



EMPLOYMENT TRIBUNALS

Claimant: Mrs D Pointing
Respondent: DSP Photography Ltd
Heard at: Cardiff (by video) **On:** 13 - 17 April 2026
Before: Employment Judge R Brace

Representation:

Claimant: In person
Respondent: Mr D Flood (of counsel)

JUDGMENT

Unfair Dismissal

The Claimant was not constructively dismissed. The complaint of unfair dismissal is not well-founded and is dismissed.

Time limit: Wages

The complaints of unauthorised deduction from wages were presented within the applicable time limits and therefore proceed.

Wages

The complaints of unauthorised deductions from wages were not well-founded and are dismissed.

REASONS

1. At the end of the hearing when a lengthy oral decision was provided to the parties, the Claimant confirmed that she wished to request written reasons and she did not wish to reflect and make an application within 14 days.
2. In those circumstances these reasons are, in terms of findings of fact and conclusions, largely the oral judgment given to the parties at the conclusion of the 5 day hearing.

Introduction

3. The claim is on the question of whether the Claimant was constructively dismissed by the Respondent and, if the Claimant was dismissed, the fairness of the dismissal and whether the Respondent has made a number of unauthorised deductions from wages. There are jurisdictional issues in relation to time limits on the latter complaints.

The hearing

4. The Claimant represented herself and the Respondent was represented by Counsel.
5. I had before me three bundles.
 - a. A Pleadings Bundle (“Pleadings Bundle”) of some 168 pages. References to pages in that Pleadings Bundle are denoted by [P]. This contained the Claimant’s updated Schedule of Loss [P163];
 - b. A Respondent bundle (“Respondent Bundle”) of some 313 pages. References to pages in that Respondent Bundle are denoted by [R]; and
 - c. A Claimant bundle (“Claimant Bundle”) of some 224 pages. References to pages in that Respondent Bundle are denoted by [C].
6. An additional document was produced by the Claimant during the hearing and that was admitted by consent [R314/325].
7. I had a Respondent chronology, as ordered by Judge Jenkins at the case management hearing on 24 September 2025 and, after some discussion over the course of the hearing I finally had a copy of what the Claimant told me were her Claimant’s comments on the chronology that she had provided to the Respondent on 6 April 2026. On review, it was not but rather an entirely separate index of key documents that the Claimant considered to be relevant from the Claimant Bundle.
8. I had written statements from the Claimant (some 15 pages and the Schedule of Loss) and statements on behalf of the Respondent from:
 - a. Ian Perry, Managing Director; and

- b. Mrs Laura Barrie, an employee of the Respondent.
9. The written statement from Laura Barrie that I had originally was incomplete in that some sections had only been printed or scanned in part and a full copy of Ms Barrie's witness statement was provided to the Tribunal and the Claimant just prior to the commencement of the hearing. With the Claimant's consent, the full statement was adduced as evidence and relied on by Ms Barrie.
10. All witnesses were asked questions by way of cross examination and additional questions from the Tribunal and the Claimant was permitted to clarify any answers she had given and the Respondent, re-examination. One of the witnesses did not have a complete copy of one of the Bundles and an adjournments were given to resolve such administration issues. Whilst a day had been time-tabled for the Claimant to cross-examine the two Respondent witnesses, the Claimant was afforded in excess of that and close to a day and a half to question the two individuals.
11. Prior to hearing the live evidence, I raised concerns regarding three issues:
 - a. Allegations from Mr Perry against the Claimant of 'hacking'. It was explained that the Claimant had in her possession emails that had been exchanged between staff and that the Claimant should not have been privy to. The Claimant explained that she received them on an anonymous basis whilst she was on holiday. Some time was spent in cross-examination by both parties regarding this issue;
 - b. A number of 'transcripts' were included in the Claimant Bundle and the Claimant admitted that these recordings had been covert and the transcripts had been prepared by her, that in some instances she had prepared a note of some, although not all of what had been contained on the particular recording and accepted that she had, in some instances, included subjective commentary. She confirmed she had provided the audio recordings to the Respondent. These formed part of the Claimant evidence but the Respondent did not agree the content; and
 - c. Potential evidence of a 'without prejudice' nature was contained in both Mr Perry's statement and in the Respondent's Bundle. After some discussion and the Claimant confirming that she wished to question Mr Perry on the nature of the potentially without prejudice meeting, both parties consented to waive any privilege if any was said to exist.
12. Finally, within the Claimant's statement she had included matters relating to furlough suggesting that she continued to work from September 2020 yet the Respondent also claimed from the Government's Job Retention Scheme i.e. furlough scheme. During the hearing as the Claimant wished to ask questions in relation to this, indicating that it was relevant to matters of credibility generally, it was agreed that a warning against self-incrimination should be given to Mr Perry. This was undertaken before questioning on this aspect of the Claimant's evidence.

The issues

13. I had an agreed list of issues that had been prepared by Judge Cawthray at the last preliminary hearing and which the Claimant confirmed that she agreed with (Appendix 1), the Claimant relying on some 19 separate acts as amounting to a breach of trust and confidence entitling her resign. On the morning of the first day some time was spent with the Claimant discussing the acts/omissions that the Claimant relied upon as forming the breakdown in trust and confidence.
14. This was particularly important as the Claimant's witness statement raised a number of additional matters that were not expressly reflected within the list of issues, including that discovering 'information' at the end of July 2024 was the 'final straw' for the Claimant, the Claimant confirming as part of this case management discussion that she had received 'evidence' in July 2024 namely a bundle of copy emails that had been anonymously delivered to her home by post whilst she had been out of the country on holiday, a delivery that she says had been opened by her house-sitter and who she later described in evidence as her daughter in law / her son's girlfriend, and which contained an email in which '*we would like to find a way to get her out*' was stated, referring to the Claimant.
15. The Claimant confirmed that the unauthorised deduction from wages claim was set out in her amended Schedule of Loss [P163] and after discussion it was confirmed that the Claimant would be entitled to rely on the content of that Schedule of Loss by way of written statement evidence. Additional claims for unlawful deduction from wages were evidence in the Claimant's updated Schedule of Loss [163]. These included claims for:
 - a. Unequal Pay and Discriminatory Bonus Disparity - £2,500
 - b. A sum of £1,524,50 and £835
 - c. £15,167.00 for withheld commissions (2018-2021)
16. It was agreed that such sums were not included in the original claim (or any list of issues), the Claimant was reminded that she had not brought such complaints and no application to amend had been made by the Claimant and therefore unless that arose, these would not be considered by the Tribunal. The Claimant accepted that this was the case.
17. The Claimant is seeking compensation for unfair dismissal and for the unauthorised deduction from wages and it was agreed that liability would be addressed in the first instance.

Findings of Fact

18. Findings of fact have been made on the balance of probabilities and on the evidence before me.
19. The Respondent is limited company that by the end of the Claimant's employment employed approximately 16 people. It is a company that offers photography services to schools and has a network of and employs photographers and sales representatives who attend schools and photograph students, individual portraits and class photographs.

20. It was established in 2001 by Ian Perry, the Respondent's Managing Director. The Respondent's registered office, and where administration of the Respondent's business is carried out, is in Gloucestershire.
21. The Claimant had been employed since 30 September 2013, working from home as an External Sales Executive. Her main duties involved contacting schools within her specific geographical sales area with a view to selling photography packages to schools when a professional photographer would then attend the school at a later date to take class/individual student photographs.
22. The Respondent company was very small at the commencement of the Claimant's employment, with only the Claimant and Ian Perry involved in sales. Others later joined, including the Claimant's partner, Sarah Webb in 2023 and by 2024, the Respondent employed 15 staff including a Head of Logistics and Operations, an Administration Team Leader (with three staff reporting to her), three sales representatives (including the Claimant) and around digital/graphic operatives [C159].
23. The Claimant was employed on terms and conditions set out in an offer letter dated 11 September 2013 [R4]. She was paid a basic salary and commission, which at that time was a 20p commission per head booked and if she met her termly sales targets, she would receive a £500 bonus per term. In addition, if she met all three term sales targets she would receive a further £500 bonus. She had agreed termly sales targets of 7,000 'heads' i.e. a portrait or each class photograph such that the Claimant's remuneration package included, basic salary, commission based on sales and bonuses based on reaching targets, targets which the Claimant confirmed she had reached in all terms save two terms.
24. This has been a challenging case due to the multiple bundles, the lack of a clear agreed chronology and a lack of clarity and understanding by the Respondent as to how the Claimant came to be in possession of a large number of emails that had not been disclosed to her by the Respondent, either as part of the standard disclosure exercise or as a result of the Claimant's subject access request or that she would have had access to during her employment.
25. Indeed, counsel for the Respondent tells me that whilst they had been aware since the end of August 2024 that the Claimant did have documents of such a nature until the Claimant confirmed to me at the outset of this final hearing that she had received them by way of anonymous delivery in July 2024, they were not aware of the specifics of how she had come into such possession.
26. I would say at the outset that on the evidence before me that I find that the Claimant likely received, by way of anonymous delivery and at some point in July 2024, a bundle of papers that contained a number of internal documents and that there was no evidence before me to make any positive finding that the Claimant had any part in hacking into the Respondent's IT system to obtain such information.
27. In these findings of fact, I have not followed the order of the list of issues, which is not on a chronological basis, but have taken the matters which the Claimant

asserts gave rise to a breakdown in trust in confidence on a chronological basis as far as I am able to, starting with the Claimant's complaint that she was required to train new sales representatives which appeared to me to be one of the earliest matters that are relevant to my consideration.

