



EMPLOYMENT TRIBUNALS

Claimant: Mrs. Rose Goodall

Respondent: Mrs. Barbara Brennan

Heard: by Cloud Video Platform **On:** 26, 27 January and 10 March 2026

Before: Employment Judge S Evans

Appearances

For the Claimant: In person

For the Respondent: Ms. R. Bastin, Solicitor

RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The Claimant's claim of constructive unfair dismissal is not well-founded and is dismissed.
2. The Claimant's claim of entitlement to pay for annual leave accrued and not taken at the date of termination of employment is well-founded. The Respondent shall pay to the Claimant the agreed sum of £81.92.
3. A preparation time order is made against the Respondent for a period of five hours. The Respondent shall pay to the Claimant the sum of £225.

REASONS

Background

1. The Claimant's claim was issued on 9th March 2025 after her employment ended on 31st October 2024. Prior to issue, Early Conciliation was started on 3rd

January 2025 and ended on 14th February 2025. The Respondent's response in ET3 is dated 21st May 2025.

2. At box 2.10 of ET3, the Respondent indicated she could take part in video hearings. At box 9 of ET3, the Respondent identified a need for support because of her disability, stating:
*"Large print, extra time.
Respondent is an amputee, elderly and has an array of health conditions at 90 years old."*
3. A final merits hearing in this matter was listed for a two-day hearing by Cloud Video Platform ("CVP") on Monday 26th and Tuesday 27th January 2026. Notice of this hearing was sent to the parties on 4th September 2025, together with case management directions and information about hearings by video, including details of how to prepare for and take part in the video hearing. That information included the following detail:

"What you need to do now

1. You must write to or email the Tribunal **now** to tell us:
 - 1.1 Your email address and phone number for the day of the video hearing.
 - 1.2 If you need an interpreter or other support to join the hearing.
 - 1.3 If you cannot take part in a video hearing. You must explain why and a Judge will consider this.

Checking your technology

2. The notice of hearing tells you if your hearing is going to be by CVP. CVP is the Tribunal's secure Cloud Video Platform. You must check that your IT equipment will work for a CVP hearing as soon as possible.
 3. Make sure you have Google Chrome installed. This is the best browser for CVP hearings.
 4. Check your internet connection and internet speed. You can test your internet speed by searching "internet speed checking" online.
 5. If in doubt, please call technical support on **0330 808 9405**.
 6. Please notify the Tribunal office **as soon as possible** if you think you might not be able to join the video hearing."
4. On 23rd December 2025, the Respondent's representative requested, by email, a variation of case management orders stating that the Respondent is:
"...of advanced age, of limited digital communication, and has a range of disabilities."
 5. On 8th January 2026, the Respondent's representative requested, by email, a postponement of the hearing listed for 26th and 27th January 2026 or, in the alternative, a conversion of that hearing to a preliminary hearing. The Respondent's representative indicated that the application to postpone was made pursuant to Rule 32 and Rule 46, stating that:
"The Respondent's representatives have concluded that a final hearing, by way of CVP as currently listed for 26 and 27 January 2026 is impossible to proceed with on the basis of the above. To continue would risk significant prejudice against the Respondent."

The Respondent does not know what a webcam is, and taking witness statements has proved thus far, impossible by way of e-mail or telephone.”

The Respondent's representative also stated in this e-mail that, if the hearing was converted to a preliminary hearing, it should:

“...set new orders and discuss arrangements for re listed final hearing. Furthermore, to also determine whether or not the claim can reasonably continue, or whether rule 38, should be considered, that the claim be struck out if it is clear that it is no longer possible to have a fair hearing in respect of the claim.”

In a contradictory concluding statement, the email stated:

“The Respondent, confirms, that this application is made in line with Rule 46, namely that a hearing should not be done via electronic communication, including by telephone, provided that the Tribunal considers that it would not be just or equitable to do so.”

6. The Respondent's application was opposed by the Claimant and referred to Employment Judge Anstis on 13th January 2026. The application to postpone the hearing or vary the case management orders was refused, stating:

“The first notification of any difficulties on the part of the respondent came on 23 December 2025 at which time an application was made for extension of time for exchange of witness statements. Neither this nor the later application explains what the respondent had done in the period since being notified of the hearing and orders in September 2025, or why, given possible difficulties in communication, the respondent had not taken earlier steps for a face-to-face meeting for the purposes of taking a witness statement.”

7. On 23rd January 2026, a further application to postpone was made by the Respondent's representative by email which included the following:

“We have recently written to the Tribunal about our client's limited mobility and about the difficulty she will have accessing a Hearing by Video Platform.

Our client is 91 years old and is wheelchair bound. She is also visually impaired. Whilst she has an internet connection, she tells us that the speed of this connection is very slow, relying as it does on copper wires. We are concerned that her internet speed is not fast enough to enable a Video Hearing. Further, because of our client's visual impairment and lack of experience with this technology, we believe that she will struggle to access it.

Whilst we can attend our client's home during the Hearing and assist her, this will do nothing to improve the internet speed.

As things stand, and because the Hearing has not been postponed, we intend to bring our client to the Norwich Court Centre on Monday morning, in order that she be able to give her evidence in person."

8. It is not clear whether that request was considered by the Tribunal ahead of the hearing on Monday 26th January 2026.

The Hearing listed for January 26th and 27th 2026

9. The hearing on 26th January 2026 began at 10:08 by CVP. Despite the indication of the Respondent's representative, as set out in paragraph 6 above, that the Respondent would be brought to Norwich Court Centre, the Respondent's representative and the Respondent both joined the hearing from the Respondent's home. The Respondent's representative made an oral application to postpone the hearing, highlighting that the Respondent was elderly, an amputee, a wheelchair user and with a visual impairment. I was advised by Ms. Bastin that the Respondent's GP was against her attending an in person hearing and told that the Respondent had not left home for about four years apart from to attend the occasional clinic. The Respondent's representative indicated that the Respondent had not had a proper opportunity to examine the bundle. It was confirmed that the bundle had been sent to the Respondent in November 2025. The Respondent's representative told me she was aware "last week" that a large print bundle would be needed and she conceded that this should have been recognised earlier. The basis of the application to postpone was that the Respondent had not had sufficient time with the large print documents as they had not been provided to her sufficiently in advance. After consideration, the Claimant opposed the application to postpone and this was refused for the reasons set out below.
10. The application to postpone was refused having regard to the provisions of Rule 32 Employment Tribunal Procedure Rules 2024. As the application was made less than 7 days before the date on which the hearing begins, under Rule 32(2), the Tribunal may only order a postponement where—
 - (a) all other parties consent, and—
 - (i) it is practicable and appropriate for the purposes of giving the parties the opportunity to resolve their disputes by agreement, or
 - (ii) it is otherwise in accordance with the overriding objective,
 - (b) the application was necessitated by an act or omission of another party or the Tribunal, or
 - (c) there are exceptional circumstances.

