



EMPLOYMENT TRIBUNALS

Claimant: Mr Alexander Lee

Respondent: ID Medical Group Limited

Heard at: Watford Employment Tribunal (via CVP)
On: 8 and 9 January 2026

Before: Employment Judge Salter

Representation:
Claimant: In person, assisted by Mr D. Lee
Respondent: Mr A. Rhodes, counsel

JUDGMENT

It is the judgment of the tribunal that:

1. The claimant was constructively unfairly dismissed within the meaning of Section 95 of the Employment Rights Act 1996; accordingly his complaint of unfair dismissal succeeds;
2. The Respondent breached the Claimant's contract of employment and subjected him to an unlawful deduction from wages.
3. The Respondent do pay the Claimant a
 - (a) Basic Award in the sum of £2,692.32.
 - (b) Compensatory Award of £250.00 for loss of statutory rights.
4. The Respondent do pay the Claimant compensation for breach of contract in the sum of £21,589.05

REASONS

INTRODUCTION

1. These are the written reasons for the judgment given orally at the conclusion of the final hearing on Friday, 9 January 2026, provided pursuant to a request made by the Respondent under Rule 60(4) Employment Tribunals Procedure Rules 2024 ("the 2024 Rules").

2. In accordance with Rule 62(5) of the 2024 Rules, these reasons contain: the issues which the Tribunal determined; findings of fact relevant to those issues; a concise identification of the relevant law; and how that law has been applied to the findings in order to decide the issues.
3. References in square brackets below are, unless the context suggests otherwise, to pages of the agreed hearing bundle. Those followed by a § refer to a paragraph on that page. References following a witness's initials refer to paragraph numbers of that witness's statement.

BACKGROUND

The Claimant's case as formulated in his ET1

4. The Claimant's complaint, as formulated in his Form ET1 presented to the Tribunal on 5 February 2025, was in short that he was constructively unfairly dismissed after the Respondent failed to pay him his contractual salary, and that the Respondent had made unlawful deductions from his wages.

The Respondent's Response

5. In its Form ET3, accompanied by Grounds of Resistance dated 15 April 2025, the Respondent denied that the Claimant was constructively dismissed. It contended that the Claimant had resigned, and that he was not, in fact, owed any salary.

Relevant Procedural History

6. Once the Response was entered, the matter was made the subject of automatic directions and listed for a final hearing. There was no case management hearing.

THE FINAL HEARING

General

7. The matter came before me sitting alone. The hearing had a two-day time estimate.
8. The Claimant appeared in person, assisted by Mr D. Lee as his representative. The Respondent was represented by Mr A. Rhodes of counsel.
9. This was a remote hearing conducted entirely by the Cloud Video Platform (CVP) under Rule 46 of the 2024 Rules. A face-to-face hearing was not held because it was not practicable, no party requested one, and no party objected

to the remote format. The parties were able to hear what the Tribunal heard and see the witnesses as seen by the Tribunal.

10. From a technical perspective, there were no significant difficulties, save for:
 - (a) an issue at the start of the first day where the Claimant could not connect to the hearing room, necessitating a 30-minute adjournment (which enabled me to complete my reading); and]
 - (b) during the Claimant's closing submissions, the Employment Judge lost power at his premises for approximately 5 minutes, necessitating Mr Lee repeating some of his submissions once the Judge was able to reconnect.
11. The participants were informed that it was an offence to record the proceedings. I was satisfied that none of the witnesses was being coached or assisted by any unseen third party while giving their evidence.

LIST OF ISSUES

12. There having been no case management hearing, there was no agreed list of issues. At the outset of the hearing the issues were identified and agreed with the parties as follows.

Constructive unfair dismissal

13. The Respondent accepted that the Claimant was an employee and that at the time his employment ended he had sufficient continuity of employment to bring a claim of unfair dismissal. The Respondent denied that the Claimant was dismissed; it contended that he resigned. The Respondent further accepted that a breach of contract relating to pay was, in the circumstances of this case, repudiatory. The specific issues for determination were therefore:
 - (a) What were the terms of the Claimant's contract of employment as to pay?
 - (b) Were those terms breached by the Respondent?
 - (c) Did the Claimant affirm any breach, or waive it, by delaying his resignation?
 - (d) Did the Claimant resign in response to the breach, or for other reasons, namely having acquired alternative employment at substantially more money?
14. The Respondent did not seek to argue that it would have had a fair reason for dismissing the Claimant.

