



EMPLOYMENT TRIBUNALS

Claimant: Mr Kevin Babstock

Respondent: Advanced New Technology Ltd

Heard at: London South Croydon, in public, by Cloud Video Platform

On: 27 and 28 May 2026

Before: Employment Judge Tsamados (sitting alone)

Representation

Claimant: in person

Respondent: Ms R Nankya, Litigation Consultant

RESERVED JUDGMENT

The Judgment of the Employment Tribunal is as follows:

- 1) The claimant was not dismissed. His complaint of unfair dismissal is therefore not well-founded;
- 2) The complaint of breach of contract in relation to notice pay is not well-founded;
- 3) The claim is therefore dismissed.

REASONS

Background

1. By a claim form presented to the Tribunal on 29 January 2025, following a period of early conciliation between 8 October and 13 November 2024, the claimant brought a complaint of constructive unfair dismissal and wrongful dismissal against Mr John Brooking, the Managing Director of his ex-employers.
2. In a response received on 25 March 2025, the respondent denied the claim.
3. It would appear that the claimant had made a previous claim in case number 6019854/2024 in almost the same terms. This was initially rejected because he provided an incorrect early conciliation certificate number. He subsequently provided the correct one and both claims were consolidated and the name of the respondent corrected to Advanced New Technology Ltd, being his employer.

Documents and evidence

4. I was provided with the following documents. From the claimant: a supplementary evidence bundle consisting of 19 pages (which I will refer to as “SEB” and the relevant page number where necessary); his witness statement and one for Mr Serkan Cakmak. From the respondent: a bundle of documents consisting of 423 pages (which I will refer to as “B” followed by the relevant page number where necessary); an agreed list of issues; and witness statements from Mr John Brooking, Mrs Jessica Scott, Mrs Lynsey Okyaie, Mr Paul Vessey and Mr Chris Radcliffe.
5. I made it clear that I was not going to read the entire bundle provided to me but only the documents referenced in the witness statements or specifically drawn to my attention. The claimant asked me to read: the staff handbook; his contract of employment; the email chain at B151-170 and the extracts from the transcripts of conversations/meetings. The respondent asked me to read: B1-170 and the extracts from the transcripts.
6. I heard evidence from all of the witnesses by way of their written statements and in answer to questions.

List of issues

7. I was provided with an agreed list of issues relating to the complaints of unfair constructive dismissal and wrongful dismissal.

Preliminary matters

8. At the start of the hearing, the claimant made an application for the Tribunal to draw an adverse inference from the respondent’s “spoliation” of electronic evidence. I was not familiar with this word and thought that the claimant had made it up. The claimant explained that there were documents which have been destroyed by the respondent or have been concealed and some of which only came to light in the response from the respondent to a Data

Subject Access Request ("DSAR") he made. In particular, the absence of more text messages sent between employees and in support of his application he pointed to documents revealing a grievance investigation that had been undertaken by the respondent which he had been unaware of at the time. He also alleged that emails relating to the hostile work environment had not been disclosed.

9. I have to say that initially it took me a while to grasp what the claimant was applying for and on what basis. In the end I took the view that if he is saying that the respondent has concealed or destroyed evidence then he needs to put this to its witnesses and in submissions, and I will of course draw whatever inference is appropriate, if any, from what comes out of that.

Conduct of the hearing

10. On the first day I dealt with preliminary matters and adjourned to read until 12 noon and then heard evidence from the claimant for the rest of the morning and most of the afternoon. I then heard from his witness Mr Cakmak and from Mrs Scott on behalf of the respondent.
11. On the second day I heard further evidence on behalf of the respondent from Mr Brooking, Mrs Olyaie, Mr Radcliffe and Mr Veysey. Both parties provided written submissions; Ms Nankya a document running to 12 pages and the claimant, a closing statement running to 4 pages. We adjourned for an extended lunch break to allow reading time and then Ms Nankya spoke to her submissions. The claimant declined to do so on the basis that everything was in his closing statement.
12. At the end of submissions, in view of the limited time left, I indicated that I would give a Reserved Judgment with Summary Reasons and I provisionally set a date for a remedy hearing, if required, of 14 July 2026. Unfortunately, due to ill health I was not able to complete the Judgment in sufficient time and so I wrote to the parties vacating that hearing. On reflection, I have decided to provide full reasons.

Findings of fact

13. I decided all the findings referred to below on the balance of probability, having considered all of the evidence given by the witnesses during the hearing, together with documents referred to by them. Any failure to mention any specific part of the evidence should not be taken as an indication that I failed to consider it.
14. I have only made those findings of fact necessary to determine the issues. It has not been necessary to determine every fact in dispute where it is not relevant to the issues between the parties.
15. I have to say that it was very difficult to piece together exactly what the claimant was relying upon in support of his complaints. Unfortunately, there was no clear narrative from his particulars of claim or indeed from his witness statement, although this did at least narrow down the events he relied on. The respondent's grounds of resistance unfortunately followed the same

format in replying to the particulars of claim, as did their witness statements. However, doing the best I can, I have made these findings from the evidence I actually heard by way of witness statements or in answer to questions put in cross-examination or by me and the referenced documents.

16. The claimant was employed by the respondent as an Account Manager from 1 July 2020 until his resignation on 4 September 2024. The claimant relies on his resignation as amounting to a constructive dismissal.
17. The respondent is a small limited company established in 1986 and at the material times employed 6 people. It has no internal HR function. It produces WEB and APP-based applications for a variety of business clients, including private companies and local authorities.
18. It was described in evidence from the respondent's staff, as a small company with a family feel, some of the staff having worked there for a number of years and the atmosphere being quite laid-back and everyone getting along. Most of its customers were also longstanding.
19. Mr John Brooking is the Managing Director and along with his wife, Mrs Claire Brooking, and Mr Chris Radcliffe, the Systems Director, they are Directors of the respondent limited company. Mr and Mrs Brooking are the majority shareholders and Mr Radcliffe is a minority shareholder.
20. The claimant's team consisted of two Administrators, Mrs Jessica Scott and Mrs Lynsey Olyaie. There was also Mr Paul Veysey, who I understood is a programmer. Mr Serkan Cakmak was employed as an AI Systems Development Manager from May 2016 until his resignation in May 2026.
21. I was referred to the claimant's contract of employment at B42-45. Clause 11 at B43 requires notice of termination of employment on both sides of 12 weeks. The document does not expressly state the place of work although by implication and conduct this was clearly the respondent's premises subject to the evidence I heard relating to working from home, which I deal with below.
22. I was also referred to extracts from the respondent's Staff Handbook at B85-115. I note that this contains policies relating to dignity at work and harassment, disciplinary and grievance procedures and termination of employment. In particular, I was referred to the clause at the bottom of B107 which stated that the respondent may require an employee to take garden leave on termination of employment. I was also referred to clause 2.2 ANT Application/Server Security at B121, clause 9.9 Remote Access at B137 and clause 12.5 Configuration Requirements at B142, third bullet point at 12.5.9. In essence, these clauses state that remote working was not permitted and neither was remote access to the respondent's IT facilities. The claimant was taken to these referenced clauses in evidence.
23. The claimant places great emphasis on the lack of a formal job description, key performance indicators ("KPI") and a structured performance review process. However, it is clear that much of these matters were established by conduct between the parties on a day to day basis and that given that this was a small company, to a great extent it operated on an informal basis and

through regular contact between the managers and their staff. Indeed, as we shall see, this process was very much stymied when the claimant took it upon himself to work from home. As Mr Brooking said, it was not a multi-million pound company, everyone knew their jobs and it was self-evident what a sales manager had to do. Indeed, I did express surprise myself to the claimant that he could assert that he did not know what his role was or what he was supposed to achieve, given that he was employed there for four years.

