EMPLOYMENT TRIBUNALS

Claimant: **Gregory John Kane**

Respondent: **Dr Rajesh Wadhwani**

Heard at: **Bury St. Edmunds Hearing Centre**

On: **03, 04, 06 August 2026**

Before: **Employment Judge Illing**

Representation
Claimant: In person
Respondent: Ms Vindlacheruvu (Counsel)

RESERVED JUDGMENT

The judgment of the Tribunal is that: -

1. **The complaint of unfair dismissal is not well-founded and is dismissed.**

2. **The complaint of breach of contract is not well-founded and is dismissed.**

REASONS

Procedural history

1. Early conciliation for this claim began on 11 December 2023 and ended on 22 January 2024.

2. The claim was issued on 21 February 2024 against the Respondent and Antwerp Dental Group Limited.

3. Following a preliminary hearing on 13 March 2025 before Employment Judge Palmer, the correct Respondent was determined and Antwerp Dental Group Limited was removed as a Respondent to these proceedings.

4. Following a further preliminary hearing on 12 and 13 June 2025 before Employment Judge Hindmarch, it was determined that the Claimant was a disabled person in accordance with s.6 Equality Act 2010, however, Employment Judge Hindmarch further determined that it was not just and equitable to extend time to allow the claim of direct discrimination because of the protected characteristic of disability.

5. Employment Judge Hindmarch prepared the list of issues with the Parties. This list was reviewed with the Parties at the start of the final hearing and it was confirmed to be correct. The issues in the case were confirmed as those detailed in the case management orders of June 2025 and the parties were asked to focus on those issues. With regards to issue 1.1.1.3, regarding the Respondent's conduct during meetings, this was confirmed as the meetings of 22 December 2022 (December meeting) and 19 July 2023 (July meeting).

The hearing

6. There is a bundle of 1157 pages and witness statements from the Claimant and the Respondent.

7. The parties confirmed at the outset that they were happy to continue with the case and did not seek an adjournment for any reason.

8. Following the hearing, the Parties were asked to provide a copy of the resignation letter. This had not been included in the bundle as it was a document titled without prejudice. Neither party had referred to it, nor had either sort for it to be admitted. Upon requesting the document, the Respondent asserted that it should not be considered to be without prejudice. The Claimant agreed to waive privilege for this document.

9. Both parties were invited to make written submissions regarding the resignation letter. The Respondent did, the Claimant did not.

Conduct of the Hearing

10. The Claimant has a back injury. Regular breaks were provided and either party could seek further breaks if required.

11. Given that breaks may be required at short notice, the Parties were informed of the warning regarding evidence and any discussion of it whilst under Oath. Both Parties accepted and understood this warning.

12. This final hearing was originally listed to be heard over 4-days. Due to judicial unavailability, the hearing length was reduced to 3-days.

13. Both parties had one witness each and the time available for evidence was divided equally between them.

14. Both parties were invited to provide closing submissions both orally and in writing. Given that the Claimant was a litigant in person, further time was allowed to ensure that the Claimant had time to prepare his written submissions fully. Any oral or written submissions were taken into consideration.

15. Given the time allowed for evidence, the parties were, on occasion, directed to ensure that cross examination questions were relevant to the issues to be considered by the Tribunal. Additionally, the hearing would be limited to the determination of liability only.

Findings of fact

16. I make my findings of fact on the balance of probabilities taking into account all of the evidence, both documentary and oral, which was admitted at the hearing. I do not set out in this judgement all of the evidence which I heard but only my principal findings of fact, those necessary to enable me to reach conclusions on the remaining issues. Where it was necessary to resolve conflicting factual accounts, I have done so by making a judgment about the credibility or otherwise of the witnesses I have heard based upon their overall consistency and the consistency of accounts given on different occasions when set against contemporaneous documents where they exist.

17. The Respondent is the owner and operator of a Group of dental practices.

18. The Claimant commenced employment 17 May 2017 until the termination date of 14 September 2023. He was employed as the Group Operations Director for the Respondent.

19. It is not disputed that the Claimant was not provided with a written contract of employment.

<u>Exit payment</u>

20. The Claimant was paid a salary of £98,000 and was provided with 2 electric vehicles (Audi’s). The Claimant stated that he did not receive salary for a few months when he first started due to the financial position of the business. This was accepted by the Respondent and both parties agreed that any outstanding sums had been paid at the time.

21. The Claimant asserts that it was a term of his contract of employment that upon leaving he would be paid a long-term award as an exit payment.

22. The Respondent asserts that it was not a term of the contract and no such term had been agreed.

23. On 17 January 2021, the Respondent emailed the Claimant and attached a potential reward structure, which he stated the following:

There is a lot of meat on the bones in relation to this structure, and I have not had a chance to review the affordability of this structure but given the potential financial wins we could see over the next 2 years, it could be affordable,

24. The email attached a table, which provided for rewards ranging from £250,000 to £1,010,000 and details conditions such as the following:

24.1. Turnover

24.2. EBITDA (Earnings Before Interest, Taxes, Depreciation and Amortization) based on the Group earnings, not the Respondent's

24.3. Reward payable over 3 – 5 years

24.4. Executive Team in place

24.5. Commercial value of group is worth at least 100% of turnover

24.6. RW (Respondent) to be treated as an associate.

24.7. Clear tax position

24.8. And debt service cover provisions.

25. The Respondent stated in evidence that any agreed reward would be conditional on it being affordable. He explained that without his income as the business was currently operating, the business would be insolvent. The business needed to reach a position that the Respondent's earnings could be taken out of the equation and that the business would still be solvent.

26. The Respondent also stated that any reward was also conditional on the business being successful in a High Court claim against RBS (Bank) following alleged mis-selling of a hedge fund. He stated that any sums awarded would be taken into account as to the affordability of any reward to the Claimant.

27. Whilst the Claimant denied that affordability was to be taken into consideration, in evidence he accepted that it would be reasonable for this to be taken into account.

28. On the 22 February 2021, the Claimant confirmed in an email in response to the Respondent the following:

"with respect to a long term reward not being on the table when we stated working together, that is not my recollection of events. It is true to say we have never finalised or detailed any such reward.

