JUDGMENT SENT TO THE PARTIES ON  
31 March 2026

FOR THE TRIBUNAL OFFICE

## **Notes**

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

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

[www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/](http://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/)