Under Rule 32(4) "exceptional circumstances" may include ill health relating to an existing long term health condition or disability.

11. In this case, the Claimant did not agree and the application was not necessitated by an act or omission of another party or the Tribunal. Therefore, the only basis upon which the case could be adjourned was if I found that there were exceptional circumstances. I did not so find. The Respondent's application

was on the basis that she had not had sufficient time with the large print documents as they had not been provided to her sufficiently in advance, I find that those are not exceptional circumstances. The Respondent's ET3 in May 2025 had indicated the need for large print documents and this was something that could, and should, have been addressed much sooner by the Respondent and her representative. The parties had been aware of the date of the hearing since September 2025 and the bundle had been available since November 2025.

12. Despite the Respondent's representative having raised concerns, ahead of the hearing, about the Respondent's internet connection and about the Respondent's age and disability, apart from a brief interruption of some 2 minutes at 12:07, Day 1 of the hearing passed without incident and the evidence of the Claimant was heard. Regular breaks were requested and agreed as a reasonable adjustment for the Respondent and she appeared to be fully engaged in the proceedings.
13. Day 2 began with the Respondent experiencing internet connection issues. Her representative was with the Respondent at the Respondent's home. Efforts to resolve these connection issues were made throughout the morning and appeared resolved at 11:39 am. At this point, I moved to hear the evidence of the Respondent but she told me she was unable to give evidence as she had not been to bed as she was trying to find papers. This came as a surprise to me as no previous mention had been made of any issues experienced by the Respondent and she had participated fully through the morning in conversations to resolve their connection issues.
14. The Respondent's representative made an application to postpone, stating that this was because the Respondent had told Ms. Bastin, on her arrival to the Respondent's home, that the Respondent had not slept or eaten. This had not been communicated to me at the outset of the hearing and could have been as there were periods when the connection worked and/or Ms. Bastin could have sent an email to the Tribunal. Ms. Bastin told me that she was concerned about the Respondent's health and that attempts had been made to contact the Respondent's doctor that morning but that the phone was not working. The Claimant opposed the application to postpone. There were then further connection issues for the Respondent and I adjourned the hearing to 2pm so the Respondent could eat and in the hope of better internet connection.
15. When we resumed after lunch, Ms. Bastin reiterated that the Respondent was not well enough to continue with the hearing. Taking account of the representations made by both parties, the age of the Respondent and the internet connection issues that continued to cause difficulties throughout Day 2, I reluctantly postponed the hearing. In doing so, I had regard to Rule 32(2) and (4) as outlined above and concluded that these were exceptional circumstances due to a combination of the connection issues and the representations made by Ms. Bastin about the health of the Respondent.

Hearing 10th March 2026

16. The hearing resumed part heard by CVP on 10th March 2026 when it was concluded. Judgment was reserved as there was no time to deliver judgment on the day.
17. In reaching my decision, I took account of the evidence given by the Claimant and the Respondent, the documents in the 154 page bundle to which I was specifically directed, the closing submissions of each side and the relevant law as set out below. References to page numbers below are to the pages in the bundle both parties agreed to work from at the hearing.

18. The Issues

19. The Claimant brought two claims, the first of constructive unfair dismissal and the second of entitlement to be paid for annual leave accrued but not taken as at the date of termination of employment. The issues for the Tribunal were:

Constructive unfair dismissal

19.1 Was the Claimant dismissed?

The Claimant says there was a constructive dismissal

Did the Respondent do the following things:

- Make it difficult for the Claimant to take annual leave from 2020 – October 2024?
- Make the Claimant take the Thursday and Friday off of the Jubilee bank holiday weekend in June 2022 because the Respondent refused to pay double time?
- Deny the Claimant any bereavement leave when the Claimant's parents died in 2019 and 2024?
- Make comments about the Claimant's hormones?
- Behave in a way that made the Claimant scared?
- Make hurtful and dismissive comments to the Claimant?
- Fail to provide a substantive response to the Claimant's grievance letter of 30 September 2024?
- Make comments to the Claimant after her grievance letter was submitted including a comment that it was not a working place, it was the Respondent's home?
- Refuse to contribute to a workplace pension for the Claimant and told the Claimant to opt out?
- Told the Claimant to "get out" and that she was getting above her station when the Claimant requested a pay rise in 2022?
- Refuse to pay holiday pay from previous annual leave years after agreeing to do so?

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

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

Did the annual leave and/or bereavement leave issues breach an express or other implied term of the contract?

If so, was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the Claimant was entitled to treat the contract as being at an end.

If there was a breach of an express or implied term of the contract, did the Claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the Claimant's resignation.

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.

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

Was it a potentially fair reason?

Did the Respondent act reasonably or unreasonably in all the circumstances, including the Respondent's size and administrative resources, in treating that reason as a sufficient reason to dismiss the Claimant?

The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.

Annual leave accrued and untaken – entitlement to pay

- 19.2 Did the Respondent fail to pay the Claimant for annual leave the Claimant had accrued but not taken when their employment ended?

Findings of Fact

20. Applying the balance of probabilities, and to the extent necessary to decide the issues in the case, I make the following findings of fact.

21. The Claimant began working for the Respondent on 1 November 2010 and her employment ended on 31st October 2024.

22. The Respondent is an amputee and wheelchair user, following an accident in 2009.

23. The Claimant's written contract, dated 8 February 2017, stated that the Claimant was employed as a Carer/ Cleaner to the Respondent. (page 124). In her ET1, and in her evidence, the Claimant said she was employed as a Personal Assistant/ Carer. The Respondent disputed the Personal Assistant title but emails sent by her to her adviser (page 42 and 43) do refer to the Claimant as a "PA" albeit that the Respondent states the Claimant conferred that title upon herself. The Claimant's evidence was that she completed tasks beyond those of a carer/ cleaner including taking the Respondent to appointments, doing her shopping and cashing cheques. I accept the Claimant's evidence that she completed these tasks, finding her to be a credible witness. She did act as a personal assistant to the Respondent although nothing turns on the job title of the Claimant in relation to the issues in this case. It is not disputed that she was an employee of the Respondent.
24. The Claimant had a long and sometimes challenging employment relationship with the Respondent. From 2017 onwards, the parties had disagreements about a variety of issues, including the Claimant's perception that the Respondent was insensitive, the Claimant's ability to take holidays and the Claimant not receiving bereavement leave upon the death of her father in 2019 and her mother in January 2024.
25. In February 2017, the Claimant's father was diagnosed with terminal cancer. When the Claimant arrived at work, visibly distressed by this diagnosis, the Respondent said "In future, could you not bring your issues to work with you." The Claimant considered this response to be highly insensitive and lacking empathy during an extremely difficult personal circumstance.
26. Later in 2017, the Respondent's husband died after collapsing. The Claimant administered CPR to try to resuscitate him. Prior to Mr. Brennan's death, the Claimant promised him that she would look after the Respondent. The Claimant felt that the Respondent did not acknowledge the trauma that the Claimant experienced at this time and felt that support should have been offered for her wellbeing. Her promise to Mr Brennan was a key reason why she continued to work for the Respondent.
27. The Claimant did not usually work for the Respondent between Christmas and New Year. After the death of Mr Brennan, the Respondent asked the Claimant to work one day during this period. In December 2019, the Claimant was not told which day she would be expected to work, despite asking several times and then on Christmas Eve, she was told not to come in to work over the festive period. The Respondent told the Claimant she did not want her there. This was disputed by the Respondent but I prefer the evidence of the Claimant. She had a clear recollection of the events in question. This led to the Claimant feeling dismissed and excluded but there was no evidence that she communicated this to the Respondent.
28. The Claimant felt the Respondent was unsupportive in relation to the Claimant's loss of her parents. Her father died on 9th April 2019 (page 134) and her mother on 21st January 2024 (page 135). The Claimant felt she should have received bereavement leave. However, the Claimant gave no evidence of making a