Unlawful deduction from wages / breach of contract

15. Was the Claimant contractually entitled to £5,000 per annum above the £30,000 he was paid? If so, the Respondent accepted it was not paid.

DOCUMENTS AND EVIDENCE

16. The Tribunal took time to read privately into the witness statements and relevant documents before evidence was called.
17. All witnesses gave evidence by way of written witness statements which were read by me in advance of them giving oral evidence. When each witness came to give their evidence they confirmed the contents of their statements and, following any supplementary questions, were cross-examined.
18. I heard oral evidence from the Claimant. I also heard oral evidence from the following witnesses on behalf of the Respondent:
 - (a) Mr Ieuan Riley, Nursing Account Manager for the Respondent, and one of the Claimant's former line managers; and
 - (b) Ms Mary De'Arth, Group HR Director for the Respondent.
19. I had an undated and unsigned witness statement from Mr Scott Taylor, the Head of Managed Services for the Respondent and the Claimant's line manager at the relevant time. Mr Taylor did not attend to give evidence, having left the Respondent's employment and being in South East Asia. I gave his untested evidence such weight as I considered appropriate in the circumstances, which was limited.
20. To assist me in determining the matter I had before me an agreed bundle consisting of some 145 pages prepared by the Respondent. In accordance with the direction given to the parties at the outset of the hearing, I did not consider any document or part of a document to which my attention was not drawn. I refer to documents by reference to the relevant page number in square brackets.
21. It was recognised that the Claimant, as a litigant in person assisted by a lay representative, might require some latitude in terms of time for cross-examination, when giving evidence, and generally in the presentation of his case. Time estimates for cross-examination were discussed, but time limits were not imposed, and the parties made good progress in their questioning.

SUBMISSIONS

22. The Respondent made detailed oral submissions which I have summarise:
 - (a) Constructive Dismissal The legal test requires a fundamental breach of contract, resignation in response to it, and no waiver or affirmation.

- (b) Valid variation of contract: The Claimant's pay was varied by agreement on 17 August 2020 (letter at p.60), which he signed without pressure. The variation was supported by consideration — the Claimant retained his job during the pandemic when redundancies and furlough were occurring. The letter states the salary increase would be reviewed "at a later date when the economic climate allows," which neither commits to a date nor to an increase. That language is insufficiently certain to amount to an enforceable contractual term — an agreement to agree in the future is not enforceable. The Claimant accepts he chose not to ask for a backstop date.
- (c) Late complaint and the "new evidence" point: The Claimant raised for the first time in oral evidence that Mr Grubb promised a review in early 2021. This was not in the pleading, witness statement, or any contemporaneous correspondence, which undermines its credibility.
- (d) No objection for nearly four years: The first written objection is the email of 20 May 2024, approximately three years and nine months after the variation. During that time there is no documentary evidence of the Claimant working under protest. His line managers either deny the conversations took place (Mr Taylor) or describe only a passing reference to the offer letter with no expectation of action (Mr Riley). The Claimant is plainly capable of putting complaints in writing, as shown by his detailed 2024 emails — the absence of any earlier written complaint is telling. The role confirmation at p.61 proposed a pay progression to £32,000 and then £35,000 via KPIs, yet the Claimant did not object that he was already contractually entitled to £35,000.
- (e) Affirmation: Even if there was a breach, the Claimant affirmed the contract by continuing to work for over four years without resigning. This is not a borderline delay — it is the majority of his employment. He was not on sick leave or working under protest; he was performing his role day in day out.
- (f) Causation — resignation not in response to the alleged breach: The Claimant had multiple other grievances in 2024 (travel, overnight stays, responsibility for others' clients, the Expenses system, performance management). He began his job search in July 2024, before raising the pay grievance on 9 September 2024, and secured a significantly higher-paying role. The strong inference is that he left because he was unhappy with the job and found better pay elsewhere, not because of a four-year-old pay issue.
- (g) Grievance process: The grievance was narrow (entitlement to £35,000 post-probation). Ms Arthur investigated, spoke to witnesses, reached conclusions, and offered an appeal. There was nothing procedurally wrong with the process.
- (h) Breach of Contract Relies on the same points: the contract was validly varied on 17 August 2020; the language at p.60 is clear that the Claimant agreed to £30,000; there was no commitment to an increase or a date; any implied term as to a review date fails on both business efficacy and necessity grounds; and the Claimant accepted the variation either expressly by signing or by conduct over four-plus years.
- (i) Unlawful Deduction from Wages There was no deduction because the contract was validly varied. If there was a deduction, it was permissible under s.13(1)(a) or s.13(1)(b) ERA 1996 — either pursuant to the varied contract or consented to in writing by the Claimant signing the letter, prior to the first deduction on 31 August 2020.

