EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8002200/2025

Heard at Edinburgh on 29 April 2026, with Deliberation on the 30th April and 01 May 2026

Employment Judge J G d'Inverno

Mr G Holmes	**Claimant** **In person**
TSB Bank PLC	**Respondent** **Represented by:** **Mr R Bradley,** **Advocate** **Instructed by:** **Messrs Womble** **Bond Dickinson**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that

(First) The claimant's claim is one which does not fall within the scope of Article 3 of the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994/1624 and the claimant's claim is dismissed for want of jurisdiction.

(Second) That the respondent's counter claim is a claim which falls within the scope of Article 4 of the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994/1624, is a claim which subsists and which the Tribunal continues to have jurisdiction to consider notwithstanding the failure of the claimant's claim.

(Third) That the respondent's counter claim succeeds and the claimant shall pay to the respondent the sum of Seven Thousand, Four Hundred and Forty Two Pounds and Sixteen Pence (£7,442.16) in implement of his contractually incurred liability to pay an early termination fee in respect of his company car upon his leaving the respondent's employment for a reason other than redundancy.

J G d'Inverno

Employment Judge

26 May 2026

Date sent to parties **1 June 2026**

REASONS

1. This case called for an in person final hearing at Edinburgh on 29 April 2026. The claimant Mr Gavin Holmes appeared in person. The respondent company, TSB Bank PLC, was represented by Mr Bradley, Advocate.

2. The claim, which the claimant following requests by the respondent and direction by the Tribunal clarified in terms of his correspondence of 19 November 2025, was a claim in which he sought to invoke the Tribunal's contractual jurisdiction, arising on termination of employment, in terms of section 3(2) of the Employment Tribunals Act 1996 and Article 3 of the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994/1624 ("the Extension of Jurisdiction Order"), seeking a declaratory remedy viz:-

   *"**2. The remedy sought***
   I seek a declaration from the Tribunal that:
   1. *No contractually valid termination charge was created, due to the lack of disclosure of material terms;*
   2. *I am not liable for the £7442.16 termination charge the TSB has demanded.*

   I am not seeking arrears, loss, or damages – only a ruling that the alleged liability is unenforceable due to the absence of contractually valid terms setting out the charge." (Pages 49-50 of the joint bundle).

3. Following the claimant's clarification of the statutory basis upon which he presented his claim, the Tribunal allowed the respondent's the employer's contract counter claim to be received by interlocutor dated 11 December 2025.

4. Both claim and counter claim came before the Tribunal for determination at final hearing.

The issues

5. In the course of case management conducted at the outset of the hearing, parties confirmed, and the Tribunal recorded, the following as being the issues requiring investigation and determination at the final hearing.

(First) Has the claimant Title to Present and has the Tribunal Jurisdiction to Consider the claimant's claim, in terms of Article 3 of the Extension of Jurisdiction Order.

(Second) Let it be assumed that the Tribunal has jurisdiction to consider the claimant's claim, is he entitled to the remedy sought namely "*a declaration from the Tribunal that:*

1. *No contractually valid termination charge was created due to a lack of disclosure of material terms; and*

2. *I am not liable for the £7442.16 termination charge that TSB has demanded."*

- As opposed to a remedy being "*the recovery of damages or any other sum"* (Article 3 of the Extension of Jurisdiction Order).

Issues in the counter claim

(Third) In the event that the claimant's claim fails, for whatever reason, does the respondent retain Title to Present and does the Tribunal retain Jurisdiction, to consider the counter claim in terms of Article 4 of the Extension of Jurisdiction Order.

(Fourth) Let it be assumed that the Tribunal retains jurisdiction in the counter claim, is the respondent entitled to the remedy sought namely the payment, of the sum of £7,442.16, from the claimant in implement of his contractually undertaken liability for payment of an "early termination fee" under the respondent's company car scheme in which he was a participant, and in circumstances in which he left the respondent's employment for a reason other than redundancy.

Sources of oral and documentary evidence

6. The claimant, Mr Holmes, gave evidence on his own behalf on oath.

7. For the respondent the Tribunal heard evidence:-

a. On oath from Mr Alistair Scott, the claimant's former Line Manager, and

b. On affirmation from Mrs Claire Gardner the respondent's Benefits and Rewards Manager.

8. There was before the Tribunal a joint bundle of documents extending to 241 pages to some of which the Tribunal was referred by parties in the course of evidence and submission.

