



EMPLOYMENT TRIBUNALS

Claimant: Mr M Gough

Respondent: Alexander Duckham and Co Ltd

HELD AT: Manchester

ON: 13-14 January 2021
and 1 March 2021 (in
chambers)

BEFORE: Employment Judge Slater

REPRESENTATION:

Claimant: In person

Respondent: Ms S Ashraf, consultant

JUDGMENT

The judgment of the Tribunal is that:

1. The complaint of constructive unfair dismissal is well founded.
2. Remedy will be determined at the remedy hearing listed on 30 April 2021.

REASONS

Introduction

1. Code V in the heading indicates that this was a remote hearing by video conference (by Cloud Video Platform). The parties did not object to the hearing being conducted by these means.

Claims and issues

2. The claimant claimed constructive unfair dismissal. The claimant had produced a suggested list of issues. The respondent had not produced a list.

3. The claimant clarified that he relied on breaches of the following contractual terms:

- 3.1. The implied duty of mutual trust and confidence;
- 3.2. A term as to his pay;
- 3.3. A term as to his position in the organisation;
- 3.4. A term as to his duties.

4. At my request, the claimant produced, during an adjournment when I was reading witness statements and documents, a list of matters that he relied on as individually, or taken together, constituting a breach of the implied duty of mutual trust and confidence. I gave Ms Ashraf an adjournment before beginning the claimant's evidence, for her to be able to read this. She raised an issue that some matters were not set out in the claimant's witness statement but did not make an application that the claimant would need to amend his claim to rely on any of the matters referred to. A copy of this list is annexed to these reasons.

5. I outlined to the parties the issues which I considered I needed to consider. Ms Ashraf informed me that, although paragraph 44 of the grounds of resistance had put forward an argument that the constructive dismissal (if I found there was one) was fair, the respondent no longer pursued that argument.

6. The respondent, in its grounds of resistance, written without seeing the ACAS early conciliation certificate, raised a possible time limit point. I was satisfied, having seen the ACAS certificate, that the complaint was presented in time. The respondent did not argue at the hearing that the complaint was not presented in time.

7. The issues in relation to liability which I needed to consider were, therefore, as follows:

7.1. Did the claimant resign because of an act or omission (or series of acts or omissions) by the respondent, the acts relied upon for the alleged breach of the implied duty of mutual trust and confidence being those set out by the claimant in his document "Claimant's list and dates of mutual trust and confidence breaches by respondent for Manchester ET", (a copy of which is annexed to these reasons)?

7.2. If so, did the respondent's conduct amount to a fundamental breach of contract? The contract terms relied upon were as set out above.

7.3. In relation to the issue as to whether there was a breach of the implied duty of mutual trust and confidence, I needed to consider whether the respondent, without reasonable or proper cause, conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between the parties.

7.4. Did the claimant affirm the contract by his conduct, including any delay?

History of the proceedings

8. The claimant had made an application to strike out the response because of failure to comply with case management orders.

9. By the start of the hearing, whatever delays there had been in complying with case management orders and the reasons for this, witness statements had been exchanged and there were bundles of documents. The claimant said he could proceed with the hearing and did not pursue his application to strike out.

10. The witness statement for the claimant's witness, Mr Turner, did not appear in the bundle of witness statements and Ms Ashraf said she did not have a copy of this statement. It appeared that this was because the respondent had deleted this, twice, together with the statement of the claimant, when the claimant had sent his statements, because the respondent was not, at that time, ready to send its statement. The claimant said he had not been aware until this hearing that the respondent had deleted the statements a second time.

11. The claimant sent the Tribunal and the respondent a copy of Mr Turner's statement, which was very short, and the respondent did not object to Mr Turner giving evidence.

Evidence

12. Both parties had produced a bundle of documents. The respondent had added the claimant's documents to the bundle it had produced and the claimant suggested that we should use the joint bundle. Page references in these reasons are to the bundle produced by the respondent.

13. There were references in the claimant's witness statement and a document included in the bundle which, it appeared to me, might be information which would be inadmissible under section 111A Employment Rights Act 1996. The claimant, after having this provision read to him, agreed that I should not read the document or take account of the information. The respondent did not object to me continuing to hear the case, on the basis that I would not read the document and would not place any reliance on any references to that which I had read.

14. I heard evidence for the claimant and from Ian Turner (an ex-employee of the respondent), on the claimant's behalf and from Dominic Popham, former European Sales Director of the respondent, for the respondent. For reasons which were not explained, I did not hear evidence from directors of the respondent who were said to have had conversations of significance with the claimant and Mr Popham, in particular Maqsd Patel, a director and investor, and Jabir Sheth, the chairman.

Facts

15. The respondent is a supplier of vehicle engine oil. The brand has been established in the oil industry since 1899. However, the brand was inactive for a number of years until it was purchased by the current board of directors. The respondent began to reintroduce the brand into the classic car oil industry.

16. At the time the claimant joined the respondent, the respondent had approximately 10 people in the United Kingdom, including Board members, and some employees internationally.

17. The claimant is a graduate mechanical engineer with a graduate diploma in engineering. He is a member of the US Society of Tribology and Lubrication Engineers. A tribologist is a mechanical engineer with product application skills. The skills are particularly useful in advising on the type of oil to use in cars or other machinery. The claimant's background, contrary to what Mr Popham was told, was not in sales. The claimant had worked within a number of oil companies at a senior level. Immediately prior to working at the respondent, he was International Business Manager, Projects Manager and Managing Director of Millers Oils, Azerbaijan. The claimant left this senior role in August 2017 to take on the position with the respondent.

18. The claimant began employment with the respondent on 1 September 2017. He was employed as "director: classic, motorsport and industrial". The contract given to him stated that his reporting line was to be clarified, agreed and confirmed prior to employment. The offer of employment stated that he was to be part of the Global Senior Leadership Team (66). I have seen no other document from before or around the start of the claimant's employment identifying his reporting line.

19. The claimant's contract set out the following brief description of employment:

"Lead the introduction of Duckham's brand into Classic Car market in UK, Europe and selected international countries with initial focus on UK and Europe, primarily through the on-line platform and in accordance with the strategy document agreed. Introducing formulations and setting up initial toll-blending for the range. Costing, packaging, pricing, marketing, etc. Subsequently lead Duckham's into selected lucrative industrial markets." (p.67).