request for such leave and did not challenge the Respondent's evidence that no such request was refused. There was no contractual entitlement to such leave. Clause 4.4 of the Claimant's contract (page 125) provides an entitlement to reasonable unpaid time off to deal with emergencies but the Claimant did not seek to rely on this clause in her evidence. The Claimant was not denied any legal entitlement to bereavement leave but I accept that she felt she should have been shown more empathy by her employer at these challenging times.

29. The Claimant says the Respondent's attitude towards her was cold and distant for around two weeks each time she requested annual leave between 2021 and 2024 and that the Respondent significantly reduced communication with the Claimant in the week before her leave. There was no evidence that she was refused annual leave on any occasion during her employment. The Claimant says the Respondent's attitude made her anxious about exercising her right to annual leave. She also says that, after the Respondent came out of hospital in April 2022, she was needed to care for the Respondent. It was not in dispute that she did not take her full annual leave entitlement in any of these years but her records (pages 138 – 140) show that she did take annual leave in each leave year.
30. In April 2022, the Respondent returned home from hospital after surgery. The Respondent had discharged herself without a care package in place. The Claimant was contacted by a physiotherapist at the hospital who had been given the Claimant's telephone number by the Respondent. The physiotherapist expressed concern that the Respondent's discharge without a care package would place undue pressure on the Claimant. The Claimant gave no evidence of what she said in reply to the physiotherapist. The Claimant's evidence was that the Respondent had assured the hospital that her family and neighbours would assist her but that this was not what happened. The Claimant felt she was expected to be available at all times to care for the Respondent, impacting the Claimant's family life until the Claimant, after two weeks, contacted social services to request an urgent assessment for a care package and further support was organised by social services.
31. In May 2022, the Claimant requested a pay rise. The Respondent responded by stating that the Claimant was getting above her station. Although this was denied in the Respondent's witness statement and challenged in the cross-examination of the Claimant, under cross examination, the Respondent did not deny it. The Claimant's evidence is that the Respondent instructed her to give in her notice and to leave the property immediately. This was not challenged in cross examination of the Claimant although the Respondent denied it in her evidence. Under cross-examination the Respondent was frank that things might have been said that should not have been and I find that the Claimant's account of the discussion in May 2022 about the pay rise was correct. The following week, the Claimant returned to work, after contacting ACAS, and a pay rise was awarded to her. The Claimant felt devalued and insecure in her position but took no further action.

32. After the Claimant received a pay rise in May 2022, the Claimant says she was told by the Respondent to opt out of the Claimant's pension scheme because the Respondent was not prepared to make any employer contributions. This was denied by the Respondent who said that the Claimant chose to opt out because she could access a better scheme. The Claimant's evidence was that she had not known about employer pension obligations until she left her employment. I accept the Respondent's evidence on this as, if the Claimant had been reluctant to opt out, on a balance of probabilities I find she would have sought advice, for example from ACAS, as she did a short time earlier, in relation to the pay rise dispute. In evidence, the Claimant accepted that the pension issue was not part of the reason for her resignation.
33. There was a dispute between the parties as to the arrangements for working on the Jubilee bank holiday weekend in June 2022. On this occasion, there were bank holidays on Thursday 2nd and Friday 3rd June 2022. The Claimant's evidence on this was unclear as she stated she was asked to work then said that the Respondent refused to allow her to work on this bank holiday and instead paid her single time and told her to take the day off. The Respondent's case is that the Claimant did not work bank holidays and was always paid for them. As the Claimant did not work on Mondays, I take judicial notice of the fact that the only bank holidays (in a usual year) that the Claimant might take off would be Good Friday and possibly Christmas, Day, Boxing Day and New Years Day depending where they fell. The Claimant's holiday records (pages 138 – 140) show she took leave at Christmas and Easter in each year between 2021 and 2024 and she did not lead evidence that she worked on bank holidays. I accept the Respondent's evidence that the Claimant did not usually work bank holidays. In cross-examining the Respondent, the Claimant put it to the Respondent that the Claimant never worked bank holidays because the Respondent refused to pay double time and that she was "not allowed" to work on Good Friday. Clause 2.2 of the Claimant's contract (page 125) provided for double time to be paid for working bank holidays but there is no clause in the Claimant's contract which addressed an entitlement to work bank holidays. I find the Claimant did ask to work but was told to take the time off to be with her family. She was paid her normal pay for this time.
34. On 26 September 2024, after prolonged discussions about whether the Claimant had an entitlement to carry forward unused annual leave, the Respondent told the Claimant that she did not have to pay her. The discussions had gone on for around 6 months, since March 2024. The Claimant believed she was entitled to receive accrued holiday pay from 2022 onwards. The Claimant reached this conclusion because she felt that the Respondent's return home from hospital put pressure on the Claimant to keep the Respondent safe and that, consequently, she did not feel able to take her annual leave. The Claimant believed that her contract of employment allowed her to carry over annual leave in exceptional circumstances and that her circumstances qualified.

