EMPLOYMENT TRIBUNALS

Claimant: **Mr J Patel**

Respondent: **Metropolitan Care Services Limited**

Heard at: **London East Hearing Centre (by CVP)**

On: **22, 23 April and 16 and 17 June 2026**

Before: **Employment Judge F Spencer**

Representation

For the Claimant: Ms Knight-Webb, solicitor

For the Respondent: Ms D Worden, counsel

RESERVED JUDGMENT

The Judgement of the Tribunal is that: –

(i) the Respondent made unlawful deductions from the Claimant's wages, and the Respondent is ordered to pay the Claimant the sum of £21,029.77;

(ii) the Claimant's claim for holiday pay accrued but not taken succeeds and the Respondent is ordered to pay the Claimant the sum of £4,415.8;

(iii) the Claimant's claim for breach of contract (wrongful dismissal) succeeds and the Respondent is ordered to pay the Claimant a weeks' pay namely £535.50;

(iv) the Claimant's claim that the Respondent failed to provide him with a statement of employment particulars succeeds and the Respondent is ordered to pay the Claimant four weeks' pay at £535. 50 per week namely £2,142.

(v) The Respondent is ordered to pay the Claimant a total of **£28,123**.

(vi) The above amounts are calculated gross. Any sums deducted by the Respondent and paid to the relevant authorities by way of tax and national insurance shall stand as a partial discharge of this Judgment.

REASONS

Introduction and issues

1. This was a claim brought by Mr Jaimin G Patel for unpaid wages, wrongful dismissal, holiday pay and a failure to give a statement of particulars. The case was heard over 4 days, 2 in April and 2 in June 2026 having gone part heard.

2. It is a case where the factual disputes are stark. The Claimant came over from India in February 2023 under the terms of a Skilled Worker Visa arranged for, and sponsored by, the Respondent, which was, at the time, registered to provide sponsor licences for care assistants and healthcare workers. The Respondent has in this case abused that system.

3. The Claimant worked for the Respondent as a care worker for nearly 2 years before he was dismissed, on the Respondent's case for conduct, on 6 January 2025. He has insufficient service to bring a claim for unfair dismissal. However, he claims significant sums in unpaid wages and holiday pay.

4. The issues were agreed and set out at page 63 of the Bundle -reproduced for completeness in the Schedule to the Judgment,

Evidence

5. I heard evidence from the Claimant and from his brother-in-law Mr Viral Patel. For the Respondent I heard evidence from Ms Lauren Siakpere who is one of two registered managers of the Respondent and, briefly, from a Mr Obinwah, who described himself as the Care Coordinator in the Portsmouth office.

6. I had a hearing bundle running to 728 pages. The time sheets included in the bundle from 350 -509 were documents created by the Respondent but disclosed and added to the bundle by the Claimant. The Respondent had provided some time sheets 343-349 (which I accept the Claimant had never seen) and which related to travel time only. This case was originally listed to be heard on 5 and 6 August 2025 so that the bundle had been prepared and available at least since the end of July 2025.

7. Less than two working days before the start of the resumed hearing in June 2026 the Respondent sent a further bundle of documents to the Claimant's solicitor and that bundle was then sent to the Tribunal at the 15.05 the day before the resumed hearing. (Ms Worden says that the Respondent sent them to their solicitors shortly after the hearing went part heard) The bundle was said to contain the Claimant's Time Sheets. After a discussion with the parties, I agreed that the bundle could be admitted though, in the event, for reasons which I explain below, I find that its contents are fictitious.

8. I conclude that neither the Claimant nor the Respondent's witnesses were wholly honest in evidence. (I considered that Mr V Patel was an honest witness). For reasons which I explain below, I have for the most part preferred the evidence of the Claimant to that of the Respondent. The Claimant makes the startling claim that a significant number of documents in the bundle which purportedly contain his signature are forged. This includes two contracts of employment, various appraisals and supervision forms and a number of other

documents. It is established law that the more serious or unlikely an allegation is, the more convincing the evidence must be before the Tribunal should find it to be proved on the balance of probabilities. Nonetheless, very unfortunately I have concluded that the Claimant is telling the truth when he says he has not seen these documents, and that the Respondent has created a number of false documents in order to mislead the Sponsor Compliance team of the Home Office.

9. On the first day of the hearing an issue arose because it appeared that the Claimant had been receiving text messages from his brother-in-law while he was giving evidence in cross examination. The Respondent applied for the claim to be struck out because the way in which the proceedings had been conducted was unreasonable. I adjourned the hearing at about 3 pm to allow the parties to investigate exactly what had been sent and received and to enable them to prepare submissions on the application for a strike out and obtain screenshots of the Claimant's phone.

10. I heard those submissions on the second day of the hearing and, for reasons given orally in tribunal I refused the application to strike out the claim. I was satisfied that only one text had been sent by brother-in-law which did not contain evidence that was crucial to the case and that, although the Claimant had attempted to call his brother-in-law during the lunch break, his brother-in-law had not responded and there was no conversation While clearly bad behaviour, I was satisfied that the single text passed to the Claimant did not prejudice the Respondent or a fair hearing.

Findings of Fact

11. I set out below the findings of fact necessary to determine the issues in this case. Given the extent of the discrepancies between the parties, I may not have determined every single dispute of fact, but I have determined those which are necessary to dispose of the case.

12. In December 2022 the Respondent advertised on the Indeed platform for a "domiciliary care worker in Portsmouth, Hampshire." On 22nd December 2022 the Respondent received notification via that platform that the Claimant had applied for the position.

13. The Respondent is a licensed sponsor. This allows them to sponsor skilled workers from abroad into certain skilled occupations. All sponsors are required to pay a sponsored worker at least the minimum salary specified for the role. As a sponsor the Respondent is responsible for checking that the sponsored workers carry out the role for which they are being sponsored, and for monitoring their attendance. The sponsors are required to tell the Home Office if workers don't turn up for work or are absent without permission. A sponsor must also keep records. A sponsor pays the Home Office a fee for sponsoring a worker but is not allowed to pass that fee on to the worker.

14. The Respondent obtained a certificate of sponsorship (CoS) for the Claimant on 29 December 2022 (102). The certificate noted that the work start date was 31 January 2023 and the end date was 31 August 2026. Under the summary of job description, it says this "*if the additional 80 defined COS is granted the migrant will be offered a minimum of 45 hours per week at the rate of 25,600*

per year." (103) It also states that "*Metropolitan Care will be responsible for the maintenance of Jaimin Girishbhai Patel until he receives his first pay."*

15. There is a dispute between the parties as to what happened next. Ms Siakpere says that she had the Claimant's papers and that she interviewed him via teams on 30 December 2022, although for technical reasons the candidate had his camera off, and that she sent him an offer letter the same day (108) offering him "*the post of Healthcare Assistant for 45 hours per week at the rate of £10.10 per hour or £25,600 per annum."* The offer states that it is conditional upon receipt of *"satisfactory references, including from your last/present employer as well as a satisfactory response from DBS register."* The Claimant is asked to contact the Respondent to indicate if he wants to accept the offer *"and we can agree a potential start date."*

16. The Claimant says on the other hand that the only advertisement which he saw was from an agent in India. The Claimant says he paid this agent in India £30,000 to find him a job in the UK, that he responded to an advert from the agent (rather than from the Respondent) and that, beyond providing his papers, he had no further involvement until he received a certificate of sponsorship and an offer letter. He says that he was never interviewed – (and if Ms Siakpere interviewed anyone, she can only have interviewed the agent). He understood that the agent was representing the Respondent. He also said he did not understand, and was not told by the agent, that the job was in Portsmouth. The agent told him that the company was in Barking, and he assumed that was where the job was. Neither the offer letter nor the CoS identify the place of work. The CoS simply refers to the Respondent having contracts with local authorities in Portsmouth, Leeds, Newcastle, Nottinghamshire and various London boroughs.