20. The description of the claimant's role in the contract did not refer to sales.

21. A responsibilities' document set out a list of the claimant's intended responsibilities (p.66). This began with listing product selection and input to product requirement with manufacturer and a sub-list of duties relating to product introduction, including management of the production supply chain. Responsibilities included "Classic technical, answering all questions and responding to all technical e-mail enquiries." The only reference to sales in the list was a reference to direct sales to restoration workshops. The responsibilities' list was agreed with the respondent in a marketing meeting prior to Mr Popham joining the respondent. I

accept that Mr Popham did not see this document until these proceedings. However, Mr Popham accepted that the document broadly set out the claimant's responsibilities as he understood them, with the exception of answering technical queries. Mr Popham directed technical queries to Ian Atha since he understood Mr Atha was employed in a technical role.

22. The strategy document referred to in the claimant's contract was prepared by the claimant prior to taking up his role. The claimant says his job was not sales but he was to bring products to market. He prepared an outline plan dated 19 September 2016 (p.48) which he updated on 22 June 2017 (p.54). These were both produced before he started employment with the respondent and formed part of the process leading to the respondent offering and the claimant accepting employment. The outline plan anticipated sales being via the respondent's website and recorded that "the real effort must go into marketing and promotion which has to be extremely focussed and very strong" (p.52). The proposals in these outline plans support the claimant's evidence about his intended role. I accept the claimant's evidence that he was recruited because of his technical expertise, strong knowledge of the lubricants industry in general and the classic car, motorsport and industrial lubricants markets, in particular, as well as his experience of bringing products to market. There were no products to sell at the time the claimant began his employment; it was his role to create the products and bring them to market. I accept the claimant's broad description of his role in his witness statement as being an accurate representation of what he and the respondent anticipated to be his role when he was recruited: providing technical expertise, bringing further products to market, managing the stock and supply chain; and generally managing the classic and industrial lines. I find that, contrary to the respondent's submissions, the intention was not always that the claimant should be a salesperson.

23. The respondent asserts in its response (paragraph 9) that the respondent made the claimant fully aware that additional staff (including managerial staff) would be recruited to take over some responsibilities, in the context of the respondent having fewer than five employees when the claimant commenced employment. However, the respondent has produced no evidence as to what responsibilities the claimant was told would, in time, be removed from him.

24. When the claimant began employment, he reported directly to the Executive Board, mainly to Maqsud Patel and Jabir Sheth (a member of the board of investors and chairman respectively). This carried on for approximately a year, until Mr Popham joined the organisation in September 2018. The claimant was told, within a week of Mr Popham starting in September 2018, that the claimant was to report to Mr Popham. I have seen nothing to show that this was confirmed in writing, prior to the organisation chart which was issued in February 2019, showing the claimant with a reporting line to Mr Popham. I will return to this chart later in these reasons.

25. The claimant's contract stated that a fully expensed company car was to be provided, with the BMW model specified.

26. Dominic Popham joined the respondent with effect from 1 September 2018. He was employed until 30 August 2020 as European sales director. He was recruited to

head up sales. Mr Popham was told by Maqsd Patel and Jabir Sheth that the claimant had a strong sales background. As previously noted, Mr Popham was not shown the responsibilities document which set out the claimant's responsibilities (see paragraph 21). Mr Popham understood the claimant's role to be to introduce products into the oil market and to drive sales to the business. He understood the intention to be that the claimant was to lead sales of the Classic Duckham's range. Mr Popham refers to the claimant in his witness statement as a salesperson (e.g. at paragraphs 7 and 9). I find that Mr Popham understood, incorrectly, the claimant to be employed predominantly as a salesperson.

27. There was a change to the car allowance in September 2018 as others, including Mr Popham, joined the respondent. No employee other than the claimant was ever provided with a fully expensed car. The claimant did not object to the principle of replacing provision of a fully expensed company car with an allowance but asked questions about the allowance. Both Mr Popham and the claimant complained to the Finance Director about the level of mileage allowance, which they both felt did not fully cover their expenses. However, the Finance Director refused to increase this. There was correspondence about this in April 2019 (p.83). There is no evidence to suggest that the claimant was singled out in relation to the level of mileage allowance. As the only person who had previously had a fully expensed company car, I accept that the claimant was adversely affected by the change from the provision of a car to a car allowance; the allowance was not sufficient to pay for the same type of car that the claimant had previously been provided with.

28. Within the first week of Mr Popham starting, the claimant and Mr Popham were told by Maqsd Patel, who came into a meeting they were having with Mr Venikataraman, the CEO, that the claimant would report to Mr Popham from then on. Mr Popham was surprised by this and thought the claimant looked both surprised and unhappy, but the claimant did not complain about this at the time.

29. On 14 January 2019, Jennie Vickery joined the respondent as Sales Operations Manager. In the email announcing her appointment, Mr Popham stated that one of her main priorities would be to manage the end to end supply chain from raw material procurement to the logistics around finished goods and customer orders. The claimant had previously been managing the supply chain. This reallocation of duties was not discussed with him. Mr Popham and Ms Vickery knew each other from working for a previous employer.

30. Ian Atha joined the respondent at some time prior to Mr Popham joining. He was described on the organisation chart as Head of Technology, although he described himself in emails to clients as Chief Technical Officer. Mr Atha was a chemist, rather than a tribologist. When the claimant started employment, the claimant had fielded technical queries in relation to the application and use of classic car oils. "Classic technical, answering all questions and responding to all technical emails" had been included in the responsibility list as amongst the claimant's responsibilities. I find that Mr Popham is mistaken in the evidence in his witness statement that it was never the claimant's role to answer technical questions. However, I accept that Mr Popham understood this was Mr Atha's role, since Mr Atha was employed in an explicitly technical role and, therefore, Mr Popham passed technical queries to Mr

Atha to deal with. When Ms Vickery started distributing enquiries from the website, she directed queries to Mr Atha, rather than to the claimant. Mr Atha began to answer some of the technical queries which had previously been dealt with by the claimant. Some mistakes were made by Mr Atha in dealing with issues, for which Mr Atha apologised to customers.

31. In an email to the claimant and Ian Atha dated 16 January 2019, Mr Popham referred to them and him as a sales team (p.68). Ian Atha's job title, according to the organisation chart, was Head of Technology. There was still a small group of employees at the respondent and I find that employees took on multiple roles. Mr Popham was aware that the claimant carried out sales activities with reluctance.

32. On 13 February 2019, an organisational chart was sent out. An amended version was sent on 15 February 2019 (p.80). The organisation chart described the claimant as "Head of UK and Europe classic range". This was different to the title in his contract of employment, which had been "director: classic, motorsport and industrial". The claimant had not agreed to a change of title. Mr Popham says in evidence that the title in the organisation chart was a mistake and an amended chart was not produced as the team was still very small. I am not satisfied that the error with the job title was an administrative/typographical error by an HR assistant, as asserted by Mr Popham. An amended chart was produced, two days after the original chart, which still contained the error. The respondent's HR record continued to give the claimant's title as Head of the UK and Europe Classic Range after the claimant's resignation (p.142). I consider that, had an administrative or typographical error been made in the original chart, this would have been corrected in the amended chart and in the HR records. I find, on a balance of probabilities, that the claimant's job title as stated in the organisation chart was as the respondent intended this to be at the time.

