



# EMPLOYMENT TRIBUNALS

**Claimant:**  
Mr S Quao

v

**Respondent:**  
Ricoh UK Limited

**Heard at:** Reading

**On:** 18 and 19 September 2017

**Before:** Employment Judge Gumbiti-Zimuto

## Appearances

**For the Claimant:** Mr A Ollenu (Counsel)

**For the Respondent:** Miss M Tutin (Counsel)

## RESERVED JUDGMENT

1. The claimant's complaint of unfair dismissal is not well-founded and is dismissed.
2. The claimant's complaint about unlawful deduction of wages is dismissed upon withdrawal by the claimant.

## REASONS

1. In a claim form presented on 13 March 2017, the claimant made a complaint about unfair dismissal and unlawful deduction from wages. The claimant does not pursue his complaint relating to unpaid wages. The respondent defends the complaint of unfair dismissal.
2. The claimant gave evidence in support of his own case; the respondent relied on the evidence of Mr Sam Sorce and Mr Stuart Simmonds. All the witnesses produced statements which were taken as their evidence-in-chief. I was also provided with a trial bundle containing 326 pages of documents.
3. From these sources, I made the following findings of fact.
4. The respondent is a company specialising in office imaging equipment, production print solutions, document management systems and IT services. The respondent employs more than 2,000 employees in the United Kingdom and approximately 50 employees in the Staines office.

5. The claimant commenced work with Ricoh UK Limited on 1 November 2004 as an engineer and was continuously employed by the respondent until his dismissal on 8 November 2016. The claimant had 12 years' continuous employment with the respondent.
6. On 17 March 2015, the respondent commenced a trial period and collective consultation period with the employee forum on the use of Telematics trackers for the service division. The reasons for this included so that the respondent had a mechanism to provide support and duty of care to the service division workforce; as a remote working workforce to help track compliance with the Working Time Directive; by accurately recording mileage and linking to the respondent's expenses system in order to reduce costs and administration in completing mileage forms.
7. On 21 December 2015, Mr Sam Sorce, Regional Services Manager, delivered a presentation which outlined the background and benefits of the Telematics policy. The presentation was delivered at a team breakfast meeting where the claimant was present. In the presentation, it was explained that the Telematics devices would be fitted to all service personnel vehicles including the senior management team.
8. The respondent's employees were provided an option to have a company car or to opt for the grey fleet policy. Employees who were grey fleet users were provided a car allowance each month which could be used to pay towards the lease, insurance, tax, mileage and general maintenance of a vehicle of the employee's choice provided that it met requirements of the policy including age, CO2 emissions and mileage. The claimant was a grey fleet user. Telematics devices would be installed for both company car users and grey fleet users.
9. On 2 December 2015, the service division team was informed that the Telematics policy would be rolled out throughout the business commencing in January 2016. The service division was to be part of Phase 1 of the implementation.
10. In January 2016, the Telematics policy was implemented in the South East region service division. Installations commenced in the respondent's vehicles and in private vehicles. The Telematics devices were issued with fobs which provided the option for the driver to choose whether a journey was business or personal. The respondent had access to data stored as business use and the employee had access to their data for both business and personal use.
11. The claimant's vehicle was booked for an installation of the Telematics device on 12 February 2016. On that day the claimant advised the respondent that his lease finance company had refused permission for the Telematics device to be fitted to the claimant's grey fleet car.
12. On 16 February 2016, Mr John Stammers, Field Service Engineer, South East (Region 8) sent an email to the claimant stating that he had received

confirmation that the claimant's leasing company, Network Lease, agreed to the Telematics device being installed. The claimant was told that he should send an email to his leasing company confirming that the device was being installed and that the respondent would pay for any damage incurred as a result of fitting or removing the device.