23. The Claimant, through Mr Lee, also made oral submissions.

At the probationary review meeting on 17 August 2020, Mr Grubb congratulated the Claimant on passing probation, confirmed the salary increase was triggered, but said the £5,000 uplift could not be paid at that time due to the pandemic. Crucially, Mr Grubb told him this was a delay — not a permanent change — and that it would be reviewed around January 2021 when the economic climate improved. The Claimant signed the letter at p.60 on the understanding it referred only to a temporary delay. He would not have signed it had he believed it was a permanent change to his contract.

The letter makes no mention of changing the Claimant's employment contract or the terms of his offer letter. It refers only to the economic situation preventing the increase "at that time." Ms Arthur herself accepted in cross-examination that a letter like this would be too vague to change a person's employment contract. There is no HR record, contract correspondence, or any other supporting evidence of a contractual variation. The Claimant relies on *May and Butcher v The King* on uncertainty of terms, and *Rigby v Ferodo Ltd* [1987] for the proposition that a unilateral reduction in pay amounts to a breach of contract giving the employee the option to claim damages.

Mr Grubb, the only person present at the meeting who could speak to what was actually discussed, was not called as a witness by the Respondent. The only explanation given was that he could not remember. The Claimant contends the Respondent chose not to call him because his account may have corroborated the Claimant's version — that the letter was presented as a temporary delay, not a permanent change.

Ms Arthur was not present at the meeting, was not even in the country at the time, and admitted she had no knowledge of the conversation that took place. Her interpretation of the letter as a permanent variation is unsupported by direct evidence.

The Claimant raised the issue informally with successive line managers (Mr Riley, Mr Taylor, and others), each of whom said they would look into it but never resolved it. Mr Riley's witness statement denied the Claimant ever mentioned being owed money, but in cross-examination he accepted the Claimant had discussed underpayments. Mr Taylor's witness statement similarly denied awareness, but the Claimant's email to Mr Taylor referred to the salary as "the elephant in the room" and "an issue I raised with you on a number of occasions" — a statement Mr Taylor never challenged or denied.

The Respondent's culture was to deal with things informally and face-to-face rather than in writing. Ms Arthur herself said in cross-examination "I prefer to deal with these things face to face." The Claimant tried to resolve the issue in the manner the Respondent operated. He was also fearful that raising it formally would not be in his best interests and could jeopardise his employment. The email at

p.100/101 from the Respondent gave a strong indication that any grievance would not succeed, reinforcing this concern.

The Respondent's financial performance did not suffer significantly during the pandemic — their business placed medical staff in the NHS, so demand likely increased. Turnover grew, profits remained at over £800,000 in 2020/2021, and rose to £1.8m and £3.8m in 2022 and 2023 respectively. Dividends of £4m were paid to shareholders over 2019–2023. The economic justification for withholding the uplift did not persist.

The deductions were a continuing series throughout 2020 to December 2024, so the claim falls within s.23(4A) ERA 1996. The Claimant also relies on *Mayfield and others v Iverson Ltd* (January 2025) EAT, which held that the two-year backstop on unlawful deduction claims in s.23(4A) is unlawful, having been introduced by regulations under s.2(2) of the European Communities Act 1972. On that basis, the full period of unpaid wages should be awarded.