33. The chart showed the claimant reporting to Mr Popham. I find that the reporting line was in accordance with what the claimant and Mr Popham had been told when Mr Popham started, in early September 2018. Ms Vickery was also shown as reporting to Mr Popham. Mr Popham was shown as reporting to the CEO, Mr Venkataraman. Ian Atha, Head of Technology, and Raasheda Ilyaas, Head of Marketing, are also shown as reporting to the CEO.

34. On 16 February 2019, the claimant emailed Mr Maqsd Patel and Jabir Sheth. He referred to receiving the amended organisation chart. He wrote that he thought they had changed that after a discussion regarding his reporting line. He wrote "it is extremely disappointing and demotivating." Based on this, I find that the claimant had had a discussion before 16 February 2019 with Mr Patel and Mr Sheth as a result of which he thought that his reporting line directly to the Executive Board had been restored. The claimant did not refer, in his email, to the job title. The claimant wrote:

"I have slept on it as annoyed as I was yesterday evening. I don't want to go into a long justification email about the why's and wherefore's of why I will not accept this, both from the perspective of my own professional standing, huge international experience in lubricants in sales, technical, production

operations, running companies and P and L's. I actually do believe Duckhams is a premium brand, which the FBHVC survey has shown - not just amongst classic car owners.

“To get to the point, do you think you could please change this situation or is it now best that I explore my options outside the Company? (Which I don't really want to do, I'm getting ahead with the brand in one segment now, have done most of the hard slog and can offer so much in future).”

35. On 16 February 2019 (p.137), Jabir Sheth, sent an email to the claimant which appears to be replying to the claimant's email, although from the time stated on the email it seems to have been sent earlier than the claimant's email. Mr Sheth wrote: “Martin - I've just seen this and I also did receive the email but unfortunately could not open it because it was a zip file! Max has just spoken with me that he's had a conversation with you, I am ok with the outcome but please refrain from making threats, Duckhams do not operate this kind of the policy.”

36. I accept the claimant's evidence that Maqsud Patel told the claimant that he would report to him. I also accept Mr Popham's evidence that he was not told that the claimant would no longer report to him.

37. On 4 April 2019, Abdul Patel emailed the claimant about a new purchase order approval process (p.326). He wrote that, “as we continue to grow, especially in terms of personnel, so too must our policies and procedures. Our processes need to be commensurate to the growth and ambitions of Duckham's.” He wrote that, to that end, they were working on several policy documents, including a purchase order approval process. Until it was issued, he wanted to clarify the claimant's purchase order approval limits. He wrote: “you should obtain approval from one of Dom/ Jenny/ Raasgeeda/ or myself regarding all purchasing commitments. All purchases/ obligations of any amount (stock and nonstock) must be approved prior to making the commitment. The only exception being miscellaneous expense purchases not exceeding £250 in total in a month. Further, any customer sales pricing changes should also be preapproved by Dom and in his absence, myself.” He invited the claimant to call him if he needed to discuss this.

38. The claimant emailed Maqsud Patel on 4 April 2019 in response to Abdul Patel's email, asking to see Mr Maqsud Patel about this (pp 325-326). He wrote:

“I'm not sure there is a way forward any more, but if there is, I'd like to find it.

Ever since Dominic and Jenny arrived there has been intolerable politics, him jumping all over classic, claiming accounts yet offering no new leads of his own. Vantage, Beroil, Optimum, Opie, all down to earlier work, or buying classic not PCMO. Case in point is Ian Turner and now it appears that I am to follow in his footsteps. Duckham's will be a political corporate with no sales in UK.

“As was mentioned at branding workshop this week, we’re small and meant to be entrepreneurial: in another example it has taken three of them to examine Experian to set an obvious credit limit.

“Instead of this nonsense and constant micro-management in classic, where are the sales in PCMO, the leads, the new accounts, the 1,980,000 litres @ £1.8M GM? I have brought 4 order [sic] in in the last two days since a workshop with more to follow. I get no encouragement from the “team” just kicks in the nuts and painfully slow support.

“Anyway, let me know a time we can meet or whether this latest demotion has your support and, if so, I’ll accept it and clear the way for you to employ a junior rep rather than myself.

“This has been coming to a head for several months now, Maqs and I think rather than suffer in silence, let’s just make a call?”

39. Mr Turmer had been dismissed by the respondent. There is a dispute as to the reason for Mr Turmer’s dismissal. I heard evidence from Mr Turmer. I make no findings of fact as to why Mr Turmer was dismissed; I do not consider this relevant to any of the matters I need to decide in relation to the claimant’s complaint of constructive unfair dismissal.

40. Maqsdud Patel replied to the claimant’s email of 4 April 2019 the same day, suggesting a time to meet the next day and saying that, in the meantime, he would get to the bottom of this.

41. I heard no evidence as to what was discussed in the meeting on 5 April 2019. However, given what followed, this may have been the start of discussions resulting in the draft contract dated 10 June 2019.

42. In April 2019, Mr Popham appointed Ms Vickery to deputise for him whilst he was on holiday. During a previous absence, in March 2019, Mr Popham wrote that, if there was anything which needed clarifying, to contact Ms Vickery as she and he were pretty close on what was happening currently (p.329).

43. In April 2019, Mr Popham cancelled expenditure of £2000 per month to “Classic Friendly” on the basis that this expenditure had been incurred by the claimant without authority. I accept the claimant’s evidence, supported by an email from Maqsdud Patel dated 27 November 2018 (p.355), that he understood this expenditure had been authorised by the respondent’s CEO. The expenditure appeared in approved budgets. I also accept Mr Popham’s evidence that Mr Popham never received details of exactly what the expenditure related to.

44. The claimant perceived Mr Popham as taking over the relationship with the Federation of British Historic Vehicle Clubs (FBHVC), with whom the claimant had previously dealt. I have seen no evidence that the claimant raised objections about this at the time. The claimant has not satisfied me that Mr Popham excluded the claimant from dealings with the FBHVC. In oral evidence, Mr Popham agreed that he

had attended the House of Commons as a guest of FBHVC but said he had told the claimant he was welcome also to attend but did not think it was worth coming to London for a couple of hours, but left the choice to the claimant. The claimant did not attend and Mr Popham only used one of two tickets provided. The claimant did not dispute Mr Popham's evidence about this event.