24. Mr Brooking retired and stepped back from the business in 2020. He employed the claimant effectively as his replacement and provided him with initial training. The claimant was employed as the sales manager/account manager responsible, along side Mr Radcliffe, for the administration team. The claimant's role was sales and marketing. More particularly, it was his job to ensure that existing customers were maintained, to undertake marketing, gain new orders, as well as to manage the administration team.
25. The respondent's IT systems were based on-site and remote access was not available due to technical and security limitations. Whilst occasional working from home could be permitted in exceptional circumstances, it was not the norm and in any event required prior agreement. The restrictions upon use of these systems and remote working are clearly set out in the respondent's staff handbook.
26. In the Winter of 2023, Mr Radcliffe contacted Mr Brooking with a number of concerns. The respondent's revenue was slowly decreasing and projections for the next 12 months were predicting losses unless the company got a few new orders. There were also concerns raised by three staff members arising from the claimant not being in the office.
27. The two administration staff expressed their concerns that it was becoming the norm that the claimant was not in the office and that the only indication they had of this was when his laptop was not on his desk in the morning. This was affecting productivity. The telephones were not being answered. The claimant could not be contacted at the first attempt to do so. When he needed data from the respondent's domain server, he had to message the administrative staff to access the information.
28. A member of the programming team also asked if he could work from home given that the claimant did so a lot. Mr Radcliffe explained to the programmer that working from home was not permitted save in exceptional circumstances.
29. In following staff appraisals, it was agreed that the issue of homeworking would be addressed. This was also raised with the claimant directly. In essence, all staff were told that working from home was not permitted save in exceptional circumstances. In addition, the respondent also discussed revising the claimant's commission structure in an attempt to incentivise him to pursue increased sales via the respondent's existing clients.
30. As a result of these discussions, the claimant's working from home days decreased significantly but he chose not to take up the new commission

scheme. I was referred to the revisions to the claimant's sales commission from 1 October 2020, 1 April 2021 and 1 January 2024 at B45-47.

31. In the Spring of 2024, Mr Radcliffe again raised concerns with Mr Brooking, given the respondent's worsening financial forecast. As a result, Mr Brooking agreed to come into the office to attend a team meeting at which he would explain the situation to the staff and that drastic action needed to be taken. At the meeting, he told them that they needed to put forward ideas to generate more revenue in the next six months or the respondent would have to make cuts.
32. After that meeting, Mr Brooking became more involved in the business again, offering to assist in anyway he could. As a result he attended the office three to four times a month, at team meetings, sometimes for just an hour, sometimes two to two and a half hours, if they were brainstorming ideas, and some weeks he did not attend at all.
33. The claimant alleges that throughout his employment he experienced a hostile and bullying work environment from Mr Brooking, in which he was subjected to aggressive and intimidating behaviour, and was undermined by him in front of his work colleagues. He has cited a number of incidents in support of these allegations, which are dealt with below.
34. The claimant also relies upon a text message to him from Mr Brooking on 29 August 2024 (at B167):

"Hi Kevin

Just phoned Rads on his mobile to arrange to come in today to talk about the banner.

Your working from home?? WHY??

There is only three people in the office, you are second in control and you are at home.

Why are you working from home when we are desperate to get new orders.

Look forward to your reply."

35. The claimant accepted in cross-examination that what Mr Brooking was expressing was a legitimate concern for a small business, although he added that he was still working (albeit from home). It was put to him that Mr Brooking was not criticising him, there was no abusive language and he was not threatening him.
36. The claimant refutes the respondent's evidence that working from home was technically unfeasible, unsupported by the IT infrastructure and entirely unpermitted, by reliance on what is referred to as LS Tracker evidence.
37. This evidence shows the number of days that the claimant worked from home during 2022, 2023 and 2024. This also appears in a spreadsheet reproduced at SEB4. In addition, the claimant relies upon this as evidence that home working was allowed, given the substantial number of days that he did so, and further that the respondent latterly unreasonably refused to allow him to work from home during his notice period.

38. I have to say, that this information purely records the number of days that the claimant was working from home which I can see was a not inconsiderable amount. However, it is not necessarily probative of anything more than that. Indeed, to that extent, it is consistent with the respondent's evidence that the claimant was working from home. It does not indicate that he had permission to do so or refute the respondent's evidence that his absence from the office was causing concerns for the other members of staff.
39. Working from home can be simply sitting in your house using a laptop. There is nothing to suggest that the evidence that the claimant relies upon is indicative that he was able to access the respondent's server or do anything other than work off-line. In as far as the claimant was working these amounts of time from home, there is nothing to suggest that this was anything other than a course of conduct undertaken by the claimant, which the respondent belatedly became aware of when it was causing problems that were brought to their attention by other members of staff or in the case of one member of staff, a request to work from home as he was aware that the claimant was doing. At this point, the respondent called time on the claimant's arrangements.
40. The claimant also relies on the lack of a clause in his contract of employment as to where he was expected to work as indicative that he was entitled to work from home. Mr Brooking said in cross-examination that there might not have been a clause but it was discussed that the claimant was in charge of two people and that it was his job to bring in sales and none of this was physically possible if he was not in the office. He added that whilst Mr Radcliffe was in the office, he was not a salesperson, he dealt with systems.
41. The claimant also relies on the provision of a mobile telephone and laptop as an indication that he was entitled to work from home. Mr Brooking said in cross-examination that this was for the claimant to use when he visited customers, and his mobile phone so that the respondent knew he was safe.
42. The claimant also relied on clause 6 of his contract of employment at B42 that states: "Flexibility of hours and time off is open and will be taken into consideration". Mr Brooking said in cross-examination that the reason for this was that the company was flexible and if you have a dentist appointment at 10 am, you can take time off, or for child care, and the respondent did not take it into account in any way.
43. On balance of probability I prefer the evidence of the respondent with regard to homeworking.
44. Within the bundle are seven transcripts of various meetings which the claimant covertly recorded. These are at B171- 396 and are undated. I would stress that I have only read the passages to which I was referred to by the claimant and in his cross-examination.
45. The claimant has provided extracts from these transcripts in support of his case. These are at B421-423. However, in reality this is a mixture of his narrative and interpretation of elements from a number of the meetings that he recorded, relying on selective quotes from those meetings.

46. The claimant relies on an extract from the transcript of a meeting held on 20 June 2024 at paragraph 1 on B421 timed at 17.53 minutes. He alleges that Mr Brooking exhibited aggressive behaviour towards Mr Cakmak and Mr Radcliffe and dismissed staff input. He selectively quotes elements of the conversation. In cross-examination, he was referred to the full transcript of this meeting, where the conversation takes place at 17.53 minutes on B182. He accepted that the conversation was about a project that had not been completed after 10 weeks and this was something a manager was entitled to comment on. He accepted that there were no personal remarks made about him, it was just a comment about a project not being completed. However, the claimant asserted that in terms of body language and tone, Mr Brooking's words were directed everyone at the meeting.
47. The claimant further relies on an extract from that meeting at paragraph 2 on B421, which he describes as a "public shaming" by Mr Brooking, directed at the entire team and then Mr Brooking mocks the answers provided. In cross-examination, he was referred to the full transcript, at B184 from 20.15 minutes onwards. It was put to him that this was simply Mr Brooking asking about work being completed in a small office with declining sales. The claimant accepted that this was the case and that the comments were not directed towards him in any event. The claimant added that it was in an open environment, directed at everyone and not done professionally.
48. The claimant also relies upon an extract from that meeting at paragraph 3 on B421 timed at 09.36 minutes and quotes what he calls "profanity" aimed at Mr Cakmak and Mr Radcliffe. In cross-examination, he was referred to the full transcript at B201 and it was put to him that Mr Brooking was criticising the lack of teamwork. The claimant accepted that Mr Brooking was not criticising anyone in particular and was not picking on anyone but he asserted that it was to do with the tone and the language used.
49. The claimant also relies on an extract from that meeting at paragraph 4 on B421 timed at 30.48 minutes, in which he states that Mr Brooking issued hostile commands. In cross-examination, he was referred to the full conversation at B215. It was put to him that Mr Brooking was talking about a project that was not finished and that this was a legitimate concern. The claimant accepted this but said it was not within his control because it was to do with programming. However, accepted that Mr Brooking was talking about the communication that should happen in a team and that in any event he was not talking to him.
50. The claimant also relies upon an incident involving Mr Cakmak at a meeting held on 22 July 2024. This came out partially in the claimant's witness statement and also in Mr Cakmak's witness statement and also from Mr Brooking in cross-examination (which I had to prompt the claimant to ask about) and from Mr Radcliffe (I had asked the claimant to cross-examine on this matter but Mr Radcliffe volunteered to go over his recollection of that meeting).
51. Mr Cakmak gave evidence for the claimant. I bear mind when considering the weight of his evidence that he resigned from the respondent's employment and is bringing his own Employment Tribunal claim. I say this