Require the Claimant to train a new sales representative (xvii)

28. In the February of 2022, the Claimant says she had been asked to train a new sales representative which she says she trained over a six-week period, the Claimant confirming in live evidence that the training of the sales representative in 2018 was by way of background only and did not form part of her claim. It did indicate to me however that she had done training previously for the Respondent although no evidence was before me as to what had been agreed at that point in terms of compensation.
29. The Claimant calculated that as a result of this responsibility, she had suffered a £900 loss in commission due to not being able to sell to schools over that early 2022 period. As part of both her constructive dismissal claim she claims that she asked in April and July 2022 if she could be paid this loss if she was required to train and that Ian Perry and Laura Barrie ignored her. She also claims £900 as part of her unauthorised deduction from wages claim.
30. The Claimant had not given any witness statement evidence to support this claim, whether as part of the constructive dismissal or her deductions complaint. It is an agreed fact however that she was asked to train a new sales person 2022 and the Claimant was questioned on this matter giving live evidence. Emails were also contained in both the Claimant and Respondent Bundles that related to the issue. Findings of fact have been made on that evidence together with the Respondent evidence.
31. The Claimant had initially indicated to Ian Perry in April of that year that she had spent a lot of time with the new sales rep and asked that he look at her targets [R19]. By end of term on 18 July 2022, she indicated to him that whilst she would claim her target bonus, but she was not claiming for the loss of commission of 4,500 heads for the time she had been, what she termed, training the sales representative [C15].
32. It appears that in that context the Claimant again raised on 30 July 2022 that she was '*offering [him] to put right the lost commission of 4,500 heads which equates to £900 loss....training Emma..*' [C16].
33. It was Ian Perry's evidence that he agreed and paid the bonus payments but not the loss of commission which the Claimant had asserted amounted to £900 and that by this time the Claimant was also asked and did train another sales representative. His evidence was that the 'training' in 2022 was little more than a simple shadowing and in his view would not have impacted on the Claimant's commission, that the Claimant worked from home one day a week when she would not have been earning commission and could have and should have reasonably used that day to train the new sales representative on any administration matters which would then not have impacted the Claimant in relation to earning commission.

34. In light of the contemporaneous email evidence and in that context, I considered Ian Perry's evidence to be likely and credible, and found on balance of probabilities that that they had come to an agreement for the payment only of the bonus and not the loss of commission which is why the Claimant then agreed to train the new Sales representative.

Not provide a pay rise in line with inflation (xi)

35. Pay issues arise again in that the Claimant says that Ian Perry told her in an email in 2018 that she would have an inflation pay rise every year. She claims that she realised during her pay discussions in late 2022, and what she calls her within her statement evidence her 2022 Fair Pay request that 'triggered the campaign to force [her] exit'¹, that she had not received an inflation pay rise each year. She asserts that the Respondent withheld pay to create a hostile environment for her.
36. It is an agreed fact that on 9 May 2018, Ian Perry emailed the Respondent's accountant, asking the accountant with immediate effect that the Claimant was to receive an annual inflation pay rise in her October pay. The Claimant was copied in. The accountant was also instructed to action that each year so that Mr Perry did not forget and the Claimant didn't 'have to ask' for a review each year [R9].
37. At that time inflation was around 2%. In subsequent years, the Claimant's pay was as follows:
- a. In 2018, the Claimant was given a pay rise of 2.5% i.e. above 2% inflation;
 - b. In 2019, the Claimant was given a pay rise of 4% i.e. above 1.4% inflation;
 - c. In 2020, the Claimant was given no pay rise as a result of Covid-19, which the Claimant accepts was a difficult year;
 - d. In 2021, the Claimant was given an effective pay rise of 20.98% i.e. above 4.8% inflation;
38. As part of the 2022 pay discussions it appears that the Claimant was not initially offered an increase in her pay and that January 2023, the Claimant had still not been offered an increase in salary but an increase in her commission rates of:
- a. 30p per portrait head (up from 20p per head); and
 - b. 25p per head for class portraits (up from 5p per head).
39. Targets were again 7,000 heads per term/21,000 heads per year [C19]. Whilst the Claimant has asserted that the Respondent began unilaterally raising her targets, she also confirmed that she has since consistently booked in excess of the 21,000 per year and whilst this was not within the list of issues, there was no evidence to find that this had arisen.

¹ CWS Section 1

40. As part of the live evidence, the Claimant also disputed that she had been given a pay rise of 4% or £1,000 for 2022. In an email from the Claimant to Laura Barrie of 20 September 2023 within the Claimant Bundle however, the Claimant states that she '*accepted a pay rise of £1,000 that was well below the annual inflation rate*' [C97].
41. I therefore found that the Claimant had accepted an increase in her pay of £1,000 at some point after September 2022, howsoever it was calculated, a pay rise that was below the rate of inflation at that time which the parties state was between 9.2% (Respondent) and 10% (Claimant), albeit I found it likely that the Claimant did not receive that until 2023. That differs from the evidence presented by Ian Perry (§62 IPWS).
42. Either way, I found that the Claimant did not receive a pay rise in line with inflation in 2022/2023.

Present a new employment contract in February 2023 (xiii)

43. At the same time as the Claimant was discussing her 2022 pay review, two other issues were arising.
- a. The Claimant's work colleague, Ian Moir, Field Sales representative realised that his basic salary was significantly less than the Claimant's, eventually resulting in a challenge from him under equal pay provisions; and
 - b. In February 2023, the Claimant was presented with a new employment contract which the Claimant claims differed to her colleagues and was compiled specifically for her.
44. I accepted the Claimant's evidence, supported by a number of documents (including her own transcript of a meeting that she had covertly taped between her and Ian Perry of March 2023 and the Claimant's counter-proposal following her September 2023 Grievance [R78]) that the presentation of the new contract was more likely to be 2023 and not 2024 as had been evidenced by Ian Perry.
45. Restrictive covenants and garden leave clauses within employment contracts, particularly those for sales staff, are commonplace and I accept would reasonably be regarded as best practice, as evidenced by Laura Barrie. I also accepted the Respondent's evidence that the Claimant was just the first of the sales staff to receive a new updated contract. Nothing in either the fact that two drafts may have been sent to the Claimant, that the Claimant's targets were incorrect within those drafts or that another new sales representative had a contract without such restrictions, persuaded me otherwise.
46. The Claimant's notes of her covert recording of her conversation with Ian Perry on 8 March 2023 [C72] indicated at that time the Claimant expressing her view that the new terms looked like a plan to rid of her and that Ian Perry denied that, explaining the rationale for the new terms, a rationale that was repeated in live evidence in this hearing and which I accepted.

47. Later that year/beginning of 2024 and following his own salary negotiations and resolution of concerns regarding equality of pay, Ian Moir was also sent and subsequently accepted the new updated terms and received a substantial increase in pay to bring him line with that of the Claimant.
48. On that basis I was not persuaded that such terms were unique to the Claimant accepting the Respondent's evidence that she was just the first of the sales representatives to have such a contract and not the only one.
49. In September 2023, the Claimant's pay was again reviewed and it was confirmed that a pay rise of 3.5% would commence from September [C97]. The Claimant reminded Ian Perry that she had accepted a pay rise of only £1,000 the previous year, which had been below the rate of inflation. Ian Perry wrote to the Claimant confirming that he understood she was upset indicating that the Respondent could not afford an inflationary pay rise indicating that all staff over 5 years were getting a 3.5% increase [C99].
50. The Respondents were concerned that the Claimant might resign, something it appears that the Claimant had threatened previously [C98], and HR advice was sought on whether the Claimant would be able to bring a constructive dismissal complaint on the back of the 2018 email and inflationary increase commitment [C102]. An increase of 4% was considered as a goodwill gesture to the Claimant. [C100].
51. On 21 September 2023, Ian Perry wrote to the Claimant indicating that the Respondent could not afford inflationary increases and that all staff with over 5 years' service received a 3.5% increase.
52. I was taken to the email exchange between Laura Barrie and the Respondent's HR adviser which reflected a view in September 2023 that the Respondent was finding the Claimant difficult and by that point the Respondent was considering whether it would be in the Respondent's interest to exit the Claimant. Some advice was given from the HR adviser on whether there was at that time a potential redundancy situation [C102/C103]. Despite the evidence from Laura Barrie that this was just her deliberation and not a wider discussion with Ian Perry I did find that it was more likely than not a discussion that she would have had at that time with him as reflected in the content of that email.
53. The Claimant has referred to his contact about the employment contract as high pressure tactics and persistent 'chasing' messages. From my review of the documentary evidence I was taken to by the Claimant in her witness statement, I did not find that this had been the case [C34-36]. Rather the Respondent was reasonably contacting the Claimant for a response,
54. I did not find that there was any more evidence at that time to persuade me to find that this was a formed plan at that stage. I found that had the Respondent a strategy to remove the Claimant they would have done so and put it into place at that point although I accept that it was likely that the relationship they had with the Claimant was being questioned. They did not and no steps were taken to remove the Claimant.