17. I accept the Claimant's evidence on this point. There was no reason him not tell the truth.

18. On the other hand, the Respondent's position is less clear. The Respondent issued the CoS to the Claimant one day before the date of the alleged interview. Ms Siakpere says this is standard, as she had seen the papers, but this seems unlikely given that a CoS is a confirmation that the sponsor can meet the relevant immigration requirements. The candidate interview evaluation form appears in the bundle (105) but is uninformative. It is a standard form on which a rating of 3 has been circled for every question and there are no informative comments. The Respondent has provided a CV (66), purporting to be that of the Claimant which refers to him being an experienced healthcare assistant, (using the email Patelmittal1932@gmail.com), which conflicts with the subsequent employer reference that was provided. (See below) However no questions were asked about this CV in cross examination, and it was not referred to in evidence.

19. Both parties agree that the only documents provided to the Claimant before he travelled to the UK were the CoS and an offer letter. (108)

20. The Claimant arrived in the UK on 1 or 3 February 2023 (153) when he went to stay with his brother-in-law in Romford. On 7 February 2023 he attended at the head office in London of the Respondent and filled in what was called an application form. At this stage the Claimant was asked to fill in the details of his

most recent employer. He completed that (69) saying that his most recent job (from January 2020 to date) was as a Senior Care Assistant for Isha Women's Hospital. However, the reference that was sought, and obtained, by the Respondent was from L&T International. This stated that the Claimant had been employed by them from January 2020 to 31 December 2022 as an electrical technician. This conflicted with the application form, and the CV which had been provided prior to his recruitment. It does not reflect well on the Claimant that he has given a false reference, but it reflects even more badly on the Respondent, who have ignored the inconsistency and who have a duty, as an employer with a Sponsors licence, to check that the Claimant met the skills requirement for care workers. It does not appear that a reference was sought from Isha Women's hospital. The Claimant also has a Bachelor of Engineering from Gujarat technological University in 2017.

21. The Claimant applied for DBS certificate on 14th February 2023, and it was dispatched to him on 15th February. The Claimant's evidence in chief was that he delivered this to the Respondent on 15th February although, in cross examination, he accepted he must have delivered it a bit later than this because certificate was only dispatched on that date. I accept though that the Claimant took DBS certificate into the office shortly after he received it.

22. In its grounds of resistance the Respondent says that the Claimant delayed submitting his DBS certificate, and that he was not permitted to commence work until the certificate was received. Ms Siakpere says that she did not receive the DBS until 3 May, which is the date that it was stamped by the office.

23. I do not accept Ms Siakpere's evidence that the Claimant only bought the DBS certificate into the office on 3 May, or that the reason why the Respondent did not provide the Claimant with shifts sooner was because they did not receive the DBS certificate until 3 May. The Respondent had, by letter dated 14th February, been informed by the DBS that a certificate had been issued, and there is nothing in the bundle to show that the Respondent chased the Respondent to bring in his certificate.

24. In the meantime, on 27 January 2023, the Respondent had paid for the Claimant to attend training (109). The Claimant attended this training on 22 February and 3 and 4 March 2023. (118et seq). He was not paid for attending the training.

25. A document appears in the bundle (111) headed "Audit and Action Plan" dated 13 February 2023. This is completed by Ms Siakpere who gives the Claimant full marks for "DBS checks in place" "training" "availability and hours request" and "gaps explained risk assessed". It is notable that the scores are given before she received the DBS certificate, before she received the Claimant's references and before he completed his training. There is no reference on the form to any unwillingness to move to Portsmouth.

26. On 5 April 2023 the Claimant completed 8 hours shadowing in London. He was not paid for this.

27. On 11th April the Claimant signed a loan application form (193). This identifies a loan of £3,500 – the Claimant says that he applied for £500, that the 3 was inserted by the Respondent fraudulently and that, in any event, he did not

receive it. Ms Siakpere denies this and says that the Claimant applied for £3,500 and he was paid in cash because he did not have a UK bank account. I do not accept that account. By16 February the 2023 the Claimant had a bank account as the bank statement in the bundle shows (95). The terms of the sponsor licence mandate that al payments to a worker must be made into bank accounts and that if workers are paid in cash the licence was likely to be revoked. In any event it is not credible that the Respondent should have handed over £3,500 in cash without obtaining a receipt. No reference to this cash advance is referred to in the Grounds of Resistance. There are no deductions identified on the Claimant's payslips by way of repayment of a loan.

28. The Claimant says that he was very concerned that the Respondent had failed to give him any shifts despite having arrived in the UK on 3 February and that he frequently went to the office to ask when he would be given shifts. The Respondent's case as to the reasons why there was a delay in providing the Claimant with work is different. Ms Siakpere says that when the Claimant arrived in the UK, he raised objections to working in Portsmouth. She says that the Respondent was ready and willing to offer the Claimant shifts in Portsmouth but that the Claimant told them that he had not realised how far away Portsmouth was and that he had refused to go to Portsmouth.

29. I do not accept Ms Siakpere's evidence that he was not getting any shifts because he refused to go to Portsmouth. If that had been the case I would have expected the Respondent to have written to the Claimant mandating him to go to Portsmouth on pain of having his sponsorship revoked. There is no such correspondence in the bundle. I accept the Claimant's evidence.

30. The Claimant's brother-in-law Mr V Patel became very concerned that the Claimant was not getting any work. He was concerned that the Claimant may have been scammed. He said that the Claimant had understood that accommodation would be provided by the employer until he started work, and that had not happened. The CoS and stated that the Respondent will be responsible for the maintenance of the Claimant until he started work. He initially tried to phone Mr Ben Siakpere but was told that he was on holiday. Instead on 18th April he sent two emails to the Respondent. The first was sent at 16.33. In that email Mr V Patel says that the Claimant [sic] *"has been coming to office every week and been promise work but nothing has been happen till know*. *If has not been given work before this week then I would have let UKVI know and allows them to audit you. Place this place has been just calling people from abroad and promising work but failing to keep their promises*." He says if he hadn't got a job by Friday he would send an email to UKVI and refer the matter to his solicitor. The second email, sent two minutes later, said that he would copy the Home Office in on his next email response to them. (172 – 174). Mr V Patel says that following those emails Mr Ben Siakpere called him and asked him to allow a couple of weeks and he would give the Claimant work. I accept that evidence. The Tribunal has not heard from Mr Ben Siakpere.