29. The Respondent stated*: "Meanwhile you can review the document I have sent you to gather your thoughts and provide me with some comments on the initial proposal."* To which the Claimant has responded, *"I had hoped we could resolve my pay issue this week so I could complete my pension planning."*

30. I find that as of 21 January 2021, the Respondent had proposed a conditional potential long term reward structure to the Claimant and that this was still open to discussion as at 22 February 2021.

31. On 23 June 2021 the Claimant emailed the Respondent with his proposal in reply. This email of June 2021 puts forward the Claimant's proposal, to which the Respondent replies:

Your reward structure has been in my mind recently as well, and I have been wondering how I can set money aside from an RBS payout and possibly put money in a trust for you. This would be a perfect opportunity to you over a period of time and minimise tax – but I will need advice on mechanics of this and will create no burden for me whatsoever.

32. The Claimant accepted in evidence that as of 23 June 21, no agreement had been reached with the Respondent. I find that as of 23 June 2021, no agreement had been reached as to the exit payment sum or process. I also find that this email indicates that the payment is dependent on the RBS payment.

33. On 29 September 2022 the Respondent emailed his accountant regarding both the ongoing RBS claim and that he wanted to assess the potential pf providing a reward for effective service, particularly for the Claimant who would be retiring in the next 1 – 2 years.

34. I find that whilst the Respondent was exploring a reward for the Claimant, a reward had not yet been finalised as of 29 September 2022.

35. On 28 June 2023 the Claimant emailed the Respondent asking for a meeting to discuss his planned exit from the business. He states within the email that he wanted to understand, discuss and agree the exit payment arrangements.

36. The Claimant emailed the Respondent again regarding this on 03 July 2023 and 07 July 2023 without reply from the Respondent. The Claimant attached what he describes as the last correspondence that they had had on this matter. This is dated 23 June 2021.

37. I also find that no agreement had been reached by the date of these emails, being 07 July 2023.

38. There was no further detailed discussion with the Respondent regarding the exit payment amount or process during the Claimant's employment.

<u>Failure to report accidents in an appropriate manner</u>

39. The Claimant asserts that in July 2021 he was working at a property known as Stapleford Grange and that this was his main place of work.

40. The Respondent asserts that Stapleford Grange was to be renovated to become a family home, however due to the covid restrictions, he had required members of the executive team to carry out administration duties at the property. He stated that the Claimant was not required to work mainly at Stapleford Grange, but at locations as required or otherwise at home.

41. I find that the Claimant was required to work at Stapleford Grange in addition to working from specific dental practices as needed and at home if he chose to do so.

42. On 12 July 2021 the Claimant emailed the Business Manager (Rita Lacey) and the Finance Director (Steve Ferris) to state:

    "Morning all,

    I woke up Sunday with what I think is a trapped nerve, I can't bear weight on my right left without extreme pain down my leg and back."

43. I make no findings as to the cause, location or date of any injury.

44. On 17 July 2021 the Claimant confirmed to the Respondent and others that he had a protruding disc and was finding it difficult to work but was having physiotherapy.

The Claimant subsequently attended hospital and was off work for a number of weeks.

45. After the Claimant had resigned on 05 September 2023, the Respondent explained that Mr Ferris found a completed accident report form within the accident book. This form had been completed by the Claimant noting that the Claimant had had an accident at work which had resulted in a back injury.

46. The Respondent stated that the first allegation by the Claimant that the back injury had occurred at work was in the Claimant's resignation letter of the 05 September 2023. He says that this is referred to in his letter to the Claimant of the 13 September 2023, which also details the enquiry's the Respondent has made of Mr Ferris. The Respondent records in the letter that Mr Ferris denied that the Claimant had told him that the injury was at work and that he did not recall seeing an accident book. The letter also records that an accident book with the completed form was found at Stapleford Grange a few days after the Claimant's resignation email had been received.

47. In evidence, and for the first time, the Claimant asserted that he had completed the accident form on his return to work on 04 October 2021 and had done so whilst sat at his desk with Mr Ferris sat opposite him. This report records that the incident occurred on the 14 July 2021 and that an ambulance was called and he attended hospital. It names Mr Ferris and Mr Close as witnesses and is signed and approved by the Claimant.

48. The Claimant accepted, in evidence, that the date of the incident was wrong and that it was unusual for one person to both complete and approve the form.

49. The form records that the Claimant incurred the injury whilst moving the office furniture. He says that he was moving the furniture as the property (Stapleford Grange) had a planning inspection and that it was not permitted to be used for business use, so they were moving the furniture out.

50. The Respondent accepts that the furniture was moved out at that time to allow for a mortgage evaluation to enable him to restructure his finances with lower rates.

51. I find that there was a furniture removal at this time. There is also evidence that the Claimant was carrying out a bathroom refurbishment at this time too. I make no findings as to the alleged injury or the alleged cause of it.

52. The Claimant asserted in evidence that the reason he did not submit the form to the HSE was because Mr Ferris told him that he couldn't as this would cause the business to be investigated. There was a desire for this not to happen because the property was being used for business use when it only had planning permission for residential use. This assertion regarding Mr Ferris had not previously been raised.

53. In evidence, the Claimant also stated that he did not put his concerns in writing as he did not want to leave a paper trail, in case there was an investigation.

54. The Respondent asserts that there was no reason for any accident to not be reported and that the Respondent was unaware of the accident form until it was discovered in the accident book after the Claimant's employment had ended. He also states that the Claimant did not provide medical evidence of his injury to enable a RIDDOR report to be made at the time of the injury or subsequently.

55. The Claimant did not cross examine the Respondent in relation to this issue of the failure to report accidents in an appropriate manner.

56. Given the changing nature of the Claimant's evidence, I have preferred the Respondent's evidence and find that the Claimant did complete the accident form, but that he did not inform the Respondent or Mr Ferris of this at this or any time until his resignation email. I find that, on balance, the Claimant did not give the accident form to anyone.

57. On 13 November 2021, the Claimant reported to the Respondent that he had slipped on the path at Stapleford Grange when it had been raining. He detailed what had happened, how he thought it had happened and remedial action to prevent it from happening again, as he was reporting this slip as a near miss. He also asked for it to be recorded in the accident book.