The only condition for the salary uplift was passing probation, which the Respondent agrees the Claimant did. Performance was never a contractual condition of the increase. The Claimant's alleged underperformance was in any event caused by the Respondent requiring him to spend approximately 40% of his time on other colleagues' clients — something not in his role description at p.61 — which reduced his availability for his own clients and his ability to meet targets and earn bonuses.

He resigned because the Respondent continually underpaid him and failed to honour the salary in his offer letter. He expected the company to honour its contractual obligations once economic conditions improved, which they plainly did. The Claimant believes his unpaid wages of £20,000 plus interest should be awarded.

FINDINGS OF FACT

General approach

24. From the evidence and submissions, I made the following findings of fact. I make my findings after considering all of the evidence before me, taking into account relevant documents where they exist, the accounts given by the Claimant, Mr Riley, Ms De'Arth and Mr Taylor in evidence, both in their respective statements and in oral testimony. Where it has been necessary to resolve disputes about what happened, I have done so on the balance of probabilities, taking into account my assessment of the credibility of the witnesses and the consistency of their accounts with the documentary evidence.
25. In this decision I do not address every episode covered by the evidence, or set out all of the evidence, even where it is disputed. I have set out my

principal findings of fact on the evidence before me that I consider necessary in order fairly to determine the claims and the issues the parties asked me to decide.

The Claimant's employment and the offer letter

26. Many of the facts in this matter are uncontroversial. The Claimant was employed by the Respondent as a Client Relationship Manager from 27 January 2020 [47; CWS §2.1].
27. He had a six-month probationary period [47].
28. His initial salary was £30,000 per annum [47].
29. The offer letter dated 20 December 2019 [47] stated: *"We are pleased to confirm your basic salary will be £30,000.00 per year, payable on the last day of the month, and rising to £35,000 per year upon successfully passing the 6 month probationary period."* The Claimant accepted this offer and signed the letter [48–49].
30. The Claimant successfully passed his probationary period. This is confirmed in the letter of 17 August 2020 [60], which opens by congratulating the Claimant on completing his probationary period.

The meeting and letter of 17 August 2020

31. On 17 August 2020, the Claimant attended a meeting with Mr Anthony Grubb, a Senior Manager with the Respondent, and was informed that the salary increase was not presently possible. Mr Grubb sent the Claimant a letter of the same date [60] stating:

"As discussed with Joseph and myself, the salary increase detailed in your offer of employment is not presently possible due to the current climate as a result of the pandemic. This will be reviewed at a later date, when the economic climate allows."

32. The Claimant signed this letter.
33. The Claimant contended that Mr Grubb was the only person present at this meeting. The Respondent contended there was another person present, Joseph. However many people were in that room, I only heard evidence from one person: the Claimant. Mr Grubb still works for the Respondent and was not called as a witness. The only evidence I have, therefore, is that of the Claimant, and I accept his account as to what occurred in that meeting.

34. There was nothing in the letter to say the reduction in salary was permanent. To the contrary, the letter expressly stated that the position would be reviewed.

Whether the Claimant raised the issue of underpayment

35. The Claimant contended that after this meeting he raised the issue of his underpayment repeatedly with his line managers. The Respondent denied this. On this issue, I preferred the evidence of the Claimant, for the following reasons.
36. *First*, I found the Claimant to be a credible and consistent witness. His answers were measured; he took time to consider the questions put to him; and I considered he was genuinely trying to assist the Tribunal with its task.
37. *Second*, I did not hear from the Claimant's first line manager, Mr Frank Logioia. Mr Logioia still works for the Respondent, but no statement was produced by him and he was not called to give evidence.
38. *Third*, Mr Riley, another of the Claimant's line managers, stated in his witness statement (IR §5) that the Claimant did not "ever mention or suggest[] that he was owed any money by the Respondent." However, in cross-examination, Mr Riley accepted that the Claimant did in fact refer to the deferral of pay "in passing." Mr Riley attempted to draw a distinction between the Claimant mentioning his offer letter in passing and the Claimant saying he was owed money. I did not find that a credible distinction, and it was not one I was prepared to accept. In any event, on Mr Riley's own evidence, the deferral of pay was raised with him by the Claimant.
39. *Fourth*, Mr Taylor did not attend to give evidence. His unsigned witness statement (ST §6) contended that the Claimant did not raise this issue until his email of 20 May 2024. I gave Mr Taylor's untested evidence limited weight, as he had not attended for cross-examination. Moreover, the contemporaneous documentary evidence I was shown supports the Claimant's account.
40. In particular, the Claimant sent Mr Taylor an email dated 20 May 2024 [67] that states:

“Let us deal with the elephant in room and an issue I have raised on a number of occasions, I would refer you to my offer letter dated 29th December 2019 and attached to this email. In that letter it states ‘We are pleased to confirm your basic salary will be £30,000.00 per year, payable on the last day of the month, and rising to £35,000 per year upon successfully passing the 6 month probationary period’. The company has never carried this contractual commitment at any time over the last 3½ years despite quite clearly my having passed my probationary period (I am still here) and having been promoted re your letter dated 26th July 2023 also attached. I would like to understand when the company are going to make good on what after all is a contractual commitment by them.”

41. I emphasise the words “an issue I have raised on a number of occasions.” I have no evidence of Mr Taylor replying to this email, or disputing the Claimant’s assertion that he had raised it on a number of occasions. I therefore preferred the evidence of the Claimant on this point.
42. I find, therefore, as a fact, that the Claimant did raise the matter of his salary underpayment on numerous occasions with his line managers.

The Respondent’s financial position and failure to review

43. I heard unchallenged evidence as to the financial position of the Respondent in the period from 2020 onwards. The Respondent is a medical staffing agency. The evidence before me was that the Respondent’s turnover increased in 2019–20. Profitability remained at approximately £800,000 in the immediate post-pandemic years. By 2022 and 2023, profitability had risen to £1.8 million and £3.8 million respectively. Throughout the period 2019 to 2023, gross dividends of £7.4 million were paid to shareholders.
44. Despite the Claimant raising this matter, I have no evidence at all that the Respondent undertook any reconsideration of the deferred salary increase, as the letter of 17 August 2020 said it would do. Ms De’Arth accepted in cross-examination that there was nothing on the Respondent’s HR file to indicate that any such review or assessment took place.

The managed CRM role and the email of 20 May 2024

45. On 24 July 2023, Mr Taylor emailed the Claimant [61] about his new role as Managed Service CRM. The email set out the role’s duties and proposed a salary progression: “we would look to increase your salary up to £32,000 after 6 months providing KPIs are hit and at this point we will sit down together and build an action plan to get you to senior CRM which pays £35,000.”

46. On 26 July 2023, a formal letter was sent congratulating the Claimant on “successfully securing the role of Client Relationship Manager in the Managed Services Team” [63]. The Claimant signed this letter.
47. Despite the salary being expressly discussed in connection with this role change, the Claimant did not respond to the email at [61] to point out that he was already contractually entitled to £35,000. The Respondent relied on this in its submissions. I have noted this point and return to it in my conclusions on affirmation. However, it does not alter my finding that the Claimant raised the salary issue informally with his line managers on a number of occasions.
48. On 20 May 2024, the Claimant sent the email to Mr Taylor already quoted above [67–68]. This email raised four concerns: the underpayment of salary; being required to service clients that were not his own; overnight stays away from home; and the expenses policy. The Respondent submitted that this email was an attempt to deflect attention from performance concerns that had been raised about the Claimant. I do not accept that submission. The email speaks for itself. Its first and principal point was the contractual salary, described as “the elephant in the room.”

The grievance and resignation

49. In the late summer of 2024, the Claimant began to look for alternative employment.
50. On 9 September 2024, the Claimant raised a formal grievance about the underpayment of his salary [83]. In this letter, he referred again to having raised the issue with company personnel.
51. Ms De’Arth was appointed to investigate the Claimant’s grievance. She told me she spoke to various individuals, including Mr Grubb, as part of her investigation. However, I was not provided with any copies of the Respondent’s grievance policy, a written grievance report, or any notes from meetings with the individuals she said she had interviewed. Mr Grubb, she accepted, could not recall the meeting of 17 August 2020.
52. Ms De’Arth replied to the Claimant’s grievance in an email dated 25 October 2024 [101]. She rejected the grievance. The email does not refer to her investigation or the interviews she told me she had undertaken. So far as it addresses the substance of the grievance, it summarises what she and the

Claimant had discussed in their meeting and concludes that the letter of 17 August 2020 constituted a permanent change to the Claimant's contract. In cross-examination, Ms De'Arth was asked whether she, as an HR professional, would use a letter in the form of the one at [60] to change a person's contract of employment. She replied that she would not; she said she would "probably be much clearer as to the salary review situation, or say not able to review it at all."