31. Ms Siakpere's evidence was that Mr Patel attended at the office and was aggressive. However, he had not realised that the Claimant was refusing to go to Portsmouth and once he understood this, he said that he would sort it. There is no documentary evidence of this, it is denied by both the Claimant and his brother-in-law, and I do not accept it

32. A text on the Claimant's phone (169) shows that at 5.37 p.m. on 18 April, an hour after Mr V Patel had sent his emails, Mr Ben Siakpere provided the Claimant with the address of the Portsmouth office and asked him to call.

33. On 19 April Mr. Siakpere told the Claimant he should report to the Portsmouth office. On 19 April 2023 the Claimant went to the Barking office to sign his employment contract. (179). It provides that:

    a. his employment with the Respondent began on 24th April 2023

    b. he was employed as a care assistant and reported to Ms Siakpere

    c. "You will work 45 hours weekly- this can be between 8 a.m. and 8 p.m. Monday to Sundays with two days off. "

    d. "You will be paid £10.10 per hour/£25,600 per annum. You will only be paid for the hours that you work"

    e. "You are entitled to 28 days paid holiday per annum". The leave year was 1 April to 31st March.

    f. "Your normal place of work can be in the following areas London/Portsmouth/Leeds/Hampshire."

34. The Claimant accepts he signed his contract but says that, after he had signed, the Respondent refused to give him a copy. Ms Siakpere denies this. However, given the unreliability of the Respondent's evidence I prefer the Claimant's evidence on the balance of probabilities. It is consistent with the letter from the Claimant's solicitor of 15 January 2025 (510). I also note that the contract provides that the Claimant would have two days off per week, yet at the start of his work in Portsmouth the Claimant was working six days a week. I consider that if the Claimant had been aware of this provision of this contract he might have protested sooner. The Claimant also signed an induction form, a payroll form and an availability form. He was given a copy of the employee handbook.

35. The Claimant duly found accommodation in Portsmouth. Mr V Patel's wife paid the initial monies required. The Claimant texted the Respondent on 22nd April saying that he would be moved to Portsmouth by the following Monday (24th). He asked if he could shadow on Tuesday and start work (169).

36. The timesheets from the Claimant in the bundle indicate that he began work on Monday, 8 May 2023.

37. The Claimant had provided his timesheets for inclusion in the hearing bundle in advance of the first day of the hearing. He says timesheets would be sent to him each week by the Care Coordinator in Portsmouth (Emmanuel) by whatsapp. These appear at page 350 onwards. No timesheets were included in the bundle by the Respondent other than the timesheets at pages 343 – 349, which the Claimant says he never saw. However as set out above, in its supplementary bundle, provided just before the reconvened hearing in June, the Respondent provided what it says are the Claimant's timesheets. I have concluded that those timesheets are false.

38. The timesheets provided by the Claimant show the following hours of work in

the first few weeks when he was in Portsmouth:

a. w/c 8 May 2023- 36.15 hours

b. w/c 15 May - no timesheet

c. w/c 22 May 2023 – 35 hours

d. w/c 29 May – 34:45 hours

e. w/c 5 June- 35 hours

39. The timesheets also show that, despite a contract that said he would work five days in seven the Claimant was working to a rota that required him to work six days a week, with Tuesdays off.

40. Ms Siakpere's evidence was that on 6 June 2023 the Claimant asked for a reduction in his hours as he was feeling tired. As a result his hours were adjusted to 37.5 hours per week, with a revised salary of £21,200 per annum. She says that the Respondent agreed to this and a revised contract was issued and signed on 8 June 2023. There appears in the bundle a revised contract which appears to show the Claimant's signature at page 227. The Claimant denies asking for reduced hours or signing the new contract.

41. On 8 June 2023 Victoria (to whom the Claimant was initially reporting) sent the Claimant an email warning him as regards lateness to client care calls and informing him that he was required to inform the care coordinator about any unavailability 48 hours before the weekly rota was sent. He was warned that if it happened again, he would be disciplined. (203). The Claimant denies that he received this and says that this was not his email, but an email given and created by his agent for the purposes of his recruitment. However, the email address used by Victoria is the email address that the Claimant had provided on his application form when he arrived in the UK and I find that it was sent, though it may not have been received. In February 2024 the Claimant is asked by Victoria for his email address and he responds that it is Jaimingipatel1992 (which is different).

42. The Claimant denies that he asked for a reduction in hours, and he denies signing a new contract. He says the signature on the contract, as well as that on a number of other documents in the bundle is not his, and is forged. He says that on 8 June he was working morning, afternoon and evening shifts in Portsmouth and could not have been the Respondent's office in Barking to sign a new employment contract. He refers to his timesheet at page 356.

43. It is a serious accusation to make of any employer that they have forged documents and signatures. I am not a handwriting expert and cannot tell from the various signatures whether they are likely to be the Claimant's or not. I do accept that it is possible to forge signatures and my findings of fact are made on the basis of credibility, plausibility and consistency with the documents in the bundle.

44. It seemed unlikely that the Claimant would be asking the Respondent to reduce his hours from 45 to 37.5 when he had not in fact been rostered to do 45 hours on a single occasion prior to 6th June. When this was put to Ms Siakpere she referred to the new bundle of documents. This contains what purports to be

timesheets for the Claimant throughout his employment. These show that the Claimant was rostered to work 45 hours each week until the week commencing June 12 when his hours reduced to 37.5 hours. It was her evidence that these were the rotas that were sent to the Claimant, containing the clients he was required to attend to, and that the timesheets/ rotas that the Claimant had put in the bundle were the hours that he had actually done. She said that he had not put them in the original bundle because the judge at the case management hearing had commented that the bundle was too long, and she did not think they were relevant.

45. I have concluded that the rotas produced in the addendum bundle are a work of fiction. If Ms Siakpere's evidence is to be believed, the Claimant failed to attend appointments on his very first day at work, and he failed to attend shifts totalling 10 hours of allocated work each week over his first five weeks. That is a very significant number of missed visits. One appointment in the new bundle is said to last for 6.30 hours, others for 3 hours, whereas the shifts in the time sheets provided by the Claimant generally show shorter visits. The missing shifts are generally in the middle of the day. There is no indication in the bundle that the Respondent expressed any concern about a worker who was failing to attend just under one quarter of his scheduled shifts.

46. Ms Siakpere's explanation is that the Claimant's timesheets are the original timesheets amended to show the shifts that the Claimant had actually worked is at odds with the fact that Claimant's own timesheets for the weeks beginning 6 and 23rd December 2024 identify the Claimant as working on two- shifts which he has accepted he did not attend (see below). If Ms Siakpere's evidence had been correct those shifts would not appear on the Claimant's timesheets.