55. Indeed, on 24 September 2023, the Claimant received confirmation that she would have a salary increase of 6.8%, with Ian Perry confirming that he would not take a pay-rise to accommodate that and reminding her of the financial pressures that were being faced by the Respondent [C103].
56. In reality, it appears that this was not eventually correct as by May 2024 Ian Moir had received a significant pay increase in excess of that % to bring him in line with the Claimant and had signed a new contract with restrictive covenants,.
57. The Claimant sought advice on the target increases and the new contract as she considered that this was indicative of a strategy to engineer her exit. The Respondent was sought advice from its HR advisers on the 2018 email regarding inflationary pay increases indicating that the Claimant was difficult in the pay discussions [C96].

Exclude the Claimant from the 'Google operating system' (viii)

58. Turning back somewhat in time to the beginning of 2023, it is an agreed fact that the Respondent implemented a new Google booking system that Field Sales were unable to access for around a three month period from around January to April 2023.
59. I further found however, accepting the evidence from both Ian Perry and Laura Barrie, that this did not stop the Field Sales representatives, including the Claimant, from undertaking their sales roles and that they were still able to book schools; that they were only limited from viewing others schools not in their sales areas which would not have impacted on the Claimant's role or ability to work.
60. I was not persuaded that the Claimant had proven that this had resulted in her losing commission as asserted.

Fail to investigate the Claimants grievances on the 8th of March 2023 (xxvi)

61. By March 2023, the Claimant was raising concerns to Ian Perry in March 2023, which is now referred to as her first grievance, regarding samples, exclusion from the Respondent's systems and her commission which was dealt with by Ian Perry on 9 March 2023. In response she claims that Ian Perry promised to alleviate staff pressures. The Claimant's complaints related to the failure to investigate the Claimant's grievances were not clarified in evidence and indeed what evidence she had given appeared to relate to failure to alleviate staff pressures and the uploading of her September 2023 grievance and not the March 2023.
62. I am unable to make any positive findings in relation that that allegation which is not proven as a result.

Fail to investigate the Claimants grievances on the 24th of September 2023 (xxvi)

63. On 24 September 2023, shortly after the Claimant received confirmation that she would have a salary increase of 6.8% and indeed later that same day having taken legal advice, the Claimant lodged a grievance [C104]. Again, the Respondent took advice was taken from HR [C105].

64. The Claimant has claimed that instead of resolving her concerns, the Respondent used the grievance as a delay conduct suggesting that the Respondent's conduct was 'predatory' having first tried to use her salary to coerce her to sign restrictive covenants and then rebranded the increase as a 'personal sacrifice'. Whilst I accept that the Respondent did use the salary increase as consideration for the Claimant to enter into new terms, and Ian Perry did indicate to the Claimant that her salary increase involved a financial sacrifice for him, I did not find that this reflected any wider strategy to exit the Claimant. Insofar as that took place prior to the Claimant filing her grievance, I fail to see how subsequently investigating and dealing with the grievance was a delaying tactic.
65. Laura Barrie undertook some investigation into the grievances contacting other sales representatives including her concerns that she was not permitted to call the administration office, that she had been blocked from the Google calendar [C107/108] and that admin had directly checked with schools that the commission claims were true
66. As part of the grievance management, Margy Clark, Administration Team Leader was asked to ensure scans and emails in relation to the Claimant's grievance were printed and then removed the Respondent's IT system [C112]. This was undertaken.
67. Whilst Ian Perry was questioned by the Claimant regarding the upload into the Respondent's WeTransfer system of the transcript of the Claimant's second grievance meeting, his evidence was that no third parties save for senior managers Margy Clark and Jim Daniel had access to such documentation and that other staff and third parties such as photographers were unable to access such documentation and any documentation that had been printed and scanned were immediately deleted after scanning. The Claimant was unable to persuade me that she had any reliable evidence to contradict that and I found it likely that no additional staff or freelancers had or could have access to such documents.
68. On 8 November 2023 the Claimant received a written outcome to her grievance including confirmation as to the links between administration and sales, that an additional administration person would be recruited but that sales team should not get involved in customer queries and that moving forward if a school should contact a sales representative, they should contact the office. Separately, concerns regarding samples was addressed with actions outlined [C120/121].
69. The Claimant responded confirming that she had taken advice on constructive dismissal and proposed a resolution that referenced her belief that at some point the Respondent would make her redundant, confirming that she was prepared to sign the new contact terms if her notice was increased to an 18 month notice period [C123]. This was declined and the Claimant did not sign the new terms and conditions. The Respondent was again concerned that the Claimant was suggesting constructive dismissal and queried the grounds on which she could bring such a complaint.
70. It appears that some within the Respondent continued to find the Claimant difficult with the Respondent also receiving concerns regarding the Claimant's

communications with schools with my attention being taken to one particular complaint from Margy Clark complaining [C115]. The emails disclosed reflected to me little more than effort being taken to resolve the relationship issues with the Claimant but at the same time demonstrating concern that the Claimant was intending to leave [C123/C33/C134].

Fail to alleviate staff pressures (i)

71. The Claimant asserts that on 13 October 2023 Ian Perry told the Claimant he would employ more staff to alleviate pressures but this did not happen. Ian Perry and Laura Barrie's evidence was that the Respondent employed a full time administrative to replace the part-time administrator with overtime obligations. I had no real evidence from the Claimant to make any positive findings to support her allegation which was not proven.

Fail to provide samples and marketing information and documents in a timely manner (v)

72. The Claimant says she ordered samples and materials in July 2023 but they had not arrived by mid-September 2023 and that after chasing by the Claimant, the materials provided were inaccurate. The Claimant says in December 2023 she ordered samples and materials, but they did not arrive ready for the start of January 2024.
73. It is accepted by the Respondent that there is evidence of samples being delivered later and inaccurate. The Respondent's evidence was that when Scott Woodhouse was originally employed there had been a lack of understanding on his part of the importance of such products and that this caused Ian Perry concern but that this was rectified and resolved. Further it was clarified that each of the two delays was over a school holiday period when the Claimant would not have been attending schools. I accepted that.
74. Further the Claimant alleges that her efforts to correct were met with hostility and incompetence from staff relying on emails within the Claimant Bundle [C78, 90-94]. However having considered those documents, I do not consider that this is cogent evidence supporting that allegation and do not find it proven that the Claimant's efforts were met with hostility and incompetence as alleged.

Failures in communication (iv)

75. The Claimant says she was not given information about pricing from pre-Covid until end of employment and that she was not given information about changes to ordering systems from September 2020 until September 2021. She says in July 2022 she was instructed by Ian Perry not to contact the office and that she would pass queries from a school to the office but was not kept updated on matters from December 2022 until end of employment; that the Respondent sent an email to a school that said they were not to communicate with the Claimant in June 2024.
76. The Claimant was not questioned on her evidence regarding this but I was not persuaded on the evidence that was before me that this amounted to deceptive

pricing or part of a 'bad faith campaign' as asserted by the Claimant. Rather I preferred the evidence from Ian Perry as more likely and credible that pricing was communicated to the Claimant by provision to her of the Respondent's sales literature and that ordering system was known to the Claimant who understood it as a simple as reflected in the Claimant's transcript of her own recording of her April 2024 appraisal [C149/169].

77. Further, I was not persuaded by the Claimant's evidence that she had been prohibited from calling the office, accepting that she had been asked to use email as much as possible instead of the main phone line to keep that free for customers.

Not provide a new laptop charger (xii)

78. In December 2023, the Claimant emailed Ian Perry complaining that the battery in her laptop was not keeping charge and shutting down early [C134]. She claims that when this was raised with Ian Perry he told the Claimant to ask Jim Daniel to source her one but that this was not processed [R180]. In her witness statement evidence she asserts that this was refused on 'false grounds' of affordability suggestive of a calculated move to hinder her performance creating an unfair disadvantage for her.

79. It was also Laura Barrie's evidence, which I accepted, that she had told the Claimant that as she had a credit card she could purchase one. This was not challenged and no evidence was provided by the Claimant as to why she had not sought to source her own and charge the company or why she had not followed up on her request indicating to me that this was not a significant issue. When the Claimant raised the issue again within her appraisal in May 2024 her request was processed.

Fail to resolve administrative issues (ii)

80. In relation to the allegation that from December 2022 to the end of July 2024 the Claimant was asked not to deal with administrative issues, but staff would send the tasks to the Claimant and she would not be able to deal with them (giving an example of not having price details) I was not persuaded that there was any cogent or credible evidence from the Claimant to support this complaint, the Claimant only asserting that administration checked her school bookings in advance.
81. Ian Perry' evidence was that the Respondent was seeking to separate to Sales and Administration and I accepted his evidence that there was some friction between he and the Claimant that the Claimant was struggling to accept that administration should be responsible.
82. Whilst I accepted that in any undertaking mistakes can arise, nothing that was presented in evidence could lead me to conclude that there were administration issues to an extent that I could make positive findings that there had been such a failure to the extent that this caused professional embarrassment for the Claimant.