53. On 4 November 2024 [98], the Claimant appealed the grievance decision. Ms De'Arth acknowledged this appeal.
54. The Claimant resigned on 11 November 2024 [102], giving one month's notice. His last date of employment was therefore 11 December 2024. He commenced employment with a new employer on 12 December 2024.
55. The Claimant's new employment was at a gross salary of £48,000 per annum, substantially higher than he had been earning with the Respondent. The Claimant's evidence was that this reflected London weighting and significantly higher travel costs associated with commuting to London.

Credibility

56. In forming my findings, I had regard to the credibility and reliability of the witnesses. As to the Claimant, I found him to be a credible and measured witness. He answered questions carefully and did not seek to overstate his case. He made appropriate concessions, including accepting that he had been naïve not to ask for a backstop date in the meeting of 17 August 2020 (CWS §17), and that he had not put the matter in writing until 20 May 2024.
57. As to Mr Riley, I found his evidence problematic. His witness statement asserted categorically that the Claimant had never mentioned or suggested he was owed money. Under cross-examination he retreated from that position, accepting that the Claimant had mentioned his offer letter and the deferral of pay "in passing." His attempt to maintain a distinction between mentioning an offer letter and suggesting he was owed money was not persuasive.
58. As to Ms De'Arth, she was not employed by the Respondent at the time of the variation in August 2020 and could not give direct evidence as to what was discussed or intended. She accepted there was nothing on the HR file

to indicate any review had taken place. Her concession that she would not have used a letter in the form of [60] to effect a permanent contractual change was significant.

59. Mr Taylor did not attend. His untested witness statement was unsigned. I gave it limited weight accordingly.
60. Mr Grubb, the person best placed to give evidence about the meeting and the letter of 17 August 2020, still works for the Respondent but was not called as a witness. Ms De'Arth's evidence was that when she spoke to him as part of the grievance investigation, he could not recall the meeting. The Respondent offered no other explanation for not calling Mr Grubb. I draw no adverse inference from that decision, but I note that the consequence is that the only direct evidence of what was discussed in the meeting of 17 August 2020 comes from the Claimant.

THE LAW

Constructive unfair dismissal

61. Section 95(1)(c) of the Employment Rights Act 1996 ("ERA 1996") provides that an employee is dismissed if *"the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."*
62. The leading authority on constructive dismissal is *Western Excavating (ECC) Ltd v Sharp* [1978] ICR 221, CA. The test is whether the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract. If so, the employee is entitled to treat himself as discharged from any further performance.
63. The employee must not delay too long before resigning, or he will be regarded as having elected to affirm the contract. However, merely continuing to work and draw pay while protesting or seeking to resolve the breach does not of itself constitute affirmation: *W E Cox Toner (International) Ltd v Crook* [1981] ICR 823, EAT.
64. The repudiatory breach need not be the sole cause of the resignation. Where there is more than one reason why an employee leaves, the correct approach is to examine whether any of them is a response to the breach, not to identify

which is the effective cause: *Wright v North Ayrshire Council* UKEATS/0017/13/BI, per Langstaff P.

65. If the employee establishes that he resigned in response to a fundamental breach and did not affirm the contract, the dismissal is established. It is then for the employer to show a potentially fair reason for the dismissal. If the employer does not seek to do so, the dismissal is unfair.

Unlawful deduction from wages

66. Section 13(1) of ERA 1996 provides that an employer shall not make a deduction from wages of a worker unless the deduction is required or authorised by a statutory provision or a relevant provision of the worker's contract, or the worker has previously signified in writing his agreement or consent to the making of the deduction.

67. Section 13(3) provides that where the total amount of wages paid on any occasion by an employer is less than the total amount of wages properly payable on that occasion, the amount of the deficiency shall be treated as a deduction.