47. When asked about the fact that, on her case, the Claimant was missing some 10 hours of visits each week, Ms Siakpere explained that this was not a problem for them as they had a large number of agency workers that they could call on and that she had a duty of care to the Claimant who was new to the country and whose immigration status was dependent upon their sponsorship. She said she had reported the position to the Home Office who advised her to terminate his contract, but that because he was a vulnerable worker, and because of her duty of care, she had decided not to.

48. I find this evidence wholly implausible. I do accept that there are issues with the Claimant lateness and that the email of 8 June was sent to him by Victoria (203). I infer from this that the Claimant told the care coordinator rather late in the day that he was unavailable for a particular shift - The email does not suggest that the Claimant was failing to attend significant numbers of the shifts for which he had been allocated or that the Respondent would be wholly tolerant of an individual who simply failed to turn up for a significant number of shifts.

49. From June 12, 2023 onwards the Claimant's timesheets show that he worked the following hours:

    a. w/c June 12 — 34 hours
    b. w/c June 19 — 34 hours
    c. w/c June 26 — 31.45 hours
    d. w/c July 3 — 35 hours
    e. w/c July 10 — 35 hours

f. w/c July 17 30 hours
g. w/c July 24 32.15 hours
h. w/c July 31 32.15

50. In no week has the Claimant worked 37.5 hours. At some point the Claimant asked the Respondent if he could work his hours over five days rather than six. This was agreed.

51. On 22nd July the Claimant sent the following text to the Respondent (referring to the roster he was sent by Victoria for the week commencing 24th July). *"In this roster my hours is decrease I don't want to do that. I kindly request you. If one day day off can't affect my hours then give me otherwise please take it back my leave and give me my full hours I can't afford this."* There is no response.

52. The following week, on 29 July, he wrote "*I kindly request you that now when you make new roster please take back my day off leave and give my hours back".* The Respondent replied as follows "*you requested two days off which I granted until I have a new client your rota remains five working days."* The Claimant replied "*hi Victoria Madam, as per our last conversation could you please give me the same hours I used to do I have not been getting 45 hours of work which was initially agreed by Mr Ben and this is taken a toll on my financial circumstances. I am happy to work every single day but the hours should match my contract."*

53. The above texts are inconsistent with an individual who has asked for a reduction in hours and signed a contract reducing his hours to 37.5 hours a week. He asks for 45 hours a week "as agreed by Mr Ben.". Victoria's reply is not that the Claimant is working less hours at his request. Instead she says that he must work fewer hours until she finds a new client. I find that the reason that the Claimant was not getting 45 hours a week was because the Respondent did not have the clients to give him 45 hours. I am also forced to the reluctant conclusion that the second employment contract is a fiction and was not signed by the Claimant.

54. A letter in the bundle dated 25 November 2024, evidences that following a visit on 4 September 2024 by the UK Visas & Immigration office (UKVI) the Respondent's sponsor licence had been suspended because the Respondent was failing to offer their sponsored workers the hours guaranteed in their Certificate of Sponsorship and in turn the salary. UKVI states in that letter that "*the sponsor cannot reduce a sponsored workers salary, the salary received must always be reflective of the figure stipulated on the CoS, other than the permitted salary reductions set out in the Workers and Temporary Workers Guidance for sponsors."*

55. The letter notes that the Respondent had provided documentation in March 2024 that four named workers (not including the Claimant) had all requested a reduction in hours from 45 to 37.5 and that new employment contracts showing 37.5 hours a week had been issued to those workers.

56. Notwithstanding this, pay evidence for those 4 workers examined by UKVI showed that the Respondent was still not paying those workers the minimum gross monthly salary (based on 37.5 hours a week) of £1,859. UKVI also expressed concern that having been assigned 632 sponsorship certificates since obtaining a licence, the Respondent was no longer sponsoring 343 individuals and that individuals failing to take up employment for which the certificate of sponsorship was assigned constituted 43% of the overall certificates assigned which was of serious concern.

57. Nonetheless, in the 25th November letter UKVI restored the Respondent's sponsor licence following further explanations by the Respondent and an assurance that, despite monthly fluctuations, the Respondent would ensure that any salary shortfall was addressed and compensated at the end of the year. The Respondent clearly understood that it was their duty to offer 45 hours a week to the Claimant as a sponsor of skilled workers.

58. On the balance of probabilities, I find it highly unlikely that no less than five workers with certificates of sponsorship from the Respondent had all requested a reduction in their hours from 45 to 37.5 and all had signed new contracts of employment.

59. (A third version of the Claimant's employment contract appeared in the bundle (297) dated 24 April 2024. It appears to be signed by the Claimant and increases his rate of pay to reflect the increase set by UKVI for skilled workers. This increase is reflected in the hourly rate of pay paid to the Claimant. The Claimant also denies signing this contract).

60. Supervisions. The Respondent says that Ms Siakpere carried out a number of supervisions and appraisals with the Claimant. The Claimant denies that he had any supervisions or appraisals with Ms Siakpere and says that the documents in the bundle identifying such meetings are fraudulent. On the Respondent's case these occurred on:

    a. 18th August 2023
    b. 14th November 2023 (247)
    c. 15th February 2024
    d. 16th May 2024
    e. 18 September 2024 (263)
    f. 18th November 2024 (271)

61. The Respondent has provided a number of supervision forms which appear in the bundle from page 240. All appear to have been signed by the Claimant, but the Claimant denies both signing those forms and having any supervision meetings. Mr Obinwah gave a brief statement that he had personally observed the Claimant attending the office in Portsmouth on multiple occasions for in person meetings with Ms Siakpere. However, notwithstanding the impression given in his signed witness statement that he was the care coordinator in the Portsmouth office, he accepted in cross examination that he attended the Portsmouth office only when Ms Siakpere attended – and was unable to recall how often that was. Moreover, he accepted in evidence that a document (80) which indicated that it had been signed by him, was in fact signed by Ms Siakpere. I concluded that his evidence was unconvincing.

62. Several factors lead me to doubt the credibility of those forms. First the location is said to be at the "Barking office". When the Claimant pointed out in his witness statement that he could not have been at the Barking office on 8 June or 15 February 2024 because he had been working morning and afternoon shifts in Portsmouth, Ms Siakpere presented an addendum to her original witness statement to the effect that the meetings had taken place in Portsmouth, notwithstanding the that the supervision forms stated that the location was the Barking office. I do not accept the explanation from Ms Siakpere that she was required to state on the form that the location of the meeting was the Barking office

(even if it took place in Portsmouth) because that is where they were required to keep their records.

63. I also note that the supervision records are perfunctory and largely uninformative. The same wording is often repeated from form to form. The supervision record for 18 August 2023 records that the Claimant has said that he is unable to work 37.5 hours per week. That statement is entirely at odds with the Claimant's exchange with Victoria at the end of July where he is seeking more work and asking for the 45 hours referred to his contract to be honoured. Although the appraisal states that the Claimant "always visits his clients late" – there is no reference to any failure to attend at all.