Employ incompetent staff to the extent it affected the Claimants duties (iii)

83. I was not persuaded that there was any cogent or reliable evidence that the Respondent employed incompetent staff, as asserted by the Claimant. I deal with the failure to order samples separately, the Claimant giving no additional witness statement evidence that I considered could be said to reasonably support this statement.
84. Perpetuate a toxic work environment (vi)
85. The Claimant complains that from December 2022 until the end of her employment she was spoken to dismissively, and that this conduct worsened from October 2023, referring to it as a toxic environment (vi).
86. Whilst the Claimant has alleged that Sarah Webb, Margy Clark and Laurie Barry sent emails that she considered were not nice in tone or content and that staff would raise matters about the Claimant that she says she had not done wrong, I was not taken to any that had been sent to the Claimant. Rather, I was taken to screenshots of private emails that had been sent to third parties which contained references to the Claimant.
87. The emails relied on therefore were not emails that had been sent to or copied to the Claimant, or emails intended that the Claimant would be aware of, but were emails or private Whatsapp exchanges between management [C163] and/or their professional advisers that related to the Claimant and that the Claimant had been given anonymously and which she saw for the first time in July 2024. That these emails exist is not in dispute and included:
- a. The email of 22 February 2022 from Laura Barrie to the HR adviser, in the context of the issuing of a new contract to the Claimant that she was ‘*a pain*’ [32];
 - b. The email of 22 September 2023, in which in the context of the September 2023 pay discussions, where Laura Barrie sought advice on finding ‘*a way to get her out*’ and that she was not a ‘*team player*’ or ‘*golden goose*’ [C102];
 - c. The email of 2 May 2023 from Laura Barrie to the Respondent’s accountant, in which Laura Barrie referred to the Claimant as ‘*hard work*’, which related to the Claimant chasing her P11D nearly two months before it was due [83]; and
 - d. The grievance meeting held on 13 October 2024, was referred to as ‘*ironic*’ by Laura Barrie in an email of 7 October 2023 sent to the HR adviser [C114]
88. The evidence relied on by the Claimant to support the allegation that she had to work in a toxic environment were much wider than the content of such emails or complaints from staff however and was spread throughout various parts of her written statement evidence and included:

- a. What the Claimant considered were contradictory approaches between the positive appraisal she had received from Ian Perry in her grievance meeting of October 2023 when she was told she was a '*valued member*' of the team, her appraisal in May 2024 when he called her '*brilliant*' and the Thank You card she had been sent [C177] and what she considered were active attempts to ascertain the best course of action to remove her which she believed was reflected in:
 - a. the internal communication from the 22 September 2022 [C102], nearly two years prior to her seeing such email communications; and
 - b. the email from Laura Barrie [C179] regarding concerns regarding the Claimant's conduct and how to potentially manage that, likely through a disciplinary.
 - b. the assistance that the Respondent sought from the Claimant on quantifying her role in response to an equal pay challenge from Ian Moir, further relying on contemporaneous email exchanges regarding that exercise [C151-C162], an email of 20 March 2024 from Laura Barrie regarding the job descriptions in which she referred to the Claimant as a '*pain in the ass*'; [C154]
89. However the Claimant relies not on seeing and reading such evidence as the reason why resigned, but as evidencing that there was a strategy to remove her and/or that the emails established or supported a finding that the environment in which the Claimant worked was difficult or toxic. I did not make that finding.
90. Rather, on considering the contemporaneous emails and the evidence from both Ian Perry and Laura Barrie, I concluded that Respondent management, including Ian Perry and Laura Barrie had found the Claimant to be a difficult person to work with particularly during pay discussions and, as the business grew and systems had changed the Claimant had been unwilling to adapt.
91. I found that this was likely the root of the somewhat derogatory comments at times made by Laura Barrie in her communications with professional advisers, and not evidence of a wider toxic environment. Further, that other staff had found her behaviour challenging and critical generally, to the extent that Laura Barrie considered that it needed to be proactively dealt with, albeit that I did find that Ian Perry chose not to address this conduct at the Claimant's appraisal.
92. Contemporaneous documentation supported a finding that staff found the Claimant difficult, and not just the evidence from Laura Barrie or the one concern raised by Margy Clark in October 2023 (which the Claimant has suggested was in response to her grievance,) but also Whatsapp exchanges which indicated that staff were regularly upset from as early as 2021 and that Ian Perry had previously asked the Claimant to be kinder and that he needed to have staff have a good relationship.
93. There were clearly email exchanges regarding concerns held about the Claimant's conduct around this time as by the end of June 2024, Laura Barrie

was looking to manage HR more generally across all staff and specifically in relation to the Claimant's conduct as further issues arose regarding the Claimant's behaviour with staff complaining that she showed no respect and her condescending tone. Ian Perry gave evidence that he did not take action against the Claimant at this time despite those concerns and had chosen not to raise it at the Claimant's appraisal.

94. The Claimant has sought to rely on an excerpt of a photograph of one sentence in an email referencing '*culling the dead wood*' as a reference to removing her. It was concerning that the whole image was not included only that extract in that document and gave no indication of who it was sent from or to or indeed what it related to. Rather I considered it likely that it was wholly irrelevant accepting Ian Perry's evidence that the phrase '*dead wood*' they widely used to reference schools that did not make them money.
95. I did not make any positive findings that such evidence demonstrated either that the Claimant worked in a toxic environment and was spoken to dismissively or that there was a wider campaign or strategy to remove the Claimant.
96. Have other staff check booking information (ix)
97. The Claimant claims she put booking information on the system and closer to the school's appointment time, the booking would be confirmed; that from January 2023 the administration staff started contacting the schools to check the bookings and roll numbers for the school she had made and that this continued until the end of her employment. She gave witness statement evidence that administration began 'double checking' with schools, a practice that had never previously been required and schools had queried that.
98. This appears not to be in dispute as the Respondent evidence was that this had been a routine administration task since 2022 for all Sales. I had no evidence to persuade me to the contrary and found that this was a routine administration task.

Fail to declare new bookings from schools (xvi) / Fail to pay correct commission on sales (xviii)
99. The Claimant claims that from January 2023 until end of employment the administration team put new bookings on a new system did not tell her. She relies on a document that she has created for the purposes of this information to support this allegation and no contemporaneous documentation [C213]. The Claimant says the Respondent withheld information about bookings which meant the Claimant could not meet her targets in July 2024.
100. Ian Perry gave evidence, which related to a number of ad hoc commission queries that the Claimant had raised over the period that the Claimant sent her commission claims and if she had been aware of an issue she could have claimed for it and that he had never queried this until after her resignation.
101. I was not persuaded that a document that the Claimant had created in the run up to the final hearing in which she asserted that she was owed commission was

credible evidence on which to base any positive finding that the Respondent had failed to declare new bookings.

102. I had little to no evidence from the Claimant to make positive findings of fact that the Respondent had withheld information about bookings meaning that the Claimant could not reach her targets. The only evidence was a spreadsheet that the Claimant had created for the purposes of litigation and which was unsupported by any evidence from the Claimant.
103. Further, I was unable to find that there had been any shortfall in the commission and/or bonuses that were due to be paid to the Claimant in respect of the Summer 2024 Term on the same basis for the purposes of the unauthorised deduction from wages claim. On the evidence before me I was not satisfied that I could make any positive findings that there had been such a failure.

Question the mileage forms on the 17th January 2024 (x)

104. It is admitted that Ian Perry questioned the Claimant about her mileage forms submitted on 17 January 2024 and that he had queried a 300-mile visit the Claimant had made to Gloucester concerned that an extra 100 miles appeared to have been claimed.
105. The Claimant asserts that this was aggressive and a sudden demand for 'proof' that was irrelevant. Ian Perry's evidence was that this was the only time in the 10 years' of her employment that he had queried her mileage as it was outside the parameters of what would normally be acceptable. His evidence was that the Claimant was angry and the issue was blown out of proportion.
106. The Claimant was not cross-examined on whether Ian Perry had been aggressive and I found that it was likely that the Claimant had considered it an aggressive act to question her as he had not done so previously in her employment.
107. I found that the Claimant was questioned about her mileage and that were the mileage was outside the parameters of what would normally be acceptable, this was a reasonable step for an employer to take.

Deliberately withhold information (vii)

108. The Claimant claims that in March 2024 a school had asked the administrator Sarah Webb for prices and she referred it to the Claimant, that Sarah Webb did not provide them and the Claimant had to chase Scott Woodhouse multiple times to get the pricing information.
109. That complaint was not supported by any evidence from the Claimant and such an allegation is unproven.

Allow IT security issues to perpetuate (xxv)

110. The Claimant says a few months before her employment ended she was contacted by a number of schools about proofs and was concerned about IT

security. This was also reflected in her witness statement but with a wider allegation that this had been happening since 2022 and not just in the months before her employment ended (Section 16). It is accepted that there have been occasions when proofs have been sent to the wrong school but that this accounted for less than 1% of orders.

