Case number: 1401584/2024

EMPLOYMENT TRIBUNALS

Claimant: **Mr Neville Smith-Daniels**

Respondent: **Montpellier Land and Developments Ltd**

Heard at: **By video** **On: 16, 17, 18, 19 & 20 March 2026**

Before: **Employment Judge Oliver**

Representation
Claimant: Mr Matthew Curtis, counsel
Respondent: Mr Robin Smythe, director

JUDGMENT having been given orally at the hearing on 20 March 2025 and written reasons having been requested in accordance with Rule 60(4D) of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided:

REASONS

1. This is a claim for unfair dismissal, detriments on the grounds of public interest disclosure, breach of contract (notice), unauthorised deduction from wages, and accrued but unpaid holiday pay.

2. The hearing was conducted by the parties attending by video conference (CVP). It was held in public with the Tribunal sitting in open court in accordance with the Employment Tribunal Rules. It was conducted in that manner because the parties had consented to such a hearing after a courtroom was unavailable for a hearing in person, and it was in accordance with rule 46, the *Presidential Guidance on remote hearings and open justice* and the overriding objective to do so.

3. The evidence did not begin until day two because the Respondent did not have a hard copy of the bundle of documents, which should have been provided to them by the Claimant under the relevant case management orders. A copy was delivered so that evidence could begin in day two. The initial listing was for a six-day hearing, but was reduced to five days because I was not available for the sixth day. It was still possible to complete evidence and submissions within four days

and I gave an oral judgment.

4. I dealt with two preliminary applications at the start of the hearing, and gave full oral reasons for my decisions at the start of day two:

a. Whether the Respondent should be permitted to rely on a supplementary bundle of documents containing unsigned statements and emails. I allowed this to be submitted and confirmed the Claimant could address weight and relevance in closing submissions.

b. Whether the Respondent should be permitted to amend their response to argue that the Claimant was not an employee. I did not allow this amendment, taking into account the timing of the application, the potential merits of this argument, the prejudice to the Claimant of postponing the hearing, and the balance of injustice and hardship to the parties.

Issues

5. There was a first Case Management Preliminary Hearing on 9 May 2025. The issues were agreed subject to further information from the Claimant on some points. The Claimant provided a consolidated list of issues for the hearing, and this was discussed and agreed with the parties as follows. It was agreed there would be a separate remedy hearing if needed, so these are the issues for the first part of the hearing:

1. Time limits

1.1 The claim form was presented on 26 June 2024. The Claimant commenced the Early Conciliation process with ACAS in respect of the first respondent on 27 March 2024 (Day A). The Early Conciliation Certificate was issued on 29 March 2024 (Day B). Accordingly, any act or omission which took place before 25 March 2024 (which allows for any extension under the Early Conciliation provisions) is potentially out of time so that the Tribunal may not have jurisdiction to hear that complaint.

1.2 Was the unauthorised deductions / detriment complaint made within the time limit in section 48 / 23 of the Employment Rights Act 1996? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act complained of / date of payment of the wages from which the deduction was made?

1.2.2 If not, was there a series of similar acts or failures and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one? (for detriment)

1.2.3 If not, was there a series of deductions and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one? (for deductions)

1.2.4 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

1.2.5 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. Dismissal / resignation

2.1 Was the Claimant's contract terminated by way of his resignation or by way of the Respondent dismissing him for gross misconduct?

2.1.1 The Claimant avers that he resigned without notice on 25 March 2024 by letter and email prior to a disciplinary hearing.

2.1.2 The Respondent accepts that a resignation letter was pushed through the letterbox of the Respondent's offices and a resignation email was sent to the Respondent prior to a disciplinary hearing on 25 March 2024. At that disciplinary hearing (which proceeded in the Claimant's absence) the Respondent says the decision was taken to dismiss the Claimant without notice for gross misconduct.

The Respondent says it was only after that hearing that the Claimant's resignation email / letter was read. In any event, the Respondent also avers that even if the resignation was put in prior to the dismissal, the dismissal of the same day 'overrides' the resignation.

3. Constructive unfair dismissal

3.1 If the Claimant's contract ended by way of resignation, did that amount to a dismissal within the meaning of s.95 Employment Rights Act 1996 (a 'constructive dismissal')?

3.2 The Claimant claims that the Respondent acted in fundamental breach of the implied term of the contract relating to pay / mutual trust and confidence. The alleged breaches he relies on are as follows;

3.2.1 Failing to obtain statutory consents (in or around October / November 2021) for a specific plot development (Shepherds Walk – Plot 10) or pay the Community Infrastructure Levy (CIL) to the appropriate local authority in relation to the same plot (the Claimant says this was behaviour likely to bring the business, and by association the Claimant, into disrepute);

3.2.2 In or around autumn 2021 / spring 2022 Mr R Smythe incurring inappropriate company expenditure namely an extension to his private residence, Shepherd's Walk (the Claimant says this was to his detriment because he was a shareholder and interested in the business growing rather than being diminished by this expenditure);

3.2.3 In breach of the shareholders agreement dated 6 May 2017 failing to provide interest statements or calculations throughout the period of employment and in particular this became an issue in 2023 and early 2024 prior to resignation when larger sums were undeclared.

3.2.4 Failing to enrol the Claimant in a workplace pension scheme as required by the Pensions Act 2008 despite the Claimant's requests. The Claimant says the request were made orally (throughout employment, but increasingly after the legal obligation was brought in to provide such a pension) and he also believes some may be in writing (which will be disclosed if that was the case);

3.2.5 On numerous occasions from May 23 onwards Mr R Smythe / or his solicitors misrepresenting (by undervaluing) and failing to disclose the financial status of the Company upon reasonable requests made by the Claimant / his solicitors, in particular requests were made on:

(a) On 17th May 2023 the Claimant initially queried the validity of the draft accounts for the year ending March 2023 at the meeting he attended with Robin Smythe and Nick Bryant of Azets Accountants. The Claimant then exchanged numerous emails and 'phone calls with the accountants, which angered Robin Smythe none of which were satisfactorily answered.