35. The Claimant's contract at Clause 4.3 (page 125) states:
"You have no right to carry forward your annual leave from one leave year to another, although this may be agreed in exceptional circumstances."
36. The Respondent had initially agreed to pay the outstanding holiday pay but on 26th September, the Respondent said to the Claimant *"You are not going to like this. I hope your hormones are up to this today."* The Respondent then told the Claimant that she had re-read the Claimant's contract and decided she did not have to pay the outstanding holiday pay. She then asked the Claimant *"What are you going to do about it?"*
37. There is a conflict of evidence between the parties as to the further events of 26 September. The Respondent says that the Claimant verbally resigned after being told that the holiday pay would not be paid. The Claimant denies this and says that she sought advice from ACAS before raising a grievance on 30 September and tendering her resignation on 3rd October 2024. Neither party gave evidence of precisely what was said in the conversation of 26 September other than the detail above and the Respondent's evidence that she asked the Claimant to confirm her resignation in writing.
38. After the conversation on 26 September, the Claimant returned to work. On 30 September the Claimant submitted a written grievance to the Respondent (page 52) which stated:
"After taking the time to look through my contract, and after several conversations with yourself where I have made you aware of a grievance over holiday pay, I thought I would take the time to formally let you know my grievance and the reasoning behind it.

I have informally brought this to your attention on several occasions and we haven't been able to resolve the matter.

I believe that I should have been paid for backdated holiday pay for the period in question. C

I understand that my contract states no holiday can be carried over unless exceptional circumstances exist, however I believe that this grievance would be within those circumstances as I acted in your best interests.

In recent months you have asked me if I would like to give you my notice to terminate my employment for no clear reason, which has caused me to be very distressed and confused as to what I had done wrong, which in turn has made me feel very uncomfortable at times.

I hope we can resolve this issue, however thought it pertinent to formally address my concerns."

39. On a balance of probabilities, I prefer the Claimant's evidence that she did not resign on 26 September but I find, on the basis of what the Respondent said in paragraph 37 above, that the Respondent did make some reference to her handing in her notice. I further find that, in view of the grievance raised on 30 September, the Claimant had not felt compelled to resign because of any invitation to do so by the Respondent. The purpose of the grievance was to pursue the Claimant's assertion that she was entitled to accrued holiday pay. In her grievance letter, the Claimant also makes reference to requests from the Respondent that she should end her employment which caused the Claimant distress. I find that the Respondent had made such references but that the focus of the grievance was the holiday pay as demonstrated by the final sentence in the letter which refers to resolving "this issue".
40. On 3 October 2024, the Claimant sent her written resignation to the Respondent (page 54) stating:
*"Please accept this letter as formal notice of my resignation from the position of PA / Carer at your home address.
In accordance with my contract, I am giving you 4 weeks notice so I expect my last date of employment to be 31/10/2024. Please let me know if this is incorrect.
You should be aware that I am resigning due to my formal grievance not being resolved. I have written this resignation as a result of your response to my formal grievance letter, which was you asking me to submit my written resignation. I have been given no option but to resign and have been made to feel extremely uncomfortable in my workplace.
Please let me know if there is anything you need from me before I leave."*
41. The Claimant left her employment on 31 October 2024 after working four weeks' notice. Her resignation letter states that the Respondent responded to the Claimant's grievance letter by requesting that the Claimant should submit her written resignation. This is in contrast to the Claimant's evidence (paragraph 4 page 149) which was that the only response she received to her grievance letter was "an acknowledgment of receipt, with no substantive reply". In cross-examining the Respondent, the Claimant stated that the parties had a discussion when she gave the Respondent her grievance letter. The Respondent's evidence was that she told the Claimant she had read it, that it had been discussed before and that the Respondent was "following it up by sending it to Peninsula". The Claimant's case is contradictory on the issue of what the Respondent said on receipt of the grievance letter and I find that she has not discharged the burden of showing that the Respondent's reaction to her grievance letter was to ask for the Claimant's written resignation. I find that the Claimant resigned on 3rd October 2024 and did so because of the Respondent's refusal to pay accrued holiday pay. This was the basis of the grievance and her resignation letter (page 54) states she is leaving because her grievance has not been resolved. Her letter also refers to her giving notice "in accordance with" her contract showing an intention to still be bound by it.

42. On the last day of her employment, the Claimant discovered that the Respondent had not paid her for holiday accrued during her notice period. The Respondent told the Claimant that entitlement did not accrue in the notice period. Clause 4.6 of the employment contract (page 125) states that holiday entitlement will not be accrued during any period of notice for which payment in lieu was made. This clause was not relevant to the Claimant's notice period as she was working her notice and was not paid in lieu. The Claimant's entitlement to the accrual of leave during her notice period was conceded by the Respondent at the hearing and the sum agreed between the parties is £81.92.

The Law relating to Constructive Unfair Dismissal

43. Under s.94(1) Employment Rights Act 1996 ("ERA"), an employee has the right not to be unfairly dismissed by his employer.
44. S.95 (1) ERA sets out the circumstances in which an employee is dismissed. The relevant provision here is s.95(1)(c) which states that an employee is dismissed by his employer if the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.
45. Under s.98 (1) ERA, in determining whether a dismissal of an employee is fair or unfair, it is for the employer to show the reason (or, if more than one, the principal reason) for the dismissal and that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
46. If the employer discharges that burden, under s.98(4) ERA, the Tribunal must decide whether the dismissal is fair or unfair, having regard to the reason shown by the employer. This decision will depend 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 the decision must be determined in accordance with equity and the substantial merits of the case.
47. In determining whether an employee has been constructively dismissed, case law has established the following principles.
48. The employer must have committed a repudiatory breach of contract. A repudiatory breach is a significant breach going to the root of the contract. This is set out in *Western Excavating v Sharp* [1978] ICR 221. There must be an act or omission, or a series of acts or omissions, by the employer which was the cause of the employee's resignation and amounted to a fundamental breach of contract. A repudiatory breach can be a breach of the implied term of mutual trust and confidence that is within every contract of employment. This is that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of

trust and confidence between employer and employee (per Lord Steyn in *Malik -v- BCCI SA (in compulsory liquidation)* [1997] ICR 606). Whether an employer has committed a breach of that implied term must be judged objectively, looking at the employer's conduct from the perspective of a reasonable person in the employee's position *Tullett Prebon plc and ors v BGC Brokers LP and others* 2011 IRLR 420. It is not enough to show merely that an employer has behaved unreasonably *Transco plc (formerly British Gas plc) v O'Brien* 2001 IRLR 496, EAT. It is not necessary to show that the employer intended any repudiation of the contract. *Woods v WM Car Services (Peterborough) Ltd* 1981 ICR 666, EAT established that the tribunal's function is to look at the employer's conduct as a whole and determine whether its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it. *Woods* also established that any breach of this implied term will be regarded as repudiating the contract of employment.