because his evidence is at odds with the evidence of the respondent, particularly as to this meeting. Further, his evidence is that Mr Brooking did behave in the way that the claimant alleges which goes against the respondent's witnesses' evidence. In addition, he asserts a much higher level of attendance in the office by Mr Brooking than was even relied upon by the claimant.

52. Doing the best I can from the totality of the evidence, these are my findings to the extent that this meeting is relevant to the claimant's case.
53. "Mr S", a representative of an external company, was invited to attend the meeting by Mr Brooking who had made prior contact with him. All of the staff, including Mr Brooking and Mr Cakmak were present at the meeting. Whilst it was not expressly said in evidence, I got the impression that Mr S was there to provide information about a product or system that his company was marketing.
54. It would appear that Mr Cakmak in effect derailed the meeting because he repeatedly spoke out of turn and attempted to push the discussion in the direction of the use of AI and LinkedIn with Mr S. Mr Brooking had to intervene so as to stop Mr Cakmak from pursuing this line of questioning.
55. Whilst Mr Cakmak alleged that Mr Brooking shouted at him "no, no, no, you are not allowed to speak", he went red, was embarrassed and left the meeting, Mr Radcliffe asserted that Mr Brooking simply said this was not the time to ask these questions and shut the line of questioning down. Mr Radcliffe further stated in evidence that no one left the meeting and he did not recall Mr S stating one point if Mr Brooking would prefer him to leave the meeting, as Mr Cakmak alleges, as Mr S felt uncomfortable. I also note that the claimant's witness evidence is that Mr Brooking's dismissive behaviour caused Mr S to question whether he should remain in the meeting. Mr Radcliffe recalls that he spoke to Mr Cakmak the next day and he did say that he felt uncomfortable in the meeting.
56. On balance of probability, I find that Mr Cakmak was pursuing a line of questioning with Mr S that was inappropriate and that Mr Brooking closed him down, perhaps somewhat abruptly, but understandably so in the circumstances. No one left the meeting. However, I am inclined to accept that Mr S felt uncomfortable and did question whether it was appropriate him to remain in the meeting.
57. The claimant relies upon an extract from a meeting on 14 April 2025 (sic) at paragraph 5 on B421 in which he asserts there was ongoing verbal abuse. He was referred to the full conversation at B380 timed at 1.20.58 and the passage at 1.30.25. It was put to him that Mr Brooking was expressing frustration about the financial performance of the business. The claimant's response was that he did not know but Mr Brooking was using bad language. He was referred to the above extract at 1.30.25 and it was put to him and he accepted that the wider discussion was about improving sales and the competitiveness of the business. He further accepted that Mr Brooking was not singling anyone out in particular, However, he asserted that this was the way Mr Brooking talks to people in the business.

58. The claimant also relies upon an extract from the meeting held on the 4 September 2024 at which he resigned, at paragraph 6 on B421. He describes this as the last straw. In cross examination, the claimant was referred to B387. I will deal with this when considering the claimant's resignation.
59. The claimant further relies upon an exchange of what I understand to be Microsoft Teams' messages between him and Mrs Olyaie on 11 September 2024 (at B168). In these messages, both the claimant and Mrs Olyaie makes some critical remarks about Mr Brooking. The claimant relies upon this as evidence of the way in which Mr Brooking behaved in meetings towards members of staff. He accepted that notwithstanding these matters, he did not raise a grievance, but said that there again Mr Brooking was the owner. The claimant also stated that there was open discussion in the office about the way Mr Brooking spoke to the team but nothing was documented. The claimant asserts that there were a lot more conversations of this kind but the respondent has either destroyed them or not disclosed them. This forms part of his application for me to draw an adverse inference against the respondent, which is dealt with below.
60. Another incident the claimant relies upon relates to a slide presentation which he was asked to prepare for a team meeting. He referred to an email he received from Mr Brooking, cc Mr Radcliffe, dated 1 September 2024, in which Mr Brooking states that he did not like the presentation and that he would discuss it with him the following Tuesday when his in the office (at B151). The claimant accepted that this was feedback about marketing material and that was part of his role and that a director was entitled to provide feedback about his role. The claimant added that feedback could only be provided with a clear objective, which is one of his common themes in evidence. He did not accept that the email contained a clear objective. Having looked at the email, it appeared to me that it did.
61. On 3 September 2024, there was a team meeting. During the meeting Mr Brooking asked the claimant about any new potential orders. Mr Brooking's evidence is that the claimant, in a departure from his usual behaviour, stood up and raised his voice in a hostile manner and loudly stated four negative comments in front of the whole team, which shocked everyone. I was referred to be B328-335 which is an extract from the transcript of that meeting. Mr Brooking further alleges, that the claimant stormed round the desk picked up three leaflets which he collected from an exhibition he had attended, through them on the table and stated "this is what I am fighting against, other companies have teams of people designing producing leaflets".
62. Mr Radcliffe said in evidence that at the meeting Mr Brooking was providing feedback to the team's leaflet designs which are primarily been designed by the claimant and the admin team. On hearing the feedback, he asserts that the claimant had a small outburst, throwing the respondent's competitors leaflets on the table stating "right, I'll show you what we are competing with" and then continue to undermine the respondent's own products.

63. That afternoon Mr Brooking said that he spent a few hours at home designing a leaflet, found the local graphic designer could produce the leaflet and arranged a meeting next day to get the leaflets produced.
64. The following day, 4 September 2024, Mr Brooking went to the office to meet with the claimant to discuss his behaviour the previous day and to go through a new plan to get leaflets produced, to present the draft leaflets that the designer had provided him with and discuss how to distribute them. At the end of the meeting, the claimant resigned.
65. There is an email at B152 from Mr Brooking to the claimant and Mr Radcliffe sent at 11.04 am on 4 September 2024 in which they are asked to provide information to a designer as a matter of urgency so that the leaflets can be drafted that afternoon. It would appear, although this was not stated in evidence, that the meeting must have taken place later on that day possibly in the afternoon.
66. The claimant's resignation came at the end of a discussion regarding sales and initiatives and Mr Brooking expressing his dissatisfaction with the claimant's lack of enthusiasm. In particular, I was referred to the final exchange between Mr Brooking and the claimant which starts at the bottom of B388 and goes over to B389 (I have taken out the timings):

"KB

Do you know what? No. I've had enough, right? I've had enough I've got no job to go to, 3 months, resignation. I don't want to work for you anymore - Kevin. Done

JB

No now you are being silly

KB

I'm not I've had enough right this company is dying on its arse I have been to so many meeting where we have come back been going can we do this, can we do this, can we do this. MTR, still not done. Fucking, what do you call it, direct line started when I started, we're going to lose it because it's still ain't finished. That's what I'm dealing with on a daily basis.