Variation of contract

68. A contract of employment may be varied by agreement between the parties. For a variation to be binding, there must be offer, acceptance, consideration, and an intention to create legal relations. Where a variation is said to be evidenced in writing, the document must be construed objectively to determine the parties' intentions: *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896, HL.

CONCLUSIONS ON THE ISSUES

General

69. Having regard to my findings of fact, applying the law identified above, and taking into account the submissions of the parties, I have reached the following conclusions on the issues.

Issue 1: What were the terms of the Claimant's contract as to pay?

70. The Claimant's original contract, as contained in the offer letter of 20 December 2019 [47], entitled him to a salary of £35,000 per annum upon successfully completing his probationary period. He completed his probationary period; that is expressly confirmed in the letter of 17 August

2020. By operation of the offer letter, his salary should therefore have increased to £35,000 from the date of successful completion of probation.

71. I find that the Claimant's terms of employment were varied at the meeting of 17 August 2020. The Claimant agreed — by signing the letter at [60] — that his salary would remain at £30,000 per annum for the time being. However, the variation was not unconditional or permanent. The letter expressly stated that the position "will be reviewed at a later date, when the economic climate allows." That language imports an obligation on the Respondent to review the Claimant's salary when the economic climate permitted. It does not leave the matter entirely at the Respondent's discretion.
72. I reject the Respondent's submission that the review clause was insufficiently certain to be contractually enforceable. The letter identifies a clear trigger: a change in the economic climate. This is no different in kind from many contractual provisions that are subject to the occurrence of external events. It was open to the Respondent to comply with this obligation by conducting a review and, if economic conditions still did not allow an increase, to say so. What the Respondent could not do was simply ignore the obligation altogether, which is what happened.
73. I also reject the Respondent's submission that the letter constituted a permanent removal of the Claimant's entitlement to £35,000. The letter does not say that. It says the increase is "not presently possible" and that it "will be reviewed." Those are the words of a temporary deferral, not a permanent variation. Ms De'Arth, the Respondent's own HR Director, accepted in cross-examination that she would not have used a letter in this form to effect a permanent contractual change. There is no other document on the Claimant's HR file evidencing any permanent change.
74. The terms of the Claimant's contract, as varied, were therefore: (a) his salary was to remain at £30,000 per annum temporarily; and (b) the Respondent was obliged to review this when the economic climate allowed, with a view to restoring the contractual entitlement to £35,000.

Issue 2: Were those terms breached?

75. Yes. The Respondent never conducted any review of the Claimant's salary. Ms De'Arth accepted there was nothing on the HR file to indicate any

assessment took place. The unchallenged evidence before me was that the Respondent's financial position recovered strongly from the pandemic, with profitability rising to £1.8 million in 2022 and £3.8 million in 2023, and dividends of £7.4 million paid to shareholders over the period. The economic climate plainly did improve, yet no review was undertaken.

76. This was a breach of the varied contract. The Respondent was obliged to review and failed to do so. Had it reviewed the position at any point from 2021 onwards, it would have had to grapple with the question of whether economic conditions permitted restoration of the £35,000. On the financial evidence before me, it is difficult to see how the Respondent could reasonably have concluded that conditions still did not allow the increase. But the Respondent did not even get to that stage. It simply did nothing.

Issue 3: Was the breach repudiatory?

77. The Respondent accepted that any breach of contract relating to pay was, in the circumstances of this case, repudiatory. I agree. A failure to pay contractual wages goes to the root of the employment contract.

Issue 4: Did the Claimant affirm the contract?

78. The Respondent submitted that the Claimant affirmed the contract by continuing to work for over four years after the variation without resigning. It pointed to the absence of any written complaint before 20 May 2024, and to the Claimant's failure to respond to the salary discussion in the email of 24 July 2023 [61] by asserting his entitlement to £35,000.
79. I find that the Claimant did not affirm the breach. My reasons are as follows.
80. *First*, I have found as a fact that the Claimant raised the issue of his salary informally with his line managers on numerous occasions. He did not simply accept the position and move on.
81. *Second*, the nature of the breach must be considered. This was not a one-off act of misconduct in response to which the employee had to decide quickly whether to accept or reject the breach. It was an ongoing failure — a continuing failure to review — which was capable of being remedied at any time. Each month that passed without a review was a fresh instance of the breach. In those circumstances, the passage of time does not carry the same weight as it would in a case involving a single repudiatory act.