64. In the February 2024 supervision notes it is noted that the Claimant had complained that the "hours given too much to manage". This seems an unlikely statement, given that at the end of 2023 the hours in the Claimant's timesheet showed that in some weeks he worked only 10 or 11 hours. If the Claimant had been failing to attend for some 20 hours a week for which he had been rostered it is simply not credible that this would not have been noted, or that disciplinary action would not have been taken. Equally the supervision notes for September 2024 failed to refer to the warning sent to the Claimant ostensibly in August (see below).

65. Ms Siakpere says that on 18 August 2023 she decided to extend the Claimant's probation. There is a letter in the bundle (238) purporting to come from a Ms Feko extending the Claimant's probation. The Claimant says that he never got this letter, the first time he saw it was in the bundle, and he does not know who Miss Feko is. In the same supervision form it is noted that the Claimant was "unable to do 37.5 hours a week".

66. On balance I prefer the Claimant's evidence. The letter states that the Claimant was consistently failing to complete his contractual hours in a direct violation of his agreed working terms. This is at odds with the Claimant's request for his 45 hours to be restored. It is also at odds with the (alleged) supervision records for 18th August (240) which states that the Claimant was visiting the service users late but does not say that he was failing to attend significant numbers of appointments, or that his probation would be extended. The criticisms are generic- no particular shifts are identified, and no client complaints are detailed.

67. There is a letter in the bundle dated 22 November 2023 referring to a meeting with Ms Siakpere on 20th November and recording that the Claimant had successfully completed his probation period (292) but also recording that there had been ongoing concerns regarding his failure to consistently complete his contractual hours. The Claimant denies having received this letter. It is not clear how it was sent, and I find that it was not sent. The alleged appraisal meeting in November (see below) is said by the Respondent to have taken place on 14 November 2023 rather than 20th November.

68. The Claimant continued to work shorter hours than his contractual entitlement. Timesheet in the bundle identified the following hours for the remainder of 2023;

    a. w/c August 7 32.15 hours
    b. w/c August 14 34.45 hours
    c. w/c August 21 24.3 hours
    d. w/c August 28 28.30 hours

e. w/c September 4 28.30 hours
f. w/c September 11 28.30 hours
g. w/c September 18 28.30 hours
h. w/c September 25 28.30 hours
i. w/c October 2 28.30 hours
j. w/c October 9 40.30 hours
k. w/c October 16 40.30 hours
l. w/c October 23 33.45 hours
m. w/c October 30 28.30 hours
n. w/c November 6 28.30 hours
o. w/c - no timesheet
p. w/c November 20 10 hours
q. w/c November 27 11 hours
r. w/c December 4 11 hours
s. w/c December 11 11 hours
t. w/c December 18 11 hours
u. w/c December 22 15.45 hours

69. In 2024 his work reduced further. The rotas provided by the Claimant show that, throughout 2024 until the Claimant's dismissal, the work provided to him ranged from 13 hours per week to 25 hours a week. None provide 45 hour – or even 37.5 hour a week.

70. Holidays. The Respondent says that the Claimant took holiday and was paid for holiday from 19 – 22 March 2024, 15- 28 July 2024 and 11- 15 August 2024. The Claimant says he only took two weeks holiday from 15-28 July 2024.

71. As before I prefer the evidence of the Claimant. It is clear from the bundle that his request for holiday from 12th – 25 August 2024 was refused. The Claimant's time sheet for the week beginning 18th March 2024 shows that he was working from 19 - 22 March 2024 (430) and from 11 – 15 August 2024 (468). His further request for four days holiday in September 2024 was declined.

72. Ms Siakpere gave the Tribunal an explanation as to why those timesheets should show the Claimant working when he was in fact on holiday. Her evidence was that when a worker took holiday the Respondent would leave his timesheet as it was- because that enabled them to pay the worker as though they were at work. Since it was Ms Siakpere's case that the timesheet provided to the Claimant at the beginning of the week always provided 37.5 hours a week without fail, whereas the timesheet provided by the Claimant evidenced the actual work he had done, that evidence was not credible.

73. The payslip issued to the Claimant on 11 August 2024 (reflecting pay from 8 July – 4 August) shows that the Claimant was paid for his holiday as though his contractual hours were 16.15 hours per week.

74. Warnings. The Claimant appears to use a number of different email addresses. There is jaiminpatel291192, jaimingipatel1992, and jaimupatel29. The Claimant says his permanent address is jaimingipatel1992 and this is the address he gave the Respondent (293). However, in the application form which the Claimant completed on his arrival to the UK, email address he gave was jaiminpatel291192 (384) he himself requests holiday from jaimupatel29. The CV

allegedly sent with his application form by the agent has an email of patelmittal1932.

75. The Respondent says the Claimant was given warnings on 8 June 2023, 10 June 2024 and 13 June 2024. The Claimant says that he was never sent any warning letters and that the email addresses used by the Respondent were not ones that he used. However, in this instance I find that the emails were sent to the Claimant. I note that the email address used for the June 2023 warning was the email address that the Claimant had himself provided in his application form and that the warnings sent on 10th June and 13 August 2024 were sent to jaimupatel29, which is the email the Claimant had used when requesting annual holiday (314).

76. However, the content of those warnings does not support the Respondent's case that the Claimant was consistently failing to attend a very large number of allocated shifts. The first warning was for lateness. The second was for lateness on four occasions (315). The third was for discussing a client's personal information with another carer. There is no warning that the Claimant has been failing to attend significant numbers of shifts that had been rostered to do.

77. There is further evidence of the Claimant seeking additional work in iMessages sent to Ms Siakpere (316) on 6 July, 12 July and 1 August. Although Ms Siakpere denies that she received these texts I find on balance that she did. Her response was "stop messaging me, thanks".

78. Dismissal. It is the Respondent's case that the Claimant failed to attend scheduled visits with a vulnerable service user (PB) on 10th and 28 December 2024 and as a result the service user was put at considerable risk and PB's family complained. Emails in the bundle from the service user by way of complaint to the Care Coordinator in Portsmouth (Emmanuel) make it clear that the Claimant did not attend his appointment with PB on 10th December and again on 28 December. PB's family also complain that the Claimant is frequently late 5 or 10 minutes late. Ms Siakpere's evidence was that, until that point, she had given the Claimant the benefit of the doubt, but she could not ignore the serious risk posed to this service user due to the Claimant's conduct.

79. An email sent on 29th December 2024 (332) sent to Jaimupatel29 from a Benedict Ighoyota invites the Claimant to attend a disciplinary meeting on 31 December 2024 at 2 pm. The Claimant says that he did not get this email, but it is sent to an email address that the Claimant uses. It is the Claimant's evidence that there was no communication with him until his dismissal email on 6 January 2025.

80. The invitation letter states "*I am writing to formally invite you to attend a disciplinary meeting in relation to* your conduct and performance *following your suspension on 28 December 2024. This suspension was due to missed visits which led to concerns of gross misconduct and neglect. In addition to the issues arising from your suspension, there have been severe concerns raised over the past year regarding your repeated lateness, fraudulent activity and overall poor performance."* The meeting was scheduled to take place in Portsmouth.