Findings in fact

9. On the oral and documentary evidence presented, and upon consideration of parties' submissions, the Tribunal makes the following essential findings in fact, restricted to those necessary and relevant to the determination of the issues.

10. The claimant was an employee of the respondent in a grade which entitled him to participate in the respondent's company car scheme as an alternative to receiving a monthly cash car allowance.

11. On 26 August 2022 the claimant accepted an offer to participate in the respondent's company car scheme on the respondent's terms, (pages 85-100). In doing so the claimant undertook, in terms of clause 9.3, to do so subject to, and to be bound by, the rules of the scheme "as amended from time to time" and further details of which were available on the intranet, (pages 101 and 85-100).

12. On 3 October 2022, the claimant signed the "company car driver declaration form", (pages 154-155 of the bundle), confirming in terms of that document that he had read the terms and conditions detailed in the car scheme information pack and agreed to be bound by them; and that he had also read and accepted the data privacy notice set out on the adjoining page. The declaration form required to be countersigned by and was countersigned by the claimant's then line manager Alistair Scott.

13. Alistair Scott had previous experience of the scheme and spoke with the claimant prior to his entering the scheme drawing to his particular attention the liability which came with participation to make payment of an early termination fee in the event of the claimant opting to leave the respondent's employment prior to the expiry of the 48 month lease period for any reason other than redundancy.

14. It was the respondent's policy to require employees who left their employment for any reason other than redundancy at a point prior to the expiry of the full lease term applicable to the car which had been provided to the employee under the scheme, to reimburse the respondent in respect of early termination charges arising under its contract with the leasing company in terms of which cars were provided to its employees.

15. That policy was reflected and expressed in the terms of the company car scheme applicable at the time the claimant contracted under it, and a copy of which is produced at pages 103-134 inclusive.

16. Within the scheme, the respondent provided for, and the claimant agreed to, the claimant being liable for various fines and penalties including; parking fines, speeding notifications and maintenance work required as a result of the claimant's negligence.

17. The claimant acknowledged and operated those terms, reimbursing the respondent in respect of traffic/parking fines incurred in the course of his use of the car which was supplied to him under the scheme scheme.

18. Under section headed "Leaving TSB" the scheme provides that when an employee left the respondent's employment, payments in respect of certain matters, including early termination fees, would be deducted from the claimant's salary and the claimant for his part agreed to such deductions being made by the respondent.

19. At the time of the claimant entering into the company car scheme in terms of his contract with the respondent, the levels of early termination fees payable under the main leasing agreement between the respondent and the third party leasing company and recovered by the respondent for early leaving participating employees, were substantially lower than those which became applicable in or around 2024/2025.

20. In 2022 early termination fees typically varied as between a few hundreds of pounds and one thousand pounds.

21. Early termination fees were and continue to be calculated by the leasing company under two methods.

22. The first method being a method which sought to quantify the whole actual cost to the leasing company on early termination and involved a large number of constantly varying factors.

23. The second method was that set out in the correspondence of 3 July 2025 sent to the claimant by the respondent.

24. The second method was one based on 50 per cent of the remaining rentals outstanding at the point of termination (early leaving).

25. It was the policy of the respondent to recover from participating employees a termination fee in the lesser of the amounts produced by the two methods, which policy the respondent applied in the case of the claimant and which brought out the sums sued for in counter claim of £7,442.16.

26. Under the alternative "actual method", there were and are other variables which impact upon the amount bought out as due and which were and are subject to constant variation resulting in it not being possible, to calculate

and provide to a participating employee confirmation of what would be the amount of an early termination fee at any point in the future more distant than one month.

27. It was open to employees to apply directly to the leasing company at any point in time, and on as many occasions as they may wish to, for an early termination fee quotation which fee once provided would be held good for a period of one month from the date of its provision.

28. In or around 2024, the respondent became aware of the fact that early termination fees were increasing in amount to levels substantially greater than those at which they had previously sat, including in 2022 at the time of the claimant's knowingly undertaking his obligation to pay such a fee.

29. The respondent was concerned to ensure that any participating employee who had in contemplation leaving the respondent's employment prior to the expiry of the lease term on a car which they were using under the scheme should inform that decision and or the timing of that decision by obtaining and being aware of, the amount of the early termination fee which they would be liable to pay.

30. The respondent accordingly sent its "important message" of 25 November 2024, (copied and produced at page 182 and 183 of the bundle), to all employees who were participating members of the company car scheme.