58. I find that the Claimant was aware of the process to record accidents.

<u>Employee liability insurance</u>

59. In or about February 2022, the Claimant asserts that the Respondent informed him that *"Up until this point, the people working in the building may not have been properly insured, but I've sorted it now".*

60. In evidence, the Respondent stated that he said that he didn't know if the employees had been insured at Stapleford Grange, because of it being a residential property and so, at the time, he had had an extension placed on his insurance to allow the property to be used for limited administrative purposes.

61. The Claimant states that he had assumed that *"such fundamental legal obligations had been properly addressed".* When asked if he had followed this up, he confirmed that he had not as this was the Respondent's responsibility.

62. The Respondent stated that the property and its employees were, in fact insured as the policy covered the business throughout Great Britain. He also stated that at the time there was confusion as this was during and immediately post covid. Employees were being asked to work remotely or at alternative locations and the Respondent was confused as to the cover, which is why he sought the extension on his personal insurance. Additionally, he stated that the Claimant had, as Operational Director, responsibility for the operational governance of the business. It was a matter for him to raise with the Respondent, but he did not do so.

63. I have considered the evidence of both parties; I accept the Claimant's evidence that he did not take any further action in relation to finding out the details for the existence of the employee liability insurance or the extent of its cover. There is no explanation from the Claimant as to why he did not press this matter further with the Respondent if he genuinely believed that the employee liability insurance was an issue. I accept that the Claimant's role gave him the responsibility to do this, I also accept that it was for the Respondent to provide the insurance.

64. The documents produced to the Tribunal confirm that the property at Stapleford Grange was, at all times, insured. I am satisfied that the covid period and the months immediately afterwards required unprecedented actions by employers and that there

could be confusion as to matters such as insurance cover. I accept the Respondent's explanation of his actions at the time.

Failure to address a malicious rumour concerns raised by the Claimant

65. The Claimant, in evidence, states that he raised a concern with the Respondent on the 19 December 2022 in relation to a rumour which he believed had been started by Mr Fredrik Andersson, the Respondent's business partner for the Abbey Dental Practice, which is part of the Antwerp Dental Group Limited. The rumour was that because the Claimant had not dismissed an employee, that they must have been having an affair. The Claimant says that the Respondent told him that Mr Andersson "loathed" him. Additionally, that, in effect, the Claimant had brought this upon himself.

66. The Respondent denies that there was an issue regarding a rumour in December 2022 and states that it was in or about Summer 2022. He stated that an issue arose because of the recruitment of a receptionist by the Claimant, who Mr Andersson and Ms Abbie Delaney (Abbey Dental Practice Manager) were not happy with. The rumour came from the Claimant refusing to dismiss the receptionist despite Mr Andersson and Ms Delaney raising concerns.

67. The Claimant stated in his statement that the Respondent did not deal with his concerns properly.

68. The Respondent stated that he interviewed both Mr Andersson and Ms Delaney about this and responded to the Claimant's concerns in the email of the 04 October 2022. This included a link to the recording of the meeting, which had been conducted by video.

69. The Claimant did not open the link nor did he raise the concerns further.

70. The Claimant did not cross examine the Respondent on this issue.

71. Taken the evidence into account I find that, on balance, the following was the most plausible explanation:

    71.1. That Mr Andersson and Ms Delaney were unhappy about the Claimant's recruitment of a receptionist. This is in the background of other communication issues between them.

    71.2. That, on balance, it is likely that Mr Andersson did say something regarding the receptionist and the Claimant.

    71.3. That on reporting this, the Respondent did investigate the Claimant's concerns and did report this back to him.

    71.4. That this occurred prior to the email of the 04 October 2022.

72. The Claimant did not raise his concerns in writing with the Respondent before or after the discussion.

Conduct of the Respondent on 22 December 2022

Background

73. In October 2021, the Claimant raised a grievance regarding the conduct of a colleague Ms Evita Carroll (Practice Manager). Ms Carroll had resigned following her taking issue with the Claimant's conduct towards her. The Respondent had investigated and formed his view as to the events. The outcome, in summary, was that:

    73.1. Ms Carroll was asked to retract her resignation.

    73.2. That the Claimant consider the manner and style of his speech.

    73.3. That mediation was arranged for them.

74. On 01 December 2021, a dental hygienist (RN) emailed the Respondent. She stated that she had been upset by the bullying, harassing and threatening nature of the Claimant towards her.

75. The Claimant stated in evidence that RN had already resigned and that he was not the reason for her resignation.

76. I find that whilst RN had resigned, the complaint to the Respondent was because of the manner in which the Claimant had spoken to her.

77. I also find that the Claimant was aware of the grievance process.

78. On 24 May 2022, Ms Carroll resigned again. She states:

    "Greg Kane has made it impossible for me to continue in this role."

    …

    "I'm sorry to say **I believe** *Greg Kane is using his position to push me out of this group and has become a personal matter for him. This may be something you do not agree with but this is certainly how I feel I am being treated."*

    …

    "but I cannot continue working in this environment."

79. On 02 June 2022 the Respondent contacted Cambridge HR Consultants for assistance. Having spoken to the consultants, whilst Ms Carroll asserted that the reason for her leaving was the Claimant's conduct, the Respondent accepted at this time that the Claimant had had cause for performance management issues with Ms Carroll.

80. I find that it is common and reasonable practice for a business to use the services of an external HR provider, including for the investigation of allegations such as grievances or disciplinary matters.

81. As part of its strategy of growth, the Respondent and its associated group of companies acquired a practice called Abbey Dental. As part of this acquisition, the Respondent remained a partner with Fredrik Andersson**.**

82. On the 03 and 04 October 2022, there was an email exchange between the Claimant and the Respondent. The Claimant asserts that he had been in communication with

the practice manager at Abbey Dental (Abbie Delaney) and that she had become been emotional and stated that she had told him that she had been made to feel small and belittled and that the Claimant was interfering in matters and that she can and is managing. He went further to assert that this only came about as he asked Ms Delaney questions about the business. In evidence, the Claimant stated that it was not uncommon for new businesses and the practice managers to not like what he had to say and it was his role as the Director of Operations to bring all of the businesses in line.

83. In response to the email, the Respondent informed the Claimant that it was the Claimant that Ms Delaney was struggling with and that he was making her feel very patronised and small when interacting with him. The Respondent told the Claimant that it was not what he was saying, but how he was saying it.