(b) The Claimant also held face to face meetings with Robin Smythe on 23rd June 2023 and 26th July 2023 and followed up with emails dated 7th August 23, 17th August 23 and 13th September 2023 relating to financial concerns culminating in the Claimant's solicitors' letter of 22nd September 2023.

(c) The Claimant also requested details at the shareholders meeting held at the Bournemouth office of the Respondent on 4th December 2023.

(d) The Claimant made several further requests until March 2024 and his resignation; information obtained subsequently demonstrated financial information was improperly withheld from the Claimant.

3.2.6 On or about 3 January 2024 the intentional filing of incorrect company accounts by the Respondent, objected to by the Claimant (in writing), and a declaration by Mr R Smythe (orally and in writing) to the Claimant that due corporation tax 'would not be paid';

3.2.7 On or about 3 January 2024 Mr R Smythe making threats (orally) to liquidate the company and assign all the Respondent's clients to a new business under Mr R Smythe's sole control and then make the Claimant redundant;

3.2.8 Improperly accessing, in March 2024, the Claimant's work email account through the Claimant's own personal laptop computer without the Claimant's express or implied consent to do so (the Claimant says that he discovered this because emails he was sending were being followed up by Mr R Smythe shortly afterward with phone calls to the recipients and then he got documentary evidence from the Respondent's IT consultant that his emails were being accessed); and

3.2.9 The treatment relied on below as acts of detriment for making a protected disclosure (whether or not they are found to be done because of a protected disclosure).

3.3 The Tribunal will need to decide:

3.3.1 Whether the Respondent acted as set out above;

3.3.2 If so, in so acting whether the Respondent:

3.3.2.1 Breached the implied term of trust and confidence, in particular: 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;

3.3.2.2 breached any implied term in relation to pay, and whether any such breach amounted to a repudiatory breach of contract.

3.4 Did the Claimant resign because of a repudiatory breach of contract? The Respondent says that the Claimant resigned because he knew he was going to be properly dismissed for wrongdoing.

3.5 Did the Claimant affirm the contract after resigning?

4. Unfair dismissal

If the Claimant was dismissed within the meaning of s.95 ERA 1996:

4.1 What was the reason for dismissal? The Respondent asserts that it was a reason related to conduct which is a potentially fair reason for dismissal under s. 98 (2) of the Employment Rights Act 1996.

4.2 If the dismissal was for a potentially fair reason, was it fair or unfair (having regard to the reason shown by the Respondent)? This 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. If the reason for dismissal is shown to be related to conduct, the Tribunal will need to consider whether the Respondent held a genuine belief in the Claimant's misconduct on reasonable grounds and following as reasonable an investigation as was warranted in the circumstances?

5. Protected disclosure ('whistle blowing')

5.1 Did the Claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Claimant relies on:

5.1.1 an (open) letter sent on 22 September 2023 by his then legal representatives to the Respondent which he says disclosed the following:

5.1.1.1 That Mr R Smythe had failed to answer reasonable questions on the financial affairs of the Respondent and provide proper financial information to the Claimant to enable him to discharge his fiduciary and directorial duties and contrary to a Shareholders Agreement between the Claimant and Mr R Smythe;

5.1.1.2 the expenditure on behalf of the Respondent in the form of rental payments to Chapter Homes (Poole) Limited (owned by the Mr R Smythe) whilst living at the same address as his primary residence namely 1 The Boltons, 9 Durley Chine Road South, Bournemouth, BH2 5JT (the Property);

5.1.1.3 the expenditure of the Respondent's funds on personal items and furnishings for living at the Property 'rent free';

5.1.1.4 the expenditure of the Respondent's funds on furnishing another property and various personal expenses including entertainment, gardening services and bar expenses;

5.1.1.5 the payment of inflated interest payments of 17% per annum by the Respondent to Chapter Homes (Poole) Ltd contrary to director's fiduciary and directorial duties;

5.1.1.6 the use of the Respondent's funds to pay for enlargement of a personally owned property, plot 10 Shepherds Walk, without relevant statutory planning consent;

5.1.1.7 the failure to disclose financial information in relation the purchase of 10 Shepherds Walk contrary to fiduciary and directorial duties in that the purchase was believed to be at an under-value;

5.1.1.8 incurring unwarranted expenditure of the part of the Respondent to the personal benefit of Mr R Smythe, contrary to fiduciary and directorial duties and the Shareholders Agreement;

5.1.1.9 the failure to engage and consult with the Claimant in respect of declaration of dividend payments contrary to the Shareholders Agreement and the Respondent's Articles of Association; and

5.1.1.10 the unilateral cessation of dividend payments to the Claimant, decreasing income from £4,832 to £1,047.50 per month until it ceased.

5.1.2 Disclosures to the following:

5.1.2.1 Dorset Council Community Infrastructure Levy – 19 March 2023 - Claimant reported the breach in planning consent at 10 Shepherds' Walk and the resultant shortfall in the amount of Community

Infrastructure paid – as detriment to the public purse. ERA 43B(1)(b) and ERA 43G

5.1.2.2 Companies House - 13 February 2024; Claimant reported that R2 was looking to liquidate R1 leaving unpaid accounts as he had suggested leaving the corporation tax bill unpaid which would affect the public purse. ERA 43B(1)(b) and ERA 43G

5.1.2.3 Bournemouth, Christchurch and Poole Council – Claimant reported for non-payment of Council Tax in respect of his occupation of 1 The Boltons, Bournemouth which is a detriment to the Public Purse which was mentioned in correspondence on 14 February 2024; ERA 43B(1)(b) and ERA 43G

5.1.2.4 The Pensions Regulator - 14 February 2024; Claimant reported the failure to provide a workplace auto-enrolment pension as is not compliance with a legal obligation adopted for the public interest. ERA 43B(1)(b) and ERA 43G

5.1.2.5 Dorset Police - 1 March 2024; Claimant reported fraud and therefore in the public interest to report as it affected the public purse in unpaid taxes including corporation tax, PAYE and income tax obligations, the Community Infrastructure Levy and VAT. ERA 43B(1)(b) and ERA 43G

5.1.2.6 HMRC - 5 March 2024. Claimant reported fraudulent company accounts and the resultant underpayment of Corporation Tax, in addition to personal items purchased through the business where VAT had been incorrectly reclaimed, both of which affect the public purse. ERA 43B(1)(b) and ERA 43G

5.1.3 Were these disclosures of ‘information’?

5.1.4 Did he believe the disclosure of information was made in the public interest?

5.1.5 Was that belief reasonable? The Claimant believes that the disclosures were in the public interest because of the impact of non-compliance with the duties referred to on taxation, corporate and employer compliance obligations.