31. In that message, the respondent reminded participating employees of the company's policy being that of holding employees liable to pay early termination fees in the circumstances set out in the scheme and alerting them to the fact that because of the changes in the variable factors which were included in the calculation of the scheme that early termination fees had, at that time, that is to say as at 25 November 2024, become substantial.

32. In the letter, the respondent set out a table of three examples of differing cars with differing mileages in circumstances where termination took place, respectively, one year into a four year term, two years into the same term and three years into the same term and showing the corresponding range of early termination fees from; £2,204 at the lowest illustrated, up to £15,692 in the case of an Audi Q4 etron terminated one year into the four year term with a mileage of 16,786 miles.

33. The letter concluded with a reminder that participating employees should ensure that they read the up to date version of the car scheme handbook which was available on the intranet while also providing a link to it and encouraged those who, amongst other things, may be thinking of leaving TSB to make contact with the leasing company whose contact telephone number and email address they provided asking that they provide them with an exact early termination fee at any particular time and reminding

employees that they were able to request such a figure regularly if they wished, given that it would be subject continuously to change.

34. The claimant received that letter.

35. Upon receipt of that letter the claimant did not take any steps to contact the leasing company or to request an indicative early termination fee at any particular point in time.

36. The claimant continued, notwithstanding his receipt of the letter to utilise the car provided to him and enjoyed the benefits afforded to him under the scheme.

37. Neither did the claimant, following receipt of the letter, access the up to date version of the company car scheme which was available to him via the link provided in the letter. Had he done so he would have found the same illustrative table of actual termination fees as appeared in the letter.

38. The claimant, contrary to encouragement contained in the 25 November 2024 letter, did not factor into or take account of his liability to pay an early termination fee in his decision to voluntarily leave the respondent's employment and take up another employment opportunity. He took no steps to request an early termination fee quotation until on or about the second half of June 2025 by which time he had already taken his decision to leave and to accept alternative employment.

39. The claimant received his early termination fee quantification, via the respondent, on 3 July 2025 (page 223 of the bundle). The claimant was shocked at the amount.

40. The claimant asked the respondent to waive the fee.

41. The respondent declined to do so in accordance with their policy and on the basis that other leavers, in similar circumstances were required to and had paid their early termination fees.

42. At the request of the claimant, the respondent did not deduct any part of the fee from the claimant's wages.

43. The claimant, while recognising his contractual liability to pay the fee in terms of correspondence sent to the respondent asked the respondent to put in place an instalment payment plan. The respondent agreed to do so firstly proposing a plan of three monthly instalments and subsequently, at the request of the claimant, an extended plan over six monthly instalments.

44. The claimant declined to take up the offer of payment over a six month period and made no payments in respect of his liability.

45. On 10 September 2025 the claimant raised proceedings before the Employment Tribunal at first instance alleging a breach of the provisions

of section 13 of the ERA (Protection against unauthorised deduction from wages) and simultaneously invoking the Tribunal's contractual jurisdiction.

46. The claimant subsequently accepted that the respondent had made no deduction from his wages in respect of the early termination fee and stood upon his breach of contract claim, which claim, together with the respondent's counter claim, came before the Tribunal for determination at a hearing.

The applicable law

47. The Tribunal's statutorily conferred contractual jurisdiction, arising on the termination of an employee's employment, is set out in the following primary and secondary legislative provisions:-

a. The Employment Tribunals Act 1996, ("the ETA") section 3(2) which is in the following terms:-

"(2) Subject to subsection (3), this section applies to –

(a) a claim for damages for breach of contract of employment or other contract connected with employment,

(b) a claim for a sum due under such a contract, and

(c) a claim for the recovery of a sum in pursuance of any enactment relating to the terms of performance of such a contract,

if the claim is such that a court in England and Wales or Scotland would under the law for the time being in force have jurisdiction to hear and determine an action in respect of the claim."; and

b. The Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994/1624, ("the Extension of Jurisdiction Order") Article 3, which gives effect to the primary legislative provision in the following terms:-

"(3).