49. There can be a breach of the implied term of trust and confidence where a "last straw" doctrine applies. In *Kaur v Leeds Teaching Hospitals NHS Trust* 2019 ICR 1, the Court of Appeal held that an employee who claims unfair constructive dismissal based on a continuing cumulative breach is entitled to rely on the totality of the employer's acts notwithstanding any prior affirmation of the contract, provided that the later act -the last straw - forms part of the series. In *London Borough of Waltham Forest v Omilaju* [2005] IRLR 35 it was confirmed that the last straw must contribute, however slightly, to the breach of trust and confidence. The last straw cannot be an entirely innocuous act or be something which is utterly trivial. In *Kaur* (above) the Court of Appeal set out the questions that the tribunal must ask itself in a "last straw" case. These are:

- (a) What was the most recent act (or omission) on the part of the employer which the employee says caused or triggered her resignation?
- (b) Has 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.
- (e) Did the employee resign in response (or partly in response) to that breach?

50. The employee must leave because of the breach but it need not be the sole or dominant reason for resignation *Jones v F Sirl & Son (Furnishers) Ltd* [1997] IRLR 493.

51. The employee must not waive the breach or affirm the contract by delaying resignation too long. In *Western Excavating (ECC) Ltd v Sharp* (above), Lord Denning said that the employee 'must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving,

he will lose his right to treat himself as discharged'. However, the question of whether the employee has affirmed the contract does not simply focus on the passage of time. In *Chindove v William Morrison Supermarkets plc* EAT 0201/13, Langstaff P said that what matters is whether, in all the circumstances, including the employee's own situation, the employee's conduct has shown an intention to continue in employment rather than resign. It was recognised in *Bournemouth University Higher Education Corporation v Buckland* 2010 ICR 908 that resigning from a job is a serious matter with potentially significant consequences for the employee and this can be relevant in assessing the significance of the length of time the employee may take to make such a decision.

The Law on Annual Leave under Working Time Regulations 1998

52. Neither party directed me to the Working Time Regulations 1998 ("WTR").

53. Regulation 13(9) WTR states that leave to which a worker is entitled under this regulation may be taken in instalments, but—

(a) subject to the exceptions in paragraphs (14), (15) and (17), it may only be taken in the leave year in respect of which it is due, and

(b) it may not be replaced by a payment in lieu except where the worker's employment is terminated.

54. Regulations 13 (14) – (18) state:

(14) Where, as a result of taking a period of statutory leave in any leave year, a worker is unable to take some or all of the annual leave to which the worker is entitled in that leave year under this regulation, the worker is entitled to carry forward such untaken leave into the following leave year.

(15) Where, as a result of taking a period of sick leave in any leave year, a worker is unable to take some or all of the annual leave to which the worker is entitled in that leave year under this regulation, the worker is entitled to carry forward such untaken leave into the following leave year provided it is taken by the end of the period of 18 months from the end of the leave year in which the entitlement originally arose.

(16) Paragraph (17) applies where, in any leave year, an employer fails to—

(a) recognise a worker's right to annual leave under this regulation or to payment for that leave in accordance with regulation 16;

(b) give the worker a reasonable opportunity to take the leave to which the worker is entitled under this regulation or encourage them to do so; or

(c) inform the worker that any leave not taken by the end of the leave year, which cannot be carried forward, will be lost.

(17) Where this paragraph applies and subject to paragraph (18), the worker is entitled to carry forward any leave to which the worker is entitled under this regulation which is untaken in that leave year or has been taken but not paid in accordance with regulation 16.

(18) Annual leave that has been carried forward pursuant to paragraph (17) cannot be carried forward beyond the end of the first full leave year in which paragraph (17) does not apply.

Conclusions on claim of constructive unfair dismissal

55. The Claimant was employed as a personal assistant/ carer to the Respondent from 2010 – 2024. Her employment ended on 31st October 2024. She commenced Early Conciliation on 3rd January 2025. This ended on 14th February 2025 and the Claimant's claim was issued on 9th March 2025. The Claimant is therefore eligible to bring a claim of unfair dismissal if she was dismissed.
56. The burden of proving the dismissal falls on the Claimant on a balance of probabilities. She says she was constructively dismissed, in accordance with s.95(1)(c) ERA. Her case is that she terminated her contract of employment in circumstances in which she was entitled to terminate it without notice by reason of the employer's conduct.
57. The Claimant relies on a range of events which occurred between 2017 and 2024 as establishing a breach by the Respondent of the implied term of trust and confidence ("Implied Term"). If there is a breach of this Implied Term, it will be a fundamental breach.
58. Taking the events identified by the Claimant chronologically:
59. **2017**
Two incidents are relied upon by the Claimant:
- (a) On an unspecified date in February 2017, the Respondent displayed a lack of empathy towards the Claimant when she arrived at work distressed after her father's diagnosis of terminal cancer.
 - (b) Later in 2017 when the Respondent's husband died, the Respondent did not acknowledge the trauma experienced by the Claimant after she administered CPR to Mr. Brennan and did not offer the Claimant support for her wellbeing.

I find that neither of these incidents meets the test of a breach of the Implied Term. Viewed objectively, it was unreasonable for the Respondent to show a lack of empathy towards the Claimant's distress about her father's diagnosis in February 2017 but unreasonableness is not enough to show a breach of the Implied Term. The effect of the Respondent's failure to acknowledge the wellbeing needs of the Claimant following the death of Mr. Brennan, when viewed objectively, was not such that the Claimant cannot be expected to put up with it. These two incidents, alone or collectively, do not show the Respondent conducting herself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.

60. **2019**

Two matters are relied on by the Claimant:

- (a) On 9th April 2019, the Claimant's father died. The Claimant felt the employer should have shown her more empathy and should have given the Claimant bereavement leave.

I find there was no express contractual entitlement to bereavement leave. The contract of employment is silent on this issue. This did not therefore breach an express term of the contract. Did it breach the Implied Term? I find that it did not. The Claimant made no request for leave: even if she had done so, a refusal by the Respondent would be viewed objectively as lacking empathy but would not show the Respondent conducting herself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.

- (b) After initially asking the Claimant to work one, unspecified, day between Christmas 2019 and New Year 2020, the Respondent told the Claimant on Christmas Eve that she should not to come in to work over the festive period and that the Respondent did not want her there. This led to the Claimant feeling dismissed and excluded. The Claimant did not give further detail on why she felt this way and gave no evidence that she took steps to discuss her feelings with the Respondent.

A reasonable employer may have communicated in a more timely manner with the Claimant and may not have said she was not wanted but, viewed objectively, this behaviour of the Respondent does not amount to conduct which was calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.

61. **2021 – 2024**

The Claimant relies on the cold and distant manner displayed by the Respondent to the Claimant for about a two week period each time the Claimant requested annual leave and the reduced communication from the Respondent in the week leading up to the Claimant's scheduled holiday. This made the Claimant anxious about requesting leave. She did not take her full annual leave entitlement in any of the years 2021 – 2024 but this was not because the Respondent refused any request for annual leave made by the Claimant. It was clear from her evidence that the Claimant took the promise she made to Mr. Brennan - that she would look after the Respondent – seriously and her sense of duty may have stopped her taking some of her leave after the Respondent came out of hospital in April 2022. However, she was permitted to take the leave she requested as shown in the annual leave records produced for each of these years. Those records inflate the Claimant's entitlement to annual leave each year as they carry forward untaken leave from previous years where there was no legal right to do so, as discussed below.