5.1.6 Did he believe the disclosures tended to show that:

5.1.6.1 The First and / or Second Respondent has committed or a criminal offence;

5.1.6.2 The First and / or Second Respondent had failed or was failing or was likely to fail to comply with legal obligations to which they were subject, those obligations being fiduciary and directorial duties and legal obligations within the Shareholders

Agreement, compliance with minimum wage and pension requirements;

5.1.6.3 The First and / or Second Respondent has concealed information tending to show the above.

5.1.7 Was that belief reasonable?

5.2 If the Claimant made a qualifying disclosure, was a protected disclosure because it was made to (in relation to the disclosures of 22 September 2023) the Claimant’s employer, and to appropriate third parties?

6. Detriment (Employment Rights Act 1996 section 47B)

6.1 Did the Respondent do the following things:

6.1.1 cease payment of all wages (and dividends) from 29th September 2023 onwards;

6.1.2 fail to provide reasonable support on or around September 2023 to enable the Claimant to discharge his duties as an employee, in particular he was informed by Mr R Smythe that he could not incur any further expenses (which prevented him from being able to do his duties);

6.1.3 pressure the Claimant on 11 September 2023 (by email), 14 October 2023 (by email) and 6 March 2024 (by email) to resign as a director, shareholder and employee (the pressure is said to have been put on the Claimant by Mr R Smythe);

6.1.4 inappropriate behaviour towards the Claimant in telephone calls, to colleagues and third parties, due to the influence of alcohol, in particular:

6.1.4.1 In February 2023 R1 was trying to finalise a business transaction. Andy Fallon was the Senior Land Manager for Sovereign Housing Association. One afternoon, after drinking, Robin Smythe called the Claimant about progress and became very irrational and belligerent. He rang off abruptly and then subjected Mr Fallon to an aggressive verbal assault. The incident was raised with the Claimant shortly after it took place causing embarrassment and concern.

6.1.4.2 In mid-May 2023 one afternoon, after drinking alcohol, Robin Smythe telephone the Claimant demanding to know why a planning application had not been submitted. The Claimant explained that it was progressing but more slowly than hoped, Robin Smythe ended the call abruptly and aggressively and then called Georgina Martin (an architect at Boon and Brown) giving verbal abuse reducing her to tears. Clive Brown, the MD of the architects called Robin Smythe and told him to desist from treating his staff in such manner. The incident caused embarrassment and concern.

6.1.5 on 6 March 2024 Mr R Smythe declare (by email) exclusive decision making in all decisions as majority shareholder and if the Claimant was ‘unhappy’ that he could hand back his shares and resign his directorship and end his employment; and

6.1.6 in March 2024 commence a disciplinary action against the Claimant for allegedly acting contrary to the Respondent’s business interests.

The Claimant confirmed he was not pursuing an allegation of detriment relating to the alleged failure to address the allegations he had raised in his letter of 22 September 2023.

6.2 By doing so, did it subject the Claimant to detriment?

6.3 If so, was it done on the ground that he had made the protected disclosures set out above? The Respondent asserts that Mr R Smythe only became aware of the disclosures to the various organisations listed above after the Claimant’s employment ended. The Claimant says that the Respondent was aware of these disclosures either through Mr R Smythe’s access to his emails and / or by way of reference to them in the Claimant’s letter of 22 September 2023 and / or because he orally informed Mr Robin Smythe that he would be or was making them at the time he made them.

7. Wrongful dismissal; notice pay

7.1 What was the Claimant’s notice period?

7.2 Was the Claimant paid for that notice period?

7.3 If not, was the Claimant guilty of gross misconduct or did he do something so serious that the Respondent was entitled to dismiss without notice?

8. Holiday Pay (Working Time Regulations 1998)

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

9. Unauthorised deductions (Part II of the Employment Rights Act 1996)

9.1 Did the Respondent make unauthorised deductions from the Claimant’s wages and if so how much was deducted? (The original Claimant alleges he was not paid wages from September 23 onwards.

10. Remedy issues – for the first part of the hearing

Unfair dismissal

10.1 Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?

10.2 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?

10.3 If so, should the Claimant's compensation be reduced? By how much?

10.4 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? If so, did the Respondent or the Claimant unreasonably fail to comply with it? If so is it just and equitable to increase or decrease any award payable to the Claimant and, if so, by what proportion up to 25%?

10.5 If the Claimant was unfairly dismissed, did he cause or contribute to dismissal by blameworthy conduct? If so, would it be just and equitable to reduce his compensatory award? By what proportion?

Detriment (s. 47B)

10.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? If so, did either party unreasonably fail to comply with it? If so, is it just and equitable to increase or decrease any award payable to the Claimant and, if so, by what proportion up to 25%?

10.7 Did the Claimant cause or contribute to the detrimental treatment by their own actions and if so would it be just and equitable to reduce the claimant's compensation? By what proportion?

10.8 Was the protected disclosure made in good faith? If not, is it just and equitable to reduce the claimant's compensation? By what proportion, up to 25%?

Schedule 5 Employment Act 2002 cases

10.9 When these proceedings were begun, was the Respondent in breach of its duty to give the Claimant a written statement of employment particulars or of a change to those particulars?

10.10 If the claim succeeds, are there exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay under section 38 of the Employment Act 2002? If not, the Tribunal must award two weeks' pay and may award four weeks' pay.

10.11 Would it be just and equitable to award four weeks' pay?

Evidence

6. I had an agreed bundle of documents of 444 pages, and a supplementary bundle from the Respondent of six pages which contained unsigned written statements. Unusually I had time to look at all of these documents due to the delay in starting the evidence.

7. I had written witness statements from the Claimant and from Mr Robin Smythe which I read. I heard evidence from both witnesses, and oral submissions from both parties (from Mr Peter Smythe for the Respondent).