Proceedings may be brought before an [Employment Tribunal] in respect of a claim of an employee for the recovery of damages or of any other sum (other than a claim for damages, or for a sum, in respect of personal injuries) if –

(a) The claim is one to which section 131(2) of the 1978 Act applies and which a court in Scotland would under the law for the time being in force have jurisdiction to hear and determine;

(b) the claim is not one to which article 5 applies; and

(c) the claim arises or is outstanding on the termination of the employee's employment."

c. The Tribunal's jurisdiction to consider an employer's contract counter claim is articulated and given effect to in Article 4 of the Extension of Jurisdiction Order which provides as follows:-

"4. Proceedings may be brought before an [Employment Tribunal] in respect of a claim of an employer for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if –

(a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in Scotland would under the law for the time being in force have jurisdiction to hear and determine;
(b) the claim is not one to which article 5 applies;
(c) the claim arises or is outstanding on the termination of the employment of the employee against whom it is made; and
(d) proceedings in respect of the claim of that employee have been brought before an [Employment Tribunal] by virtue of this Order."

d. Article 5, which is referred to in Articles 3 and 4, of the Extension of Jurisdiction Order, is in the following terms:-

*"**5.** This article applies to a claim for breach of a contractual term of any of the following descriptions—*

(a) a term requiring the employer to provide living accommodation for the employee;
(b) a term imposing an obligation on the employer or the employee in connection with the provision of living accommodation;
(c) a term relating to intellectual property;
(d) a term imposing an obligation of confidence;
(e) a term which is a covenant in restraint of trade.

In this article, 'intellectual property' includes copyright, rights in performance, moral rights, design right, registered designs, patents and trademarks.".

e. Guidance of the higher courts relating to the construction and scope of Articles 3 and 4 of the Extension of Jurisdiction Order is to be found in:-

- **Patel v RCMS Ltd** [1999] IRLR 161 at pages 9-11
- **M Fearon Vaughan Simpson v WM A Merrick** UKEAT/0490/09/DA at pages 12-16

48. In addition to the above, the Tribunal drew to the attention of parties and invited submission on the potentially relevant/potentially distinguishable decision of the EAT in; **Nosworthy v Instinctif Partners Ltd** UKEAT/0100/18.

Submissions

49. It is not the function of the Tribunal to record verbatim the submissions made by parties and these are accordingly summarised here. In addressing the Tribunal in submission parties each dealt with both the principal claim and the counter claim.

50. The respondent's representative offered to, and with the agreement of the claimant, made his submissions first with a view to ensuring that the claimant, who was a litigant in person, had the opportunity of responding specifically to the points made. The words appearing in square brackets are comment by the Tribunal and not words spoken by the parties.

Submissions for the respondent

51. The respondent's representative primarily submitted that the claim, which in response to the Tribunal's Case Management Order the claimant had clarified was a claim in terms of which he gave notice of invoking the Tribunal's contractual jurisdiction arising on termination of employment, and was a breach of contract claim in terms of which he sought by way of remedy; (a) not the payment of any sum of money but rather, (b) a declarator from the Tribunal that "*no contractually valid termination charge was created, due to lack of disclosure of material terms*;" (c) was a complaint which did not fall within the terms of Article 3, of the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994/1624 and thus, was a claim which the claimant lacked Title to Present and the Tribunal lacked Jurisdiction to Consider.

52. The claim, as pursued, failed to meet the requirements of Article 3 of the Order in that it was not "*a claim of an employee for the recovery of damages or any other sum…"* rather, it was a claim for a declaratory remedy.

53. While the Employment Tribunal had certain declaratory powers, these were expressly constituted within the statutory provisions which conferred its respective jurisdictions to consider claims of particular types, Article 3 of the Extension of Jurisdiction Order conferred no such declaratory power upon the Tribunal and thus such a claim fell out with the scope of Article 3 and separately, the remedy sought was not one which the Tribunal could competently grant.

54. The respondent's representative invited the Tribunal to dismiss the claimant's claim for want of jurisdiction. In doing so and upon his consideration of the same the respondent's counsel submitted that the decision of the EAT in **Nosworthy v Instinctif Partners Ltd**, was one which fell to be distinguished on its facts, the claim in that case being one which was a claim for the payment of a sum of money, albeit by the

mechanism of seeking to "disapply bad leaver provisions" rather than by seeking damages.

55. In respect of the counter claim, and under reference to Patel v RCMS Ltd and M Fearon Vaughan Simpson v WM A Merrick the respondent's representative submitted, let it be assumed that the principal claim was so dismissed for want of jurisdiction, that the Tribunal's jurisdiction to consider and determine the counter claim subsisted in terms of Article 4 of the Extension of Jurisdiction Order notwithstanding the failure of the primary claim.