45. In May 2019, questions were raised about proposed expenditure of £6000 with the Federation of British Historic Vehicle Clubs (FBHVC). Mr Popham suggested the claimant had been with him at a meeting where this expenditure was agreed. Subsequently, Mr Popham apologised, accepting that the claimant had not been present.

46. At the end of May or early June 2019, Mr Popham raised an issue about branded boxes which had been purchased with the approval of the Duckham's board. The claimant felt that Mr Popham was seeking to blame him not disclosing the existence of nine full pallets of these branded boxes. It appears that the boxes should have been sent on to Opie Oils for online sales but this was not done when Ms Vickery had taken over responsibilities previously done by the claimant. The claimant suggested that Ms Vickery would have been aware of the existence of the boxes when she and the finance director did a physical stock check in February 2019.

47. On 7 June 2019, Ms Vickery emailed the claimant asking him not to access or view the respondent's info email "in order to free up your admin time and avoid duplication" (p.299). I accept Mr Popham's evidence that the intention of giving control to Ms Vickery of responses to enquiries was to ensure that enquiries were logged, referred to the correct department and that they were dealt with on time. However, I accept that the claimant viewed this as a further instance of his responsibilities being removed.

48. I accept the claimant's evidence that he found the changes to his role to be professionally embarrassing. He had worked in the oil industry for a long time and knew many people in the industry. He found it highly embarrassing when clients asked why he was not doing certain things.

49. I find that the claimant sought to negotiate a contract for services with the respondent, for a few days' work each week, which he intended to do as well as work for other clients he hoped to obtain, because he was not happy with his position at work. I reject the evidence of Mr Popham that the claimant requested to become a self-employed contractor as this would be more lucrative for him. The claimant would have worked reduced hours for the respondent and tried to get other work to make up the financial short fall. The claimant's email of 4 April 2019 to Maqsd Patel expressing unhappiness at the situation at work and what he viewed as a "demotion", supports the claimant's account of why he tried to negotiate the contract for services, rather than Mr Gough's evidence for the respondent.

50. It is not clear from the evidence exactly when these discussions began. This was some time after 4 April 2019 and before 10 June 2019. It appears from the claimant's evidence that the suggestion that the claimant should change his role with the

respondent was initiated by the claimant. Maqsd Patel wanted to keep the claimant within the company.

51. The claimant and Maqsd Patel had discussions as a result of which a draft contract was prepared by Maqsd Patel on 10 June 2019 (p.86) for the claimant to work on a part-time self-employed basis for the respondent. The claimant and Mr Patel agreed draft terms for a self-employed role. These included that the claimant would report directly to the Board of Investors “but specifically not to the current European Sales and Marketing Director” i.e. Mr Popham.

52. The draft contract was passed to the respondent’s in house legal adviser. On 19 July 2019, the claimant emailed the adviser to ask about the contract (p.88). He concluded: “If there are any material changes to what has been agreed, I need to decide whether I accept them or whether I have to terminate in terms of my existing employment contract with Alexander Duckham and Co, i.e. 12 weeks notice, which I really hope will not be the case as I actually love this company.”

53. A draft contract was provided to the claimant on 23 July 2019. This included the claimant reporting to the sales director i.e. Mr Popham. The claimant sent comments on this contract on 29 July 2019. Having had no response to these comments, the claimant resigned on 5 August 2019, giving 90 days’ notice, which was the notice period required in his contract. The claimant resigned after he was unable to agree terms for a contract on a self-employed basis.

54. I accept that the claimant worked his notice period, rather than resigning with immediate effect, because he felt he needed the time of the notice period to try to find other work. Financially, he did not feel able to leave with immediate effect, with no other work to go to. He felt that, having given notice, there was light at the end of the tunnel. He had agreed with Maqsd Patel the work he would do during the notice period and that he would be reporting to Mr Patel, rather than to Mr Popham.

55. In his resignation letter (p.132), the claimant wrote to Maqsd Patel that his first year with the respondent was thoroughly enjoyable “selecting products for the classic range, using my network, setting up and managing the supply chain, price file building, introducing the first classic products to the market within two months, managing the technical aspects, handling customer queries, preparing datasheets, promoting Duckhams at events and shows, logistics etc.” He wrote: “however, the vast majority of this work has now been devolved to more recent incumbents and my role has lost much of its appeal, being reduced to basic sales.” The claimant expressed discontent with the way the business was being run and to finding the “politics” quite stressful.

56. The claimant wrote about the development of the draft contract proposal into “a legalistic 20-page nightmare” which he asserted differed significantly from what they had agreed. He wrote further: “we had attempted to help to save the company some costs on the basis that the value of my role had been greatly reduced by it being largely distributed amongst other personnel and cut down to just a sales role. It is now over six weeks since you and I discussed the idea, there was still neither agreement in key areas (which were changed) nor a start date and under these

circumstances, I now no longer wish to continue these discussions and will leave my role entirely.” The claimant concluded by thanking Maqsd and Jabir “for the good times we had during the last couple of years and I wish you all the very best of good fortune for the future of the Duckham’s project.”

57. The claimant refers to being excluded from marketing meetings on 20 September 2019, but this is after the claimant resigned, so cannot form part of the reasons for his resignation and I make no findings of fact about the alleged exclusion.

58. The claimant’s employment ended on 1 November 2019.

Submissions

59. The parties made oral submissions.

60. In summary, Ms Ashraf made the following submissions on behalf of the respondent. She referred to **Kaur v Leeds Hospital**. She submitted that the respondent was not in breach of contract and the claimant resigned because he was not happy with the terms of the new contract. Ms Ashraf submitted that the claimant had been recruited due to a heavy sales background and the intention had always been for the claimant to be a salesperson. She submitted that, if the respondent was in breach of contract, the breach was so trivial that the claimant could not rely upon this for constructive dismissal.

61. Ms Ashraf acknowledged that there were some errors in the February 2019 chart in respect of the claimant’s job title. However, the claimant did not require an amendment and did not submit a formal grievance. She submitted that the job title did not change. The claimant’s duties remain the same and his salary was unaffected. There was no demotion. Around May 2019, the claimant requested that he become a self-employed contractor. Ms Ashraf submitted that the claimant left not because of any breach of contract but because he disagreed with the terms of the self-employed contract. He worked a full three months’ notice but any reasonable person would have left immediately if they felt there was a breach of contract of employment. The respondent submitted that the claimant was not constructively dismissed and the unfair dismissal claim should, therefore, fail.

62. The claimant, in making his oral submissions, repeated points made in his written document which is annexed to these reasons.