84. Both Parties agreed that the Claimant was asked not to manage Abbey Dental following this exchange. The Claimant states that this was a decision to remove him from strategic decision making. The Respondent stated that this was a decision to address the issues raised by the Claimant with the concerns raised by his business partner as the practice had move from functional to dysfunctional.

85. I find that this was a business decision by the Respondent in response to the request from his business partner, Mr Andersson.

86. In evidence the Respondent explained that losing a practice manager could have a detrimental effect on the business and I accept this evidence.

87. On 17 November 2022, Mr Ferris informed the executive team, (the Respondent, Ms Lacey and the claimant) that the business, as a group, had had its first £1 million turnover for May 2022. However, this was to be balanced with the post covid clawback that was due to be repaid in 2023. I accept this evidence.

88. On 19 November 2022, the Respondent wrote to Ms Lacey and Mr Ferris with a draft letter for the Claimant. The letter is titled "*Expression of Concern".*

89. The email details the following:

Recently three managers have contact me expressing their fear and upset in dealing with you, one of them being Abbie Delaney from our newly acquired practice. All three managers have expressed being fearful in dealing with you…… and being made to feel small and belittled and "blamed" for failures. These comments are a direct reference to your management style, and tone and manner….

The extension of circumstances and reservations expressed to me by numerous individuals and experienced by myself personally and some practice manages (sic), and our Head of Finance Steve Ferris leads me to confirm my original thoughts. There is no longer any reasonable doubt that your tone and manage (sic) is having a negative effect on practices, their people and possibly, their performance.

90. In evidence, the Respondent confirmed that the three managers were Abbie Delaney, Olga Bigielmajer and Louise Ayers.

91. The Claimant raised issue with the written complaint from Ms Bigielmajer not being sent to the Respondent until 29 November 2022. I find that it is not uncommon for

employees to raise their concerns verbally first before being asked to put complaints into writing, which was the Respondent's explanation.

92. The Claimant stated that he had not seen this email until disclosure. I accept this evidence as the Respondent confirms that it was never sent to the Claimant.

93. The email goes further and the Respondent raises a concern for the Claimant's mental health. In responding to this email, Mr Ferris agrees with this concern and suggest that a first step might be to speak to the Claimant and raise this with him.

94. On 29 November 2022, Ms Bigielmajer raised her concerns with the Respondent in writing. She states:

I'm afraid I have to raise a concern regarding Greg and his way of communication.

I find him extremely intimidating to the point that I'm scared to report any issues within the practice as I know he will get very frustrated, angry and will take it out on me.

When I'm trying to speak to him about operations of the practice or Antwerp dental group he makes me feel like I'm completely incompetent, useless and nothing constructive comes out of those conversations.

95. The Respondent replied to Ms Bigielmajer to confirmed that he and Mr Ferris would be meeting with the Claimant before Christmas to understand why he is behaving in a manner that appears to be condescending.

96. I accept that the Respondent arranged the meeting of the 22 December 2022 as a first meeting to discuss the issues raised by colleagues as to the manner in which the Claimant spoke to them.

97. On 22 December 2022 the Respondent met with the Claimant with Mr Ferris and Mrs Wadhwani present. The Claimant did not have advance notice of this meeting.

98. The Claimant stated that he understood that the meeting had been presented as an opportunity to repair the working relationship between the Respondent and himself.

99. The Respondent stated that the meeting was to discuss the issues that the Respondent had become aware of in relation to the breakdown of relationships between the Claimant and other employees, i.e. the complaints that had been received.

100. It is the Claimant's position that the Respondent was extremely angry in the meeting and that he repeatedly swore at the Claimant. He goes further and detailed that the Respondent hit his fist to his chest and saliva was coming out of his mouth. The Claimant also says that when he stood to leave, the Respondent moved towards the door before warning him that if the Claimant left the meeting it would be the end of the working relationship. He says that the meeting left him feeling deeply upset.

101. The Claimant stated that he did not know about the emails complaining about his conduct, or the draft email sent by the Respondent titled "Expression of Concern" until after disclosure.

102. It is the Respondent's recollection that he had told the Claimant that the Claimant's conduct had become unbearable and that his communication style was

oppressive. He says that he told the Claimant that his manner and tone had been experienced by several people across the group and that it had to change. The Respondent stated that the Claimant said that he could not change his manner. The Respondent explained that he became frustrated because of this.

103. The Respondent stated that he wanted to resolve the communication issue and he had not yet sent the email titled “Expression of Concern” to the Claimant. He accepted that he did not formally invite the Claimant to this meeting, nor did he follow up this meeting in writing. There was also no performance or disciplinary process that followed.

104. Having heard evidence from both the Respondent and the Claimant I find, on balance of probabilities, the following facts:

104.1. The purpose of the meeting was to discuss the complaints about the Claimant’s communication style.

104.2. This was a first meeting to understand what was happening and why and to tell the Claimant about the complaints.

104.3. The Respondent had not told the Claimant about the purpose of the meeting beforehand.

104.4. The Respondent told the Claimant during the meeting that there had been complaints, and the Claimant would not accept that there was an issue with his communication style.

104.5. That the Respondent became frustrated that the Claimant would not accept that there was a problem with his communication style.

104.6. That the Respondent did swear at the Claimant because of the frustration.

104.7. That both the Respondent and Claimant were upset during and after the meeting. The Claimant because he had been sworn at and because he didn’t fully accept what was said to him, the Respondent because the Claimant would not accept that his communication style needed to change and he had concerns regarding the complaints and the effect of them on the employees and the business.

104.8. I accept that the meeting was charged between the Claimant and the Respondent, I do not accept that the Respondent beat his chest, had saliva at his mouth or that he stepped to block the Claimant’s exit.

105. Following the meeting of the 22 December 2022, the Respondent emailed Ms Bigielmajer and Ms Ayres to confirm that the Claimant had been informed that his behaviour had to change. The Claimant was not aware of these emails until disclosure.

106. The Claimant did not raise a grievance or any written complaint in regard to the meeting of the 22 December 2022.

<ins>Fail to respond to a colleague physically threatening and abusing the Claimant.</ins>

107. The Claimant alleges that on 23 March 2023 at the Falkner House Dental Practice there was a confrontation with Mr Justin Graham, who was the Group handyman. The Claimant says that this was because he had given Mr Graham a routine management instruction, in that the Claimant asked Mr Graham to alter his planned work schedule to deal with something that the Claimant considered to be more pressing. This was at another of the business properties. The Claimant says that Mr Graham became angry. He says that Mr Graham repeatedly swore at the Claimant and blocked his path back to his vehicle.