There was no breach of an express term of the contract in relation to annual leave. The Respondent's cold and distant manner on receiving a request for annual leave and the reduced communication in the week before she took leave

were not explained on any further detail by the Claimant. Viewed objectively, I find that this evidence does not show conduct by the Respondent which was calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.

62. **April 2022**

I find that this is the year when relations between the Claimant and Respondent were at their lowest. The Claimant relies on four matters which arose in 2022:

(a) The Claimant felt that she needed to be “available at all times” to care for the Respondent after the latter returned home from hospital after surgery. The Claimant did not give evidence of any specific dates on which she was asked to work beyond her contracted hours. Her evidence was that the Respondent would not have been discharged from hospital except for the fact that the Claimant was available to care for her. She gave no evidence of agreeing with the hospital, the Respondent or anyone else that she would assume this role. I accept entirely that the Claimant did assume this responsibility but I have no evidence that she did so other than voluntarily and possibly as part of her promise to Mr. Brennan. The only fact given in evidence about the Respondent’s conduct on this issue was that the Respondent gave the Claimant’s telephone number to the hospital physiotherapist. There is little doubt that a more reasonable employer might have checked with their employee before doing so but, viewed objectively, this evidence does not show conduct by the Respondent which was calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.

(b) In May 2022, the Claimant requested a pay rise. The Respondent responded by stating that the Claimant was getting above her station. The Respondent instructed her to give in her notice and to leave the property immediately. The following week, the Claimant returned to work, after contacting ACAS, and a pay rise was awarded to her. The Claimant felt devalued and insecure in her position but took no further action.

I find that the Respondent’s conduct here was likely to seriously damage the relationship of trust and confidence between employer and employee when viewed objectively, as, despite the support the Claimant had offered the Respondent, she said things that caused the Claimant to feel insecure in her job.

(c) After the Claimant received a pay rise in May 2022, the Claimant chose to opt out of a pension scheme.

My finding of fact on this issue was that this was done voluntarily by the Claimant. There is no conduct therefore on the Respondent’s part which, viewed objectively was likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.

- (d) There was a dispute between the parties as to the arrangements for working on the Jubilee bank holiday weekend in June 2022. The Claimant's case is that she should have been allowed to work the bank holidays to secure double pay and that the Respondent's refusal was a breach of contract.

I find there was no breach of contract by the Respondent. There was no clause in the Claimant's contract which gave an entitlement to work bank holidays. As the Claimant did not work bank holidays and was given the time off and paid her normal salary for it, there was no conduct by the Respondent which, viewed objectively was likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.

63. January 2024

The Claimant felt the Respondent was unsupportive in relation to the Claimant's loss of her mother in January 2024. She felt she should have received bereavement leave.

I repeat the points I made above in relation to the death of the Claimant's father in 2019 as I found there was no express contractual entitlement to bereavement leave. The contract of employment is silent on this issue so there was no breach of an express term of the contract. Neither was there a breach of the Implied Term. The Claimant made no request for leave and even if she had done so, a refusal by the Respondent would be viewed objectively as lacking empathy but would not show the Respondent conducting herself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.

64. 26 September 2024

Between March 2024 and 26 September 2024, the Claimant and Respondent had been engaged in discussions about whether the Claimant had an entitlement to carry forward unused annual leave. The Respondent told the Claimant she would pay her for this leave then, on 26th September, the Respondent told the Claimant that she had changed her mind and did not have to pay her. The Claimant says this is both an express breach of contract and a breach of the Implied Term.

- 64.1 Firstly, I find that, as a matter of law, the Claimant was not entitled to carry forward her leave and was not entitled to pay in lieu of leave whilst in employment. The Claimant's contract of employment at Clause 4.3 expressly stated that there was no right to carry forward annual leave. The Claimant said that this was subject to exceptional circumstances and that those exceptional circumstances were the requirements of caring for the Respondent. The Claimant was wrong in her reading of Clause 4.3 : it did not provide for carry forward in exceptional circumstances. Instead, it specified

"You have no right to carry forward your annual leave from one leave year to another, although this may be agreed in exceptional circumstances."

The key word is “agreed” – the Claimant did not seek to suggest that the parties had agreed that she could carry forward annual leave. She had no express contractual provision that enabled her to do so.

64.2 The Working Time Regulations 1998, Regulation 13(9) addresses both the points raised by the Claimant. She says

- (i) she was entitled to carry forward annual leave and
- (ii) that she should be paid for the leave carried forward.

64.3 Under Regulation 13(9) (a), subject to the exceptions in paragraphs (14), (15) and (17), leave can only be taken in the leave year in respect of which it is due i.e. there is no right to carry forward.

64.4 Under Regulation 13(9)(b) leave may not be replaced by a payment in lieu except where the worker’s employment is terminated.

Did any of the exceptions under Regulation 13(14), (15) or (17) apply to enable the Claimant to carry forward her untaken leave to subsequent leave years?

The only exception that could apply was Regulation 13(17) which requires consideration of Regulation 13(16)(b) where leave (under Regulation 13(17)) can be carried forward if the employer fails to give the worker a reasonable opportunity to take the leave to which the worker is entitled under this regulation or encourage them to do so. I find there was no evidence of such failure: the Claimant did not suggest that she had ever been refused the opportunity to take leave. There was no statutory right to carry forward annual leave.

64.5 At the point of the discussions about holiday pay between March and September 2024, the Claimant was still in employment so she was not entitled to pay in lieu of accrued leave.

64.6 Was there a breach of the Implied Term?

64.6.1 There was no such breach in the refusal on 26 September 2024 to pay for accrued leave: there was no legal entitlement to such pay.

64.6.2 Was there a breach of the Implied Term in relation to the Respondent’s change of mind, having first told the Claimant that she would be paid for the accrued leave? I find that there was not. Viewed objectively, the conduct of an employer who corrects an earlier misunderstanding of their legal obligations to their employee is not conduct which is calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.

64.6.3 Was there a breach of the Implied Term when the Respondent said to the Claimant on 26th September 2024 “*You are not going to like this. I hope your hormones are up to this today*”, when she asked the Claimant “*What are you going to do about it?*” and when the Respondent made some reference to the Claimant

handing in her notice.