82. *Third*, the Claimant's evidence, which I accept, was that he was told by his managers that the matter would be "looked into." A reasonable employee in those circumstances might well decide to give his employer further time to put matters right, without thereby affirming the contract.
83. *Fourth*, when it became clear that informal approaches were not producing results, the Claimant put the matter in writing on 20 May 2024 and then raised a formal grievance on 9 September 2024. He resigned on 11 November 2024, approximately two months after the formal grievance and approximately two weeks after Ms De'Arth's email rejecting it. In the context of this case, that was not an unreasonable delay.
84. I am not persuaded by the Respondent's reliance on the Claimant's failure to respond to the email of 24 July 2023 [61]. That email proposed a different salary structure for a new role. The Claimant's evidence was that the salary discussion had taken place separately from the role change, and that the letter at [63] was the formal document he was asked to sign. He was not asked to sign the email at [61], and his contract was never formally amended to reflect it. While his silence in response to that email is a factor I have taken into account, it does not, in my judgment, amount to unequivocal affirmation of the breach.

Issue 5: Did the Claimant resign in response to the breach?

85. The Respondent submitted that the Claimant resigned for other reasons: dissatisfaction with the managed CRM role, the requirement to travel and stay away from home, the performance improvement process, and the fact that he had found a substantially better-paid job.
86. I find that an operative reason for the Claimant's resignation was the Respondent's failure to review and restore his contractual salary. The breach of contract does not have to be the sole reason for the resignation. Where there is more than one reason why an employee leaves, the correct approach is to examine whether any of them is a response to the breach, not to see which is the effective cause: *Wright v North Ayrshire Council* UKEATS/0017/13/BI, per Langstaff P.
87. I accept that the Claimant had other grievances about his role and that he had secured alternative employment. But the underpayment of salary was,

on the Claimant's own evidence — which I accept — the central and longstanding issue. It was the first point in his email of 20 May 2024. It was the subject of his formal grievance. His evidence was that he resigned because he did not believe the Respondent would ever honour its obligation to review his salary. I find that the Respondent's conduct in failing to review the deferred salary, over a period of more than four years, played a part in the Claimant's decision to resign. That is sufficient.

Issue 6: Was the Claimant unfairly dismissed?

88. Having found that the Claimant was constructively dismissed, it was for the Respondent to show a potentially fair reason for the dismissal. The Respondent did not seek to argue that it would have had a fair reason. The dismissal was therefore unfair.

Issue 7: Unlawful deduction from wages

89. In light of my findings above, I find that the Claimant was contractually entitled to a salary of £35,000 per annum from the date of successful completion of his probationary period. The temporary deferral agreed in August 2020 was subject to a review obligation which the Respondent breached. In those circumstances, the Respondent cannot rely on the deferral as justification for continuing to pay only £30,000. The difference of £5,000 per annum was properly payable and was not paid. Each underpayment constituted an unlawful deduction from wages within the meaning of section 13 of ERA 1996.

REMEDY

91. I then considered remedy\

Basic Award

92. This was agreed at

Compensatory Award

93. The Claimant went immediately into new employment at a higher rate. He has suffered no loss, save for it now taking him two years to obtain protection from unfair dismissal;. I accordingly awarded him £250 for loss of statutory rights.

ACAS

94. I did not find that there was any unreasonable failure to comply with the ACS Code of Practice. Accordingly I did not uplift any award.

Breach of Contract/Unlawful Deduction

95. The mathematics of the calculation were agreed by the parties:
96. Claimant underpaid for 4 years 16 weeks and 4 days until 11 December 2024.
97. Date claimant passed probation 17 August 2020 until 16 August 2024: Four years at £5,000.00 gross is £20,000.00
98. 17 August 2024 until last date of employment on 11 Decembre 2024 16 weeks and 4 days at £13,70 a day ($\text{£}5,000/365$) = £1,589.05
99. Total £21,589.05

Employment Judge Salter

23 March 2026
Date

REASONS SENT TO THE PARTIES ON

7 July 2026

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.