108. The Claimant raised his concerns verbally with Mrs Wadhwani and in writing to Rita Lacey and Mr Ferris. Ms Lacey responded to the Claimant on 27 March 2023 confirming that it was unacceptable behaviour and that the circumstances would be discussed with the Claimant.

109. The Respondent states that he asked Mr Ferris and Mrs Wadhwani to investigate the allegations. The outcome of the investigation was that Mrs Wadwani would become Mr Graham's line manager. The Respondent's explanation was not challenged by the Claimant.

110. In evidence the Claimant stated that he had raised a complaint about the lack of response by the Respondent in dealing with the seriousness of the allegation with Mrs Wadhwani. This had not been pleaded previously, nor was this in his witness statement.

111. I find that on balance, the most plausible circumstances were that the Respondent did investigate the Claimant's concerns, that the line manager for Mr Graham was changed and the Claimant did not raise any further complaint.

<u>Conduct of the Respondent on 19 July 2023</u>

112. On 28 June 2023 the Claimant emailed the Respondent asking for a meeting to discuss his planned exit from the business.

113. The Claimant emailed the Respondent again regarding this on 03 July 2023 and 07 July 2023 without reply from the Respondent.

114. On 19 July 2023 the business held a "Lead Meeting". This was an annual meeting for the senior employees of the Group.

115. As the meeting concluded and the Respondent was leaving, the Claimant asked him if they could discuss his exit payment.

116. The Claimant states that the Respondent became immediately angry and that he was shouting and swearing and banging his fist on a desk. The Claimant says that the Respondent again stepped to block his exit and criticised the Claimant's conduct and loyalty to the business and that he believed that the Claimant was trying to sabotage the business.

117. The Claimant asked the Respondent about leaving and his notice period. He says that the Respondent said that any exit payment would take many months to calculate and notice could be three or six-months. The Claimant says that he told the Respondent that he wanted to leave in September.

118. The Claimant accepted, in evidence, that he did not resign to the Respondent, but subsequently told Mr Ferris of his intention to leave. Mr Ferris told the Respondent this and the Respondent asked for this to be confirmed in writing.

119. The Respondent states that at this impromptu meeting he was frustrated with the Claimant. He said that there was a constant barrage of people problems, the centre of which was the Claimant. He denies blocking the Claimant’s exit or becoming abusive. He stated that he was on the way to another meeting when he was approached by the Claimant.

120. The Claimant produced a copy of undated notes for the hearing, which are not previously recorded or pleaded as minutes of the July meeting.

121. The Claimant did not challenge the Respondent on the alleged conduct at this meeting.

122. I find that, on balance, the plausible explanation is as follows:

122.1. The Claimant asked the Respondent for a meeting as he had decided that he wanted to leave in September and was seeking to finalise the exit payment.

122.2. That the Respondent was frustrated with the Claimant as he had had complaints about the conduct of the Claimant, which had an impact on the business as it was upsetting the Practice Managers.

122.3. That the Respondent had another meeting to attend.

122.4. That the meeting was heated, but that the Respondent did not block the Claimant’s path.

122.5. That the Respondent did not swear at the Claimant.

122.6. That both men were upset that they could not reach agreement.

123. Following the meeting, the Claimant did not raise a grievance, he said that there was no point as the complaint was against the Respondent.

124. The Respondent stated that if there had been a grievance, he would have appointed an independent external HR firm to conduct the investigation. I find that this would have been reasonable, if it had been required.

125. The Claimant continued work without complaint following the July meeting.

126. The Claimant emailed the Respondent on 05 September 2023 with his resignation because he’d been asked to put his resignation in writing.

127. The email confirmed that the Claimant had accepted a new position and that his last working day would be 14 September 2023. This is not disputed.

<u>Findings of fact relevant to the termination of employment</u>

128. In evidence the Claimant stated that he had told the Respondent at the July meeting that he intended on leaving in September. He told the Tribunal that he had been offered a role earlier in the year, but that he had hoped that he could stay with

the business. The Claimant said that by 19 July 2023 he had not been looking for a role, but he also accepted that he had been approached in January 2023.

129. The Claimant explained in evidence that the January 2023 approach had been from a private equity firm in relation to an acquisition of a dental practice in January 2023, but he had not accepted it. He was in conversation with them, but the opportunity did not materialise. He went on to say that he neither accepted nor rejected the approach.

130. The Claimant explained that the practice itself then contacted him to work for them directly. He could not say when this was, but that it all happened very quickly. The Claimant did not disclose the offer letter.

131. The Claimant accepted that there had been nothing to stop him from leaving the Respondent's employment as he was not contractually tied to a notice period and that he had chosen to leave in September.

132. The Claimant entered into an employment contract with a new employer on 06 August 2023. He confirmed that he had been in discussion with this employer for a couple of months and that he had negotiated in a clause to allow him to continue to work with the Respondent.

133. The Claimant's new role was to commence, and did commence, on 18 September 2023.

134. The Claimant confirmed in evidence that in signing the new contract it was his intention to enable the Respondent to honour the agreement of an exit payment and to allow the Claimant to provide work in return.

135. I find that on balance, the following:

135.1. That the Claimant did want to continue to be able to offer his services to the Respondent.

135.2. That he chose to leave in September 2023 in the knowledge that he had a new job to go to.

135.3. That I am satisfied that the Claimant was aware that he had the new job, with the negotiated clauses before the July meeting, which is why he was keen to meet with the Respondent to resolve the matter of the exit payment.

<u>Evidence</u>

136. In **Matondo v Kingsland Nursery Ltd [2024] EAT 123** the EAT allowed the appeal where the ET had required the claimant's oral evidence, based on her recollection, to be corroborated by other evidence such as independent documentary records. There is no such rule of evidence. The EAT summarised that the ET should have appraised all of the different sources of evidence, as to their reliability and credibility, including the Claimant's oral testimony, contemporary (though not independent) communications reflecting what was said during employment, work records as relied on by the Respondent and the Respondent's evidence. The findings of fact should be determined based on the overall picture.