13. The claimant responded that he had called the leasing company and they had no record of anyone contacting them about the Telematics device.
14. The claimant was asked to provide the name and contact details of the person that he had spoken to at the leasing company. Mr Sorce pointed out to the claimant that the claimant's leasing company was the same company used throughout the business and there had been no other refusals to install the Telematics device.
15. On 17 February 2016, Mr Stammers sent an email to the claimant stating that the leasing company was unable to take any details from the respondent. He asked that the claimant provide confirmation as soon as possible as the installation was scheduled to take place on 19 February. On 18 February, Mr Stammers left a voice message asking the claimant to respond to his previous email. The same day, Mr Farmer, Field Service Manager, sent an email to the claimant asking the claimant to get a letter from the leasing company confirming the reasons that the leasing company was refusing to allow the Telematics device to be fitted.
16. Also on 18 February, the claimant met with Mr Stammers at the Maidstone office. During that meeting, he confirmed that he was seeking legal advice in relation to the installation of the Telematics device in his car.
17. The installation was rescheduled for 3 March. The claimant was informed that a cancellation fee of £75.00 may be incurred if he did not inform the respondent in a timely manner that he was unable to have the device installed.
18. On 1 March 2016, the claimant sent an email to the respondent enclosing an email from Network Lease which stated that they do not allow Telematics or tracker boxes to be fitted to their vehicles [p109]. The installation that had been set to take place on 3 March 2016 was cancelled.
19. On 7 March 2016, Leaseplan, the parent company of the claimant's lease company, Network, sent an email to Mr Haynes, Rick Hewitt, Finance Director, and Ms Rebecca Wallace, HR Director, in which they confirmed that they were happy for the Telematics device to be fitted to their vehicles.
20. On 9 March 2016, the claimant was signed off work.
21. Mr Farmer sent the email from Leaseplan to the claimant on 15 March 2016. On 29 March 2016, the claimant returned to work. The claimant did not respond to the email.

22. The claimant was informed that the installation of the Telematics device had been rescheduled for 8 April 2016.
23. On 8 April 2016, the claimant informed Mr Farmer by telephone that the information provided by Leaseplan was 'insufficient'. Mr Farmer asked the claimant why he did not inform the respondent any earlier. The late notice had resulted in the respondent incurring costs relating to the non-installation of the Telematics device.
24. On 11 April 2016, the claimant was asked to provide the reasons for not allowing the installation to progress on 8 April. The claimant did not respond to the email.
25. On 21 April 2016, the claimant met with Mr Farmer and Elaine Hatton. During this meeting, the claimant was asked to provide his reasons for refusing the installation. The respondent states that during the course of this meeting, the claimant was provided with the option of swapping his vehicle for a company car and that the respondent offered to compensate a reasonable amount towards this if the claimant had to break his lease. This offer is disputed by the claimant.
26. At the end of the meeting, the claimant was to have a week to respond and he was advised that a failure to respond was likely to result in formal action. The claimant did not respond within the one week time limit given.
27. The respondent contends that the claimant was provided with the option of swapping his vehicle for a company car. However, this is not recorded in the respondent's notes of the meeting. In his witness statement, the claimant says the following:

"13. It was therefore surprising to note from paragraph 23 of RICOH's grounds for resistance that at a meeting on 21 April 2016, I refused an offer of a company car and a compensation for the penalty for a breach of my contract with Network. Had this been the case why did RICOH fail to respond to my letter of grievance of the much later dated of 26 May 2016 with minutes of the said meeting to support the fact? Furthermore, the minutes of the said meeting of Thursday, 21 April 2016 made no mention of any such offers."
28. In his evidence during questioning, the claimant said he could not remember the company car being mentioned. The claimant stated he could not remember "It was last year... I was not in the best frame of mind at the time". The claimant left open the possibility that it might have been mentioned but he cannot now recall it. I mention at this stage that the claimant during the course of his evidence was a poor witness. I am satisfied he did not intend to be obstructive or to mislead. However, his recollection was unimpressive and he often commented that at the time these events occurred, he was not in the best frame of mind. I also note that during the relevant period the claimant took significant periods of time off work because of stress due to work and family issues.