Facts

8. I have considered all of the evidence and submissions. Both the Claimant's and Respondent's witness statements contained considerable factual detail, and I also heard two days of oral evidence. The overall background is the breakdown in the relationship between the co-directors of the Respondent. Each says they lost trust in the other and make various accusations against each other. I have listened to all of their points, but I have not made findings on all of these matters. I have focused only on those facts that are necessary to decide the legal issues in the case.

9. The Claimant was employed by the Respondent between 2 March 2017 and 25 March 2024 as a Director. In 2016 he began discussing a new business venture with Robin Smythe (his former line manager at a previous employer). The Claimant became a director in the newly formed Montpellier Land and Developments Limited. The shareholding was initially divided 51% Robin Smythe, 15% Claimant, and 34% William Buckler (the third person involved). Robin Smythe and the Claimant were joint directors.

10. I have seen a typewritten note with handwritten additions which records the proposed agreement. This shows that Robin Smythe and the Claimant will be joint directors and engaged full time in day-to-day running of the business. The document also says that the Claimant will "*draw a salary (or dividend?) of £40k with £10k car allowance from 1/5/2017*". There was also a shareholders' agreement dated 6 May 2017.

11. The Claimant was not provided with a contract of employment or statement of terms of employment. His pay was split between PAYE salary and dividend payments. Mr Smythe was paid in the same way.

12. In 2022 the Claimant's shareholding in the Respondent was increased to 39%. This was by way of a transfer from Mr Buckler at no cost.

13. Mr Smythe had overall control of the Respondent's finances and sole access

to the bank account. One of the Respondent's main projects was at Shepherd's Walk, West Stafford. In May 2023, the Respondent's accountants were preparing the draft accounts for the year end March 2023, including the accounts for West Stafford.

14. The Claimant began questioning the draft accounts at a meeting on 17 May to review the accounts. A key concern was the lower than forecast profit for Shepherd's Walk. The Claimant was particularly concerned about a "balancing figure" of £190,928. The Claimant also points to two emails from the accountants to Mr Smythe on 12 May 2023 (which he first saw in 2024). The first email gives a total sales figure and asks whether the sum of £190,928 is yet to be received towards sales, querying whether this is correct or sales have been inflated. The second email, sent after a conversation with Mr Smythe, says profit has come out lower in 2023 than expected. The attached spreadsheet shows the £190,928 as "adjustment to clear out all WIP".

15. The Claimant sent a number of queries to the accountants and to Mr Smythe about the Shepherds Walk calculations and profit figure. He says he never got a satisfactory response. Mr Smythe says the accountants did answer the questions, he was not able to do so, and all the relevant documents were available in the office. He says that he cannot fully explain the figures himself, but he was satisfied from the accountants that no money was missing.

16. In June/July 2023, Mr Smythe asked the Claimant whether he would put some money into the company to maintain its liquidity, as the company was running low on cash. The Claimant did not wish to do so. Mr Smythe therefore decided not to pay the reserved dividend to himself and the Claimant in July, and it was not paid again.

17. On 3 August 2023 the Claimant emailed Mr Smythe saying he still did not understand the low profit on the West Stafford project, and suggested they sat down together with the invoices and bank statements to total things up the "old fashioned way". On 5 August he emailed to say he had been to the office but Mr Smythe was not there, so he had borrowed the bank files, and he asked what day works to meet up to discuss the project and annual accounts. Mr Smythe replied the same day, said he was happy to diarise some more time, but he was not sure what he can add further to what they already know. The Claimant then replied on 7 August with a long email which set out a number of complaints about Mr Smythe's financial conduct, and asked for a detailed breakdown of interest calculations, the West Stafford project, and the balancing figure. This longer and more formal email marks the start of a breakdown in the relationship between the Claimant and Mr Smythe. Matters were not resolved. Mr Smythe asked the Claimant twice whether he was considering leaving the company, and proposed a directors meeting and EGM.

18. On 22 September 2023 the Claimant's solicitors sent a long letter to Mr Smythe setting out a list of concerns about his conduct. This is relied on by the Claimant as a protected disclosure. The concerns include issues about a lack of financial information, loan interest payments to companies owned by Mr Smythe and Mr Buckler, and the stopping of the monthly dividend payments.

19. On 25 October 2023 Mr Smythe sent an email to the Claimant which said, "*In view of the liquidity crisis in the company and the need to preserve cash to meet liabilities we will not be receiving our salary of £1047 this month*". The Respondent did not pay the Claimant again. Mr Smythe says that he had to do this because of the Respondent's financial position, with very limited cashflow. He took this decision without discussion or agreement with the Claimant. On 3 November he emailed the Claimant again to say they were down to £4,000 in their accounts so the Claimant should not make any further card payments without reference to him.

20. There was some discussion about mediation in November, with further correspondence between the Claimant's solicitors and Mr Smythe. The company held an EGM on 15 December. On 4 January 2024, the Claimant and Mr Smythe had a "walking meeting" at which Mr Smythe proposed moving existing land options to a new vehicle, with the Claimant as an unpaid consultant who would receive 39% of the profits. The Claimant did not agree to this.

21. There was further correspondence. On 12 January 2024 the Claimant's solicitors said that their client would be bringing matters to the attention of relevant authorities. The Claimant did go on to contact a number of external authorities - Companies House, Bournemouth, Christchurch and Poole Council, the Pensions Regulator, Dorset Police and HMRC.

22. In February 2024 there were some discussions about a proposal to settle the dispute. Mr Smythe required a full and unreserved retraction of all allegations made against him before discussion, and the negotiations were not successful. There was further correspondence between them at the start of March about the accounts and West Stafford profit figure.

23. On 12 March 2024, Mr Smythe wrote to the Claimant informing him that he was under investigation for gross misconduct and that he was suspended. The email said that he was following the Acas protocol, he would be informed in writing once the investigation was complete, and he would then have an opportunity to respond.

24. On 18 March Mr Smythe wrote to the Claimant with the investigation findings. He said that the Claimant had been acting as a separate and competing entity to the Respondent. The email summarised the findings, the key issue being that the Claimant had visited the owners of the land in Curry Rivel without appointment, suggested they let the option with the Respondent lapse, and told them he would make a new proposal which would include better terms for themselves. The email explained the information has come from the land agent and was corroborated through conversations with the owners. Mr Smythe said he has confirmation from the land agent in writing, and a contemporaneous email he sent to himself after speaking with the owners. He did not provide these documents with the email.