81. The Claimant says he did not know he was suspended. No one had told him. There was no evidence from Ms Siak Pere as to how and when the Claimant

was suspended. There is no suspension letter in the bundle. The timesheets show that he was working and was paid for weeks commencing 23 and 30 December (506, 508, 237).

82. The Claimant's evidence that he did not get notice of the disciplinary hearing is consistent with what the Claimant says in his ET1.

83. Ms Siakpere says that after the Claimant failed to attend the disciplinary hearing a meeting took place on 3 January and the decision was taken to dismiss the Claimant. No attempt was made to reschedule a meeting or to check that the Claimant received the notice.

84. The letter of dismissal (incorrectly) dated 6 December 2024 was sent to the Claimant on 6 January 2025. It does not refer to any disciplinary hearing nor to his failure to attend a disciplinary hearing. It does not refer to an investigation meeting which took place on 3rdJanuary. The notes of that Investigation Meeting were not sent to the Claimant. The letter says that "*as you are aware following your suspension on 28 December 2024 we conducted a review into your conduct and performance. Unfortunately, despite being given time and support to improve there has been no significant change in your behaviour, and the following issues have persisted*"

    v. chronic lateness

    w. failure to attend to service users on two separate occasions

    x. previous warnings "in relation to your performance and conduct". A suspension was intended as an opportunity for you to reflect and make the necessary."

    There is no suggestion of a right of appeal.

85. A document in the bundle (333) purports to document the 3rd January meeting and refers to statements by Ms Siakpere, Benedict Siakpere, Emmanuel Jike, Christine Feko and John Ewhubare. (Apart from Ms Siakpere none of the others have given evidence to the tribunal.) I do not accept it was sent to the Claimant with the dismissal letter. That document refers to "missed visits and lateness", "failure to attend disciplinary hearing", breach of contract", "fraudulent claiming of hours", "lack of regard for the job role" and "neglect of vulnerable service u users"- specifically the missed visits of 10th and 28 December.

86. Other than the two failures to attend PB on 10th and 28 December 2024 the criticisms made of the Claimant are generic. For example, it refers to the Claimant having been claiming for hours he did not perform – but there are no particulars; it refers to failures of attendance but none are identified other than the missed visits of 10th and 28th December; it refers to repeated failure to meet the expectations of the role but there are no specifics. The statement said to be from Emmanuel Jike infers that the Claimant was responsible for PEG feeding so that his failure to attend put PB "at serious risk of harm including potential seizures or other life-threatening complications." However, the Claimant was not responsible for feeding PB. His responsibility was to assist with bathing and dressing/undressing the service user.

87. Although concerns regarding fraudulent activity are not referred to in the dismissal letter, Ms Siakpere states in paragraph 28 of her witness statement that the Claimant had "*engaged in a pattern of fraudulent timekeeping from May 2023 to September 2024 during which he falsely recorded attendance for 71 days he did not work*" before going on to say that the Respondent has since understood this was due to "an admin error." I conclude that other than the missed visits of 10th and 28 December 2024, the purported Investigation Meeting notes are no more than window dressing.

88. The Claimant accepts that he did not attend shifts on 10th and 28 December 2024. He has given inconsistent accounts as to the reason for his non-attendance at the shifts. In cross examination he said he was unwell. His evidence about what he told Emmanuel and/or his solicitor about the reasons for his non-attendance was unclear, though he admitted that he did not tell the truth to the Respondent as to the reasons for his non-attendance. He says that he told Emmanuel the care coordinator in advance of 10 December that he was unwell and could not attend. He also accepts that he did not attend the 28th December shift without warning but that was a rare oversight as he was unwell.

89. The Claimant solicitor wrote to the Respondent on the 15th January to appeal against the dismissal and claiming an underpayment of salary, wrongful dismissal and holiday pay. She asked for the Claimant's contract of employment. There was no substantive response.

Relevant law

90 Wages. Section 13 of the Employment Rights act 1996 provides that

> (1) An employer shall not make a deduction from wages of a worker employed by him unless—
>
> (a)the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
>
> (b)the worker has previously signified in writing his agreement or consent to the making of the deduction.
>
> ((3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

91. Wrongful dismissal. Where an employee is contractually entitled to a period of notice, an employer who dismisses an employee without giving him or her notice will be in breach of contract. An employer is entitled to dismiss an employee without any notice, where there has been repudiatory conduct by the employee justifying summary dismissal. To amount to a repudiatory breach the employee's behaviour must disclose a deliberate intention to disregard the essential requirements of the contract. The degree of misconduct necessary for the employee's conduct to amount to a repudiatory breach is a question of fact for the Tribunal to decide. The issue here is whether, at the time of dismissal, there were in fact grounds for summary dismissal and not whether those grounds were the employer's reason for the dismissal (Boston Deep Sea Fishing v Ansell 1888 39 Ch D 339.)

92. Holiday pay. The Working Time Regulations 1998 gives workers an entitlement to 5.6 weeks leave each leave year. This is an entitlement to leave not an entitlement to pay. A worker can lose the right to paid leave at the end of each leave year provided that the worker has had the opportunity to exercise that right. Thus an individual denied his right to paid annual leave can claim payment for the untaken (or taken but unpaid) leave. Regulation 14 provides that employees are entitled to be paid in lieu of accrued but untaken holiday on termination of employment.

93. Section 38 of the Employment Act 2002 provides that the tribunal must award compensation to a worker where, on a successful claim for unlawful deduction of wages or holiday pay, it becomes evident that the employer was it in breach of its duty to provide full and accurate written particulars as required under section 1 of the Employment Rights Act 1996.

Submissions and Conclusions

94. What was the Claimant start date? The Certificate of Sponsorship provides the work start date would be 31 January 2023. The offer letter provided is provisional on completion a valid DBS checks and the provision of satisfactory references. It also asked the Claimant to contact them so they can agree a potential start date. The Claimant cannot have anticipated start date of 31 January 2023 as he did not arrive in the UK until 1 or 3 February 2023, and there were some conditions to fulfil before his start date. There were some preliminary matters to deal with, but I accept that the Claimant had completed his training, provided his references and DBS, and would have been able to start by early March.

95. I accept that the Claimant did not initially know that the job was in Portsmouth, as he himself had not responded to the Indeed advertisement. Nonetheless I do not accept that he was refusing to move to Portsmouth. There is no documentary evidence to suggest that the Claimant refused to do so. I find he did not move to Portsmouth because it was not clear that he would be given work when he did so, and he had not been given clear instructions to do so.

96. The Respondent submits that the contract of employment which the Claimant signed on 19th April 2023 indicated that the contract was due to start on 24th April 2023 and reflects the true agreement between the parties. The certificate of sponsorship did not indicate a start date, as his offer was conditional. Ms Worden submits it was an implied term that he would live within a commutable distance of his work in Portsmouth.