29. On 27 April 2016, the claimant left a voicemail message for Ms Hatton confirming that he did not wish to have the Telematics device fitted to his car. The claimant was asked about this message. The claimant recalled that he left the message. The claimant was asked about the way the telephone message is recorded, i.e. "that he did not wish to have the Telematics device fitted to his car" as opposed to the network refusing to allow it to be fitted. The claimant however was unable to recall the precise words that he used.
30. Responding to the claimant's email, Ms Hatton sent an email to the claimant confirming that this was not a sufficient reason. The claimant's response was to send an email stating that the email that had been provided by Leaseplan was not sufficient.
31. It has been put forward by the claimant and on his behalf that throughout these events the claimant was indifferent as to whether the Telematics device was installed in his vehicle. I reject such a contention. In my view, it flies in the face of everything that transpired between the claimant and the respondent in the period from February to November. The voicemail message in my view is likely to have been correctly recorded by Ms Hatton because it chimes with the attitude that the claimant appears to have displayed towards the Telematics device in this period of time. I reject the notion that the claimant was indifferent to the fitting of the Telematics device and merely acting upon information received from the lease company that they were unwilling to agree for the device to be fitted. In my view, the claimant was resistant to the fitting of the Telematics device.
32. On 29 April 2016, the claimant was informed of the formal procedure being taken due to his failure to provide a response. The claimant was informed that the outcome could be that the Telematics device would be fitted to the vehicle; the respondent may terminate his employment and re-engage him on a new contract with new terms and conditions including the fitting of the Telematics device; or the respondent terminate his employment.
33. Mr Sorce sent a letter to the claimant inviting him to attend a formal meeting which was to take place on 6 May 2016. The purpose of this meeting was for the claimant to give reasons for not complying with the installation policy. The claimant was advised that a possible outcome may be dismissal if he continued to fail to comply with the respondent's policy.
34. On 4 May, the claimant was asked to confirm that he was attending the meeting. The claimant sent an email to Mr Sorce stating that he was seeking legal advice and would not be attending the formal meeting which had been scheduled for 6 May. On 5 May, Mr Sorce asked the claimant to confirm an alternative date for the formal meeting to take place within five working days. The claimant did not do that.
35. On 9 May, the claimant was signed off work due to stress.

36. On 26 May, the claimant raised a formal grievance which stated that he was working under protest and reserved the right to resign and claim for constructive dismissal. On 31 May, the claimant returned to work. On 9 June, the grievance hearing took place. This was conducted by Mr Craig Lissaman, the Senior Bid Manager who was accompanied by Miss Julie Bradley, HR adviser.
37. On 21 June 2016, Mr Lissaman sent a letter to the claimant outlining the grievance outcome and the reasons the grievance had not been upheld. The grievance outcome letter included the passage:
- “Given that you confirmed in your hearing that you accept the concept of Telematics and that your only issue is that your lease company will now allow the installation of Telematics, I believe this can easily and quickly be resolved. I suggest that in conjunction with Peter Farmer, HR adviser, that you discuss the exact confirmation information that would be acceptable to Ricoh from your lease company which we would simply clearly summarise in writing to you along with providing information about the Telematics device and installation process. Alternatively, with your permission, we could arrange a meeting or conference call between yourself, your lease company and Chris Haines, Fleet Manager, to obtain the information needed.” [p197].
38. The claimant appealed against the grievance outcome. On 15 July, a grievance appeal hearing took place. Attending the grievance appeal were Mr Stuart Simmonds, Area Sales Director; and Ms Amea Jalwal, HR adviser. During the grievance, the claimant questioned why it was necessary for the hearing to take place and eventually the claimant requested that the hearing was stopped as he did not wish to discuss the matter any further.
39. Between 18 July and 19 August, the claimant was absent from work due to a number of reasons: emergency holiday, paternity leave, authorised holiday, and unauthorised leave.
40. On 23 August 2016, the claimant and Mr Farmer met to address the issue of the period of unauthorised leave between 11 and 19 August. On 24 August, Mr Simmonds and Ms Jalwal attended a grievance outcome meeting where the claimant was provided with the outcome of the grievance. The claimant was given a formal written outcome letter detailing the reasons that his appeal had not been upheld.
41. As part of the grievance outcome, Mr Simmonds made the following offer contained in the grievance outcome letter [p242]:
- “As an outcome for this process, I would like to offer you the option to attend an informal meeting chaired by me between you, Peter Farmer, Sam Sorce and a representative of the HR team. This is within the company’s resolution policy and a facilitated discussion I believe will help to mutually resolve your concerns and agree an action plan to positively move forward and commence work together once again.”