56. The cases of Patel and Fearon Vaughan Simpson were authority for the proposition that, provided the requirements of Article 4 of the Extension of Jurisdiction Order are met at the time at which the counter claim is brought viz "*(d) proceedings in respect of a claim of that employee have been brought before an [Employment Tribunal] by virtue of this Order*" then, notwithstanding the fact that the employee's claim is settled or withdrawn or fails for whatever reason, the employer's counter claim stands and the Tribunal has jurisdiction to consider and dispose of it. Patel was a case in which the employee's claim was dismissed for want of jurisdiction (time bar) but, notwithstanding, the counter claim survived and was heard and disposed of.

57. Turning to the merits of the counter claim, the respondent's representative, under reference to the applicable vouching pages in the joint bundle and to the overall evidence of the claimant and of the respondent's witnesses summarised the steps by which the claimant had contractually bound himself to liability to make payment of the early termination fee, inviting the Tribunal to make what he submitted were the relevant findings in fact and findings in fact and in law, and to enter judgment determining the same and ordering the payment by the claimant, to the respondent, of the early termination fee in the sum of £7,442.16.

The Claimant's Submissions

58. Under reference to the documentary evidence contained in the bundle to which the Tribunal had been referred in the course of the Hearing the claimant submitted and invited the Tribunal to find in fact that, on the one hand, as at 25 November 2024 and in the updated version of the company car scheme available on the intranet to parties at or about that time and in early 2025, the respondent had taken express steps to alert participating employees of the fact that, potential early termination fees had substantially increased in amount in comparison to those that had applied at earlier times due to variables over which the respondent had no control and had expressly urged participating employees, if thinking about terminating their employment with the respondent for any reason other than redundancy, to make contact with the leasing company (providing

both telephone and email contact details) to request an actual termination fee in order that that may inform any decision on their part as to leave and or when to leave the respondent's employment. On the other hand and in comparison, the information made available to participating employees such as himself in 2022, at the time of his deciding to participate in the scheme and undertaking a liability to pay an early termination fee, the information proactively provided by the respondent was limited to advising that such a liability would exist in circumstances where an employee had left the employment of the respondent for reasons other than redundancy and that participating employees could contact the leasing company to request an actual termination fee.

59. The claimant posed the question in the submission *"Was I put in a position where I fully understood the gravity of the situation?"* [impliedly at the point of the entering in 2022].

60. The claimant submitted that this was not just a simple case of his not wanting to pay the fee, but wanting a declaration that because of the paucity of information expressly brought to his attention by the respondent in 2022, that the Tribunal should hold that no legally binding contractual obligation to pay an early termination fee to the respondent had been created by his entering into and participating in the company car scheme. He invited the Tribunal to make a declaration to that effect.

61. When asked by the Tribunal to explain why he considered that the comparatively less full information provided in the version of the car scheme which was in place at the time of his contracting to participate in it, in comparison with that contained in the version of the scheme in place in 2024/2025, would allow the Tribunal to hold, that no legally enforceable obligation had been created, the claimant responded by posing the question *"Would I have signed the contract if I had known that it could result in such a high level of a late termination fee and, if not does that mean that the contract is null and void and I should not be liable under it."*

62. [The Tribunal observes that in the fourth paragraph of the particulars of claim attached to his initiating application ET1 the claimant makes a similar averment viz – "*Had I been made fully aware of the financial risks and limitations of the company car scheme – including the fact that I could be personally liable for thousands of pounds if I left the business – I would have taken the car allowance instead"]*

63. The claimant concluded by stating that he believed that that should be the position both ethically and morally and further, that he believed that the burden sat with the TSB to explain the termination fee.

64. The Tribunal understood the claimant's submission to be one made in support of his principal claim and equally in defence of the counter claim.

65. The respondent's representative did not exercise any limited right of reply.

Discussion and Disposal of the issues

66. In relation to the first issue, the Tribunal concluded that it lacked jurisdiction to consider the principal claim as presented by the claimant.

67. Upon an application to them of the normal rules of construction in the context of the maxim – *expressio unius est exclusio alterus* (the expression of one thing is the exclusion of another), and according to the words used, their normal English language meaning, the Tribunal concluded that a claim which sought, by way of remedy, a declarator by the Tribunal of the unenforceability of a contractual term, while being a claim which could competently be pursued in the Sheriff Court or Court of Session (subject to the Sheriff Court's privative jurisdiction), was not a claim which fell within the terms of Article 3 of the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994.

68. In order to fall within the scope of Article 3, the claim must satisfy, amongst others, the requirement that it be a claim of an employee, *"for the recovery of damages or any other sum…."*. The claim presented by the claimant is one in which he expressly concedes he does not seek an award of damages or of any other sum but rather, a declarator of unenforceability of the obligation undertaken by him.