Stick your job. Up your arse."

67. It would appear that during the meeting, the claimant was scribbling on a piece of paper words to the effect that he was resigning with three months notice. I was referred to B154 in this regard. This prompted Mr Brooking to say "now you are being silly" (as above) and the claimant's further response (as above) after which he screwed up piece of paper and threw it at Mr Brooking.
68. The claimant relies upon Mr Brooking's conduct at this meeting as the "last straw" in a series of cumulative bullying incidents leaving him with no choice but to resign to protect his mental health. He makes reference to the conversation timed at 0.09 minutes within the transcript. This is at the bottom of B387 over the page to B 388:

"KB

Because whatever I say isn't the right thing. That's what it feels like. Whatever I say to you isn't either the right content, the right words, the right this, the right this, so I might as well say nothing. But when I'm on the phone, how many people have I phoned this morning? How many emails have gone out? Because it's like that. It's like this thing that's going, that's wrong, that's wrong, that wrong. That's not...

JB

I never say that's wrong. I sit down, look at something I've got, like a normal customer would, and I've done it so many times.

I can look at it effectively. Then I don't say boom boom yeah, boom."

69. After the meeting, the claimant told his colleagues that he had quit, removed his personal possessions and left. He later sent a text message to a member of his team to arrange to collect a number of items that he had left behind.

70. I was referred to B170 in relation to the above text message. However, this is an exchange between the claimant and Mrs Olyaie in which the claimant states that he has "just told John to shove his job up his arse, & I don't want to work for him" to which she responds "has he been a nob again today?" and the claimant further replies "he was just banging on again, so I said that unless he does it himself it's not good enough..."

71. Later that evening, the claimant sent an email to Mr Radcliffe which is at B157 and set out below:

"I am writing to formally resign from my position as Sales Manager at Advanced New Technology giving you three months notice as stated within my contract. My last day will be 5th December 2024.

I believe it is in my best interest to pursue new opportunities, as regrettably the work environment has become unsustainable making it challenging for me to perform at my best.

Thank you for your understanding."

72. On 5 September 2024, Mr Radcliffe saw the email and when the claimant did not arrive in the office he arranged to speak with him on the phone. During the conversation it became clear that the claimant had no intention of coming back to work. This is another of the conversations that the claimant made a covert recording of. I was referred to the exchange between them timed at 0.04.10 minutes at B394-395, in which there is a discussion as to whether the claimant will be working his notice:

"KB

But, yeah, I'm not coming back in, so I don't know what he (Mr Brooking) wants to do, to be honest. You can let us know on that.

CR

You're not coming in at all?

KB

No. Not coming back

CR

OK I thought you were going to work your notice, but obviously not.

KB

Well to be honest, well it depends on what he's proposing to be honest. Because I will not speak to him.

CR

No, that's fair enough. What I'll do is I'll have a word with him tomorrow. See, you know, what his view on it is, obviously."

73. In addition I was referred to a later exchange on this subject at B395:

"CR

Okay all right. Well I'll have a word tomorrow in terms of, you know, notice period and all that business.

KB

To be honest, at this point I will quite happily just take my chances and see what comes up.

CR

Okay. Well, obviously if it came to it and you did work, obviously if something came up, I'm happy for you to, you know, go don't have to don't have to work it but obviously don't need to get stuck basically.

KBmm-hmm

CR

Cos theres (sic) still you know sure you know okay tell John while I'm not doing sales stuff I'll just manage the current customers for transition only so.

KB

yeah alright well i'll have a chat with you tomorrow but I won't be in tomorrow."

74. The claimant submits that this is an unambiguous verbal waiver of his requirement to attend the physical office. Mr Radcliffe denies this and said that he was thinking of the position that the claimant could work in the office or if something came up (by which I took him to mean another job) then they would not hold him to it. However, he added that this was not something that he had confirmed with Mr Brooking.
75. My view on balance of probability and particularly looking at the transcript that I have set out above, is that this is certainly not the unambiguous verbal waiver the claimant asserts it to be. If anything, it is Mr Radcliffe attempting to accommodate the claimant in equivocal terms so that if he did have to come into work he would not be stuck with it if another job opportunity came up in the interim (given that his notice period was 12 weeks). It is clear in the conversation and even acknowledged by the claimant that Mr Radcliffe needed to speak to Mr Brooking further about the matter and then revert to him.
76. Mr Radcliffe spoke to Mr Brooking that afternoon and the discussion he had with the claimant as to his intention not to return to the office. Mr Brooking and his wife said that they would cancel their impending holiday in order to assist in the office if the claimant was not returning, Mrs Brooking assisting with administration given that at this time Mrs Olyaie was absent from work due to ill-health and Mrs Scott was on annual leave for two weeks. Mr Brooking and Mr Radcliffe agreed that they had no animosity towards the claimant and that they were happy for him to work his notice and assist in transferring over his duties to a new employee.
77. Mr Radcliffe telephoned the claimant later that afternoon and explained the position regarding staffing, Mrs Brooking covering the office and the claimant returning to work. However, the claimant reiterated that he would not return to the office.
78. On 9 September 2024, the claimant sent an email to Mr Radcliffe which is at B155. In essence, the claimant stated that he was prepared to work his three months' notice period on the basis of one or two days per week in the office and when Mr and Mrs Brooking are in the office he would work remotely. He then set out the following rationale for this:

"This is due to the ANT office being an unsustainable work environment due to ongoing instances of workplace bullying and aggressive behaviour by John Brooking directed at both myself and my colleagues.

I have found myself feeling increasingly uncomfortable in the workplace. The hostile atmosphere has significantly impacted my sense of well-being, making it impossible for me to perform my duties effectively. For example on 22nd July 2024 John attended a marketing meeting at the ANT office attended by (Mr S), John was so dismissive of others opinions during the meeting that (Mr S) questioned whether he should leave and as a result of the meeting Serkan Cakmak (Senior Developer) refused to attend work in the office the following day 23rd July 2024 (meeting recording available).

Johns (sic) inability to listen to others views effectively and professionally without making myself and the team too afraid to provide an answer which he will deem not acceptable, means that open and honest professional work conversations are limited.

On each occasion that John visited the office it was highlighted to yourself as the Managing Director, that Johns attitude and approach towards the team was unacceptable, unprofessional and would often include John raising his voice in an aggressive manner.

While I have tried to manage the situation, John's actions have fostered a work environment that I no longer feel able to endure. It is with deep regret that I acknowledge I cannot continue under these conditions.

Despite my best efforts to address the situation and maintain professionalism, the continuous negative behaviour and threatening of colleagues and myself losing their jobs without me having any defined KPIs or a defined job description of my expected role and accountabilities has affected my well-being and made it increasingly difficult to perform my duties effectively.

Unfortunately, I no longer feel that I can remain in this environment without it further impacting my mental and emotional health (it was highlighted to yourself numerous times of the frustrations the team and I felt after John had been in the office).

In addition previous sales/account managers have left abruptly due to no longer being able to tolerate Johns lack of professional courtesy and micromanagement.

This decision has not been made lightly, as I have valued the opportunities and experiences I have had at ANT. However, the atmosphere of no clear objectives or support has made it impossible for me to continue working here in good conscience. I hope that by raising this issue, steps can be taken to ensure a more supportive and respectful work environment for others moving forward.

Based upon these facts all correspondence between myself and Advanced New Technology (ANT) will be conducted between Chris Radcliffe, Jessica Scott or Lynsey Olyaie and myself.

- *Should I receive an alternative job office (sic) I will provide 2 weeks notice.*
- *I request that all outstanding commission will be paid in my September pay.*
- *Should the above will not be confirmed in writing by ANT I will complete the remainder of my 3 month notice period on garden leave.*

I am willing to assist with the transition of my responsibilities and ensure a smooth handover process during my remaining time at the company. I am grateful for the chance to contribute and grow in my role, but I must prioritise my personal well-being at this time.