42. Also on 24 August, the claimant was sent a letter from Mr Haines. This letter confirmed that the email which the claimant had provided from Network dated 1 March 2017 was insufficient evidence to support the refusal of the installation of the Telematics device. The claimant was required to provide a more formal response such as a letter on headed notepaper from Lease Plan which outlined the reasons for the refusal. The claimant was required to respond by 2 September.
43. On 5 September 2016, Mr Haines sent an email to the claimant asking for a response to his letter of 24 August.
44. On 8 September 2016, the claimant was asked to attend a disciplinary hearing on 14 September in relation to his unauthorised absence. In the event, this meeting did not take place.
45. On 12 September 2016, the claimant sent Mr Haines an email stating that he was still awaiting a response from Network Lease. Mr Haines' reply was to ask the claimant about the likely timescale for the response to be provided.
46. The claimant was invited to attend a formal meeting with Mr Sorce and Ms Jalwal on 19 September 2016. The purpose of the meeting was to discuss the reasons for the claimant failing to Comply with the Telematics policy. The claimant was advised that the further failure to comply may lead to dismissal from his role. The claimant was asked to confirm his attendance by 15 September 2016. In the letter to the claimant, Mr Sorce had included the following comments:
- “You have been informed that over 700 devices have been installed so far and it is not considered economically or operationally practical to make individual exceptions without due justification or alternative options being considered. However, despite providing you with this information and clarification of the data collection storage and access restrictions, you have continued to refuse the installation of the device or to enter into consultation to resolve this matter.
- ...
- The meeting will be your opportunity to provide any relevant information about the proposed termination of your contract of employment and will allow us to discuss with you
- The reasons for your refusal to agree to the Telematics policy
  - The proposed termination of your employment
  - Any suggestions for avoiding dismissal including acceptance of an offer of reengagement, any queries that you have on the proposed termination of your employment; and
  - The payments which will be made to you following termination of your employment” [p246]
47. The claimant was informed that he could be accompanied by a fellow employee, an employee forum representative or a trade union representative to this meeting.

48. On 15 September 2016, Mr Sorce sent an email to the claimant requesting that he confirm his attendance at the formal meeting on 19 September. The claimant confirmed that he would attend the meeting.
49. The claimant did not attend the meeting on 19 September. The claimant did not make contact to inform the respondent that he would not be attending the meeting. Both Mr Sorce and Ms Jalwal attended the meeting travelling in excess of three hours to do so. The claimant later sent an email stating that he had attended his GP and had been signed off until 3 October with anxiety and depression.
50. The claimant was referred to occupational health. This was his fifth period of absence in a rolling 12 month period. The claimant was informed that he was no longer entitled to the respondent's sick pay.
51. On 4 October, the claimant did not return to work. In fact, the claimant did not return to work again.
52. On 21 October, Mr Sorce sent a letter to the claimant inviting him to attend a meeting to discuss the Telematics policy with the aim of coming to a resolution. The meeting was scheduled for 27 October 2016. The letter informed the claimant that if he did not advise the respondent as to whether he was attending the meeting by 26 October, the meeting would take place in his absence.
53. The claimant did not attend the meeting on 27 October. The meeting took place in his absence.
54. On 31 October 2016, Mr Sorce sent a letter to the claimant outlining the outcome of the meeting held on 27 October. The decision, that the respondent's position remained the same in relation to the installation of the Telematics device was notified to the claimant. The claimant was told that he had the opportunity to have the Telematics device installed on 8 November 2016. The claimant was informed that if he did not accept this installation, this would lead to the termination of his employment.
55. The claimant did not accept this installation.
56. In his letter to the claimant, Mr Sorce included the following comments:

“This matter has been unresolved for over 10 months and all efforts to bring a suitable resolution have been considered. However these have been unsuccessful as you failed to enter into any discussion regarding the Telematics policy. The email which you provided does not provide sufficient detail or any justification for your continual refusal to comply with the Telematics policy.” [p270]
57. The letter also includes the following passage:

“In summary and after careful consideration I feel the company have been reasonable and provided you with alternative options offered to provide your lease company with further information have continued to make you aware of the



potential consequences of your continual refusal to conform to the policy. I can confirm that if you continue you to maintain your position I will have no choice but to terminate your employment and potentially offer you re-employment (with loss of service) on our standard terms of employment subject to further discussion.