111. In submission the Claimant indicated that she was not relying on this as an example of security issues that caused concern. Rather she said that her concern related to passwords that had been disclosed over the Covid period in 2022. This was not obviously referenced in her witness statement despite the Claimant having raised two new IT concerns: that it took 2 days after her resignation to secure a block on her mobile; and concerns that the grievance had been shared on an open system.
112. I decline to make any findings of fact in relation to her mobile phone. It arose after resignation and not relevant. I repeat my findings in relation to the grievance being shared.

Humiliate the Claimant on the 24th of June 2024 in front of other members of staff (xxii)

113. The Claimant claims that the administration team had 'messed up' a booking and she contacted Ian Perry to rectify but that he had shouted at her in front of staff and cut her off.
114. However, whilst this may have been her complaint, no evidence was provided by the Claimant on the allegation and no evidence as to why she was 'humiliated' to make any positive finding in her favour albeit based on the evidence of Ian Perry I did find that on 24 June 2024 Ian Perry and the Claimant did have a telephone conversation that took place on loud speaker and in front of Margy Clark, that Ian Perry subsequently spoke privately to the Claimant having found her rude and aggressive and informed her that he did not appreciate being spoken to in such a manner.
115. I was not persuaded that the Claimant had proven that Ian Perry had humiliated the Claimant in front of other members of staff or at all. Rather I considered it likely that this was a difficult conversation but that I had insufficient evidence to find that it reasonably humiliated the Claimant.

Resignation

116. On 1 August 2024 the Claimant resigned.
117. The Claimant included in her witness statement evidence that whilst she was on her 6 week holiday in the summer of 2024, she was '*alerted to several critical pieces of evidence*', in particular an email that included '*we would like to find a way to get her out.*' She says that this was a total shock to her and that until then the Respondent had 'duped' her into believing she was a valued member of the team even encouraging her to stay long term. She considered that the documents she had been sent indicated a '*deep-seated strategic plan in writing*' and proved

to her that they had fundamentally destroyed the duty of trust and confidence and that as a result she realised that there was no viable relationship to return to.

118. The Claimant was cross-examined on this in live evidence. Whilst the Respondent had been aware since August 2024 that the Claimant was in possession of documents that she should not at that stage have been privy to, the Respondent had not been aware until case management at the outset of this final hearing that the Claimant's position was that these had been delivered to her anonymously in July 2024.
119. The Claimant gave evidence that at the end of summer school term in 2024, she had started her long summer break and went abroad. At that time, she had reached the point where she was dissatisfied with work, had raised a grievance and had a suspicion that there might be something '*more sinister*' going on. She went away thinking about whether she would resign or return to work in the September of 2024.
120. Whilst she was on holiday, and around 24 or 25 July 2024, she had a phone call from her son's girlfriend, who had been housesitting for the Claimant who told her that a large parcel had been delivered for her. The Claimant asked her to open it and she was told that it contained 'a pile of emails' or words to that effect.
121. The Claimant's husband returned home from holiday, leaving the Claimant still on holiday. On his return, he reviewed the documents, contacted the Claimant and read out an email that contained the words '*we are looking to get her out*'. He told the Claimant that she had been right and that Ian Perry had been looking to get rid of her, referencing an exchange that they had previously had at the Claimant's grievance meeting the previous year.
122. The content of that email was a total shock to her and fundamentally changed her view of her employment situation with the Respondent. At that point I found that she determined to resign and sent her resignation letter to her sister so that she could print it out and post it to the Respondent.
123. On receipt of the resignation, the senior managers of the Respondent immediately and privately communicated with each other, an exchange that formed part of the disclosure in response to the Claimant's subject access request [C187]. It is a private exchange and clearly not intended to be read by third parties including the Claimant. As reflected in the earlier findings, they were concerned that the Claimant would sue for constructive dismissal but expressed that they did not consider they had done anything wrong. This did not indicate to me that they had a strategy of removing the Claimant. Had they done so, I considered it likely that this would have been reflected in their private exchanges. It was not.
124. Email exchanges indicated that the Claimant wished to meet Ian Perry to discuss her resignation which she asserted was a constructive dismissal [C191/192]. At that meeting the Claimant asserted that there was a sustained and co-ordinated plan to force her to leave [C197]. Matters did not resolve.

125. The Claimant's final day of work was 29 August 2024 when her employment terminated.
126. On 27 October 2024 the Claimant contacted ACAS and an early conciliation certificate was issued on 8 December 2024. On 5 January 2025 the Claimant presented her ET1.

Submissions

127. The Respondent reminded the Tribunal of the test in **Kaur** and his primary submission was that the List of Issues is clear in that the Claimant's claim is that this is a multistranded course of conduct over time with the cumulative effect being that she could not go on. However he submits that the Claimant accepted that going on holiday she saw the issues as individual matters that hadn't caused her to resign but whilst on holiday she came to know of emails, that at [C102] in particular, that led to an epiphany and she realised that, as she had suspected, that there was a concerted campaign to get rid of her and that is why she resigned. He submitted that this was fundamentally different to what had been put forward although accepted that in the ET1, the Claimant had referenced a conspiracy.
128. He submitted that there is a substantial change in tone between the agreed list of issues and the Claimant's sworn evidence, which is that the breach is an overarching conspiracy and that is why she resigned, further submitting that that is the breach the Claimant has to prove and that's he has not done that.
129. In the alternative, with regard to the individual acts, he submitted that in many instances, there was insufficient information in the witness statement and such evidence was not drawn out in live evidence. In relation to other alternative acts, the Respondent submitted that the evidence did not support a case that this was done deliberately or supportive of a claim that either that it was a fundamental breach (individually or when viewed cumulatively) and/or that there was a campaign to remove the Claimant.
130. The Respondent is not challenging the Claimant's evidence that she resigned in July 2024 because she formed the view at that point that there was an overarching conspiracy. It was also conceded that the Respondent was not in a position to put a positive case that the Claimant had personally hacked the Respondent's system or to definitively attack the assertion that documents were anonymously delivered to her.
131. It was further conceded that if I found that that the Claimant did resign in response to a cumulative series of events, that receiving the documents and seeing their contents was legally capable of amounting to a 'last straw' and the Claimant did not affirm the contract thereafter, although it is disputed on the facts that it was rather was a series of disparate events.
132. In relation to the unlawful deductions, it is submitted that there was no breach of any express or incorporated terms in relation to the salary increases and the Claimant had not established any contractual entitlement regarding the £900 in respect of 'lost' commission on training sales staff.

133. In relation to the commission and bonus for the summer term of 2024 that the Claimant claims she has not been paid²(4)-(6), it was submitted that all rely on a document that the Claimant has prepared for the purpose of this litigation and provided to the Respondent as part of the Claimant Bundle after the last preliminary hearing on 18 March 2026 [C213]. The Claimant has not evidenced how these are arising and she has not discharged the burden of proof by referring the Tribunal to original documents to support her claim.
134. Finally in relation to time, whilst it was unclear when the Claimant was last paid, it was submitted that limitation was 28 July 2024, depending on the date of the Claimant's last payment that:
- a. the amounts claimed at A(1)-(2) could potentially be in time as pay increases start at beginning of the year;
 - b. the amount at A(3) was significantly out of time; and
 - c. A(4)-(6) did appear to relate to end of term 2024; and
135. The Claimant provided written submissions which are incorporated by reference into these written reasons and after a short break for the Respondent and Tribunal to consider those submissions.
136. The Claimant referenced the chronology and the Claimant Bundle, submitting that the Respondent had known from 29 August 2024 that the Claimant was in possession of additional documents but did not ask where she had obtained them.
137. In relation to the list of issues, she confirmed that her case was that she had left the Respondent's employment as she considered that they were getting her out/forcing her to leave and that ACAS had assisted her on the list of issues. She considered that her witness statement and the documents she had provided was evidence of that. She agreed that her primary case was there was a conspiracy to remove her, something that she had been convinced of in her grievance meeting but had been persuaded by her husband that this was all in her mind which was she carried on working and it was when her husband agreed with her in the July 2024 that there was a conspiracy she left. She asserted that had she had the emails prior to that she would have left earlier.
138. In relation to specific matters set out in the list of issues, she submitted the following:
- a. With regard to the allegation of withholding of commission (xviii), she reminded me of her schedule at [C213] that she had provided to the Respondent as part of the Claimant Bundle just prior to this hearing and that if the Respondent believed the figures were inaccurate they could have challenged them and that this schedule related to the sums claims in her Schedule of Loss A(3),(4), (5) and (6). She asserted that she was entitled to the £900 loss of commission as she had failed to meet her target that term.