Thank you for your understanding, I shall await your response by 17:00 Tuesday 10th September."

79. Mr Radcliffe denies that he confirmed to the claimant that there was a toxic work environment and that this situation had arisen before. He states that employees in the claimant's role have indeed left before but this was due to lack of sales. He further stated that he could not understand why the claimant had included Mrs Brooking given that she had not worked in the office for over four years and that the claimant was well aware that working from home was not permitted except in particular circumstances and that his role relies on access to systems within the office and working closely with staff.
80. By email dated 10 September 2024, Mr Radcliffe replied to the claimant's email in essence stating that the respondent could not agree to his terms and

that he was required to work his notice in the office and in addition expressing surprise at the reasons given for his refusal to work in the office. The email also stated that a refusal to work his notice period would be regarded as a repudiation of his contract. This email is at B162-163 and is set out below:

"You tendered your resignation on 4th September, and we are sorry to see you go. We wish you all the best in your future endeavours.

However, on 5th September, I initiated a telephone conversation with you after you failed to attend work. During that conversation, you made it clear that you do not intend to return to the office. As promised, I discussed this matter with Mr. Brooking on 6th September.

It was decided that Mr. and Mrs. Brooking would cancel their pre-planned vacation to provide cover until a replacement is found.

Please be reminded that the terms of your employment contract do not permit hybrid working.

Your position is office-based, with working hours from 8:45 am to 5:15 pm, Monday to Friday.

Despite your refusal to return to the office, we are prepared to allow you to work your notice period in person, as provided under the terms of your employment contract.

I was surprised to learn of your allegations of bullying and aggression by Mr. Brooking. During Mr. Brooking's sporadic office visits, I did not witness the behaviour you described.

As you are aware, Mr. Brooking founded the business over 30 years ago, and over the past two years, the company's sales have been in decline. Naturally, Mr. Brooking has been concerned and has consistently offered assistance. He has strong opinions on the future of the company, and as the owner, he is entitled to manage the business in a way that he believes is in its best interests. That said, he remains open to new ideas and initiatives.

However, I fail to see how Mr. Brooking's passion for his business could be interpreted as bullying or aggression.

At this time, garden leave is not being considered, and it is not provided for in your employment contract.

In regard to your non-attendance on 5th, 6th, and 9th September, we cannot agree to your demands to exclude Mr. and Mrs. Brooking from their business or the new conditions you wish to impose regarding the notice period.

We are bound by the terms of your contract, which stipulates a three-month notice period. As previously mentioned, we are happy to allow you to work out the notice period.

Please respond to this correspondence within 3 working days. Should you decide not to work your notice period, we will need to arrange the return of your personal property and any company property by 17th September.

If your employment contract is terminated, you will be paid all amounts due up to the date you communicated your decision not to work the notice period, including any owed holiday pay and commission."

81. By email dated 13 September 2024, the claimant responded to Mr Radcliffe's email (at B160-161). In essence, he reiterated his allegations of bullying against Mr Brooking and accused Mr Radcliffe of inaction in dealing with his concerns and expressed his confidence in fulfilling his responsibilities during his notice period on the terms he has set out. In addition, his email appeared to be suggesting that the respondent, being aware of his concerns, should undertake a grievance investigation.
82. By email dated 18 September 2024, Mr Radcliffe responded to the claimant's further email. This is at B159-160 and is set out below:
"We interpret your response as a refusal to work your notice period in person at our office in Pippingford Manor.

We would like to reiterate that our security and working infrastructure does not support remote working. While we have allowed occasional remote working in the past for unforeseen circumstances—such as when you cited childcare problems and personal appointments—this was an exception, not a regular practice.

However, remote working became excessive in 2023 and Mr Brooking became aware of this when other staff members began requesting remote work for reasons outside the scope of previous policy. Concerns were raised regarding productivity and security. Remote work is against our security policies, and employees have limited network access when working from home, which has a negative impact on productivity.

At the end of 2023, it was clearly communicated and agreed by all that remote working would no longer be permitted for any employee moving forward into 2024.

The company has a grievance procedure and no such action was taken by yourself over the past 4 years. You have not raised any official grievance or made formal allegations of bullying or aggression against Mr. Brooking. It was only recently that you indicated these as reasons for your resignation.

As you are aware, the company has faced financial challenges over the last two years. We have not acquired new clients and have relied on repeat business, long-term contracts, government grants, and development work to maintain operations. In addition, we experience an annual existing customer loss of approximately 15%, which has added to the financial pressures on the business.

These circumstances have led to difficult decisions, including instances when Mr. and Mrs. Brooking, as well as myself, deferred or reduced our own pay in order to prioritise employee salaries during cash flow challenges. The financial pressures have placed the viability of the business at risk, which has been a significant concern for myself and Mr. Brooking. As a result, Mr Brooking has taken a more active role in Sales & Marketing, which falls within your area of responsibility. He has provided guidance and suggestions to help generate leads, focusing on networking with our existing client base. He also arranged meetings with our web designer and hired a marketing expert to further strengthen our efforts in this area.

Your direct interactions with Mr. Brooking this year have amounted to approximately 12 hours over eight months (less than 1% the overall time). During his visits to the office, Mr. Brooking has typically involved all staff in team meetings, encouraging everyone to contribute ideas for generating new business. These meetings have been serious in tone, given the financial situation the company faces, but I fail to see how those meetings amount to bullying or aggression. If you had felt otherwise, the grievance procedure outlined in the employee handbook provides a clear process to address such concerns, but no formal steps have been taken by you in this regard.

As mentioned in previous correspondence, garden leave has not been approved in your case. Garden leave is an option that can only be enforced by the employer unless it is explicitly available to the employee in the contract or staff handbook, which it is not in this instance.

We appreciate your service to ANT and wish you success in your future endeavours.

Please ensure that all property belonging to ANT is returned by 23rd September to allow us to process the final payroll. Failure to return company property by this date may result in delays in your final payment, and we reserve the right to make deductions for any unreturned property. Your final salary, covering all work up to 6th September will include commission and any accrued holiday pay."

83. By email dated 20 September 2024, the claimant wrote to Mr Radcliffe providing a Royal Mail Tracking reference number for the return of his mobile phone and company credit card sent by recorded delivery (at B164).
84. By email dated 24 September 2024, the claimant wrote to Mr Radcliffe (at B165). In this email, the claimant stated that he had not refused at any point to work is notice period, that he remains employed by the respondent for his 12 weeks' notice period and that he is currently on sick leave. The email attached a statement of fitness for work (at B413). This states that from 23 September 2024, the claimant is unfit to work due to "stress at work" for a period of four weeks. The email also asked for confirmation as to whether the respondent has taken a decision to dismiss him and if so whether the dismissal is from 18 September with pay for the period to 6 September or if

the dismissal was from 6 September 2024. The email ended by stating that if his employment has been terminated, he wishes to formally appeal.