You have until the close of business on Tuesday 8 November 2016 to reconsider your position and I can confirm that the company will not accept working under protest of acceptance of the Telematics policy under duress.

If you confirm your full acceptance of the Telematics policy and installation of the hard wired device please sign below and return a copy to me by 5.30pm Tuesday 8 November 2016 and your termination will not take effect.

However, if your position remains unchanged and we do not receive a signed agreement then I must inform you that your contract will be terminated with immediate effect on Tuesday 8 November 2016.” [p271]

58. The claimant was informed that if he was dismissed he would have the right to appeal against the decision to terminate his employment and informed as to how he could do that.
59. On 10 November, Mr Sorce sent the claimant a letter confirming his dismissal with effect from 8 November. This letter enclosed both the disciplinary and capability policy and the disciplinary and capability procedure. The claimant was given the reason for the termination of his employment as due to the ongoing refusal of the respondent's Telematics policy. The claimant was offered the right of appeal against the decision to dismiss. The claimant did not appeal.
60. An employee has the right not to be unfairly dismissed by his employer. In determining whether the dismissal of an employee is fair or unfair, it is for the employer to show the reason or if there is more than one the principal reason for the dismissal and that it is a reason either falling within ss.2 of section 98 of the Employment Rights Act 1996 or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
61. Where the employer has shown a potentially fair reason, the determination of the question whether dismissal is fair or unfair having regard to the reason shown by the employer depends on whether in the circumstances including the size and administrative resources of the employer's undertaking the employer acted reasonably or unreasonably in treating it as sufficient reason for dismissing the employee and shall be determined in accordance with equity and the substantial merits of the case.
62. The issues that have to be decided in this case are firstly, what was the reason for dismissal and secondly, whether the decision to dismiss the claimant was fair and reasonable in all the circumstances.
63. The respondent has provided written submissions. The respondent contends that the claimant was dismissed for some other substantial

reason, namely the claimant's refusal to accept the respondent's Telematics policy. The respondent contends it followed a fair procedure and acted within the range of reasonable responses in dismissing the claimant in the circumstances where his intransigence regarding the installation of a Telematics device made it unviable for his employment to continue.

64. It is said on behalf of the claimant that the crux of the case is what the claimant did as regards fitting the Telematics device. It is said that there is no issue as to whether it was good or beneficial and it is said that had he been offered the company car he would have accepted it. Therefore, I am entitled to find that he had not been in principle against the Telematic device being fitted in his lease car at all.
65. In respect of the question whether the respondent acted reasonably having regard to all the circumstances of the case, it is said that Mr Sorce's evidence is important because Mr Sorce stated that he did not want to dismiss the claimant and if he had had the opportunity to sit down with the claimant, there was a way forward. The claimant says that the grievance procedure shows failings on the part of the respondent in making clear what they wanted. It is said on behalf of the claimant that the fact that there were instances of inactivity or a lack of engagement is not important as regards whether or not the dismissal was unfair. It is pointed out that at the time the claimant was suffering from panic attacks and that the state of affairs that arose allowed a position to arise where the claimant suffered a psychological effect. Reference is made to the personal problems that the claimant was undergoing and how the Telematics issue appeared to be going round in circles. The claimant asked me to reject the contention that an offer was made for the claimant to have a company car on 21 April and it is said that if this was clearly put it would have been recorded in subsequent email correspondence. I am asked to therefore conclude that it was not an offer made.
66. It is also put on behalf of the claimant that one should consider the fact that the claimant had a long period of employment of 12 years; that the claimant's dismissal did not come about as a result of conduct and that the disciplinary procedure was never engaged in relation to the claimant's dismissal. It is also said that at the time the claimant was too ill to attend. It is said that it is absurd to conclude that the claimant refused to have the Telematics device. It is said that there was no wilful refusal on the claimant's part to have the Telematics device fitted. The claimant did not have free rein to decide one way or another and it cannot be said to be a refusal or an operative refusal because it was not his decision to make. It is said that the claimant has acted reasonably in the circumstances.
67. It is also said that is of importance that in about October or November, Mr Sorce was of the opinion that the matter could have been resolved. It is said that there was a great degree of doubt because the lease company had sent an email and the essence of what they were saying was that they were not going to allow the Telematics device to be fitted. The question is

posed: what could the claimant have done? That should have been the end of the matter as he had asked the leasing company for their position regarding the Telematics device and was provided with the email of 1 March.