97. For the Claimant Ms Knight Webb submits that, in accordance with the certificate of sponsorship, the start date of the Claimant's employment was 31 January 2023. She refers to the Home Office guidance for sponsors that the start date should be the date the employer expects the worker to start working for them; and that once a worker has been granted permission they should normally start working in their sponsored role no later than 28 days after the latest of (i) the start date on their certificate of sponsorship, (ii) the date they were granted permission to enter, (iii) the valid from date of their visa or (iv) the date of the worker was notified of the grant of entry clearance or permission to stay. The Home Office Guidance states that if the worker does not start working in their sponsored role by the end of this 28-day period the employer has to

report this to the Home Office by the end of 10 working days after that time. She submits that was no documentary evidence produced by the Respondent to show that any delay in the Claimant's start date was reported to Home Office

98. She further submits that the Claimant arrived in the UK on 1 February 2023 and was ready able and willing to work. The certificate of sponsorship provides that the Sponsor will be responsible for the maintenance of the Claimant until he receives his first pay, which supported the view that his employment began on 31 January 2023.

99. The Home Office Guidance and the Certificate of Sponsorship are the rules by which sponsors must abide if they wish to remain sponsors of Skilled Migrant Workers. However, they are not contractual documents. The certificate of sponsorship did not have contractual force between the Claimant and the Respondent. The offer letter was conditional on references and a DBS check. It specifically refers to agreeing a start date.

100. I find that the contract of employment began on 24 April 2023. The contract was signed on 19 April 2023 with the commencement date of 24th April 2023.

101. I have found that the conditions precedent had been fulfilled by mid-March, and that the Claimant was ready to move to Portsmouth as and when he would be given work. I considered whether a contract of employment could be said to have come onto existence once these conditions had been fulfilled i.e. in mid-March. However, no start date had been agreed between the parties, and the Claimant had not in fact moved to Portsmouth, so was not in fact in a position to start. By signing the contract of employment which indicated a start date of 24th April 2023 the Claimant accepted that his employment began on that date.

<u>What were the terms of the Claimant's contract as regards his salary?</u>

102. Although the list of issues suggests that it was the Respondent's case that the Claimant was on a zero hours contract, the submissions made by Ms Worden did not suggest that the Claimant's contract was a true zero hours contract – in the sense that the Respondent was not obliged to offer, and the Claimant was not obliged to accept any work at all. She was right not to suggest that, given the written contract provided that the Claimant "will work 45 hours weekly" which read in the context of the offer letter and the terms of the sponsorship, clearly indicated that the Respondent would provide 45 hours of work weekly.

103. Ms Worden accepted that the Claimant was, until June 2023, entitled to be offered 45 hours per week with a gross annual salary of £25,600 but she submits that the Respondent was not obliged to pay him if he failed to do the shifts allocated to him.

104. Further she submits that from 6 June 2023 the contract between the parties was varied. From that date the Claimant was entitled to be offered 37.5 hours per week on the same terms.

105. Ms Knight-Webb submits that the Claimant was at all times ready, willing and able to work the minimum hours provided in the contract. She submits that the contract required the Respondent to provide and pay for 45 hours of work per week, provided only that the Claimant undertook the work that was provided. The contract did not permit the Respondent to withhold pay if no work was

provided.

106. The focus of the factual dispute in this case has been whether (i) the Respondent offered the Claimant the work and he failed to undertake it or (ii) the Claimant was not offered the work at all. As set out above I have rejected the Respondent's evidence that they offered the Claimant 45 hours a week until 5 June 2023 and 37.5 hours thereafter. I am satisfied that the Claimant was only offered the work identified in his time sheets. I have also found that the Claimant did not agree to a reduction in his guaranteed minimum hours from 45 to 37.5 hours per week. To the extent that the work offered was less than 45 hours a week he is entitled to be paid for the difference.

107. The Respondent was in breach of contract, and made unlawful deductions of wages in failing to offer and pay the Claimant for 45 hours a week at the minimum rate of pay set for skilled workers under the Home Office's sponsorship scheme.

108. (To the extent that it is suggested by Ms Knight Webb that an employer may not withhold pay if an employee is on unauthorised absence or fails without reason to attend work that has been allocated that submission must fail).

Remedy

109. The contract which the Claimant signed in April 2023 provided, in accordance with the requirements imposed by the Home Office for sponsors of skilled workers, that he would be paid a salary of £25,600 per annum for 45 hours a week. The P60 in the bundle identifies that in the 2023/2024 tax year he was paid £12,107.19. In April 2024 the rate of pay for sponsored employers to pay skilled workers increased to £11.90 per hour equating to £27,846 per annum for 45 hours a week. The P60 in the bundle identifies that in the 2024/ 2025 tax year the Claimant was paid £10,018.04. He is therefore entitled to the difference.

110. I calculate this as follows:

a. 24 April 23 – 5 April 24 49 weeks x 45 x £10.10 = £22,270.50 As the Claimant was paid £12107.19 the shortfall is £10,163.31

b. 6 April 2024 – 6 January 2025 39 weeks x 45 x £11.90 = £20,884.50. £10,018 the shortfall is £10,866.46

c. the total amount of unpaid wages is £21,029.77

111. Wrongful dismissal. For the Respondent Ms Worden, submits that the Claimant repudiated his contract. His failure to attend on 10th and 28 December created a serious safeguarding risk to a vulnerable user. The Claimant's non-attendance delayed the administration of medication, and put the service user at considerable risk.

112. Ms Knight-Webb submits that contrary to the Respondent's evidence the Claimant had not received any warnings. His failure to attend two shifts in December 2024 did not constitute a repudiatory breach or gross misconduct. His carer's duties did not put the service user at considerable risk of harm as his duties were to only to help with bathing and dressing.

113. Ms Knight-Webb also submits that the Claimant was on a fixed term contract with a termination date of 31 August 2026. This is based on the CoS which provides that the end work date is 31 August 2026.

114. I accept that the Claimant was quite often late and on the balance of probabilities I accept that he may have had warnings for this lateness. I do not accept that he consistently failed to attend shifts to which Ms Siakpere would turn a blind eye. I find that the Claimant's failure to attend the shifts on 10th and 28th December provided a convenient reason to dismiss a worker for whom they were unable to find sufficient work. The failure to attend on 10th and 28 December alone does not constitute a fundamental breach of contract. Texts show that Emmanuel had not been unduly concerned. It was undoubtedly a considerable annoyance for the family of PB that the Claimant failed to attend and was often late, but the Respondent has exaggerated the risk to the service user.

115. I do not accept, however, that the Claimant was on a fixed term contract. The CoS it is not a contractual document – though it provides a context to the true agreement between the parties. The contract which the Claimant did sign provided, at Clause 12, that he would be given one week's written notice of termination or pay in lieu until he had two years continuous service which is in accordance with the statutory notice period. I find that the Respondent is liable to pay damages amounting to 1 week's pay.

116. Holiday pay. The only holiday which the Claimant took while he was working for the Respondent was 2 weeks in July 2024. In the year from 1 April 2024 the Claimant was entitled to his pro-rata entitlement to 5.6 weeks paid holiday. As he worked for nine months of that year was entitled to paid holiday amounting to 4.2 weeks. He is therefore entitled to pay for 4.2 weeks. His weekly pay was 45 x £11.90 i.e. £535 gross. 4.2 weeks x 535= 2240. After deducting £386 received by way of holiday pay the amount due is £1,863.