25. The email said that the Claimant has broken his fiduciary duties as employee, director and shareholder. It goes on to say, "*You now have an opportunity to respond in writing and a disciplinary meeting will be held on Friday 22 March at which a decision will be handed down. It is optional whether you attend or not and whether you bring your solicitors with you*".

26. On 20 March the Claimant sent an email to Mr Smythe raising a formal grievance, saying that he had not been paid his salary since September 2023, and asking for the disciplinary procedure to be put on hold. Mr Smythe replied saying that the disciplinary hearing would go ahead. His email provided an explanation that salaries were suspended as the Respondent effectively ran out of money the previous year and had been unable to pay its creditors, and no-one has been paid. Mr Smythe said that raising this as a formal grievance was a tactic designed to stall the disciplinary hearing, and "*this email sets out why your salary has not been paid and answers your issue*".

27. On 21 March the Claimant asked to postpone the disciplinary hearing to 2pm on 25 March as he wished to be accompanied. Mr Smythe agreed, said the Claimant had yet to present a written response, and confirmed the hearing would go ahead then. The Claimant replied on 22 March, "*I do not believe I owe you a written statement in advance of my Disciplinary Hearing especially as you have provided absolutely no evidence to substantiate your allegations*". He also asked for a copy of the disciplinary rules and employment contract. Mr Smythe did not reply to this email.

28. On 25 March at 12.38 pm, the Claimant emailed a resignation letter to Mr Smythe. The letter said his position had become untenable and that Mr Smythe had totally destroyed trust and confidence as his line manager and senior director. The letter sets out a list of grievances. These include the stopping of pay, and the disciplinary process for gross misconduct without providing any evidence. He also hand-delivered a copy of this letter to the office before 2pm.

29. Mr Smythe held a disciplinary hearing at 2pm on 25 March in the Claimant's absence, and decided to dismiss the Claimant for gross misconduct. He says he was not aware the Claimant had resigned at this point. Mr Smythe sent the Claimant an email on 26 March 2024 saying that the charge of misconduct was upheld, ordinarily he would have been dismissed with immediate effect and removed as a director, but "*knowing this you resigned as both an employee and a director to avoid this end*".

30. I have considered the evidence relating to the conduct of the Claimant before the disciplinary process. This relates to an option on a site called Curry Rivel, which was land owned by a married couple. Progress had stalled because there needed to be amendments to the plans as recommended by the planning officer, which required further work by an architect. The Respondent would need to pay for this, and could not afford to do so at the time.

31. On 4 March 2024 the land agent, Lloyd Colin, emailed Mr Smythe to say that when he spoke to his clients last week "*they confirmed that Neville has been in direct contact with them and even visited them at home*". There is a further email from Mr Colin on 11 March which says he has sought further advice from his director, and "*We will not be providing any further comment about Neville and his position to you, as you are now both presenting yourselves as two separate entities*."

32. Mr Smythe spoke to the owners on 13 March 2024 and recorded the conversations in an email to himself on 15 March. The note of the conversation

with the husband (who was unwell at the time) says he, "*confirmed Neville had visited their home without notice…He confirmed also that Neville had explained that we had fallen out and that the best thing they could do now was to allow the option to expire at the end of April when he would return to agree fresh terms which would be more favourable to the owners*." Mr Smythe said in evidence that he had put these points to the husband and he had confirmed it. A later conversation with the wife (who was the main decisionmaker on the project) says she was reluctant to enter much into conversation, but she said the Claimant had explained it was Mr Smythe who had sat back from instructing the architect further.

33. The Claimant had set up a new company, Moonfleet Developments Limited, on 22 February 2024. His witness statement says that he did this as Mr Smythe was already diverting sites to another company. In oral evidence he said this was to prepare for a potential settlement in which he would be transferred some land. Neither the land agent nor the owners of Curry Rivel mentioned Moonfleet or any other company owned by the Claimant.

34. The Claimant explained his version of events at the hearing. He says he did go to see the owners to walk through the plans, and he felt he had to be honest with them. They knew the plans needed amending, and the Respondent hadn't done that because they had no money – the owners had a legal and moral right to know this. He says he explained what had been happening and why the Respondent wasn't doing the work, and they were shocked. It was left that the owners said they would be happy to deal with him in the future, either directly with him or through a different company, but not while he was working at the Respondent. The Claimant says he did not tell the owners not to extend the option, and did not tell them he had set up his own company. He denies saying he could give them a better deal.

35. Having considered all of this evidence, I find that the Claimant did visit the owners without an appointment, he did explain that the Respondent was not progressing due to lack of money, and this included telling them that he and Mr Smythe had fallen out. He also said he could work with them in the future. On the balance of probabilities I do not find that the Claimant specifically advised them to let the option expire and he would then offer them a better deal, or that he mentioned his new company. This is not what is shown in the emails from the land agent. The only evidence is Mr Smythe's own note of a telephone call made two days after the event, in which he put these points to one of the owners for confirmation. I note that Mr Smythe's statement claims that the Claimant said he was representing a new competing entity, Moonfleet Developments Limited, but this is not what any of the written evidence says. It appears to me that Mr Smythe has somewhat exaggerated what was said to him at the time.

36. The Respondent also put forward a letter from the builder that they regularly worked with, Dom Teversham. This says that in early 2024 the Claimant said that he and Mr Smythe had fallen out, and that he could try to persuade the owners of a development option in Shillingstone to grant it to Mr Teversham's company instead in return for a £100,000 fee. This letter is unsigned and Mr Teversham did not come to the hearing.

37. The Claimant's version of events is that they did have a conversation as Mr

Teversham was aware of the falling out. He confirmed to him that things were not good and the site was not progressing. Mr Teversham had at one point said he was interested in buying the site. He said if it didn't go ahead with the Respondent, he would be happy to pay the Claimant if he acquired the site. In answer to a question from me he confirmed he told Mr Teversham that he could talk to the owners and construct a deal if the Respondent was not in a position to progress. As Mr Teversham was not available for cross-examination, I prefer the Claimant's version of events, and I do not find that the Claimant said he could try and persuade the owners not to extend the option.