69. While the Tribunal has declaratory powers in respect of certain particular types of claim including, complaints of discrimination, the jurisdiction to consider such remedy, and the power to deliver it, are expressly set out in the relevant applicable statutory provisions.

70. The relevant applicable statutory provision in respect of the Tribunal's contractual jurisdiction is Article 3 of the Extension of Jurisdiction Order. That Article does not include a claim for a declarator of non-enforceability.

71. The principal which underlies the legal maxim set out above, operates on the simple common sense idea that if parties reduce their contract, or Parliamentary draftsmen giving effect to the will of Parliament in legislation, take the time to list specific things, they did so for a reason and intentionally left out anything which was not included. The inference arising, in the construction of the terms of legislation, is that items which are not included on the list are assumed not to be covered by the statute.

72. As adverted to in the course of the hearing, the Employment Tribunal is not a Court of Common Law, as are the Sheriff Court or Court of Session, having universal or a near universal jurisdiction to consider any matter that is brought before it. Rather, the Employment Tribunal is a Statutory Court having only those jurisdictions which Parliament has conferred upon it in terms of the relevant legislative provisions.

73. The Tribunal accordingly dismisses the claimant's principal claim for want of jurisdiction.

74. The claimant did not submit that in the event that the principal claim were to fail the Tribunal's jurisdiction to consider and determine the counter claim would be extinguished. The Tribunal was satisfied however upon an application of the normal rules of construction to the terms of Article 4 of the Extension of Jurisdiction Order, and on the authorities cited before it, that it does not follow that if the employee's contract claim is settled, or withdrawn or fails for whatever reason (including dismissal for want of jurisdiction), that the employer's counter claim must automatically fail. The Tribunal was satisfied that as at the date upon which the counter claim was received by the Tribunal, in terms of its interlocutory order of 11 December 2025, proceedings, invoking the Tribunal's contractual jurisdiction in respect of a claim of the claimant, had been brought before the Employment Tribunal by virtue of the Extension of Jurisdiction Order. The Tribunal was further satisfied that the counter claim, which is a claim of an employer for the recovery of a sum of money in implement of the claimant's residual obligations outstanding on the termination of his employment by him, was a claim which otherwise satisfied the requirements of Article 4 of the Extension of Jurisdiction Order.

75. The counter claim once received survives notwithstanding the failure of the principal claim and the Tribunal has jurisdiction to consider and determine it.

76. On the evidence presented, the Tribunal was satisfied that the claimant in entering into and participating in the respondent's company car scheme in 2022, had subjected himself to and had agreed to be bound by, the rules of the scheme as amended from time to time. The fact that the claimant was unclear as to whether he had or had not taken time to actually read all of the conditions to which he was binding himself, or to access from time to time the updated scheme, does not operate, of itself, to avoid his obligation. Nor does the mere fact that, in deciding to enter, participate in and enjoy the benefits of a company car under the scheme, as opposed, in the alternative, to taking a monthly car allowance, he did not have in contemplation that the obligation to pay a late termination fee, which he understood he was undertaking, might result at some indeterminate time in the future in a liability of several thousand pounds in the event that he opted to leave the respondent's employment at a time prior to the expiry of the 48 month leasing term, for any reason other than redundancy.

77. This was not a case in which the claimant offered to prove that the respondent had in some way prevented him from being aware of what some three years after his entering the scheme had become his quantified liability. Even if the claimant had sought to plead such a case or advance such an argument, the effect except where it could be shown that the

resulting error such as to preclude consent to the contract per se, would not be to render the contract void but merely voidable. It is settled law that a contract even where induced by fraud is not null and void but rather avoidable. It is valid until it is rescinded and accordingly, a party defrauded has in general the option when he discovers the fraud or error or is placed in a position where acting reasonably they could have discovered their error, of rescinding the contract or of affirming it, but they must do one or the other. They cannot continue to take the benefit of the contract, in so far as it is beneficial to them, and reject it, in so far as it is burdensome to them. If they affirm it they must affirm it in all its terms. If they reduce it, they must give up any benefit they may have had before the fraud or error was discovered.