² Schedule of Loss – A(4)-(6) [R163]

- b. With regard to the allegation in relation to allowing IT Security issues (xxv) to perpetuate, the Claimant submitted that this related to passwords sharing dating back to 2020 when passwords given to assist with administration during Covid in September 2020, became insecure; that this was the breach relied on and not any concerns about proofs being sent to the wrong schools
- c. She disagreed that she had received a pay increase in 2021. Rather the Respondent was making up for the loss where she was not paid during Covid;
- d. In relation to the alleged toxic environment (vi), the Claimant submitted that she had raised this in two grievances but that she accepted that she cannot prove that staff weren't being nice to her;
- e. In relation to incompetent staff (iii), she reminded me that she had cross examined on that point.
- f. In relation to time limits on the unlawful deduction from wages, the Claimant submitted that she did not advise Ian Perry of the £900 until September 2022.

The Law

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

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

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

140. Section 98(4) ERA 1996 states:

(4) Where the employer has fulfilled the requirements of subsection(1), the determination of the questions whether the dismissal is fair or unfair (having regard to the reason shown by the employer) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with equity and the substantial merits of the case

141. Lord Denning, in **Western Excavating (ECC) Ltd v Sharp** [1978] 1 All ER 713 sets out the approach to constructive dismissal as follows: *'If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. he is constructively dismissed.'* Whilst conduct of the employer must be more than unreasonable, the Court of Appeal expressly rejected the argument that s.95(1)(c) ERA 1996 introduced a concept of reasonable behaviour by employers into contracts of employment and this means that an employee is not justified in

leaving employment and claiming constructive dismissal merely because the employer has acted unreasonably.

142. The burden of proof is on the employee to demonstrate that the employer's actions have destroyed or seriously damaged trust and confidence or were calculated or likely to do so and that the employer had no proper cause for the actions in question.
143. Individual actions by an employer that do not in themselves constitute fundamental breaches of any contractual term may have the cumulative effect of undermining trust and confidence and a course of conduct can cumulatively amount to a fundamental breach of contract entitling an employee to resign and claim constructive dismissal following a 'last straw' incident even though the last straw by itself does not amount to a breach of contract — **Lewis v Motorworld Garages Ltd** 1986 ICR 157, CA.
144. The Claimant needs to establish his decision to resign, on the basis of the 'last straw', which need not in itself be a breach of contract. The Court of Appeal in **Kaur v Leeds Teaching Hospitals NHS Trust** 2019 ICR 1, CA, held that, if the last straw incident is part of a course of conduct that cumulatively amounts to a breach of the implied term of trust and confidence, it does not matter that the employee had affirmed the contract by continuing to work after previous incidents which formed part of the same course of conduct. The effect of the last straw is to revive the employee's right to resign, referring to Dyson LJ in **Omilaju v Waltham Forest London BC** [2005] All ER75 who opined that if an employer has committed a series of acts that amount to a breach of the implied term of trust and confidence but the employee soldiers on and affirms the contract instead of resigning, the employee cannot subsequently rely on these acts to justify a constructive dismissal unless he or she can point to a later act that enables him or her to do so. That if the conduct in question is continued by a further act or acts, in response to which the employee resigns, he or she can still rely on the totality of the conduct in order to establish a breach of the implied term. To hold otherwise would mean that, by failing to object at the first moment that the conduct reached the threshold for breaching the implied term of trust and confidence, the employee lost the right ever to rely on all conduct up to that point. Such a situation would be both unfair and unworkable.
145. The Court of Appeal in **Kaur** offers guidance to tribunals, listing the questions that it will normally be sufficient to ask in order to decide whether an employee was constructively dismissed:
 - a. what was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?
 - b. has he or she affirmed the contract since that act?
 - c. if not, was that act (or omission) by itself a repudiatory breach of contract?
 - d. if not, was it nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of trust and confidence?
 - e. did the employee resign in response (or partly in response) to that breach?

146. The tribunal is therefore required to decide whether the Respondent's conduct in this case could objectively be said to be calculated, or in the alternative likely, to *seriously* damage confidence and trust between the Claimant and the Respondent. Thereafter we are required to examine whether the claimant resigned in response to that conduct, and that conduct must include a final event which contributes to earlier actions so as to make the entirety of the conduct, taken together, sufficiently serious so as to damage the relationship of confidence and trust between employer and employee.
147. Finally, the breach must cause the employee to resign which is a question of fact for the tribunal based on the evidence before it.

Conclusions

148. Having reviewed again the Claimant's ET1 and the Claimant's witness statement and considered what the Claimant had said both in her written witness statement and within her submissions, I did conclude that the Claimant's primary claim was that she resigned because it was '*evident that DSP have wanted to terminate [her] employment through a strategic plan of forcing her to leave*' as she had referred in her ET1³ albeit I accept that this not reflected in the List of Issues and we should be slow to depart from an agreed list of issues.
149. However, I also recognise that the Claimant is a litigant in person and that the claim can still be read, even in light of the Claimant's witness statement, as one of a resignation to a cumulative acts or failures to act said to seriously damage or destroy trust and confidence. I therefore looked at it on that basis also in the alternative.
150. Dealing with the primary argument that the Claimant resigned because she realised that there was a plan or any strategic plan of forcing her to leave, whilst I considered that such conduct was likely to seriously damage if not destroy the relationship of trust and confidence between employer and employee, I was not persuaded on the evidence before me that the Claimant had proven this.
151. I accepted Ian Perry's evidence that the Claimant was a valued sales person, and that he did not want her to go, she was their best sales person and there was nothing in his own emails or communications that indicated any such strategy.
152. I did accept that the email exchanges between Laura Barrie and the Respondent's HR adviser did reflect her view in September 2023 that the Respondent was finding the Claimant difficult and by that point they were considering whether it would be in the Respondent's interest to exit the Claimant, that certain of her emails were flippant and, as I have termed it derogatory, about the Claimant and reflective of her personal view that she found it difficult to work with the Claimant.
153. Such emails were never intended to be read by the Claimant and were private communications, albeit relating to the Claimant, with the Respondent's accountancy and HR advisers.

³ [R2]

154. It was insufficient in itself for me to have concluded that this belied any plan or strategy to exit the Claimant.
155. This was my conclusion despite Laura Barrie seeking advice on finding a way to get the Claimant out in September 2023. I concluded that had the Respondent wanted to take that path at that point, they had the opportunity to do so by not giving the Claimant a pay increase/pay increase in excess of 3.5%. That the Respondent was perhaps less than candid as to what Ian Moir had received by way of pay increase to bring his pay to the level of the Claimant's was not determinative in my view.
156. Rather the private emails that I have been taken to suggest that the Claimant was an employee that a number of staff found difficult and that the Claimant, possibly understandably, had proven to be challenging during annual pay discussions and had threatened constructive dismissal as a possibility, which tended to be the subject of the emails that have been now subject to scrutiny.
157. Rather than them reflect a hostile, deliberate and systematic plan to withhold from the Claimant wages and commission in a move to oust her, I concluded that the emails reflected a concern that the Claimant was planning to leave and claim constructive dismissal, that the Respondent were unclear on their legal position regarding pay and that they were taking reasonable steps to obtain employment advice as to how they should manage that.
158. I remained of this view even after considering the individual concerns held by the Claimant regarding a range of matters which are itemised within the List of Issues such that even taking those emails in the context of the ongoing interaction with the Claimant regarding her pay, terms and conditions and general grievances, I was not persuaded that there was sufficient evidence to be satisfied that there was a conspiracy or a plan to remove the Claimant.
159. This was further supported by the private Whatsapp exchange after the Claimant's resignation in which they expressed concern that the Claimant would bring a constructive dismissal claim but that they did not consider that they had done anything wrong.
160. The claim of constructive dismissal on this basis is not well founded and is dismissed.
161. In the alternative, I considered whether any individual actions by the Respondent constituted fundamental breaches of trust and confidence individually or, taken cumulatively, had the effect of undermining trust and confidence and a course of conduct. I would repeat my earlier conclusions in concluding that none of the individual actions taken by the Respondent was calculated to destroy or seriously damage trust and confidence and indeed I concluded that the opposite had been the case.
162. The Claimant says that the 'last straw' i.e. the most recent act (or omission) on the part of the employer which the employee says caused or triggered her

resignation, was the disclosure of evidence to her in July 2024. That in my mind cannot be an act by the employer that is capable of being 'last straw'.