68. It is said that the respondent could have sent letters to the claimant setting out exactly what it is they wanted him to do. It is pointed out that events occurred over many months and there was an element of going around in circles. The claimant was losing faith in his employer's ability to look at his circumstances and come to a conclusion about that, for example, the way the grievance procedures had been carried out. It is said that the evidence was there to conclude in favour of the claimant but Mr Lissaman made findings against the claimant.
69. It is said that it is unfortunate that the claimant is now unable to recall a lot of these events which took place a long time ago and this should be considered in the light of the fact that he has been through a lot psychologically and that the minutest recollection is difficult for him. It is said that the claimant was trying to be truthful and helpful in his evidence and that I should weigh up that together with what documentary evidence there is available.
70. The question was posed as to whether there was a proper reason for the dismissal and had the matters been fairly considered in the circumstances the claimant found himself. It is said that the respondent was too concerned about putting the device in the car and should have been more flexible. It is said that in the circumstances the dismissal was unfair.

## **Conclusions**

### What was the reason for the claimant's dismissal?

71. I am satisfied that the claimant was dismissed for some other substantial reason namely his refusal to accept the respondent's Telematics policy. The claimant was eligible for a company car or car allowance in accordance with the respondent's company fleet policies. The claimant opted for a car allowance and obtained a lease car. The respondent required as part of its driving at work policy for the claimant to have installed in his car a Telematics device as part of the consideration for receiving a car allowance. It was the claimant's refusal to accept the Telematics policy and that resulted in the claimant's dismissal.
72. This was not a matter of conduct. The policy was introduced as a variation to the claimant's contract of employment. It is not in dispute that the respondent has demonstrated a good and sound business reason for the proposed introduction of Telematics devices into company or leased vehicles. This was to ensure that the respondent had a mechanism to meet its duty of care to its remote workforce, to track compliance with the Working Time Regulations, to reduce administration by capturing business and private mileage, to improve driving styles and ensure driver safety, to

improve customer response times by interacting with scheduling in all call centres, and to improve fuel consumption.

73. That the claimant refused to accept the Telematics policy in my view is clearly established by the evidence. In February, the claimant was asked to confirm the reasons why the Telematics device could not be fitted to his car. He eventually produced the email of 1 March 2016. This email presented as an oddity to the respondent because there were other employees who used the same lease company whose cars were fitted with Telematics device, the lease company appeared to be only objecting to in the claimant's case. When contact was made with the lease company, the respondent was told something which was different to that which the claimant was putting forward. The respondent gave the claimant the information that it obtained from the lease company. It gave him the name of an individual at the lease company for the claimant to contact. All of which was to facilitate the way forward for permission to be obtained for the Telematics device to be fitted to the car.
74. I am satisfied from the evidence that I have heard that the claimant did nothing after 1 March 2016 to secure any further communication with the lease company so as to clarify the position in relation to the fitting of the Telematics device or to seek permission of the lease company for the Telematics device to be fitted.
75. The claimant says that he did contact the lease company after 1 March. However, I reject that. The evidence which has been produced appears to show the lease company only being contacted after the termination of the claimant's employment and not during the period between 1 March and the termination of the claimant's employment.
76. It appears to me that on the evidence that has been presented that it is not tenable to conclude that the claimant was indifferent to the Telematics device being fitted. By his lack of cooperation, the claimant was in effect obstructive.
77. The claimant states that there were emails which are not included in the trial bundle which show him communicating with the lease company. However, not one has been produced. Either these emails do not exist and the claimant's evidence is therefore to be dismissed on this issue or alternatively such emails do exist and the claimant has failed to comply with his disclosure obligations. This is a case where the claimant has been represented by solicitors throughout and I expect them to understand the disclosure obligations in employment tribunal cases.
78. I am satisfied that the evidence presented shows that the claimant did refuse to comply with the respondent's Telematics policy and that that was the reason why the respondent dismissed the claimant.

Was the decision to dismiss the claimant fair in all the circumstances?