78. The only remedy available in such circumstances is to seek reduction of the contract. There would be a number of difficulties associated with adopting such an approach within the Employment Tribunal. Firstly, on the same basis as set out above at paragraphs 69 to 72, the Employment Tribunal has no jurisdiction to reduce a voidable contract, not even, by way of exception, as a defence to a claim. Secondly, in the instant case, the claimant was put on his warning, along with all other participants in the company car scheme on 25 November 2024 as to the risk of substantial liability. As at that date at the latest acting reasonably he could have discovered his error, let it be assumed he was in error. The claimant took no steps at that time, to challenge or reduce the contract. Rather, he continued to use the car under the terms of the scheme and thus is likely to have been held to have affirmed the contract in which circumstances reduction, even if pursued in a court of competent jurisdiction would no longer be a remedy open to him.

79. Separately and in any event, the remedy of reduction is only available to a party when its corollary of (*restitutio in integrum*) parties i.e. being placed in the position in which they were before the contract was made remains possible. Such a process would require the claimant to be able to, amongst other things, return the vehicle to the leasing company in an unused condition, something which was not possible as at the date of the claimant opting to leave the respondent’s employment. Further, and in any event, the conduct of a party who would otherwise be entitled to reduce a voidable contract may be such as to debar him from exercising that right on the grounds that he has acquiesced in the maintenance of the contract, that he has waived his right to rescind it and that he is personally barred from disputing it.

80. The case of which the claimant appears to give notice in his initiating application ET1 and to which he adverted in the course of making his submissions is not that the contract is voidable, rather; (a) that he entered in to the contract with the respondent (agreed to participate in the company car scheme subject to the rules of the scheme as amended by the

respondent from time to time including his knowingly undertaking the obligation to pay an early termination fee in the circumstances set out in the scheme) in error as to the amount of such a fee at some indeterminate time in the future were he to opt to leave the respondent's employment for any reason other than redundancy, and further, (b) that that error, although unilateral that is to say an error under which only he contracted, was so material (as to preclude the formation of any agreement at all, that is to say; (c) that when respectively contracting under the company car scheme, the claimant for his part and the respondent for their part, were thinking of different things, such that it cannot be said that they had arrived at any agreement, or that either of them had consented to be bound by any contractual obligation.

81. It is established as a general rule that mere error by one party has no legal effect. It is not a sufficient ground for the reduction of a contract that one party gave his assent to it under a mistake. Parties are supposed to inform themselves on points material to their contracts, or to take the consequences if they do not. Nor, in cases where consent to a contract is admitted, and the allegation is that consent was given under error is it material to consider whether the error alleged was or was not, from the point of view of a third party, as to a matter of sufficient importance to be considered essential. Such an inquiry is unnecessary and irrelevant, because the law refuses to allow effect to an error by one party whether essential or not. In a case of misrepresentation, however, error becomes essential whenever it is shown that but for it, one of the parties would have declined to contract, but the party asserting error cannot rescind (withdraw from the contract) unless his error was induced by the representation of the other contracting party made in the course of negotiation and with reference to the subject matter of the contract itself.

82. Thus, as a general rule, essential error is not in itself enough, according to Scots Law to nullify a contract. It must further be proved that the error was mutual i.e. common to both parties, or that it was induced by misrepresentation, either innocent or fraudulent, made by the other party to the contract, or that it was induced by fraudulent concealment.

83. However, the general rule that error by one party has no legal effect, and is not a ground upon which the validity of a contract can be challenged, is limited by an equally general principal that contract requires the agreement of parties, and that error into which one of them has fallen may be so material as to preclude any agreement. That is to say that if it can be proved that they were thinking of different things, it cannot be said that they have arrived at any agreement, or that either of them has consented to be bound by any contractual obligation. The question in those circumstances is not whether a contract is reduceable on the grounds of error, but whether there is any contract to enforce. Error, though not a ground for the

avoidance of an obligation which is founded on consent, may preclude the giving of that consent in the first place.

84. The question then comes to be to distinguish between cases of error which is so fundamental or essential as to exclude any agreement, and error as to collateral matters which admits of agreement, though of an agreement to which one of the parties has assented under a mistake. The former case can operate to exclude contract or what amounts to the same thing, renders a seeming contract void. The latter, as a general rule, leaves the obligations of the parties as they would be had no error been alleged.