Applicable law

Time limits

38. Under section 48 of the Employment Rights Act 1996 ("ERA"), a claim for detriment for making a protected disclosure must be presented before the end of the period of three months beginning with the date of the act or failure or the last of a series of acts or failures. Time can be extended where the Tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period (48(3)(b) ERA), in which case the claim must have been presented within such further period as the Tribunal considers reasonable.

39. The three-month time limit is automatically extended by Acas early conciliation, but only where Acas has been contacted before the original time limit has expired (section 207B ERA).

40. Whether it is reasonably practicable to submit a claim within time is essentially a question of whether it was "reasonably feasible" (***Palmer v Saunders and Southend-on-Sea Borough Council*** [1984] IRLR 119 (CA)). Where a skilled adviser has been at fault, this does not prevent it from being reasonably practicable for the claim to have been submitted within time. This is clearly established by various authorities, including in particular ***Dedman v British Building and Engineering Appliances Ltd*** [1973] IRLR 379 (CA).

Constructive unfair dismissal

41. The definition of a dismissal includes circumstances where an employee is entitled to terminate their employment contract without notice by reason of the employer's conduct (Section 95(1)(c) ERA). This requires a significant breach going to the root of the contract, or something that shows the employer no longer intends to be bound by one or more essential terms of the contract (***Western Excavating (ECC) Ltd v Sharp*** [1978] ICR 221, CA). This is an objective test. It is not a range of reasonable responses test, and the employer cannot "cure" a breach with later conduct (***Buckland v Bournemouth University Higher Education Corporation*** [2011] EWCA Civ 131, CA).

42. In ***Kaur v Leeds Teaching Hospitals NHS Trust*** [2018] EWCA Civ 978, the Court of Appeal listed five questions to be asked in order to determine whether an employee was constructively dismissed:

- What was the most recent act (or omission) on the part of the employer

which the employee says caused, or triggered, their resignation?
- Has the employee affirmed the contract since that act?
- If not, was that act (or omission) by itself a repudiatory breach of contract?
- 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 the implied term of trust and confidence?
- Did the employee resign in response (or partly in response) to that breach?

43. This fundamental breach can be a breach of the mutual duty of trust and confidence, which is an implied term of all employment contracts. The test is whether the employer acted without reasonable or proper cause in a way that was calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties (***Mahmud and Malik v BCCI*** [1997] ICR 606, HL).

44. A course of conduct by an employer which amounts to a breach can include a "last straw", which must contribute to the breach in some way but need not necessarily be a fundamental breach in itself. In ***Waltham Forest v Omilaju*** [2004] EWCA Civ 1493, the Court of Appeal provided guidance on final straw cases. The court confirmed that the final straw must contribute something to the breach, although what it adds might be relatively insignificant. The final straw must not be utterly trivial. The act does not have to be of the same character as earlier acts complained of. It is not necessary to characterise the final straw as "unreasonable" or "blameworthy" conduct in isolation, though in most cases it is likely to be so. The Court also confirmed that an entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of their trust and confidence in the employer - the test of whether the employee's trust and confidence has been undermined is objective.

45. This approach was refined by the Employment Appeal Tribunal in ***Williams v Governing Body of Alderman Davies Church in Wales Primary School*** UKEAT/0108/19, which held that the event that contributes towards an employee's decision to resign need not necessarily in itself contribute anything to a breach of trust and confidence. It can revive an earlier fundamental breach of trust and confidence, so long as that earlier breach has not already been affirmed and was part of the reason for resignation.

46. In addition, the employee must resign in response to the breach. The resignation needs to be at least in part due to the breach, but the breach does not need to be the significant or the only reason for resignation. In ***Nottinghamshire County Council v Meikle*** [2004] IRLR 703, the Court of Appeal held that the resignation must be in response to the employer's repudiation, but that the fact that the employee also objected to other actions of the employer will not vitiate the acceptance of the repudiation.

47. An employee cannot delay too long or they may be found to have waived the breach or affirmed the contract. An individual can explain a delay in resigning, but continued performance of the contract would generally indicate an affirmation. This is applied less strictly in employment cases compared to other cases, and the Tribunal should consider the facts carefully before deciding that the employee has affirmed the contract (***Buckland***, above).

Adjustments to unfair dismissal compensation

48. Compensation for unfair dismissal consists of a basic award (section 119 ERA) and a compensatory award (section 118 ERA). The basic award can be reduced if the Tribunal finds that the claimant's conduct before dismissal was such that it would be just and equitable to reduce the amount. The compensatory award can be reduced where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the claimant. The reduction is by such proportion as the Tribunal considers just and equitable (section 123(6) ERA).

49. The amount of the compensatory award must be "just and equitable" based on the loss arising out of the unfair dismissal (section 123(1) ERA). In ***Polkey v AE Dayton Services Ltd*** [1987] IRLR 503, the House of Lords confirmed that the compensatory award may be reduced or limited to reflect the chance that the claimant would have been dismissed in any event.

50. Under section 207A and Schedule A2 of the Trade Union and Labour Relations (Consolidation) Act 1992, the Tribunal may, if it considers it just and equitable in all the circumstances, increase or reduce an employee's compensation by up to 25% if either party has unreasonably failed to comply with a relevant code of practice. This includes the Acas Code of Practice on Disciplinary and Grievance Procedures (the "Acas Code"). The Acas Code sets minimum procedural steps for a disciplinary and grievance process, which include holding a meeting with the employee, and providing an opportunity to appeal. Schedule A2 sets out the claims which can have compensation adjusted. These include unfair dismissal, unauthorised deductions from wages, and breach of contract including failure to give the statutory minimum notice period.

Wrongful dismissal

51. Wrongful dismissal occurs when an employee is dismissed without notice. Under section 86(1)(a) ERA, the notice required to be given by an employer to terminate an employee's contract of employment is not less than one week's notice for each year of continuous employment, if that period of employment is two years or more but less than twelve years. Under section 86(6), a contract can be terminated without notice by reason of the conduct of the other party. This requires gross misconduct, where the employee's conduct is sufficiently serious that it fundamentally breaches the contract and allows the employer to terminate without notice.