85. The respondent was advised by its then solicitors not to reply to the claimant's email on the basis that he had already repudiated his contract.
86. On 27 September 2024, the respondent received his final payslip and P45. He was paid his final salary, commission up to 5 September 2024 and his outstanding annual leave entitlement (at B402).
87. The respondent subsequently carried out a grievance investigation on the back of the claimant's email of 13 September 2024. I was referred to documents at SEB6-10. These documents are redacted with regard to the names of the person against whom the grievance is brought, although we know this is Mr Brooking, and the names of those persons interviewed are also redacted. Mr Radcliffe undertook the grievance and concluded the investigation on 19 September 2024. His findings are set out at SEB8. His conclusion is at SEB10 that no evidence was identified to substantiate the allegations and so the grievance was not upheld.
88. I was also referred to the claimant's DSAR at SEB12-17 and SB19 as well as the claimant's commentary within his supplementary bundle on these documents.
89. Mr Radcliffe was asked in cross-examination why he did not invite the claimant to participate. His response was that by the time it was concluded, the respondent and claimant had very much stopped communicating and both parties had solicitors and the matter was handed over to them. The respondent's then solicitors advised the respondent to carry out the investigation, to send it to them and they would send it to the claimant solicitors, although they added that as it happened after the claimant's dismissal there was probably no need for them to do so.
90. The claimant alleges that the respondent has destroyed and/or failed to disclose material documents. In cross-examination, Mr Radcliffe stated that he had administrative access to the respondent's Microsoft Office 365 software. This includes the respondent's documents, emails and Teams' messaging. It was put to him that notwithstanding his knowledge that there were Tribunal proceedings in this matter, he allowed relevant documents to be destroyed. Mr Radcliffe denied this and said that there was a default process in place by which emails and junk mail within Microsoft 365 were automatically deleted on a 12 or 18 month rolling process.
91. The claimant further put to Mr Radcliffe that he had failed to disclose the documentation regarding the grievance and the Tracker. Mr Radcliffe denied this and explained that the claimant had made two DSARs. The first was for his entire personnel file, appraisals, contract negotiations and any discussions in writing between Mr Radcliffe, Mr Brooking and the claimant. The claimant made a further DSAR because he did not believe that everything been disclosed. It was at this point that the respondent used Preview and searched using various words, including the claimant's name, and this brought up the additional documents which were then disclosed to

the respondent's then solicitors. Mr Radcliffe further stated that he believed that these had then been provided to the claimant.

92. In essence, Mr Radcliffe's evidence was that he had not destroyed or withheld any evidence and had provided everything that the respondent had to its then solicitors which he understood was then disclosed to the claimant.
93. I heard evidence from a number of the respondent's staff.
94. Mr Veysey was employed initially as an Apprentice reporting to the claimant and then to Mr Radcliffe, although still communicating with the claimant on a daily basis. Mr Veysey acknowledged that Mr Brooking rarely visited the business but described him and his wife as cheerful and easy-going and Mr Brooking particular as very energetic and enthusiastic. He stated that he would not describe Mr Brooking as a bully and he never witnessed him bullying any staff including the claimant.
95. Mrs Olyaie has worked for the company for 17 years and stated that she could not have stayed there for such a long time if the environment was toxic as the claimant claims it to be or if Mr Brooking was a bully. She further stated that she had not witnessed Mr Brooking behaving inappropriately towards others and she would have intervened on the claimant's behalf if she witnessed any bullying or wrongdoing.
96. Mrs Scott has worked for the company for 5 years. She described Mr Brooking as having a big personality, becomes excitable with high energy and has an entrepreneurial spirit. She further described him as a bit "old school", blunt and direct but not a bully. She did not observe any behaviour that she would describe as bullying or harassment. She said in cross-examination that when Mr Brooking came to the office, he would only pop in for an hour or so and at most at meetings for, say, two hours. She further stated that he was direct but the business was in trouble and he came into "gee" everyone up, to offer guidance and to help. She said that sometimes he could raise his voice a bit but he was enthusiastic and while she may have described him as "unprofessional" in her text message to the claimant, this was the wrong word to use.
97. Mr Cakmak had been employed by the company for 10 years from 2016 until his resignation in May 2026. He described a very different atmosphere in the office. He stated that when Mr Brooking came to the office this was a source of regular anxiety and discomfort among staff. He further stated that he had conversations with colleagues including Mrs Olyaie, Mrs Scott and Mr Veysey in which they expressed discomfort about attending the office on the days when Mr Brooking was expected. He also experienced a similar pattern of conduct from Mr Brooking directed at him which he has raised in his own Tribunal claim.
98. I also heard evidence from Mr Brooking. From what I observed of him and from the evidence before me, he is a plain speaker and believes in conducting the business openly in front of all members of staff at team meetings.

Submissions

99. Both parties provided written submissions. Ms Nankya spoke to her submissions. The claimant said that he had nothing further to add and relied on his closing statement.
100. I do not intend to set these submissions out in the reasons, other than where it has been appropriate to do so. But I would assure both parties that I have taken them fully into account.

Essential law

101. Section 95 of the Employment Rights Act 1996:

“(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) . . ., only if)—

(a) the contract under which he is employed is terminated by the employer (whether with or without notice)...

[(b) he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or]

(c) 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.

(2) An employee shall be taken to be dismissed by his employer for the purposes of this Part if—

(a) the employer gives notice to the employee to terminate his contract of employment, and

(b) at a time within the period of that notice the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire;

and the reason for the dismissal is to be taken to be the reason for which the employer's notice is given.”

102. Section 98 of the Employment Rights Act 1996:

“(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it—

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) relates to the conduct of the employee,

(c) is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3) In subsection (2)(a)—

(a) “capability”, in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and

(b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

(4) [In any other case where] the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

(a) 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

(b) shall be determined in accordance with equity and the substantial merits of the case."

103. The Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994.

Conclusions

Unfair dismissal

104. For the purposes of a claim of unfair dismissal there of course has to be a dismissal. This has to fall within section 95 of the Employment Rights Act 1996 ("ERA 1996"). A termination of the contract of employment between the parties by the employee will constitute a dismissal within section 95(1)(c) if he is entitled to so terminate it because of the employer's conduct. This is colloquially and widely known as a "constructive dismissal".

105. The leading case is Western Excavating (ECC) Ltd v Sharp [1978] IRLR 27, CA. As Lord Denning indicated, an employee is entitled to treat himself or herself as constructively dismissed if the employer is guilty of conduct which is a significant breach going to the root of the contract of employment; or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract. The employee in those circumstances is entitled to leave without notice or to give notice, but the conduct in either case must be sufficiently serious to entitle him to leave at once. Moreover, the employee must make up his mind soon after the conduct of which he complains. If he continues for any length of time without leaving, he will be regarded as having elected to affirm the contract and will lose his right to treat himself as discharged.

106. Thus in order for an employee to be able to claim constructive dismissal, four conditions must be met:

- a. There must be a breach of contract by the employer. This may be either an actual breach or an anticipatory breach.
- b. That breach must be sufficiently important to justify the employee resigning, or else it must be the last in a series of incidents which justify his/her leaving.
- c. He must leave in response to the breach and not for some other, unconnected reason. He must not delay too long in terminating the contract in response to the employer's breach, otherwise he may be deemed to have waived the breach and agreed to vary the contract.

107. If an employee leaves in circumstances where these conditions are not met, he will simply have resigned and there will be no dismissal within the meaning of ERA 1996 and so there can be no claim of unfair dismissal.
108. In the present case, the claimant is relying on a breach of the implied term of mutual trust and confidence in view of his employer's behaviour towards him with regard to a number of incidents as set out within the agreed list of issues a paragraph 1.2.
109. The House of Lords in Mahmud v Bank of Credit and Commerce International SA [1997] ICR 606, [1997] IRLR 462 defined this as follows:

"The employer shall not without reasonable and proper cause conduct itself in a manner calculated and (or) likely to destroy or seriously damage the relationship of confidence and trust between employer and employee."