79. The respondent had good motives for introducing the Telematics policy. The policy was announced in March 2015 to its employee forum. The proposed roll out of the telematics devices in the customer service division was well trailed. The scope and effect of the changes were clearly explained to the group at meetings.
80. The respondent has a service communication group which consisted of representatives from the service division. They were consulted on the proposals. There was a pilot of the Telematics devices being installed. This was all made known to the employees. Throughout, the employee forum was consulted about proposed changes and during those meetings the employee forum representatives could question the business about the rollout. There was no objection to the changes that were being sought to be made by the respondent.
81. On 2 December, the claimant was given warning that the Telematics devices would be rolled out in his team from January 2016.
82. When the claimant initially refused the installation of the Telematics device, he pointed out that this was refused by his lease company. The respondent received confirmation that the claimant's lease company in fact considered it acceptable to install the Telematics device and provided this information to the claimant.
83. The claimant subsequently produced an email dated 1 March. The email stated that the lease company does not allow Telematics boxes to be fitted to their vehicles. It gave no reasons for the decision. The respondent asked for a formal communication and for an explanation as to the reasons for the refusal.
84. In the period from March until October, there were attempts to install the device; there were attempts to hold meetings with the claimant; and through much of this period, the claimant either was unresponsive or was unwell and not at work.
85. The claimant raised a grievance. In the course of the grievance, a route was identified to negotiate the impasse. The claimant did not take up the respondent's offer made at the end of the grievance hearing. The claimant by his conduct displayed an unwillingness to reach a resolution to the issue relating to the fitting of the Telematics device. I consider that his behaviour reflected a resistance towards fitting the device. He was being obstructive to the fitting of the device but hiding behind the suggestion that the lease company refused for the installation of the device.
86. I note that there is also no explanation provided as to why the lease company that allows other leased vehicles to have the same Telematics device fitted in their cars by the respondent but would not allow it in respect of the claimant's car.
87. The email to which the 1 March email is a reply has not been produced.

88. There is a letter dated 15 June 2017 from Fairview Solicitors to Leaseplan UK Ltd and that letter reads as follows:

“We act for the above who is your customer, in his employment matter. We attach his signed letter of authority.

Mr Quao was formerly employed by RICOH UK Limited. We have had sight of your email to our client dated 1 March 2016 stating telematics are not allowed to be fitted to vehicles leased from your company. We attach a copy of the email for the avoidance of doubt. Our client was directed to forward a copy of the email to his employers, RICOH UK Limited.

Please confirm whether this was a policy of your company at the relevant date.

The information is required for the court and time is of the essence. We will therefore appreciate if you could give this matter your urgent attention.

Thank you for your co-operation.  
Yours faithfully  
Fairview Solicitors”

The email of 19 June 2017 appears to be a response to that letter. It reads as follows:

“Thank you for your letter relating to Mr Stephen Quao’s agreement with Network.

As per your request I can confirm that Network does not allow any trackers or Telematics to be fitted or activated on our vehicles.

I hope you will find the above statement suitable to support Mr Quao’s case, however if there is anything further we can assist with, please do not hesitate to contact our Customer Services...” (p273q)

89. Even now, after the dismissal, it remains an unexplained mystery in this case that other Leaseplan UK cars were having telematics devices fitted. Why it was not possible in the claimant’s case has not been explained.
90. Having regard to all the circumstances as they were at the time, I am satisfied that the respondent acted reasonably in dismissing the claimant. The claimant was given the opportunity on many occasions to address the respondent’s concerns. He failed to engage with the respondent. Even at the point where the respondent was making a decision that could have the effect of ending his employment the claimant still failed to engage with the respondent. When the claimant was told that unless he complied with the policy, he would be dismissed, the claimant still did not respond.
91. In all the circumstances, the respondent in my view was entitled to conclude that after a period of about ten months in which this issue had been under consideration with the claimant that dismissal was an option.

92. I am unable to conclude that in all the circumstances, the claimant's dismissal was unfair. The claimant's claim for unfair dismissal is therefore dismissed.

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Employment Judge Gumbiti-Zimuto

Date: .....9 October 2017.....

Sent to the parties on: .....

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For the Tribunals Office