The Law

63. The law in relation to unfair dismissal is contained in the Employment Rights Act 1996. Section 94(1) of this Act provides that an employee has the right not to be unfairly dismissed by his employer. Section 95(1)(c) provides that an employee is to be regarded as dismissed if “the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer’s conduct.”

64. An employee will be entitled to terminate a contract of employment without notice if the respondent is in fundamental breach of that contract and the employee has not affirmed the contract by their conduct.

65. An implied term of an employment contract is the term of mutual trust and confidence. This is to the effect that an employer will not, without reasonable or proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee. Browne-Wilkinson J in **Woods v WM Car Services (Peterborough) Limited** 1981 ICR 666, said that the tribunal must “look at the employer’s conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it.”

66. A course of conduct can cumulatively amount to a fundamental breach of contract entitling an employee to resign and claim constructive dismissal following a “last straw” incident, even though the “last straw” is not, by itself, a breach of contract: **Lewis v Motorworld Garages Limited** 1986 ICR 157 CA. The last straw does not have to constitute unreasonable or blameworthy conduct, but it must contribute, however slightly, to the breach of the implied term of trust and confidence: **Omilaju v Waltham Forest London Borough Council** 2005 ICR 481 CA.

67. In **Kaur v Leeds Teaching Hospitals NHS Trust** [2018] EWCA Civ 978, the Court of Appeal has reasserted the orthodox approach to affirmation of the contract and the last straw doctrine i.e. that an employee who is the victim of a continuing cumulative breach of contract is entitled to rely on the totality of the employer’s acts, notwithstanding a prior affirmation. The Court of Appeal set out the questions the tribunal must ask itself in a case where an employee claims to have been constructively dismissed:

- (1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?
- (2) Has he or she affirmed the contract since that act?
- (3) If not, was that act (or omission) by itself a repudiatory breach of contract?
- (4) If not, was it nevertheless a part (applying the approach explained in *Omilaju*) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the *Malik* term? (If it was, there is no need for any separate consideration of a possible previous affirmation because the effect of the final act is to revive the right to resign.)
- (5) Did the employee resign in response (or partly in response) to that breach?

68. Where there are mixed motives for a resignation, the Tribunal must decide whether the employer’s fundamental breach of contract was an effective cause of the resignation. It does not need to be “the” effective cause. A claimant can claim

constructive dismissal if the repudiatory breach of contract was one of the factors relied upon, even if the claimant leaves employment for “a whole host of reasons”: **Abbycars (West Horndon) Ltd v Ford** EAT/0472/07.

Conclusions

69. As outlined previously, the issues I need to consider are as follows:

69.1. Did the claimant resign because of an act or omission (or series of acts or omissions) by the respondent, the acts relied upon for the alleged breach of the implied duty of mutual trust and confidence being those set out by the claimant in his document “Claimant’s list and dates of mutual trust and confidence breaches by respondent for Manchester ET”, (a copy of which is annexed to these reasons)?

69.2. If so, did the respondent’s conduct amount to a fundamental breach of contract? The contract terms relied upon were as set out above.

69.3. In relation to the issue as to whether there was a breach of the implied duty of mutual trust and confidence, I needed to consider whether the respondent, without reasonable or proper cause, conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between the parties.

69.4. Did the claimant affirm the contract by his conduct, including any delay?

The reason for the claimant’s resignation

70. I conclude that the claimant resigned because of unhappiness about what his role in the company had become, being reduced, as he saw it and described in his resignation letter, to “basic sales” and because he disliked the way the company was being run and found what he described as “politics” stressful. It was the concerns expressed in his resignation letter which had led the claimant to seek to negotiate a different, self-employed role with the respondent. When he and the respondent had not reached agreement on key terms by 5 August 2019, the claimant decided to resign, giving notice.

71. I reject the respondent’s submission that the claimant left, not because of any conduct on the part of the respondent which the claimant alleges to constitute a fundamental breach of contract, but because he disagreed with the terms of the self-employed contract. The claimant’s resignation letter makes clear the reasons why the claimant was seeking to negotiate other terms of engagement. It was not, as Mr Popham suggested in his evidence, and as the respondent asserted in their grounds of resistance, because the claimant wanted to move to a self-employed arrangement because this would have been more financially beneficial for him. Agreement on the terms of a self-employed contract would have led to a termination of the employment contract by agreement, but this does not mean that resignation following failure to agree such terms was not because of the respondent’s conduct which led the claimant to seek to negotiate such terms. The fact that the claimant gave and worked

his full notice period does not mean there cannot be a constructive dismissal. The wording of section 95(1)(c) ERA expressly contemplates that the resignation can be with or without notice. I have accepted the reasons given by the claimant for working his notice (see paragraph 54).

72. The claimant has relied, in these proceedings, on a considerable number of matters as together constituting the reason for his resignation. The claimant set these out in the document which is annexed to these reasons. The resignation letter does not expressly refer to many of these matters, whilst also referring to matters such as “endless administration”, “plain poor decisions” and failure to bring new sales contacts into the organisation, which do not appear to allege conduct which contributes to a fundamental breach of contract. A few of the matters referred to in the claimant’s list post-date his resignation and cannot, therefore, have been part of the reason for his resignation e.g. exclusion from marketing meetings on 20 September 2019.

73. I accept that all the matters referred to in the claimant’s list were matters of concern to the claimant.

74. It is not clear exactly when the claimant decided to try to negotiate an alternative role and to resign if he could not do so. It is also not clear what, if anything, was a “last straw” which led to these decisions. The claimant threatened to explore options outside the company from as early as 16 February 2019, following the organisation chart showing the claimant reporting to Mr Popham, to which the claimant objected (see paragraph 34). In response to the new purchase order process, requiring the claimant to get approval from Mr Popham, Ms Vickery or two others for purchasing commitments over £250 in a month, the claimant wrote on 4 April 2019 referring to this “latest demotion” and suggesting that he will accept this “and clear the way for you to employ a junior rep rather than myself” if the “demotion” had Mr Patel’s support (see paragraph 38).

75. As noted in paragraph 41, I heard no evidence as to what was discussed in the meeting on 5 April 2019 between the claimant and Mr Patel. However, given what followed, I conclude this may have been the start of discussions resulting in the draft contract dated 10 June 2019.

76. Given that the claimant has not specifically identified anything after 4 April 2019 as being the trigger for him seeking to negotiate different terms of engagement, I consider it likely that matters of concern which fell in the period after 4 April 2019 but before the claimant’s resignation, shored up the claimant’s decision to resign, rather than being anything which could be described as the “last straw”, causing the claimant to resign.

77. A fundamental breach of contract does not have to be the only reason for a resignation for there to be a constructive dismissal. It is enough that the fundamental breach of contract is one of the reasons for resignation.