137. In this case there was testimony, particularly from the Claimant, that had not been pleaded previously and was absent from the claim and statements. That being the case, I have considered evidence based on the overall picture, including contemporaneous documents.

The law

Constructive Unfair Dismissal

138. The relevant statutory provision is s.95(1)(c) of the ERA 1996 which provides that an employee is dismissed by his employer if:

The employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employers conduct.

139. It is established case law that to be entitled to resign, any breach of contract must be fundamental and not minor or inconsequential.

140. In considering whether or not the Respondent has breached the term of the claimant's contract of employment, the conduct of the employer must be judged reasonably and sensibly on an objective basis. (**Post Office v Roberts [1980] IRLR 347**)

141. Although in **Western Excavating (ECC) Ltd v Sharp** the Court of Appeal firmly supported the contract rather than reasonableness test for determining whether or not there has been a constructive dismissal, the courts have in recent years been willing to interpret the implied contractual duties of the employer in such a way that they have come close to accepting that the employer is under a duty to behave reasonably towards his employees. It is true that in the case of **Roberts**, the EAT refused to accept that there was a specific implied term to this effect, on the grounds that such a term would be too wide and too vague. Even so, the duty imposed by the courts is not far removed from this.

142. After a series of cases had gradually moved towards a recognition of this implied duty, the House of Lords finally affirmed its existence in **Malik v Bank of Credit and Commerce International SA [1997] IRLR 462, [1997] ICR 606**. The term (often referred to as 'the T & C term') was held to be as follows:

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

143. In **Baldwin v Brighton and Hove City Council [2007] IRLR 232, [2007] ICR 680** 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 i.e. it should be 'calculated or likely'. One important result of this is that, as 'likely' is sufficient on its own, it is not necessary

in each case to show a subjective *intention* on the part of the employee to destroy or damage the relationship, a point reaffirmed by the EAT in **Leeds Dental Team Ltd v Rose [2014] IRLR 8, EAT**. As Judge Burke put it:

"The test does not require a Tribunal to make a factual finding as to what the actual intention of the employer was; the employer's subjective intention is irrelevant. If the employer acts in such a way, considered objectively, that his conduct is likely to destroy or seriously damage the relationship of trust and confidence, then he is taken to have the objective intention spoken of…"

144. Not every action by an employer, which can properly give rise to complaint by an employee, amounts to a breach of trust and confidence. The formulation approved in **Malik** recognises that the conduct must be likely to destroy or seriously damage the relationship of confidence and trust. It has been described as a demanding test. Simply acting in an unreasonable manner is not sufficient.

145. There is, one limitation on the width of the implied term of trust and confidence which is contained in its very definition; namely, that the employer must not indulge in such behaviour *without reasonable and proper cause*. While in most cases of serious and blatant breach by the employer there will be no question on the facts of this applying, there may well be more nuanced and difficult cases where this limitation may be there to hold a balance between the interests of both parties, in particular where the employer has objectively (and possibly admittedly) acted in a way likely to damage trust and confidence, but claims to have had good reason to do so on the facts. In such a case the tribunal must weigh both elements of the definition of the term (**Hilton v Shiner Ltd [2001] IRLR 727, EAT**).

146. ***Malik*** provides that the test is whether the employer has destroyed trust and confidence 'without reasonable and proper cause'. Here, the EAT held that:

(1) as a matter of fact this was what the tribunal had in fact been applying; and

(2) when a tribunal does so it does not commit the error of applying the range test. Instead, it applies an objective element inherent in the T & C term itself.

147. 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 Corpn 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 Cedron [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 **Roberts** .

148. 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 **Malik** case where he refers to the conduct of the employer causing *serious damage* to the employment relationship.

Breach of Contract

149. The Employment Tribunal has jurisdiction to consider breach of contract claims further to The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994. This Order limits the extension of the jurisdiction to the Tribunal in the following ways:

149.1. The claim must arise or be outstanding on the termination of the employment of the employee against whom the claim is made. (ss.3 and 4)

149.2. There is a limit to any award Ordered, being the limit of the amount to a sum not exceeding £25,000. (s.10)

150. It is not disputed that there was an employment relationship and contract between the Parties, in this case, the question is regarding the terms of that contract.

151. The terms of a contract are the rights and obligations that bind the parties to the contract. They can be express, implied or incorporated from other sources.

152. The terms of a contract, including an employment contract, can be express or implied. In any event, for a contractual term to be enforceable, it must be sufficiently certain.

153. For example, the intention to promote someone within two years was not sufficiently certain to be binding, **O'Laoire v Jackel International Ltd (No 2) [1991] ICR 718**.

154. An "agreement to agree" will not be contractually binding, even if the parties intended to enter into legal relations. For example, in **Barbudev v Eurocom Cable Management Bulgaria Eood and others [2012] EWCA Civ 548**, where a side letter provided that the employee would receive a 10% share in the business on terms to be agreed. The Court of Appeal held that this was merely an agreement to agree, which was not enforceable.

155. When determining contractual terms, "*The court's task is to ascertain the objective meaning of the language which the parties have chosen in which to express their agreement*" (**Lukoil Asia Pacific Pte Ltd v Ocean Tankers (Pte)Ltd [2018]EWHC163**.

156. In **Maggs (t/a BM Builders) v Marsh [2006] EWCA Civ 1058**, the Court of Appeal held:

"Determining the terms of an oral contract is a question of fact. Establishing the facts will usually, as here, depend upon the recollections of the parties and other witnesses. The accuracy of those recollections may be tested and elucidated by things said and done by the parties or witnesses after the agreement has been concluded. Receiving evidence of such words or actions does not mean that the judge is losing sight of his task of deciding what the parties agreed at the time of the contract. It is simply helping him to decide whose recollection is right."

Express Terms

157. Express terms are those that have been agreed explicitly between the parties, either orally or in writing.

Implied terms

158. Traditionally, two tests have been most commonly used:

158.1. Business efficacy test. The proposed term will be implied if it is necessary to give business efficacy to the contract (***The Moorcock [1889] 14 PD 64***). I.e. the term must be necessary to contract as a whole.)