85. It might be argued that when one party is in error as to the obligations in which he has involved himself by contract, it necessarily follows that the parties have not arrived at any complete agreement. Their minds have never truly met. There appears at first glance therefore an apparent conflict between the proposition that unilateral error (error on the part of only one party) is not sufficient to invalidate a contract on the one hand and the fundamental rule that a contract involves an agreement between two parties on the other. But that conflict is only apparent. It disappears if it is kept in view that contractual obligations are not, as a rule, to be construed by considering the intentions of the party who undertook them, but rather by considering the impression which the words or acts of one party are calculated to convey to the other, or to a neutral and disinterested third party. To this general principle of construction, the cases where error has been found to be so material as to preclude consent and therefore to preclude obligation may be regarded as exceptions.

86. The question of whether a particular case falls within the rule or the exception may be narrow. The distinction may be helpfully considered in this way that a man cannot be barred from saying that he never meant to contract; but he may be barred from saying that he meant to contract on terms inconsistent with the reasonable interpretation of his words or acts.

87. There is generally no difficulty, even in theory, where the error alleged relates merely to external facts which induce one party to think, mistakenly, that it is desirable for him to enter into the contract, and such error, as a rule leaves the validity of the contractual tie unaffected. But when the error relates to the identity of the other party, to the nature of the contract undertaken, to the subject matter of a contract or to the nature of the obligations involved, the question comes to be one of degree.

88. The principle that an error as to the nature of the contract undertaken excludes consent and therefore renders the contract void, does not cover the case where a party knows the contract into which he is entering, but misapprehends its legal affect. Mere error on one party's part as to the import and effect of a contractual obligation is not a ground on which that obligation can be set aside **Stuart v Kennedy** 1889 16 R 857 per Lord Ordinary (Kinnear) at page 862 – "*A contract deliberately executed in the*

terms which the parties intended cannot be set aside on the ground of one of them misunderstood its legal effect."

89. It is further the case that error merely on a matter of opinion, or of expectation for the future, does not affect the validity of a contract. A bargain may be a bargain, though it turns out to be unexpectedly good for either one party or the other and likewise unexpectedly bad for one party or the other, **Dormer v Allan and Son** 1900 3F.112. In such transactions each party takes the risk that the opinion or expectation on which he relies may turn out to be wrong. If the existence of the thing to which the obligation relates is known by both parties to be doubtful, or variable, the fact that it turns out either to be non-existent or to be crystallised in a manner or amount which is more or less beneficial to one or other of the parties does not affect the validity of the contract.

90. On the evidence presented and upon the submissions made, the Tribunal was satisfied that such error as the claimant may have been under at the time of entering in to the contract was a unilateral error (that is to say the error of one party only), was error not as to the nature of the obligation to pay an early termination fee rather, was an error of expectation for the future. It was not an error as to the legal effect of the contract. It was not an error as to the contract price which price was predicated upon the assumption that each party would perform its obligations under the contract including in particular for the full contractual term of 48 months. It was not essential error, that is to say error so material as to preclude any agreement as at the date of the parties contracting. In 2022, the amount of the early termination fee which would fall to be paid in the event of an early termination in 2025 was not known to the claimant or to the respondent, the parties to the contract, or for that matter to the third party leasing company, by reason of the multiple and continuously changing variables which inform the quantification of the early termination fee payable at any particular point in time. It was a matter in respect of which each party took the risk in respect of expectation for the future, as to whether, in the event of the obligation being triggered by the claimant, the fee to be paid would be relatively lower or higher.

91. On the basis of the documentation signed by him the claimant is not to be heard to say that he was in error either as to the fact that he was undertaking an obligation to pay an early termination fee in the event of his deciding to leave the respondent's employment in the circumstances in which he did, or as to the facts that the amount of such fee would vary according to a number of factors including amongst others the remaining term under the lease.

92. On the oral and documentary evidence presented the Tribunal holds that the claimant has failed to establish that he contracted subject to essential error such as to render the contract between himself and the respondent

as void, that is to say a nullity in law, that he has failed to establish his pleaded defence against the counter claim and, the Tribunal enters judgment in favour of the respondent for the amount counter claimed.

93. The Tribunal observes that, in the event that the claimant had established that the contract (or what would more properly be described in those circumstances as "the apparent contract") was void and had never come into being; and further let it be assumed in circumstances, as was the position in the instant case, where restitution that is to say the restoring of parties to the position that they were in prior to their entering into the contract, was not possible, then , under the rules of equity. the claimant, would have required to account for his use of the vehicle and for his enjoyment of the benefits under the contract. Depending on the particular circumstances, that may have involved the claimant making payment, at a market rate, for his use of the vehicle over what was a shorter than the intended term. That in turn may have involved him in making payments over and above those which he had already made and was to be given credit for.

Date sent to parties **01 June 2026**