117. Before the Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023 came into effect the Working Time Regulations did not permit the basic annual leave entitlement to be carried over into a subsequent leave year.

118. Regulation 13 (17) of the 2024 Regulations give employees a statutory right to carry over unused leave in the circumstances set out in Regulation 13(16) of the Working Time Regulations. They provide as follows: –

> "(16) Paragraph (17) applies where, in any leave year, an employer fails to—
>
> (a) recognise a worker's right to annual leave under this regulation or to payment for that leave in accordance with regulation 16;
>
> (b) give the worker a reasonable opportunity to take the leave to which the worker is entitled under this regulation or encourage them to do so; or
>
> (c) inform the worker that any leave not taken by the end of the leave year, which cannot be carried forward, will be lost.
>
> (17) Where this paragraph applies and subject to paragraph (18), the worker is entitled to carry forward any leave to which the worker is entitled under this regulation which

is untaken in that leave year or has been taken but not paid in accordance with regulation 16.

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

119. In this case I am satisfied that Regulation (16) (c) applies. Although the Claimant signed a contract which provided (Clause 3.4) that he could not carry over annual leave from previous leave years (302), save in specific circumstances (which were not applicable in his case), the Respondent did not permit the Claimant to keep a copy of that contract. Although he may have read the contract before he started, it is unlikely that he would have taken in the detailed provisions as to holiday and carry over. The staff handbook (546) does not refer to any policy on carry-over. The Respondent did not separately warn the Claimant that if he did not use his holiday he would lose it. In those circumstances therefore Regulation13 (16) (c) applies. The Claimant was entitled to carry over his unused leave entitlement from the 23/24 leave year.

120. Regulation 14(6) provides that where any worker is entitled to carry forward leave under Regulation 16, the employer shall make the worker a payment in lieu of leave equal to the sum due under Regulation 16 for the period of untaken leave. I find that the Claimant is entitled to pay in lieu of his holiday accrued but untaken for the leave year 23/24 at the rate of pay applicable for that year (£10.75 x 45) or £483.75. per week. As the Claimant was employed for 49 weeks of that year he is entitled to his pro rata entitlement of 5.6 weeks, namely 5.27 weeks. I calculate this to be £2,552.70.

121. The Respondent is ordered to pay the Claimant £4,415.8 by way of accrued and untaken holiday pay, less any amounts validly deducted for income tax and national insurance.

Failure to provide written statement of employment particulars.

122. I have accepted the Claimant's evidence that he was not permitted to keep his contract of employment. Pursuant to section 38 of the Employment Act 2002 I award the Claimant £2,140 being four weeks' pay

.....

Employment Judge F Spencer

Dated: 9th July 2026

SCHEDULE
THE ISSUES

Non-payment and underpayment of salary

1. What were the terms of the Claimant's employment contract? The Tribunal to decide

   a. When was the Claimant's start date under the terms of his employment contract? *The Claimant avers that his start date was 31 January 2023. The Respondent avers that his start date was 19 April 2023.*

   b. What were the terms of his employment contract as regards his salary? The Claimant avers that it was a term of his employment contract that he would be paid a salary of £25,600 (gross) pa from his start date. The Respondent avers that the Claimant was entitled to be paid only for the hours he worked (a zero hours contract).

   c. Is any term in the Claimant's employment contract that he would only be paid for the hours that he worked unenforceable on public policy grounds?

   d. Was it a term of the Claimant's employment contract that the Respondent would provide him with a minimum of 45 hours of work per week?

   e. Did the Claimant request a reduction in his contractual hours from 45 to 37.5 hours per week on 6 June 2023? Did he sign an employment contract on 8 June 2023 agreeing to reduced hours of 37.5 per week and a reduction in his annual salary to £21,300?

2. Were the terms of the Claimant's contract breached by the Respondent?

3. What wages were properly payable to the Claimant?

4. What sums was the Claimant paid from his start date until his dismissal on 6 January 2025?

5. Were deductions made from the Claimant's wages? If so, what deductions were made? The Respondent asserts that there were no deductions from wages and the Claimant is limited to a claim for breach of contract.

6. If any deductions were made from the Claimant's wages, were they lawful?

7. If there were no deductions from wages, what award should be made by way of damages for breach of contract?

Wrongful dismissal

8. Did the Claimant commit a repudiatory breach of contract prior to the end of his employment, meaning he had no entitlement to notice pay? *The alleged breach relied on by the Respondent is set out at paragraph 25 - 28 of the Grounds of Resistance concerning the Claimant's alleged non-attendance at shifts with the same vulnerable service user on 10 December and 28 December.*

9. If the Claimant did not commit a repudiatory breach of contract, did the Respondent breach his employment contract in terminating his employment without notice on 6 January 2025?

10. If the Respondent breached his employment contract, what damages is the Claimant entitled to. The Tribunal to decide:

    a. Was the Claimant on a fixed-term contract with a termination date of 31 August 2026? If so, what damages for loss of earnings from the period 7 January 2025 to 31 August 2026 should he be awarded? OR

    b. Was it a term of the Claimant's employment contract that his notice period was one week? Was any such term unenforceable on the grounds of public policy? What damages for loss of earnings should be awarded? OR

    c. Should the Claimant be awarded damages for loss of earnings for the minimum statutory notice period of one week?

11. What sum did the Claimant receive following his dismissal on 6 January 2025 by way of mitigation? The Claimant asserts he has not received any earnings by way of mitigation.

12. Did the Respondent unreasonably breach the ACAS Code of Practice on disciplinary and grievance procedures in dismissing the Claimant?

Holiday pay

13. Did the Respondent pay the Claimant any holiday pay during his employment? The Claimant avers that he was not paid any holiday pay during his employment. The Respondent avers that the Claimant was paid his entitlement for the following dates: 19th March – 22nd March 2024, 15th July – 28th July 2024, and 11th August – 15th August 2024.

14. What holiday pay is the Claimant entitled to under regulation 14 Working Time Regulations 1998?

Failure to give statement of initial employment particulars

15. Did the Respondent provide the Claimant with a written statement of initial employment particulars in accordance with section 1 of the Employment Rights Act 1996?

16. If a written statement was provided, was it provided:

    a. On or before the Claimant's first day of employment?

    b. Did the statement contain all the required particulars as set out in section 1(3)

    – (5) and section 1(6) – (7) of the Employment Rights Act 1996?

Remedy

17. If there were unlawful deductions from wages, what sums were unlawfully deducted? What declaration and order should the Tribunal make?

18. If there was a breach of contract, what is the financial loss that flows from that breach?

19. What holiday pay, if any, is the Claimant entitled to?

20. What notice pay, if any, is the Claimant entitled to?

21. If there was a failure to provide a statement of employment particulars, is the Claimant entitled to an award of compensation pursuant to s.38 of the Employment Act 2022?

22. If the Claimant is entitled to an award, should the Claimant be awarded two weeks' pay or the higher award of four weeks' pay, on the basis that it is just and equitable in all the circumstances.

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