158.2. "Officious bystander" test. The proposed term will be implied if it is so obvious that, if an officious bystander suggested to the parties that they include it in the contract, "*they would testily suppress him with a common 'oh of course'*" (**Southern Foundries (1926) Ltd v Shirlaw [1939] 2 KB 206**). In other words, the proposed term must be so obvious that it goes without saying.

159. Only one of these tests needs to be satisfied.

160. Business efficacy: term must be necessary to contract as a whole

161. The parties must be assumed to have intended their contract to be workable. Consequently, courts and tribunals will imply terms which are *"necessary in the business sense to give efficacy to the contract"* (**Reigate v Union Manufacturing Co (Ramsbottom) Ltd [1918] 1 KB 592**). However, the House of Lords has held that the business efficacy test cannot be used to imply a term which is not necessary to the contract as a whole, even if it is necessary in order to make a part of the contract workable (**Scally & ors v Southern Health and Social Services Board [1991] IRLR 522 (HL)**). In **Scally**, the part of the contract which was unworkable related to pension provision. The House of Lords held that, although an implied term on employers to inform employees of a contractual benefit to which they were, or might be, entitled, was not necessary to the contract as a whole (and therefore was not required by business efficacy), such a term was implied by law.

162. In **Villella v MFI Furniture Centres Ltd [1999] IRLR 468**, the High Court held that, in circumstances in which a dismissal would deprive the employee of benefits under a long-term disability scheme, there was an implied term that the employer would not dismiss the employee, unless it was for a reason other than ill health. This was necessary "to give business efficacy to the contract to provide disability benefit". By treating disability benefits as separate from the main contract of employment, the High Court sidestepped the requirement set out in Scally (which was not, in any event, cited in the Villella judgment).

163. The "officious bystander" test: obvious terms

164. Under the "officious bystander test", a term can be implied if it is *"something so obvious that it goes without saying"* (***Southern Foundries (1926) Ltd v Shirlaw [1939] 2 KB 206***). In Shirlaw, it was said that a term would be implied where it could be said that:

"if, while the parties were making their bargain, an officious bystander were to suggest some express provision for it in their agreement they would testily suppress him with a common 'Oh, of course'".

165. Whether a term will be implied depends on whether:

165.1. It would have been obvious at the time the agreement was first entered into, not at the time the dispute arose (by which time one of the parties is usually adamant that no such term would have been agreed).

165.2. It would have appeared obvious to both parties (**Deeley v British Rail Engineering Ltd [1980] IRLR 147**).

166. Consequently, the officious bystander test cannot be used to imply a term in relation to something of which one party had no knowledge at the time the contract was made (**Spring v National Amalgamated Stevedores and Dockers Society (No.2) [1956] 1 WLR 585**).

167. A term will not be implied into the contract simply to make it fair, **Vision Events (UK) Ltd v Paterson UKEAT 0015/13*.***

168. The officious bystander test can also not be used to imply a variation to a contract after it has been made, **North Lanarkshire Council v MacDonald and another UKEATS/0036/06*.***

169. Terms can be implied into a contract by custom and practice; that is if they are customary in a particular trade or locality or at a particular workplace. To constitute a binding implied term, a custom or practice must be:

169.1. "*Reasonable, notorious and certain*" (see ***Bond v CAV Co [1983] IRLR 360 and Henry v London General Transport Services Ltd [2001] IRLR 132***).

169.2. Followed "*because there is a sense of legal obligation to do so*" (see **Solectron Scotland Ltd v Roper [2004] IRLR 4**).

170. The term must be regularly, but not necessarily universally, adopted in the particular trade or locality or at the particular workplace. A single incident will not be enough to establish an implied term based on custom and practice (***Waine v R Oliver (Plant Hire) Ltd 1977 IRLR 43***

Submissions

171. Both Parties were invited to provide oral and written submissions. All submissions have been taken into consideration.

Conclusions

172. I now set out our conclusions on the issues, applying the law as set out above to the facts which I have found. I do not repeat all of the facts here since that would add unnecessarily to the length of the judgment, but I have them all in mind in reaching those conclusions

Unfair dismissal

173. Was the Claimant dismissed?

173.1. The Claimant was not dismissed, his employment ended following his resignation on 05 September 2023.

174. Did the Respondent do the following things:

174.1. require the Claimant to work at a location without employer's liability insurance and failing to rectify this.

174.2. fail to report accidents in an appropriate manner.

174.3. became angry with the Claimant, lose his temper, block the Claimant's exit, became abusive and threatening, make unsubstantiated claims about the Claimant's performance and character. This occurred on two occasions, the last being 19 July 2023.

174.4. fail to address malicious rumour concerns raised by the Respondent's business partner about the Claimant.

174.5. fail to respond to a colleague physically threatening and abusing the Claimant.

175. The Claimant has pleaded that his resignation was the culmination of the conduct of the Respondent. In order to evaluate this, I will consider the allegations in the order listed and will evaluate the effect of them cumulatively.

<u>Employee Liability Insurance</u>

176. I have found that the Claimant was required to work at Stapleford Grange in addition to working from specific dental practices as required, in addition to working from home.

177. I have accepted the Respondent's evidence that in about February 2022 he was unsure whether the employees were covered by employee liability insurance and took steps to ensure that the cover was there through an extension to his personal insurance. Additionally, I have accepted the documentation that shows that all of the practice properties were covered by insurance. I conclude that the Respondent did not require the Claimant to work at a location without employer liability insurance nor did he fail to rectify this.

178. Additionally, I have found that it was within the Claimant's control as Group Operations Director to raise this matter with the Respondent, but he did not.

179. I conclude that the Respondent did not act in the manner alleged.

<u>Reporting of accidents</u>

180. With regards to the reporting of accidents, I have found that the Claimant did not inform the Respondent that the back injury had allegedly occurred at work until after his resignation. I have also found that the Claimant knew how to report accidents. I

conclude that the Respondent did not fail to report accidents in an appropriate manner.

Conduct of the Respondent during the December 2022 and July 2023 meetings.

181. With regards to the December 2022 meeting; I have found that the purpose of this meeting was to speak to the Claimant about the concerns raised by other employees regarding the tone and manner of his communication and management style. This was a first meeting to which the Claimant had not been formally invited to.

182. I have found that the Respondent was in receipt of verbal and written complaints from three practice managers.

183. I have found that there had been previous complaints about the Claimant's communication style including that of Ms Carroll.