163. Rather it is a discovery of information such that the last acts of the employer relied on within the List of Issues appeared to be a number of acts including
 - a. the 24 June 2024 telephone conversation with Ian Perry (xxii) and/or
 - b. the allegation that the Respondent had failed to pay correct commission on sales (xviii).
164. Either way, I was satisfied that it could not be said that the Claimant had affirmed the contract since then particularly taking into account her length of service.
165. I then considered whether those matters were by itself repudiatory breaches of contract. I concluded that they were not.
166. I deal with a series of issues that took place in the lead up to the Claimant's resignation from around the end of 2024. I deal with each issue in turn as far as I am able as an easy chronology does not sit readily with the list of issues before stepping back and considering the cumulative effect of the actions of the employer.
167. Whilst accepting on the agreed evidence that a difficult conversation had taken place between the Claimant and Ian Perry on 24 June 2024, I had not been persuaded that the Claimant had proven that Ian Perry had shouted at the Claimant, cut her off or humiliated her in that discussion, or that the discussion was any more than what a manager might reasonably be entitled to speak to an employee;
168. The Claimant had not proven the allegation that the Respondent had failed to pay correct commission on sales (xviii) and it follows that it could be a breach of the implied term (or indeed any express term).
169. I deal with the allegations: that there had been failures in communication (iv) and that the Respondent had deliberately withheld information from her in March 2024 (vii) and failure to resolve administration issues (ii) together. As reflected in the findings of fact, I had little to no evidence from the Claimant to make positive findings of fact that the Respondent had withheld information about bookings meaning that the Claimant could not reach her targets. I had not been persuaded by the Claimant on the evidence before me that she had proven her allegations. I therefore did not conclude that it could not be said that these were events were matters that could be reasonably said to damage or destroy trust and confidence or form part of a cumulative series of actions.
170. It is an agreed fact that Ian Perry did ask Jim Daniel to source a new charger and this request was not processed (xii). The evidence before me was not questioned and I accepted that this request was not processed until May 2024. However I concluded that even if this was an unreasonable delay, it was a minor issue and relatively insignificant, had the Claimant considered it a significant issue, she could have easily resolved it. She did not. Even on proven facts this is not a

matter that could be said to have given rise to a breach of trust and confidence, either in isolation or taken in conjunction with others.

171. It was an agreed fact that in January 2024, Ian Perry had questioned the Claimant's mileage (x) and I had found that the Claimant had considered his approach 'aggressive'. However on the basis of my findings that he was reasonably entitled to question mileage, this was not in itself conduct that could be said to seriously damage or destroy trust and confidence and, in any event, I accepted that Ian Perry had had reasonable proper cause for doing so.
172. The Claimant then complains of a series of events in the latter part of 2023, regarding a failure to alleviate staff pressures (i), failure to provide samples and marketing information in a timely manner (v) and a failure to investigate her 24 September grievance (xxvi).
173. In relation to failure to alleviate staff pressures (i), I had found that the Claimant had given little evidence, other than to say that this was 'false' and no support was provided. However the contemporaneous emails indicated that Ian Perry gave the Claimant detailed feedback on the grievance, confirming his own evidence on steps he had taken which was not challenged that included employing additional administration. This was not in itself conduct that could be said to seriously damage or destroy trust and confidence.
174. In relation to the allegation that there had been a delay and a failure to provide samples (v) and I made positive findings in relation to this. This also appeared to be the issue that the Claimant relied on to support her allegation that the Respondent had failed to employ competent staff (iii). Whilst I have no doubt this caused both the Claimant and other sales representatives challenges in their roles, and whilst I accept that repeat failings such as this could form part of a series of cumulative acts, this was not the case here. It could not be said in my view to be conduct amounting to a fundamental breach of trust and confidence. It had happened twice over a school break and the failure was stopped, with the Respondent management also being dissatisfied. It was rectified. I agree with Mr Flood's submissions that this did not meet the threshold of conduct that could be said objectively likely to destroy or seriously damage trust and confidence.
175. I had not concluded that the Respondent had failed to investigate the Claimant's September 2023 grievance and I had been satisfied that the Claimant had received a response. Mr Flood has submitted that whilst the Claimant does reference this within Section 6 of her statement, the Claimant has not at any time evidenced what precisely was wrong with the grievance such that she has not proven her case. I agree.
176. I had made findings that asking the Respondent management to print the grievance and remove from the IT system was reasonable, that I had not found that the Claimant's grievance was widely accessible within the Respondent's systems or that Debbie Barrie subsequently undertaking an investigation likewise was reasonable albeit it was far from clear that these were specific allegations that the Claimant relied on. Either way, I am not satisfied that the manner in which the Respondent investigated and dealt with the Claimant's grievance could be said to be likely to destroy or seriously damage trust and confidence.

177. In relation to the allegation that the Respondent alleged certain IT security issues to perpetuate, the Claimant confirmed that she no longer relied on the allegation that in the months leading to her resignation the wrong proofs had been sent to schools. However and in any event I concluded that sending proofs to the wrong school was insufficient to amount to a loss of trust and confidence, particularly in the context of the scale of the issue and more significantly this allegation appeared to have been withdrawn by the Claimant.
178. Neither did I did not conclude that password security was an issue for the Claimant in this case. The password disclosure was historic and whilst in principle it could undermine trust and confidence in some circumstances, on the evidence before me, this was not such a circumstance.
179. I did not consider that seeking administration support in managing a grievance to a trusted Team Leader to print and then delete from the IT systems to amount to conduct that was reasonably likely to destroy or even damage trust and confidence and, if it did, that the Respondent had reasonable and proper grounds for a Managing Director to seek administration support from his staff.
180. The Claimant complains that from December 2022 until the end of her employment she was spoken to dismissively, and that this conduct worsened from October 2023, referring to it as a toxic environment (vi). She claims that emails sent were not 'nice' in tone and content and that staff would raise matters about the Claimant that she says she had not done wrong.
181. As indicated in my findings of fact, the evidence relied on by the Claimant was spread within various parts of her written statement evidence and the emails relied on were not emails sent to or copied to the Claimant or emails intended that the Claimant would be aware of. Rather, they were emails that the Claimant had been given anonymously and which she saw for the first time in July 2024. Whilst working in a difficult working environment where colleagues are constantly speaking dismissively to you can potentially amount to a loss of trust and confidence particularly where management are involved and/or have failed to take action. This was not the evidence from the Claimant and I had not been persuaded that this evidenced a toxic environment albeit I did conclude that relationships between the Claimant and management at the Respondent from time to time were difficult.
182. Again on the basis of my findings of fact, neither the allegation that other staff checked booking information (ix) or failure to declare new bookings (xvi) had not been proven and could not amount to a breach.
183. In relation to the inflationary increases from 2018, I was not satisfied that the circumstances of this case justified a finding or conclusion that it was a contractual term of the Claimant's employment, whether express or incorporated into her contractual terms and conditions, that she would have an inflationary pay increase each year. Those circumstances included;
 - a. the Claimant only being copied into an email sent to the accountant in 2018 regarding future pay reviews;

- b. the Claimant not receiving a pay increase in any year subsequent to that email that was linked to inflation.
184. Neither did I find that it was reasonable for the Claimant to have had any expectation of such an inflationary annual pay rise for the same reasons..
185. I therefore concluded that such that failure to award such an annual increase based on inflation in September 2023 would not in my view amount to breach of contract and /or a loss of trust and confidence. In any event, even if that is wrong and it could be said that it was likely to result in a serious loss of trust and confidence by the Claimant, the Respondent had reasonable and proper cause for doing so namely it was not a contractual entitlement and the Claimant had received average pay increases in excess of inflation.
186. The Claimant had not been given a bespoke employment contract and being given new contractual terms in consideration of a pay increase is not conduct that could reasonably be said to be likely to destroy trust and confidence, particularly in a sales setting and with a growing competitive business. Albeit I accept that such an approach would have been unpalatable to the Claimant, the Respondent had reasonable and proper cause for doing so – it was improving its HR terms and protecting its business.
187. The Claimant had been asked to train a new Sales representative and there was no evidence that this in itself did lead or could reasonably led to a loss of trust and confidence. She had done it before in 2018 and had agreed to do it for a future sales representative. Rather, the issue was that the Claimant subsequently wanted recompense for her effort. That in part was met and I had made findings that the parties had reached an agreement at that time on that. On that basis it could not reasonably be said that this could have caused or contributed to a loss of trust and confidence.
188. I did not conclude that any of the actions taken by the Respondent, considered individually, could be said to be likely to destroy or seriously damage trust and confidence or, alternatively, even if they had in some instances seriously damaged that trust, the Respondent had reasonable and proper cause for taking the steps that they did.
189. Stepping back I then considered whether the individual actions could be said to be a series of actions on the part of the employer that cumulatively amounted to a repudiation of the contract and concluded that they could not.
190. On the alternative basis, the claim of constructive dismissal fails.
191. I therefore do not conclude that the resignation was tendered because of a breach of the implied term of trust and confidence and in turn, conclude that the Claimant was not dismissed within the meaning of s.95(1)(c) Employment Rights Act 1996. In turn any complaint for unfair dismissal is not well-founded and is dismissed

Unauthorised deduction from wages

192. On the basis of my findings and conclusions that the Claimant was not entitled to inflationary pay increases, I concluded that the Claimant was not entitled to the pay claimed and therefore in neither the September 2022/2023 and/or 2023/2024 Academic Year (A(1) and (2)) were the wages paid to the Claimant was less than the wages that should have been paid to the Claimant.
193. In terms of time, such a complaint was likely to fall within a series of deductions such that the last of such deductions would be August 2024 and the complaint was in time.
194. I was not persuaded that the Claimant had a contractual entitlement to the £900 (A(3)) that she asserted was in respect of loss of commission on targets that she had failed to meet in the Spring Term of 2022 whilst with the new Sales representative ,having concluded that an agreement had been reached between the Claimant and Ian Perry for payment of bonuses only. I therefore concluded that the commission paid to the Claimant in the period, claimed in September 2022 was not less than the commission that the Claimant was entitled to.
195. I repeat my conclusions on time. The claim was brought in time under a series of deductions basis.
196. Finally, I was not persuaded that I had any credible or reliable evidence before me to find that the Claimant's 2024 Summer commission (A(4)), End of Term Bonus (A(5)) and/or End of Summer Bonus (A(6)) were less than the commission and/or Bonus that the Claimant was entitled to be paid, claims which it is conceded were brought in time. The Claimant relied only on a spreadsheet that she had prepared and compiled, effective a 'shopping list' as it was termed by the Respondent. Despite having retained her own commission records and having had an opportunity to explain her calculations and provide evidence of such a deduction within her evidence, the Claimant has failed to prove her claims.
197. On that basis, all the complaints of unauthorised deductions from wages were not well-founded and are dismissed.