110. This follows the formulation adopted in a series of cases by lower courts, eg Woods v W M Car Services (Peterborough) Ltd [1981] IRLR 347, [1981] ICR 666 per Browne-Wilkinson J, approved by the Court of Appeal in Lewis v Motorworld Garages Ltd [1986] ICR 157.
111. However, a note of caution needs to be expressed in relation to the precise terms of the formulation adopted by Lord Steyn in the BCCI case, as referred to above. In Baldwin v Brighton and Hove City Council [2007] ICR 680, [2007] IRLR 232 the EAT had to consider the issue as to whether in order for there to be a breach the actions of the employer had to be calculated and likely to destroy the relationship of confidence and trust, or whether only one or other of these requirements needed to be satisfied. The view taken by the EAT was that this use of the word "and" by Lord Steyn in the passage quoted above was an error of transcription of the previous authorities, and that the relevant test is satisfied if either of the requirements is met ie it should be 'calculated or likely'.
112. In the BCCI case, the House of Lords in particular held that this term may be broken even if subjectively the employee's trust and confidence is not undermined in fact. It is enough that, viewed objectively, the conduct is likely to destroy or seriously damage the trust and confidence. The term may be broken even where the employee actually remains indifferent to the conduct in issue. Similarly it also follows that there will be no breach simply because the employee subjectively feels that such a breach has occurred no matter how genuinely this view is held. If, on an objective approach, there has been no breach then the employee's claim will fail (see Omilaju v Waltham Forest London Borough Council [2005] IRLR 35, CA).
113. This term not to undermine trust and confidence is of potentially wide scope. It can extend to extremely inconsiderate or thoughtless behaviour. For example, refusing to investigate complaints promptly and reasonably is capable of falling into this category (see British Aircraft Corp v Austin [1978] IRLR 332, which can probably best be explained as a breach of this term). Similarly, unacceptable abuse may fall within its scope: Palmanor Ltd v Cordon [1978] IRLR 303, [1978] ICR 1008, and indeed any conduct which is "so intolerable that it amounts to a repudiation of the contract": per Phillips J in the Austin case, referred to approvingly by Talbot J in Post Office v Roberts

[1980] IRLR 347. However it needs to be stressed that the conduct does need to be repudiatory in nature in order for there to be a breach of the implied term of trust and confidence (see Morrow v Safeway Stores Ltd [2002] IRLR 9, EAT). This tallies with the comments of Lord Steyn in the *BCCI* case where he refers to the conduct of the employer causing serious damage to the employment relationship.

114. The respondent has referred to the case of Buckland v Bournemouth University Higher Education Corporation [2010] IRLR 445. In that case the Court of Appeal confirmed that the question of whether the employer has committed a fundamental breach of the contract of employment is an objective test. It is not to be judged the range of reasonable responses test which applies to the later issue of whether a dismissal is unfair, if of course a constructive dismissal is made out. Whilst the Court of Appeal acknowledged that reasonableness could be considered by the Employment Tribunal it made clear this was not applicable as a principle of law.

115. Many of the constructive dismissal cases which arise from the undermining of trust and confidence will involve the employee leaving in response to a course of conduct carried on over a period of time. The particular incident which causes the employee to leave may in itself be insufficient to justify his taking that action, but when viewed against a background of such incidents it may be considered sufficient by the courts to warrant their treating the resignation as a constructive dismissal. It may be the 'last straw' which causes the employee to terminate a deteriorating relationship.

116. In Lewis v Motorworld Garages Ltd [1985] IRLR 465, CA, Glidewell LJ expressly commented that:

"... the last action of the employer which leads to the employee leaving need not itself be a breach of contract; the question is, does the cumulative series of acts taken together amount to a breach of the implied term?"

117. However in Omilaju v Waltham Forest London Borough Council [2005] IRLR 35, CA, the Court of Appeal held that where the alleged breach of the implied term of trust and confidence constituted a series of acts, the essential ingredient of the final act was that it was an act in a series the cumulative effect of which was to amount to the breach. It follows that although the final act may not be blameworthy or unreasonable it has to contribute something to the breach even if relatively insignificant. As a result, if the final act did not contribute or add anything to the earlier series of acts it was not necessary to examine the earlier history.

118. I also refer to the case of GAB Robins (UK) Ltd v Triggs [2007] IRLR 857 by the Respondent. In that case the Employment Appeal Tribunal derived the following principles from Omilaju:

- a. The final straw need not be of the same quality as the previous acts relied on as cumulatively amounting to a breach of the implied term of trust and confidence, but it must, when taken in conjunction with the earlier acts, contribute something to that breach and be more than utterly trivial.

- b. Where the employee, following a series of acts which amount to a breach of the term, does not accept the breach but continues in the employment, thus affirming the contract, he cannot subsequently rely on the earlier acts if the final straw is entirely innocuous.
- c. The final straw, viewed alone, need not be unreasonable or blameworthy conduct on the part of the employer. It need not itself amount to a breach of contract. It will, however, be an unusual case where the final straw consists of conduct which viewed objectively as reasonable and justifiable satisfies the final straw test.
- d. An entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely (and subjectively) but mistakenly interprets the employer's act as destructive of the necessary trust and confidence.

119. Both parties also referred me to the case of Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 1189 in particular at paragraph 55 of the judgment which also relates to the last straw doctrine.

120. Turning then to the case before me.

121. The claimant relies upon a course of conduct by the respondent, specifically Mr Brooking, that fundamentally breached the implied term of mutual trust and confidence. He further relies on the last straw doctrine, namely the hostile interaction with Mr Brooking on the 4 September 2024. He asserts that this was not an isolated incident, it was the final straw in a cumulative sustained campaign of oppressive behaviour that completely shattered the employment relationship.

122. He refutes the characterisation of Mr Brooking's management style as being merely robust or firm and relies upon the transcript, particularly of the management meeting on 20 June 2024 as exposing this as a misrepresentation. He also relies on Mr Radcliffe's inaction in seeking to intervene or to protect him particularly when he raised these concerns. His subsidiary allegations relate to the respondent's assertion that he was not allowed to work from home even in the face of the LS Tracker records proving to the contrary and the refusal to allow him to do so during his notice period.

123. He also submits that the respondent did not take his concerns seriously and that in essence the grievance investigation was a sham in as far as it opened and closed in six days, five colleagues were interviewed behind closed doors but he was excluded from the process and denied a right of appeal.

124. The claimant further submits that by refusing to allow him to work his notice period, the respondent dismissed both unfairly and wrongfully.

125. The respondent's position is that the claimant was not dismissed, he left work before the end of the working day on 4 September 2024, sent a written resignation email later that day stating that he would not return the following day. He did not physically attend the office again despite the respondent requiring him to do so in order to work out his notice.

126. The respondent submits that Mr Brooking did not subject the claimant to a sustained pattern of bullying, intimidation, humiliation or hostile language as pleaded. Further the respondent submits that this is borne out by the evidence presented. Moreover, the claimant did not raise a formal grievance prior to his resignation and the disagreements relating to his sales performance.
127. In addition, the respondent submits that the covert recordings that the claimant relies upon do not objectively demonstrate conduct capable of destroying or seriously damaging the mutual term of trust and confidence. The respondent avers that this evidence, taken at its highest, reveals workplace disagreements and performance discussions, not conduct without reasonable and proper cause and far short of that necessary for a repudiation of the employment contract.
128. The respondent accepts that Mr Brooking expressed strong criticism concerning the claimant's marketing material and sales performance. However, the respondent does not accept that isolated criticism or use of profanity in a pressurised commercial environment does not, objectively assessed, meet the necessary threshold in Woods and Malik.
129. Further, the respondent denies that there was a failure by Mr Radcliffe to intervene or address the claimant's concerns because they were simply not raised with him until after the claimant had resigned. Thereafter the respondent asserts that Mr Radcliffe undertook a grievance investigation indicating that the allegations were taken seriously and addressed proportionately.
130. The respondent additionally denies that any grievance handling was procedurally defective, predetermined in secret as the claimant alleges. Whilst it was unclear whether the claimant was relying on this as such, the respondent submitted that mere dissatisfaction with the outcome of the grievance was not conduct objectively capable of constituting a repudiate breach.
131. The respondent also denied that the claimant had any entitlement to work from home. It avers that the claimant was aware that his role as a senior member of staff was to attend the office and this was a contractual condition established by conduct.
132. Finally, the respondent denied that Mr Brooking's behaviour at the meeting on 4 September 2020 could amount to a last straw. A last straw must add something to the existing course that cumulatively amounts to a fundamental breach of contract. The respondent denies that there was any cumulative repudiate a course of conduct to which any minor event could be added. The respondent asserts that the transcript evidence of the meeting on 4 September 2020 simply shows that the claimant was frustrated with the pressure of sales and performance and not any incident of bullying, harassment or aggression from Mr Brooking.
133. As I have indicated, having observed Mr Brooking in evidence and having heard evidence from the witnesses, he is a plain speaker and believes in

conducting the business openly and robustly and mainly in front of all members of staff at team meetings as well as with his managers and in written communications.