184. I have found that the Respondent became frustrated as the Claimant would not accept that there was an issue with his communication or management style. I have accepted that the Respondent did swear at the Claimant, but not that he blocked the exit or become abusive or threatening.

185. I conclude that at the December 2022 meeting, the Respondent did not make unsubstantiated claims as he was in receipt of verbal and written complaints.

186. I conclude that in swearing at the Claimant, this conduct was unreasonable.

187. With regards to the meeting on 19 July 2023; I have found that this was an impromptu meeting initiated by the Claimant to discuss his emails regarding an exit payment that had not been answered by the Respondent. This was following a leadership meeting where the Respondent had another appointment to attend.

188. I have found that the Respondent was frustrated with the Claimant because of the complaints and the lack of acceptance by him. I have found that the meeting was heated but that the Respondent did not swear or block the Claimant's path.

189. I conclude that the Respondent did not act in the manner alleged on the 19 July 2023.

Malicious rumours

190. With regard to the allegation that the Respondent failed to address malicious rumour concerns raised by the Claimant; I have found that the Claimant did report his concerns regarding a malicious rumour to the Respondent in or about the Summer of 2022. I have found that the Respondent interviewed Mr Andersson and Ms Delaney and emailed the Claimant with their comments. I have found that the Claimant did not review this nor did he raise his concerns further. I have found that there was a rumour and I have also found that the Respondent investigated the Claimant's concerns.

191. I therefore conclude that the Respondent did not act in the manner alleged.

Colleague's threatening behaviour

192. With regards to the allegation that the Respondent failed to respond to a colleague physically threatening and abusing the Claimant; I have found that, on balance, the Respondent did investigate the Claimant's concerns and the colleague's line management was moved from the Claimant to Mrs Wadhwani.

193. I have also found that the Claimant raised no further complaint following this action.

194. I conclude therefore, that the Respondent did not act in the manner alleged.

195. The next question to be considered is to review any breach that I have concluded occurred and to consider whether the conduct of the Respondent breached the implied term of trust and confidence? The Tribunal will need to decide:

195.1. whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent; and

195.2. whether it had reasonable and proper cause for doing so.

196. I have concluded that the Respondent has not acted in the manner alleged except for during the December 2022 meeting. I have concluded that the Respondent did swear at the Claimant and that this was unreasonable. The question is whether this was calculated or likely to destroy or seriously damage the trust and confidence between them.

197. This is not a situation as in **Palmanor Ltd v Cedron** where the employee was told by his manager that he could leave if he didn't like such language.

198. The circumstances as I have found them are that the Respondent was in a position where he was having to speak to his Group Operations Director because the style of his communication and management was causing complaints from managers within the business and that he believed that this was impacting the business itself.

199. I have found that the Claimant did not accept that there was an issue with his communication or management style.

200. It is not disputed that the Claimant's communication manner had been raised before this meeting. There had been a complaint by Ms Carroll previously and the Claimant had been cited in her resignation.

201. I have concluded that the Respondent did not block the Claimant's exit nor was he abusive or threatening. I have also concluded that the claims regarding the Claimant's performance and character were not unsubstantiated as the Respondent had received verbal and written complaints. It was reasonable for the Respondent to raise these matters with the Claimant.

202. The meeting was pre-arranged and was to discuss the complaints that had been raised. The correspondence indicates that the Respondent was concerned about the Claimant's mental health and that he accepted Mr Ferris's suggestion that they should meet with the Claimant first, before sending the Expression of Concern. This conduct is not calculated or likely to destroy or seriously damage the trust and confidence between the parties.

203. During the meeting I have found that the Respondent told the Claimant of the complaints and that the Claimant would not accept that he needed to change.

204. I have found that the Respondent was frustrated by the Claimant and that the Claimant was upset by the allegations. I have also found that the Respondent swore at the Claimant. I do not accept that the conduct of the Respondent was calculated, I am satisfied that the heat of the moment and the Claimant's responses to the Respondent lead to the frustration and swearing.

205. The question is whether swearing at the Claimant was likely to destroy or seriously damage the trust and confidence between them.

206. These are circumstances where these are senior executives of a dental practice. It is also the circumstance where I have found that the Respondent was addressing genuine concerns with the Claimant, and the Claimant was not acknowledging any issue with his communication and management style.

207. Additionally, I have accepted that the purpose of the meeting was to discuss complaints about the Claimant. I have accepted that the Claimant did not want to acknowledge this. I have also accepted that the Respondent had concerns about the business. I conclude that there was reasonable and proper cause for the meeting and for addressing the concerns with the Claimant.

208. I have also accepted that the Claimant did not know the reason for the meeting beforehand. I have also accepted that this is not the first time the Respondent has raised the concern regarding his communication style with the Claimant.

209. I am satisfied that by swearing at the Claimant, the Respondent was acting in a manner that was unreasonable. I am not satisfied that it was likely to destroy or seriously damage the trust and confidence between the parties.

Breach of Contract

210. This is the claim for the failure to pay an exit payment to the Claimant. The first question is did this claim arise or was it outstanding when the Claimant's employment ended?

211. It is accepted by the Parties that there is no written contract of employment, nor is there a written agreement regarding an exit payment.

212. I have found that as at 07 July 2023 in the Claimant's emails to the Respondent to seek a meeting to discuss the exit payment and the Claimant's own evidence, an exit payment had not yet been finalised.

213. I have found that there were no further detailed discussions regarding the exit payment between the Claimant and the Respondent between 07 July 2023 and the Claimant's termination dated on the 14 September 2023.

214. I have considered whether a term could be implied into the arrangement between the Parties. However, for a term to be express or implied into a contract, it must be certain. There is no certainty here as I have found that the term was still under discussion.

215. I have found that the Parties were in the process of negotiating an exit payment, but this remained outstanding when the Claimant's employment ended. As there was no term but an agreement to negotiate, I conclude that at the date the Claimant's employment ended there was an agreement to agree. This is not an enforceable contractual term.

216. I conclude that there was no term of contract to pay the Claimant an exit payment in place when the Claimant's employment ended and therefore there was no breach.

Approved by:
Employment Judge Illing

Date: 10 September 2026
JUDGMENT & REASONS SENT TO
THE PARTIES ON:
16 September 2026

FOR THE TRIBUNAL OFFICE