78. The failure to agree terms for a self-employed contract was one of the reasons for the resignation. Failure to agree a contract as a self-employed contractor could

not constitute a breach of the employment contract, and the claimant does not allege that it does. Also, as noted above, the claimant had concerns expressed in his resignation letter which contributed to his decision to resign but which are about matters he does not rely on as forming part of a fundamental breach of contract.

Whether the respondent's conduct amounted to a fundamental breach of contract

79. I need to consider whether matters on which the claimant relies, either individually or collectively, constitute a fundamental breach of contract. I have accepted that all the matters referred to by the claimant in his list were matters of concern, although ones which post-dated the resignation cannot form part of the reason for his resignation.

80. The claimant identified that he relied on four contractual terms: the implied duty of mutual trust and confidence; a term as to his pay; a term as to his position in the organisation; and a term as to his duties. The claimant, however, relied on the matters relating to pay (which I understand to be about the car allowance), his position in the organisation and his duties as part of his argument as to why there was a breach of the implied duty of mutual trust and confidence. He did not make any separate arguments which explained how he would say there was a breach of the alleged terms, other than a breach of the implied duty of mutual trust and confidence, if there was not a breach of the implied duty of mutual trust and confidence. It does not appear to me that there could be a repudiatory breach of any of the other alleged terms without there being also a breach of the implied duty of mutual trust and confidence. I consider, therefore, that it is not necessary to deal separately with alleged breaches of other alleged terms if I deal with whether there was a breach of the implied duty of mutual trust and confidence.

81. I conclude that the claimant's principal concern was what he considered to be a demotion; his role being reduced to that of a salesperson, rather than the more senior role to which he had been appointed. In his resignation letter, he wrote about the vast majority of his work being devolved to more recent incumbents and his role being reduced to "basic sales" (see paragraph 55). He had previously expressed concern about "demotion" in his email of 4 April 2019, prompted by the £250 limit on his spending (see paragraph 38). He objected to the organisation chart showing him as subordinate and reporting to Mr Popham (see paragraph 34).

82. The claimant's contract stated that his reporting line was to be clarified, agreed and confirmed prior to employment (see paragraph 18). There is nothing further in writing about the reporting line before the claimant began employment. When he started, and for about a year, he reported directly to the Executive Board (see paragraph 24). This changed very soon after Mr Popham was appointed, when Mr Maqsd Patel told the claimant and Mr Popham that the claimant would report to Mr Popham. The claimant did not initially object to this. However, the way the reporting line came to be operated, in accordance with Mr Popham's misunderstanding that the claimant was intended to be primarily a salesperson, caused the claimant to be objecting to this by some time before 16 February 2019 (see paragraph 34). I conclude that this change in reporting line could contribute to a breach of the implied duty of mutual trust and confidence. The respondent has presented no evidence as

to why this change in reporting line was imposed. There is no evidence on the basis of which I could conclude that the change was for reasonable and proper cause. I consider that the change from reporting to the Executive Board to reporting to Mr Popham was a change which was likely to seriously damage the relationship of confidence and trust between the parties.

83. I reject the respondent's submission that the claimant's duties remained unchanged. This submission rests on the assertion, which I rejected in my findings of fact, that it was always intended that the claimant would be a salesperson (see paragraph 22).

84. I conclude that the claimant's status within the organisation was diminished. He had been recruited for a senior role, described as a "director", but, within a few months of Mr Popham starting, he was subordinate to Mr Popham, as reflected in the organisation chart, and duties were being removed from him.

85. I conclude that the organisation chart reflected the reality of the claimant's role as it had changed. The claimant's position can be contrasted with that of Ian Atha and Raasheda Ilyaas, who are shown as reporting to the CEO.

86. In a growing organisation there may, of course, be changes to roles as new people are appointed and new procedures introduced which may not have been necessary when the organisation was very small. The claimant could not properly object to changes which were to reduce administrative burdens on him and to free up his time for more important duties or to procedures which, although he may have found them burdensome, were introduced for good reasons e.g. of financial control. Such changes would be for reasonable and proper cause and could not form part of a breach of the implied duty of mutual trust and confidence.

87. I conclude, however, that there were significant changes to the claimant's responsibilities, which fundamentally changed his role within the organisation and his status as a senior employee. Most significant, was the concentration on work as a salesperson, reporting to Mr Popham.

88. Responsibilities in relation to the supply chain were given to Ms Vickery. I conclude that this was a significant diminution of the claimant's responsibilities. Management of the production supply chain was included in the responsibilities' document (see paragraph 21). This was not just a removal of administrative tasks to free up the claimant's time for more important tasks; it was the removal of managerial responsibilities. The respondent has not satisfied me that this change was for reasonable and proper cause.

89. Technical queries relating to Classic vehicles on the website were directed away from the claimant. I do not consider that preventing the claimant from accessing the info email inbox was itself something which could form part of a breach of the implied duty of mutual trust and confidence; it appears that there was good reason, or reasonable and proper cause, for doing this, to ensure that there was an audit trail of who was dealing with what, and what had been dealt with. Not directing queries relating to Classic vehicles to the claimant was, however, a significant change to his

responsibilities which could form part of such a breach. "Classic technical, answering all questions and responding to all technical emails" had been included in the responsibility list as amongst the claimant's responsibilities (see paragraph 30).

90. I do not consider that the change from a fully expensed car to a car allowance was, per se, something which could form part of a breach of the implied duty of mutual trust and confidence. The respondent had reasonable and proper cause for making the change; no other employee was to be given a fully expensed car. The claimant did not object in principle to the change to an allowance. His objection was to the amount of allowances he subsequently received. The objections he raised were about the mileage allowance.

91. I do not consider that Mr Popham appointing Ms Vickery to deputise for him, in his absence, was something which could contribute to a breach of the implied duty of mutual trust and confidence. There was reasonable and proper cause to nominate someone to deal with queries in Mr Popham's absence. Given their respective roles, and the fact that they worked closely together, Ms Vickery was a suitable person to nominate.

92. The claimant was unhappy about the way Mr Popham got involved with dealings with the FBHVC. The claimant's evidence has not persuaded me that the claimant was excluded from dealings with the FBHVC. I do not, therefore, consider this to be a matter of sufficient significance to potentially form part of a breach of the implied duty of mutual trust and confidence.

93. The claimant has not satisfied me that the matters he described as false accusations against him were raised with malicious intent or were other than mistakes. Given this, I conclude that these matters cannot form part of a breach of the implied duty of mutual trust and confidence.