Failure to provide a statement of initial employment particulars

52. Under section 1 ERA, an employer shall give a worker a written statement of particulars of employment. This must contain specific particulars as set out in section 1. Under section 38 of the Employment Act 2002, where an employee has successfully brought a claim listed in Schedule 5, and the employer is in breach of section 1 ERA at the time the claim was brought, the tribunal must award two weeks' pay (unless there are exceptional circumstances which would make such an award unjust or inequitable) and may award four weeks' pay if just and equitable in the circumstances. This is subject to the statutory cap on a week's pay. The listed claims include unfair dismissal.

Conclusions

53. My conclusions are as follows.

54. At the start of the hearing, the Respondent confirmed that they accepted wages were owed to the Claimant. I encouraged the parties to discuss an agreement on various matters during the hearing. The parties agreed figures in relation to deduction from wages, expenses and holiday pay, and asked me to set these out in the judgment. I therefore make no finding on these issues.

55. I start with the issue of **time limits for the claim of detriment for making a protected disclosure**.

56. The issues record that the claim form was presented on 26 June 2024, the Early Conciliation process with Acas was commenced on 27 March 2024, and the Early Conciliation Certificate was issued on 29 March 2024. Accordingly, any act or omission which took place before 25 March 2024 is potentially out of time.

57. I have looked at how the list of issues records the alleged acts of detriment. The final act is, “In March 2024 commence a disciplinary action against the Claimant for allegedly acting contrary to the Respondent’s business interests”. The disciplinary action was “commenced” by Mr Smythe’s letter of 12 March 2024, when he suspended the Claimant and informed him he was under investigation for gross misconduct.

58. The Claimant’s representative submitted that this could be read as the whole process of pursuing the disciplinary case against the Claimant, up to and including the outcome decided on 25 March 2024. I do not agree. The list of issues specifically uses the word “commence”. There have been three case management hearings at which this wording could have been queried if it was thought to be incorrect, and the Claimant has been professionally represented throughout. I find that the last detriment relied on occurred on 12 March 2024.

59. This means that the claim was presented out of time. The Claimant did not give any evidence about this issue or argue that it was not reasonably practicable to present the claim within time, and I note that he was professionally represented by September 2023. I therefore find that it was reasonably practicable to present this claim within the time limit. The claim is dismissed.

60. The next issue relates to dismissal. **Was the Claimant’s contract terminated by way of his resignation or by way of the Respondent dismissing him for gross misconduct?** As recorded in the list of issues, the Respondent says it was only after that hearing that the Claimant’s resignation email and letter was read. The Respondent also says that even if the resignation was put in prior to the dismissal, the dismissal of the same day ‘overrides’ the resignation.

61. The Respondent accepts that a resignation letter was pushed through the letterbox of the Respondent’s offices and a resignation email was sent to the Respondent prior to a disciplinary hearing on 25 March 2024. As found in the facts, the Respondent’s letter of 26 March 2024 says the Claimant would have been dismissed for gross misconduct if he had not resigned. This indicates that the

Claimant was not dismissed by the Respondent, and the dismissal letter was written after the resignation letter was received. In any case, even if Mr Smythe was unaware of the resignation when he held the hearing at 2pm on 25 March, I do not agree with the argument that the dismissal can override the resignation. The caselaw on this point establishes that, where an employee resigns without notice, the resignation is effective when it is received by the employer, it does not require the employer to have read it – ***Potter v RJ Temple Plc (in liquidation)*** UKEAT/0478/03, ***George v Luton Borough Council*** UKEAT/0311/03. Where an employee is dismissed without notice by letter, the dismissal is effective when the employee reads the letter or has a reasonable opportunity of reading it. The email dismissing the Claimant was not sent until a day after delivery of the resignation letter. I therefore find that the Claimant's contract was terminated by resignation on 25 March 2024.

62. If the Claimant's contract ended by way of resignation, **did that amount to a dismissal within the meaning of s.95 Employment Rights Act 1996** (a 'constructive dismissal')?

63. The Claimant claims that the Respondent acted in fundamental breach of the implied term of the contract relating to pay and mutual trust and confidence. The Claimant relied on a long list of alleged breaches. I have not made findings on all of these allegations as it was not necessary for me to do so to decide this issue.

64. The most serious and obvious fundamental breach was stopping the Claimant's PAYE pay from 29 September 2023 onwards. This was done without the Claimant's agreement. The Respondent says that there was a good reason for doing this, as the company was running out of money. However, this does not prevent it from being a breach of contract. Pay is one of the most important terms in a contract of employment. It is still a fundamental breach of contract to stop paying an employee's wages without agreement, even if the employer has a good reason for this (see ***Buckland v Bournemouth University Higher Education Corporation*** [2010] EWCA Civ 121, paragraph 28).

65. I have also considered the disciplinary process, which is relied on as a breach of trust and confidence, and occurred immediately before the Claimant resigned. The Claimant said this was the last straw that triggered his resignation. The Claimant makes a number of criticisms of the process that was followed, including various breaches of the Acas Code on disciplinary procedures. I accept the Respondent's position that they did some internet research and tried to follow a correct process. However, there were some fundamental flaws. Most importantly, the Claimant was not correctly advised about the right to be accompanied, Mr Smythe admitted in evidence that he was not looking for exculpatory evidence, none of the written evidence was provided to the Claimant in advance of the disciplinary meeting, and Mr Smythe was somewhat misleading about what that written evidence said (see paragraphs 9, 10 of the Acas Code). Although borderline, I find that this is sufficiently serious to be a breach of trust and confidence. It is undoubtedly a last straw that contributes something to the earlier breach in relation to pay.

66. **Did the Claimant resign because of a repudiatory breach of contract?** The Respondent says that the Claimant resigned because he knew he was going to be

properly dismissed for wrongdoing. I have considered the Respondent's argument, and I put this question to the Claimant during his evidence. The Claimant said that it was obvious the Respondent was trying to find a way to push him out of the company, he did not think he would get a fair hearing, and the disciplinary process was the final straw that made him lose all faith. He therefore resigned after submitting the grievance about his pay. I accept the Claimant's evidence on this point. He did ultimately resign because of the disciplinary process. However, this was because he thought the process was unfair, not because he knew he would be properly dismissed for wrongdoing. This was in the context of a series of other complaints and concerns, as originally set out in the solicitor's letter of September 2023, and including in particular the stopping of all pay from 29 September onwards.