I find that the Respondent could and should have refrained from making a reference to the Claimant's hormones but the Claimant's case was not put on the basis that the language used breached the Implied Term : her focus was very specifically on the breach arising from the refusal to pay. This is reflected in her grievance letter of 30th September 2024 when she says:

"After taking the time to look through my contract, and after several conversations with yourself where I have made you aware of a grievance over holiday pay, I thought I would take the time to formally let you know my grievance and the reasoning behind it.

I have informally brought this to your attention on several occasions and we haven't been able to resolve the matter.

I believe that I should have been paid for backdated holiday pay for the period in question..."

The words "What are you going to do about it?" were not given further context in the evidence provided. In her grievance letter, the Claimant does, in her penultimate paragraph say:

"In recent months you have asked me if I would like to give you my notice to terminate my employment for no clear reason, which has caused me to be very distressed and confused as to what I had done wrong, which in turn has made me feel very uncomfortable at times."

The Respondent should not have made reference to the Claimant handing in her notice either on 26th September or earlier but, without further evidence of exactly what was said and when, I cannot find that this equated to an invitation to resign in the same way as the incident in May 2022 did when the Claimant asked for a pay rise.

65. **3 October 2024**

It was not in dispute before me that the Claimant's grievance was raised on 30 September 2024, although the email sent to the Respondent by the Claimant attaching the grievance (page 51) is dated 3 October 2024.

On 3 October 2024, the Claimant sent her written resignation to the Respondent (page 54) stating:

"...In accordance with my contract, I am giving you 4 weeks notice ...

You should be aware that I am resigning due to my formal grievance not being resolved. I have written this resignation as a result of your response to my formal grievance letter, which was you asking me to submit my written resignation. I have been given no option but to resign and have been made to feel extremely uncomfortable in my workplace..."

The Claimant resigned because she had not received accrued holiday pay and because her grievance about holiday pay had not been resolved. The

Respondent had told the Claimant that the grievance (received 3 days earlier) had been sent to her legal advisers. The Respondent did nothing to suggest that she was not dealing with the grievance and only three days had elapsed. I find no evidence that viewed objectively, the Respondent's response to the grievance was conduct calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.

66. The Claimant's resignation letter stated that she was giving notice "in accordance with" her contract. Under s.95(1)(c) ERA, a constructive dismissal can be established if the employee terminates the contract under which she is employed *with or without notice* in circumstances in which she is entitled to terminate it without notice by reason of the employer's conduct. The fact of giving notice does not therefore deny the Claimant the opportunity to prove she was constructively dismissed.
67. In the list of issues, in addition to the specific points made above, refers to the Respondent behaving in a way that made the Claimant scared and making hurtful and dismissive comments to the Claimant. No further detail was provided in the Claimant's evidence and I can therefore attach little weight to them.
68. It was clear to me that the Claimant was a loyal and long-serving employee and, in the hearing, the Respondent made comments (not in evidence) that showed how much she depended on the Claimant. However, to determine this claim, I am mindful that the starting point is that the Claimant must show that the Respondent committed a fundamental breach of the employment contract.
69. I find there was no breach of any express term of the contract for the reasons set out above. In particular, the Respondent did not breach the contractual provisions in relation to annual leave, pay or pension and there were no contractual terms relating to bereavement leave.
70. I find there was one breach of the implied term of trust and confidence which occurred in May 2022 when the Claimant asked for a pay rise. Here, the Respondent did behave in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent in the way she spoke to the Claimant, telling her she was getting above her station, instructing her to give in her notice and to leave the property immediately. I find that on that occasion, the Respondent had no reasonable and proper cause for speaking to the Claimant in this way.
71. Did the Claimant resign in response to that breach? I find that she did not. The pay rise issue arose more than two years before her resignation. She does not refer to the conversation about a pay rise in May 2022 in either her grievance or resignation letter. She raised a grievance because the Respondent refused to pay her for annual leave which the Claimant wrongly believed she could carry forward. She resigned because that grievance was not resolved by 3 October 2024.
72. The Claimant did refer, in her grievance letter, to

“In recent months you have asked me if I would like to give you my notice to terminate my employment for no clear reason...”

I find that this did not relate to the Respondent's words in May 2022 – that would be outside the “recent months” reference made by the Claimant.

73. The Claimant affirmed the contract after the fundamental breach by the Respondent in May 2022. She returned to work the following week and continued to work for the Respondent for more than two years, showing that she chose to keep the contract alive after the breach. She cannot therefore rely on this breach alone to establish that she was constructively dismissed.
74. There is no one incident that establishes a repudiatory breach of contract upon which the Claimant can rely to prove her dismissal.
75. The Claimant's case is that she resigned because of the various behaviours of the Respondent over a number of years and that the refusal to pay the holiday pay and/or the failure to resolve the grievance was “the last straw”. She is entitled to rely on the totality of the employer's acts notwithstanding any prior affirmation of the contract, provided that the later act -the last straw - forms part of the series. The last straw must contribute, however slightly, to the breach of trust and confidence.
76. Applying the relevant questions set out in *Kaur* (above), the most recent act on the part of the employer which the employee says caused or triggered her resignation was the refusal to pay holiday pay and the failure to resolve the Claimant's grievance within three days. The Claimant had not affirmed the contract since that act but neither of those acts of refusal to pay holiday pay and the failure to resolve the Claimant's grievance within three days were, by themselves, a repudiatory breach of contract. Furthermore, they were not a part of a course of conduct comprising several acts and omissions which viewed cumulatively amounted to a (repudiatory) breach. There was only one breach of contract identified in my discussion above (in May 2022). In all other respects, whilst there were instances of unreasonable behaviour by the Respondent, taken cumulatively, the Respondent's conduct did not amount to a repudiatory breach of contract. Consequently, I must find that the Claimant did not resign in response (or partly in response) to a repudiatory breach.
77. The Claimant has therefore not discharged the burden of proving a dismissal in accordance with s.95 ERA 1996.
78. Accordingly, the Claimant's case of unfair dismissal is not well-founded and is dismissed.

Preparation Time Order

79. At the hearing on 27th January, 2026, I issued case management orders that the Respondent should submit medical evidence to the Tribunal addressing the reasons why the Respondent felt too unwell to give evidence on 27 January 2026, whether these reasons were likely to persist and if so, for how

long and details of any reasonable adjustments that should be made to facilitate the Respondent's ability to give evidence at the next hearing date which was 10th March 2026.

80. In view of the internet connection issued experienced on Day 2 of the hearing in particular, I ordered that the Respondent must write to the Tribunal providing details of the solution that the Respondent and/or her representatives had identified and actioned in relation to the inadequate internet access experienced on Day 2 so that the solution was in place for the reconvened hearing on March 10, 2026.

81. Having regard to the provisions of Rule 74(2)(c) Employment Tribunal Rules 2024, I also ordered that

- the Respondent should submit to the Tribunal any written submissions they wished to make in relation to the Tribunal's consideration of a preparation time order in favour of the Claimant; and
- the Claimant must send to the Tribunal details of the time taken by her to prepare for today's hearing, which will need to be repeated for the reconvened hearing.