94. There may have been good reasons for introducing new financial controls. However, to require the claimant, who had been appointed as a senior employee, to obtain authority for expenditure over £250 during a month from one of a number of people, including Ms Vickery, who was not at a higher level in the organisation, even on the organisation chart which I have concluded showed a demotion to the claimant's original senior role (see paragraph 37), was, I conclude, a demonstration of the reduction in the claimant's status. The claimant's reaction to this, describing it as a demotion, shows that he took it this way.

95. Whilst I have not concluded that all the matters the claimant refers to in his list are matters which could constitute part of a breach of the implied duty of mutual trust and confidence, the matters relating to the reduction of the claimant's status and responsibilities are so serious that I conclude that the respondent was, because of these acts, in breach of the implied duty of mutual trust and confidence. I conclude that the respondent's conduct in these respects was a fundamental breach of contract.

Did the claimant affirm the contract by his conduct, including any delay?

96. I conclude that the claimant did not affirm the contract in relation to the matters I have concluded have, taken together constituted a breach of the implied duty of mutual trust and confidence. The claimant objected from some time before 16 February 2019 up to and including his resignation letter, to his demotion to a largely sales role, reporting to Mr Popham.

97. If provision of the car is the term about pay which the claimant alleges was breached and this is considered as a separate term, rather than as part of the matters relied upon for a breach of the implied duty of mutual trust and confidence, I conclude that, if there was a fundamental breach of the term, the claimant affirmed the contract and lost the right to resign as a result of the removal of his car. However, as noted above, it did not seem to be the removal of the car per se, which was the problem, but discontent with particularly the mileage allowance the claimant received after he was no longer provided with a fully expensed car.

Overall conclusion

98. I conclude that an effective reason for the claimant's resignation was the respondent's breach of the implied duty of mutual trust and confidence, in relation to the demotion of the claimant from a senior role, to a largely sales role, reporting to Mr Popham, including the removal of significant duties relating to his role. The claimant did not affirm the contract in relation to the matters together constituting this breach. I, therefore, conclude that the claimant was constructively dismissed. The respondent has not argued that, if there was a constructive dismissal, it was for a potentially fair reason. Since the respondent has not shown a potentially fair reason for the constructive dismissal, I conclude that the dismissal was unfair.

Employment Judge Slater

Date: 10 March 2021

RESERVED JUDGMENT & REASONS
SENT TO THE PARTIES ON

22 March 2021

FOR THE TRIBUNAL OFFICE

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ANNEX

Claimant's list of matters relied on as constituting a breach of the implied duty of mutual trust and confidence

CASE NO: 2402295/2020 : Claimant's List and Dates of Mutual Trust and Confidence Breaches by Respondent for Manchester ET

Claimant's pay reduction and demotion for no reason:

1. I was demoted unilaterally, for no reason as is evidenced by the Company's issued organogram, about which I complained to the Main Board. **15.02.2019 and to 01.11.2019**
2. Unilateral Demotion from Director of Classic, Motorsport and Industrial to Salesperson – as per Respondent Particulars of Response and Organogram dated **15.02.2019** in which I am shown as subordinate to Dominic Popham (also see email dated **16.01. 2019** from Dominic Popham to Ian Turner in which I am referred to as a salesperson); **16.01.2019**
3. I was unexpectedly made to seek authorisation for trivial amounts of money from a part-time contractor, supposedly made to be an equal, not befitting of the Director, Classic, Motorsport and Industrial, with 35 years international experience. **04.04.2019**
4. I was made to report to this contractor, Jennie Vickery, Dominic Popham's friend from Castrol, during another of The European Sales Director's (Dominic Popham's) periods of absence on multiple occasions. **01.04.2019**
5. The HR files continued to show this demotion until my departure on **01.11. 2019.**
6. In the Respondent's Witness Statement Dominic Popham repeatedly refers to me as one of his 'sales team' or a 'salesman', which was never discussed nor agreed (neither the reporting line nor the function). I had never been given a sales target previously as the classic sales were agreed to be 'on-line', supported by the Marketing Department and set up as such with Global Distribution Ltd, Batley. My role as *Director, Classic, Motorsport and Industrial* was far senior and wider ranging than that of a 'salesperson' Referring to me as a 'salesperson' was a clear admission that my role had been changed and a clear and material breach of my Terms of Employment: I was employed as Director, Classic, Motorsport and Industrial. **16.01.2019 onwards (and Dominic Popham's witness statement).**
7. Without any discussion, my fully expensed Company Car, a BMW 320i Sportline, was removed and replaced with a 'car allowance scheme' which was insufficient to purchase a similar vehicle with a mileage rate allowance fully 44% lower than the HMRC recommended rate for business use car allowance. A pay cut, in effect, pushing me into a small hatchback for often very long drives to Classic events and taking no notice of the fact that I towed

a half-tonne trailer to trade shows that exacerbated the problem and in fact I effectively had to pay in to travel to work. **26.04.2019**, I complained about this in writing to the Financial Director, to no avail.

Forced to accept unreasonable material changes to how I worked

1. Virtually all of my roles and responsibilities were removed from me with no warning and distributed to other members of staff by Dominic Popham:

16.01.2019 onwards

- a. I was the only qualified Tribologist (Mechanical Engineer with product application skills) with many years of Classic experience, in the group, yet the role of discussing products and their applications in Classic vehicles was passed to a chemist, Ian Atha, with no such skills or experience with often disastrous results (incorrect recommendations). Ian himself wrote laborious apologies to customers initially. when mistakes were pointed out. **12.06.2019**

When I tried to assist in correcting these mistakes to avoid reputational damage to the Company, I was banned by the newly contracted Operations Sales Manager (Jennie Vickery) from accessing the email enquiry site that I had been involved with from Day One of my employment. Jennie is a house-friend of Dominic Popham and worked with him at Castrol at some point and whom he took on as his right-hand person. **16.01.2019**

- b. I had introduced the entire supply chain, all of whom I had worked with previously, to the Company and this was again, most unexpectedly, passed in its entirety, to Jennie Vickery. No additions to the supply chain were made save for the appointment of Dominic Popham's relatives to handle all Duckhams' logistics, T Alun Jones in rural Welshpool, ostensibly by Jennie Vickery but with the RFQ (Request for Quotation) 'process' being presented to the staff by Dominic Popham. There were significant issues because T Alun Jones are agricultural suppliers and frequently damaged the delicate tins on delivery and had no facility to honour on-line orders. Activities that previously took weeks, now took months. **16.01.2019**
- c. I had managed to form a partnership with the prestigious and over-arching Classic Car authority '*The Federation of British Historic Vehicle Clubs*' but Dominic Popham simply took over my liaison role with their Chairman without warning or discussion. **18.12.2018 and others.**
- d. Jennie Vickery mishandled multiple export orders, by her own admission never having worked on export orders previously, and missing out vital information such as the Export Tariff Codes, causing goods to be held up at ports, for example, Malta with the customer having to pay demurrage fees. **04.04.2019 and 03.07.2019**
- e. Another customer complained that because I had not been involved in a Classic Oil deal for Singapore, hidden from me despite my asking for details from Dominic Popham and Jennie Vickery, because he required assistance on the features and benefits of the products, which Dominic