Employment Judge R Brace

Dated: 17 April 2026

JUDGMENT SENT TO THE
PARTIES ON
28 April 2026

Kacey O'Brien
FOR THE SECRETARY OF
EMPLOYMENT TRIBUNALS

Appendix 1

**IN THE EMPLOYMENT TRIBUNAL
OF WALES BETWEEN :**

CASE NO: 1400047/2025

MRS D POINTING

Claimant

-v-

DSP PHOTOGRAPHY LIMITED

Respondent

RESPONDENT/CLAIMANT'S LIST OF ISSUES

1. Time Limits

Unauthorised deductions from wages – The Claimant first presented her claim with ACAS on the 27th of October 2024, therefore any allegations of unpaid wages must have taken place on or after the 28th July 2024 or else it is prima facie out of time. For the alleged unpaid wages which pre-date the 28th of July 2024, the Tribunal will need to decide:

- (a) The date of each allegation;
- (b) Whether there was a series of deductions, with the claim made to the Tribunal within three months (plus early conciliation extension) of the last one;
- (c) If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
- (d) If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

2. Constructive unfair dismissal

2.1 Was the Claimant dismissed?

The Claimant resigned citing reasons of constructive dismissal on the 1st of August 2024, and worked her notice until the 28th of August 2024.

2.2 Did the Respondent do the following things:

i. Fail to alleviate staff pressures

On 13 October 2023 Ian Perry told the Claimant he would employ more staff to alleviate pressures but this did not happen.

ii. Fail to resolve administrative issues

The Claimant was asked not to deal with administrative issues, but staff would send the tasks to the Claimant and she would not be able to deal with them, she gave the example of not

having price details. The Claimant says this started in December 2022 and continued to the end of July 2024.

iii. Employ incompetent staff to the extent it affected the Claimants duties

The Claimant says Scott Woodhouse, Margy Clarke, Sarah Webb and Rachel Haynes were incompetent or not able to do their job due to lack of training and lack of knowledge about the business and the Claimant's role. The Claimant says in relation to Scott Woodhouse, due to his incompetence, the Claimant had no samples to take into schools. The Claimant says the other staff's incompetence or lack of training meant she was not able to provide the services she wished to provide clients. She says this was from December 2022 until end of employment.

iv. Failures in communication

The Claimant says she was not given information about pricing from pre-Covid until end of employment.

The Claimant says she was not given information about changes to ordering systems from September 2020 until September 2021.

The Claimant says she would pass queries from a school to the office but was not kept updated on matters from December 2022 until end of employment. The Claimant says the Respondent sent an email to a school that said they were not to communicate with the Claimant in June 2024.

The Claimant says in July 2022 she was instructed by Ian Perry not to contact the office.

v. Fail to provide samples and marketing information and documents in a timely manner

The Claimant says she ordered samples and materials in July 2023 but they had not arrived by mid-September 2023. After chasing by the Claimant, the materials provided were inaccurate. The Claimant says in December 2023 she ordered samples and materials, but they did not arrive ready for the start of January 2024.

The Claimant says Scott Woodhouse and Jim Daniels were the persons involved.

vi. Perpetuate a toxic work environment

The Claimant says she was spoken to dismissively. She says Sarah Webb, Margy Clark and Laurie Barry sent emails that she considered were not nice in tone or content and would raise matters with the Claimant about matters that she says she had not done wrong. She said they raised a matter about mileage and whole school staging. The Claimant says this was from December 2022 and got worse from October 2023 until end of employment.

vii. Deliberately withhold information

The Claimant says a school had asked the administrator Sarah Webb for prices and she referred it to the Claimant. The Claimant said she needed the prices but Sarah Webb did not provide them and the Claimant had to chase Scott Woodhouse multiple times to get the pricing information. The Claimant says this was in March 2024.

viii. Exclude the Claimant from the 'google operating system'

The google operating system was a booking system set up by the Claimant. The Claimant says in January 2023 the Claimant and her colleague couldn't access the system as the Respondent had changed the access code. The Claimant queried it and was not able to access the system for three months.

ix. Have other staff check booking information

The Claimant says she puts booking information on the system. Closer to the appointment time the booking would be confirmed. From January 2023 the administration staff started contacting the schools to check the bookings she had made and roll numbers. The Claimant says it continued until the end of her employment.

x. Question the mileage forms on the 17th January 2024

Ian Perry questioned the Claimant about her mileage forms submitted on 17 January 2024 and queried a 300-mile visit to Gloucester saying she had put an extra 100 miles on.

xi. Not provide a pay rise in line with inflation

The Claimant says Ian Perry told her, in an email in 2018, that she would have an inflation pay rise every year. The Claimant did not get an inflation pay rise in September each year.

xii. Not provide a new laptop charger

The Claimant uses her laptop when travelling. Ian Perry told the Claimant to ask Jim to source a charger. Jim did not process the request. The Claimant says this was December 2023.

xiii. Present a new employment contract in February 2023

The Claimant says the new employment contract differed to her colleagues and was compiled specifically for her.

~~xiv. Present an appraisal form to the Claimant on the 22nd of January 2024~~

~~xv. Fail to complete the appraisal in a timely manner~~

xvi. Fail to declare new bookings from schools

The Claimant says the administration team put new bookings on a new system did not tell the Claimant. The Claimant says this was from January 2023 until end of employment.

xvii. Require the Claimant to train a new sales representative

The Claimant was asked to train a new sales representative in 2018. The Claimant trained a new representative over a six-week period in February 2022 which meant there was a £900 loss due to the Claimant not being able to sell. The Claimant asked, in April and July 2022, if she could be paid her £900 loss if she was required to train and Ian Perry and Laura Barrie ignored the request.

xviii. Fail to pay correct commission on sales

The Claimant says the Respondent withheld information about bookings which meant the Claimant could not meet her targets in July 2024.

~~xix. Send P11D tax form in a timely manner~~

~~xx. Fail to send company car documents in a timely manner~~

~~xxi. Fail to supply a new company car to the Claimant~~

xxii. Humiliate the Claimant on the 24th of June 2024 in front of other members of staff

The Claimant says the administration team had messed up a booking and she contacted Ian Perry to rectify. She says Ian Perry shouted at the Claimant in front of staff and cut her off.

~~xxiii. On the 9th July 2024 misinform a school with regards to a query~~

~~xxiv. Fail to respond to Telephone calls in a timely manner~~

xxv. Allow IT security issues to perpetuate

The Claimant was contacted by a number of schools about proofs. She was concerned about IT security. This was a few months before her employment ended.

xxvi. Fail to investigate the Claimants grievances on the 8th of March 2023 and the 24th of September 2023.

As underlined.

2.3 Did the above conduct breach the implied term of trust and confidence? The Tribunal will need to decide:

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

2.3.2 Whether the Respondent had reasonable and proper cause for doing so.

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

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

3. Unauthorised deductions from wages

3.1 Did the Respondent make unauthorised deductions from the Claimant's wages and if so how much was deducted?

3.2 The Claimant contends that the following deductions⁴ occurred:

⁴ The deductions claimed are amended to those at A(1)-(6) inclusive on the Claimant's Schedule of Loss and not those itemised in this List of Issues [R163]

- (i) £480 salary loss from September 2018
- (ii) £355 salary loss from September 2019
- (iii) £176 salary loss from September 2020
- (iv) £1767 salary loss from September 2022
- (v) £1817 salary loss from September 2023
- (vi) Bonus losses from April – July 2020 totalling £3200
- (vii) £452 Summer term commission loss 2024
- (viii) 2024 End of Term Bonus of £1000
- (ix) End of term bonus for 3 terms targets loss of £1500
- (x) Loss of rebooked schools not claimed between September 2020 – November 2021 totalling £1740
- (xi) 2024 summer term loss of booking due to other staffs incompetency £920
- (xii) Loss of term targets due to not signing new contract: £2500

4. **Remedies**

4.1 **Unfair Dismissal**

- (i) What basic award is payable to the Claimant, if any?
- (ii) If there is a compensatory award, how much should it be? The Tribunal will decide:
 - a. What financial losses has the dismissal caused the Claimant?
 - b. Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
 - c. If not, for what period of loss should the Claimant be compensated?
 - d. Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
 - e. If so, should the Claimant's compensation be reduced? By how much?

4.2 **Unauthorised deductions from wages**

(i) If the Claimant is owed unpaid wages or was subject to wage deductions, how much financial restitution is the Claimant entitled to?