82. The case management orders made on January 27th were complied with and, at the reconvened hearing, having regard to the information provided, I made a preparation time order in favour of the Claimant. I did so, having considered the written submissions made on behalf of the Respondent, in accordance with Rule 75(2), the oral submissions made by both parties, the letter received from the Respondent's GP practice dated 2 February 2026 and the law set out below.

83. The GP letter referred to above stated that the Respondent's last GP consultation had been by telephone on 9th January 2026 when she complained of leg pain and that the Respondent was next seen, by the practice's paramedic, at home on 29th January. The letter states
"Mrs. Brennan had emailed in 2 days before this to say that she was involved in an Industrial Tribunal and was unable to attend the online session. She mentions that she was experiencing dizziness with no appetite and nausea and had been struggling with a lack of sleep and stress. This was not discussed at the appointment on the 29th but her nighttime symptoms had been discussed in terms of managing her pain."

The letter went on to say that the doctor suspected the Respondent's ongoing pain and sleep management would be an ongoing issue and dated back to 2009. Although I have referred only to extracts of the GP letter, I took account of its entire contents in considering the provisions of Rule 74.

84. I was directed to the cases of *Gee v Shell UK Ltd* [2002] EWCA Civ 1479, para 22 and *Dyer v Secretary of State for Employment Appeal No. EAT 183/83* by Ms. Bastin. I could not locate the second case but note that it was relied upon in the Respondent's submissions as authority that "the word 'unreasonable' in Rule 11 seems to us to have its ordinary meaning, being the meaning attributed to it by the industrial tribunal." I take note of that point and the principle from

Gee that costs in the Employment Tribunal are the exception rather than the rule.

85. Under Rule 73(2) a preparation time order is an order that the paying party make a payment to the receiving party in respect of the receiving party's preparation time while not represented by a legal representative.
86. Rule 74(2)(c) states that the Tribunal must consider making a costs order or a preparation time order where it considers that a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which that hearing begins.
87. This rule requires the Tribunal to *consider* making an award but I recognise that I am not *required* to make such an award. What I must do is consider the relevant factors in this case, and, taking into account all of those relevant factors, and disregarding anything that is not relevant, decide whether an award should be made. If so, I need to decide the amount of the award. The factors that are relevant to the decision about whether to make such an order (and, if so, how much the award should be) include, but are not limited to, the points set out below.
88. Costs, and therefore by analogy, preparation time orders, are the exception rather than the rule. The fact that the criterion under Rule 74 (2)(c) has been met does not mean that an order will be made.
89. If a preparation time order is made, it should be compensatory, not punitive.
90. Under Rule 82, in deciding whether to make a preparation time order, and if so the amount of any such order, the Tribunal may have regard to the paying party's ability to pay. The Tribunal is not obliged to take ability to pay into account but should specify whether it has done so or not (and, if not, why not). The onus is on the Respondent here to raise any issue of inability to pay and to provide evidence in support of any such inability to pay.
91. Under Rule 77(1), if a preparation time order is made, the Tribunal must decide the number of hours in respect of which the order should be made, on the basis of information provided by the receiving party on the preparation time spent and the Tribunal's own assessment of what it considers to be a reasonable and proportionate amount of time to spend on such preparatory work, with reference to such matters as the complexity of the proceedings, the number of witnesses and documentation required.
92. Under Rule 77(2) and (3), the relevant hourly rate for work done between 27 January and 10 March 2026 is £45 and the amount of a preparation time order must be calculated by multiplying the number of hours assessed under Rule 77(1) by the rate under paragraph (2) which is applicable to the year beginning 6 April in which the preparation time was spent.
93. Having considered the issue of a preparation time order as required, I exercise my discretion to award such an order to the Claimant to compensate her for the

additional time required to prepare for the hearing on 10th March. This hearing was necessitated by the postponement on 27th January which was made because of the combined factors of difficulties with the Respondent's internet connection and the Respondent's indication that she was not well enough to testify that day.

94. The issue of the internet connection affected both the Respondent and her representative as they were together at the Respondent's home. The Respondent had indicated in her ET3 that she could take part in video hearings. Both the Respondent and her representatives had known since September 2025, the date of the final hearing and had been made aware, as set out in paragraph 2 above, of the need to check their technology on receipt of the Notice of Hearing. Steps should have been taken to ensure an adequate connection was available or, alternatively, an in-person hearing should have been requested in September 2025.
95. The Respondent's indication that she was unable to give evidence on 27th January because of her condition is not taken any further by the medical evidence supplied. Although that evidence refers to ongoing pain and sleep issues, the Respondent's condition on 27th January 2026 was not discussed at her appointment on 29th January and the reference in that GP letter to the Respondent's dizziness, lack of appetite and nausea and lack of sleep and stress is taken from the Respondent's self-reporting in her email requesting a GP appointment. The Respondent participated fully in the discussions on the morning of 27th January about the internet problems and no mention had been made to the Tribunal of any health issues affecting her that day before she was asked to give evidence. If she was more stressed that any other party involved in a final hearing, that would not have been helped by the lack of preparation and support in place to enable her to access documents and have a reliable internet connection. Those were matters which the Respondent could and should have resolved ahead of the hearing. The failure to do so led to the postponement and consequent additional preparation work for the Claimant.
96. Taking all relevant factors into account, I exercise my discretion to award a preparation time order in favour of the Claimant, not as a punitive measure against the Respondent but to compensate the Claimant for the additional time spent on the case because of the postponement.
97. At the hearing on March 10th, the Respondent's representative indicated that the Claimant would have spent "more than 3 hours, perhaps 5 hours" to reacquaint herself with the case and prepare for the postponed hearing. I take notice of the fact that the Claimant was due to begin her cross-examination of the Respondent and would therefore have had a significant amount of preparation to do. In her submissions, the Claimant indicated that she had spent 6 – 8 hours preparing for the postponed hearing, but this included research because of what was said at the last hearing. I do not allow any time in relation to such research: if the hearing had concluded on 27th January, that research would not have been done. I take the view that the additional preparation time needed by the Claimant because of the postponement would have been a period of about 5 hours. I award 5 hours, having regard to the

Respondent's indication above as well as my own assessment of what is a reasonable and proportionate amount of time to spend on the preparatory work in this case, having regard to the need for the Claimant to re-prepare for cross examination, re-acquaint herself with the documents and to remind herself of what happened in the hearing in January. This is payable at the fixed rate of £45 an hour and totals £225.

S. Evans
Employment Judge

Authorised for issue on 9 April 2026

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Sent to the parties on:
14 May 2026

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For the Tribunal Office:

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