Popham and Jennie Vickery were unable to provide, so that he could sell them. **03.07.2019 and 27.06.2019**

- f. As the Director, Classic, Motorsport and Industrial, I was completely excluded from Marketing meetings where the advertising, promotions and events schedules were being discussed for Classic The result was no advertising, events or promotional activity, with a hollow promise to promote on on-line forums, when the uptake in the classic car owner demograph for on-line is very small. **20.09.2019**
- g. This completely ignored the fact that the CEO of the Company, in discussions previously with myself, had approved £20,475 for Advertising and Clubs. Later I was advised that I was to seek approval save for £250 total monthly expenditure from Jennie Vickery despite this approval, the budget was blocked with concomitant results. Budget approval: **October 2018**

Other employees were allowed to harass or bully me.

- a. **False accusation:** Dominic Popham and the Jennie Vickery, when they changed logistics supplier to Dominic Popham's relations, T Alun Jones in Welshpool, were forced to use Opie Oils as their on-line fulfilment company because T Alun Jones did not cater for on-line sales, calling into question why they had been selected as the logistics partner as on-line classic was the only line that was selling. In transferring the product to Opie Oils Ltd, after Dominic Popham and Jennie Vickery had taken the stock checking responsibility away from me, they omitted to send 9 full pallets of Duckhams-decorated packing boxes to Opie, a serious and expensive mistake. These thousands of decorated boxes were produced as a result of a Board decision to 'enhance the customer's Duckhams experience'. When their error was discovered, Dominic Popham and Jennie Vickery tried to blame me for the error to the Board and the Financial Director. After much unnecessary research, I was able to prove through written and timed correspondence that they themselves had stock-counted the 9 pallets after this role had been taken from me and that it was, in fact, their error. **03.06.2019**
- b. **False Accusation:** I was accused by Dominic Popham of having awarded an unauthorised contract to a Company called Classic Friendly who were active at the time in working with Classic Car garages. I believed a working partnership would be a good way to approach this untapped sector of the classic oil market. Dominic Popham, with great fanfare, cancelled this 'unauthorised agreement'. However, the budget and justification for using this route to market had the full involvement of the Marketing Department, had previously been signed off by the CEO of the Company and a Main Board member (Maqsud Patel) had complimented me on successes achieved. This was pure harassment by Dominic Popham. **April 2019**

- c. False Accusation:** Dominic Popham, when confronted with an invoice for £6,000 from the FBHVC by the Financial Director, attempted to state that it was my unauthorised doing. When I denied this and proved that it was not, he then tried to say that I was present at a meeting with him where this had been decided. I was able to prove that it was Dominic Popham himself who had authorised the payment over a Christmas lunch with the Chairman of the FBHVC while I was working in Liverpool at the time. Upon my telling him this in writing, and reviewing the documentation, Director Maqsd Patel said ‘the b....d’ but, frustratingly, no action was taken. **24.05.2019 to 31.05.2019**
- d.** These contrived incidents, proven by the evidence to be unfounded were, I believe, designed by Dominic Popham to have the effect of reducing confidence in me by the Board and to cover his and Jennie Vickery’s own shortcomings.
- e.** A feature article in the publication ‘*Classic Car Weekly*’, read by 250,000 classic car enthusiasts, showed a Triumph TR3 burned out because high ethanol content petrol had eaten through the fuel lines on to a hot exhaust and had caused a fire. This was an ideal time to run a tactical advertisement for a fuel treatment that I had had introduced into the classic range, but had never been promoted by Marketing, that would have prevented this. Advertising funds (of just £100) were denied (unused budget (£20,475)). When I offered to pay for the advertisement myself, this was also denied, for no reason. **20.09.2019** all this despite budget approval by CEO in **October 2018**
- f.** Ian Turner also bullied and forced out of his job for less than honest reasons by Dominic Popham, a ‘toxic’ manager. **12.02.2019**

Breaches of Mutual Trust and confidence were some serious incidents but also a series of incidents that are serious when taken together.

- a.** My position had been unilaterally demoted from Director, Classic, Motorsport and Industrial to ‘Salesperson’ **15.02.2019 to 01.11.2019**
- b.** My roles and responsibilities had been removed and distributed amongst other personnel **07.09.2019 onwards, (technical) , 16.01.2019 supply chain onwards 17.01.2019 stock**
- c.** I was the unjustified victim of numerous false accusations attempts and victimisation, which caused immense stress and tied up my time in proving my innocence. It also brought on a serious bout of my Type 2 Diabetes. **30.05.2019 to 06.06.2019,**
- d.** I had been banned from emailing customers accurate classic recommendations on the Company website. **07.06.2019**
- e.** Dominic Popham had excluded me from all promotional decisions with reference to Classic, even though had far mor knowledge and

experience of the sector that anyone else in his team and my role was Director, Classic, Motorsport and Industrial

- f. This was a targeted campaign by the Dominic Popham who was trying to scapegoat me for his own failings in delivering a target of 1.98 million litres of 'modern oils' which, from the outset, had little chance of success. Denying agreed advertising and promotion funds to classic, in my opinion, was a clear deflection technique to stagnate Classic to hide his own sector's severe shortcomings.

I tried to sort out the issues out by speaking to my employer to solve the problems and offered an alternative way of working.

- a. I complained to the Chairman of the Board and Maqsud Patel on at least four occasions, twice in writing, who promised to do something yet nothing was done. 15.02.2019 and 4.4.2019
- b. Under these circumstances, I tried an alternative approach and offered to negotiate a part-time contract with Maqsud Patel which would allow me to continue to work with the Classic Oil range whilst reporting into Maqsud Patel (similar to the initially agreed terms). However, the agreed terms of this draft contract were materially amended when it was returned to me, having been reviewed by Dominic Popham, the internal legal counsel and the Financial Director. **10.06.2019**
- c. I therefore rejected the agreement and, consequently, having previously raised the situation with the Board on many occasions (in writing on **15.02.2019 and 4.4.2019**) and with the attempted compromise of a part-time contract having broken down irretrievably, I found myself with absolutely no option but to resign my position at Alexander Duckham and Co Ltd. **05.08.2019** At this point I was working directly with the Board on some projects I had been asked to do listed in my resignations

Martin Gough (Claimant)