134. Given the size of the business and the financial issues it faced at the time, Mr Brooking was clearly was attempting to find a way forward so as to improve profitability.
135. As one of the witnesses described him and Mr Brooking himself admitted, he is old-fashioned. Another witness said that he was direct and told the truth and you knew where you stood with him. Another described him as passionate. And another of being enthusiastic. However, apart from the claimant and his witness Mr Cakmak, none of the witnesses described Mr Brooking as behaving in an abusive or bullying manner or the workplace as being a toxic environment.
136. The claimant also relied upon a number of extracts from conversations in internal meetings which he had covertly recorded, as indicative of Mr Brooking's bullying and abusive behaviour and of the toxic work environment. I was then referred to the wider context of these extracts by Ms Nankya, in her cross-examination of the claimant. Beyond this, I was not asked to read the full transcripts of the meetings.
137. The majority of the extracts relied upon involved Mr Brooking speaking generally to the staff present at the meetings, and yes I would say he did so in direct and straightforward terms and on at least one occasion using profane language. However, I noticed from the documents I was referred to that on occasion so did Mr Radcliffe and indeed the claimant. I can also see that given the financial difficulties that the company was facing and its lack of sales, this was a high pressurised environment.
138. However, taking an objective view and I do bear in mind that perhaps the force of words does not necessarily come across in a written transcript, the matters that the claimant relies upon do not amount to what I would label bullying or abusive behaviour or creating a toxic work environment as the he alleges. I also take into account the balance of the evidence before me. Indeed, neither the claimant nor Mr Cakmak appeared to have raised concerns at the time about those matters which the claimant relies upon as amounting to bullying and abusive behaviour and a toxic work environment.
139. Whilst I can understand that the claimant might genuinely believe that this is the case, I have to say that taking a step back, looking at matters from a reasonable perspective and taking into account the surrounding circumstances, I do not find that this is objectively the case.
140. This is a small "family" business involving a group of staff many of which had been there for a long time and got on well together. Mr Brooking had come back from retirement to provide support and assistance to the company given that it faced potential financial ruin. The discussions to which I was referred related to the team's ability to work together and to complete projects in good time with a view to getting financially back on track. Whilst the words used

may have been harsh, direct and to the point, they have to be seen within this context.

141. On balance of probability, I accept the respondent's evidence as to Mr Brookings conduct and behaviour and I do not find that the extracts from the transcript viewed objectively support the claimant's allegations of a cumulative course of conduct amounting to a breach of the mutual term of trust and confidence. In any event, the last straw that the claimant relies upon adds nothing to those matters which, even if I accepted the claimant's evidence, adds anything to what had gone before.
142. I find on balance of probability that the claimant did not raise any of these concerns until after he had resigned at the meeting on 4 September 2024. Mr Radcliffe was clear in his evidence that he was unaware of claimant's concerns until he raised them in the subsequent correspondence.
143. Although I do not need to go this far, it does occur to me that if the claimant endured the matters which he alleges took place for a period of four years then he would have faced the additional hurdle of being able to show that he had not affirmed that conduct by carrying on working and not raising any concerns.
144. What followed after the resignation on 4 September 2024, was a dispute between the parties as to the basis on which the claimant would work out his notice. The claimant was attempting to impose unacceptable conditions upon the respondent and the respondent in turn held the claimant to his contractual obligation to attend work during his notice period. The claimant declined to do so. As I have indicated above, I do not find that Mr Radcliffe gave an unequivocal indication to the claimant that he need not work is notice period.
145. The claimant had no right to work from home other than by agreement and that the respondent indicated that there was no legitimate basis on which he could insist upon this during his notice period.
146. Whilst the claimant relies upon what he calls the "sham grievance", it is unfortunate that the respondent erroneously believed that this had been disclosed to the claimant at the time. However, there is nothing to indicate that it was a "sham". Mr Radcliffe carried out an investigation and interviewed five members of staff and concluded that the allegations against Mr Brookings were unfounded. The claimant simply disagrees with this. In any event, by the time the grievance investigation took place and the conclusion reached, the claimant had already resigned from his employment.
147. I therefore find that the claimant was not constructively dismissed but simply resigned and thereafter refused to return to work other than on his very specific terms. He was therefore dismissed on 4 September 2024 and did not return to work out his notice period.
148. In his closing statement, the claimant asked me to draw an adverse inference from what he calls the spoliation and destruction of evidence relating to adverse emails and messages and in particular in as far as it relates to the second of the two DSAR letters.

149. I am not convinced that this is a doctrine of law within the UK and I think perhaps the claimant has happened upon it by way of an Internet search or using AI software and that it is a doctrine perhaps applying in other countries. I could find nothing in any of the legal texts that I have access to in respect of Employment Tribunal or indeed Civil Procedure. However, I have considered the matter on the basis of the obligation to disclose documents within this jurisdiction.
150. The parties are required to disclose all relevant documents that they have in their possession or control even if they do not support their case. A document is in a party's control if it could reasonably be expected to obtain a copy by asking somebody else for it. Documents include recordings, emails, text messages, social media and other electronic information. Clearly, if a party is found to be in breach of these obligations, this can potentially go to its credibility and this in effect could amount to what the claimant refers to as drawing an adverse inference, presumably that a party has done so to deliberately conceal evidence that did not support its case.
151. In the circumstances, based on the evidence before me, I do not believe it is appropriate to draw such an inference. Whilst it is unfortunate that by default the Microsoft Office 365 software automatically deleted emails and messages on a 12 month rolling basis, this is not a matter that gives rise to either spoliation or destruction of documents which I believe requires proof of either intentional or negligent action or of concealing evidence. In any event, it does not support an argument that the respondent is in breach of its obligation to disclose documents.
152. On balance of probability, I accepted the evidence of Mr Radcliffe that all of the documents that the respondent had, had been given over to its then solicitors and, as he understood it, disclosed to the claimant, and that he had not destroyed or failed to disclose any documents. I also accepted his evidence that any deleted documents occurred by operation of the Microsoft Office 365 default settings.
153. In conclusion then, the claimant was not dismissed, his complaint of unfair dismissal is not well-founded and is dismissed.

Wrongful dismissal

154. The claimant relies upon the respondent acting in breach of contract in not allowing him to work his notice period of 12 weeks and seeks damages for breach of contract in respect of the pay he should have received during that period of time.
155. However, I have found that the claimant resigned forthwith on 4 September 2024 and subsequently was invited to work his notice in the office but declined to do so except on very specific terms that he set. The respondent declined these terms and repeated its offer that the claimant could work his notice in the office but he declined to do so.

156. The respondent did not act in breach of contract or wrongfully dismissed the claimant. By not attending work as required, the claimant in effect repudiated his own contract and so his dismissal stood as taking effect without notice on 4 September 2024. The claimant had no automatic right to dictate the terms on which he would work out his notice.
157. The complaint of wrongful dismissal is not well-founded and is dismissed.

Employment Judge Tsamados
Date: 18th July 2026

Judgment sent to parties on:
28th July 2026

FOR EMPLOYMENT TRIBUNALS

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