67. **Did the Claimant affirm the contract after resigning?** I have considered this point. It does not arise if the disciplinary process was in itself a fundamental breach of contract. I have found that it was. As this was borderline, I have also considered whether the Claimant affirmed the fundamental breach in relation to pay. He was told about this on 25 October 2023, and did not resign for another five months. Prolonged delay in resigning can be evidence of an implied affirmation. I asked the Claimant why he worked without pay for so long. He said that he was a minority shareholder and hoped to be able to reach a deal, and it would have been foolhardy to throw up his hands and walk away after putting seven years of his life into the business. I accept that the Claimant was trying to find a solution to the situation during this time. This is not a case where the Claimant continued to work and could be taken to have affirmed the contract by accepting usual or reduced pay, as he was not being paid at all. I find that there is an explanation for the delay, and I do not find that the Claimant affirmed the contract after the serious and ongoing fundamental breach of stopping all pay.

68. The next issue is **wrongful dismissal**. **What was the Claimant's notice period?** This was the statutory minimum period, so seven weeks based on seven complete years of employment. The Claimant was not paid for that notice period.

69. **Was the Claimant guilty of gross misconduct or did he do something so serious that the Respondent was entitled to dismiss without notice?** There is an argument that, even though the Claimant resigned rather than being dismissed, he would not be entitled to notice if he was in fundamental breach of contract himself. I have made factual findings on what occurred in relation to the discussions about Curry Rivel which led to the disciplinary proceedings. On the balance of probabilities, I do not find that this constituted gross misconduct, or something so serious that the Respondent was entitled to dismiss without notice.

70. The final issues relate to remedy.

71. **Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?** I have found that the Claimant was not guilty of gross misconduct. However, I find that the Claimant's conduct before he resigned was culpable to some extent. Although I have found that he did not advise the owners of Curry Rivel to let the option expire and he would offer them a better deal, I have made some findings relevant to conduct. He told the owners that the Respondent had run out of money, he told

them about the falling-out with Mr Smythe, and he had a discussion with them about dealing with the owners in the future if he was working elsewhere. I understand that the Claimant wanted to be honest with the owners. However, this conversation was not in the best interests of the Respondent as it was undermining their position with the owners. This approach had not been agreed with Mr Smythe. Although the Claimant did not suggest this directly, it may have led them to think that they should stop dealing with the Respondent and deal directly with the Claimant or someone else instead. There is also the conversation with Mr Teversham. Again, this conversation undermined the Respondent and suggested the Claimant was willing to act separately if the Respondent's project failed. I have found these were not examples of gross misconduct, but it was culpable conduct. I find it would be just and equitable to reduce the basic award by 25%.

72. **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?** This is inevitably a speculative exercise. There was no fair disciplinary process or hearing to examine the allegations relating to Curry Rivel, and the conversation with Mr Teversham was not addressed at the time. I have found some culpable conduct by the Claimant. It was not gross misconduct that would certainly have led to a fair dismissal. However, if a fair process had been followed in relation to all of these allegations, there is some chance that the Claimant would have been fairly dismissed, particularly if the issues were taken together.

73. If so, **should the Claimant's compensation be reduced? By how much?** I find that a fair disciplinary process would have taken a further two weeks, to allow for the Claimant to consider a response to the evidence, further investigation if needed, and a proper hearing. I find that there is then a 25% chance that the Claimant would have been fairly dismissed at the end of the process. This is based on a fair dismissal being possible, due to the culpable conduct, but this is a chance rather than being certain or likely.

74. **Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? If so, did the Respondent or the Claimant unreasonably fail to comply with it? If so is it just and equitable to increase or decrease any award payable to the Claimant and, if so, by what proportion up to 25%?**

75. I have considered which Code of Practice applies. The Claimant argued that both applied here. Having looked at the wording of the legislation (section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992), I do not agree. The Claimant was unfairly dismissed, which is a type of claim to which an uplift can apply. The Code applies to dismissals for misconduct. However, he resigned. He was not dismissed by the Respondent for misconduct. I do not find that the Code on disciplinary procedures applied here. That would require a reason for dismissal to which the Code applies, i.e. an actual dismissal for misconduct.

76. I do find that the Code on grievance procedures applied. The Claimant submitted a grievance about pay before resigning. The Respondent did reply to this grievance in writing. However, it was a short reply, giving only a brief reason for stopping pay as the Respondent had run out of money. Mr Smythe also accused the Claimant of using the grievance as a stalling tactic. The reply did not comply with some of the basic requirements of the Acas Code. This requires a

formal meeting to be held without unreasonable delay after a grievance is received (para 33), and for the employee to be allowed to explain their grievance (para 34). This was not done. The decision was communicated in writing (para 40), but no right of appeal was offered. I have taken into account the small size of the Respondent, the fact Mr Smythe was the only manager who could investigate the issue, and the fact that he did provide a response. Nevertheless, failing to hold a meeting with the Claimant was a significant breach of the Code, and the Respondent did behave unreasonably by failing to comply with the Code. I find it would be just and equitable to increase the award payable to the Claimant by 15%.

77. **If the Claimant was unfairly dismissed, did he cause or contribute to dismissal by blameworthy conduct? If so, would it be just and equitable to reduce his compensatory award? By what proportion?** I do not make a reduction to compensation under this heading because the Claimant was constructively dismissed, and it was not argued that he had contributed to the constructive dismissal (as opposed to the disciplinary process, which did not result in a dismissal).

78. As a final point, the Respondent was in breach of its duty to give the Claimant a written statement of employment particulars. The claim has succeeded, so I must award two weeks' pay, and may award four weeks' pay. I did not hear submissions on this point so I leave final determination to the remedy hearing.

Employment Judge Oliver
Date: 13 May 2026

REASONS SENT TO THE PARTIES ON
26 May 2026

Jade Lobb
FOR THE TRIBUNAL OFFICE