



EMPLOYMENT TRIBUNALS

Claimant: Mr S Southern

Respondent: Inspectorate Limited t/a Roch NDT Services

Heard at: Newcastle Employment Tribunal sitting at Teesside Justice Centre

On: 6th, 7th, 9th, 10th, 13th November 2023 (deliberations: 13th & 28th November)

Before: Employment Judge Sweeney

Representation:

For the Claimant: Troy Benjamin, counsel

For the Respondent: Mark Humphreys, counsel

RESERVED JUDGMENT

The Judgment of the Tribunal is as follows:

case number 2501705/2022

1. The Claimant's complaints of unfair constructive dismissal and wrongful dismissal are not well-founded and are dismissed.
2. The Claimant's complaint of unlawful deduction of wages in respect of pension contributions is dismissed upon withdrawal.
3. The Claimant's complaint of unlawful deduction of wages in respect of accrued holiday pay is well-founded and succeeds. The Respondent is ordered to pay to the Claimant the gross sum of £326.41.

case number 2500154/2023

4. The Respondent's Employer's Contract Claim ('ECC') is not well-founded and is dismissed.

REASONS

The Claimant's claims

1. By a Claim Form presented on **17 October 2022**, the Claimant brought claims of unfair constructive dismissal, wrongful dismissal and a claim of unlawful deduction

of wages in respect of accrued, outstanding holiday pay on termination of employment. In short, the Claimant contended that conduct of Jon Hall (the Managing Director and major shareholder of the Respondent) amounted to a repudiatory breach of the contract of employment, entitling him to terminate the contract without notice and treat himself as dismissed. He relied on the well-known implied term of mutual trust and confidence. He also claimed wrongful dismissal and unlawful deduction of wages in respect of pension contributions and outstanding holiday on termination of employment.

The Respondent's claims

2. The Respondent served a Response on **24 November 2022**. In its Grounds of Resistance ('GOR'), it denied that Mr Hall repudiated the contract and averred that he was not entitled to terminate the contract of employment without notice and to treat himself as dismissed. The Respondent brought an Employer's Contract Claim ('ECC'), which the parties referred to as a counterclaim. The ECC was in two parts:
 - A claim for repayment of a sum of **£15,000** said to have been paid on account of a retention bonus in connection with a proposed sale of the Respondent and relying on an implied term of the agreement to pay the sum that a failure by the Claimant to sign a new contract of employment would render the £15,000 repayable [paragraph 71 GOR]
 - A claim for damages arising from the Claimant's failure to give notice in accordance with Clause 16 of his existing contract of employment [paragraphs 72-75 GOR]
3. On **23 February 2023**, the Claimant served a Response to the ECC. He denied that the payment of the £15,000 was a retention payment and averred that it was a personal payment to him and his wife to demonstrate Mr Hall's willingness to look after him and his wife, that it was in essence a goodwill gesture [see paragraph 5 of the Response to the ECC]. As regards the second part of the ECC (the claim for damages) the Claimant admitted that he did not give the requisite notice when he resigned on **28 May 2022**. He claimed that he was entitled to resign summarily by reason of the Respondent's repudiation of the contract.
4. Following a telephone preliminary hearing on **10 May 2023**, the Claimant applied, on **19 May 2023**, to amend the ET1 with regards to a complaint of unlawful deduction of wages in respect of holiday pay. There was no objection to the amendment application, which was granted and an amended response was served by the Respondent on **21 July 2023**. In paragraph 59 of the amended GOR, it averred that the Claimant was entitled not to 12.4 days but to 9.66 days, which it averred had subsequently been paid.

The issues

5. During discussion at the outset of the hearing, counsel confirmed that there was an agreed list of issues from **10 May 2023**. Mr Benjamin, on behalf of the Claimant, confirmed that contractual term relied on in respect of the constructive unfair dismissal claim was the implied term of mutual trust and confidence and that the matters set out in paragraph 3 of the list of issues amounted to repudiatory conduct, either taken individually or cumulatively. Mr Benjamin also confirmed that the complaint of unlawful deduction of wages in respect of pension contributions had been resolved and was no longer pursued. It was withdrawn. That claim had been set out in paragraphs 12 to 14 of the original list of issues. The final list of issues is reproduced in the **Appendix** at the end of these reasons, with the relevant paragraphs scored through.
6. The parties had also agreed a joint bundle consisting of several sections labelled A to N and running to some **804 pages**. It contained a large number of WhatsApp messages between the Claimant and Mr Hall. Rather frustratingly, many of the WhatsApp messages did not show the dates on which they were sent and upon a careful examination of the content and context of some of the messages, it was clear that the index was in part incorrect. I asked the Respondent's solicitors to review the index which they did. An amended index correcting some of the dates was provided to Mr Benjamin and then handed to the Tribunal. Therefore, it was necessary to try and piece together the sequencing of messages.

Documents

7. There was an agreed bundle of documents divided into sections A to N. The Tribunal was provided with a hard copy and an electronic copy, the latter consisting of **804 pages**.

Witness evidence

8. Sworn evidence was given by:
 - The Claimant
 - Jon Hall
 - Michael Yule (remotely by CVP)
 - Ryan Hall
 - Philip Griffin (remotely by CVP)
9. The Tribunal did not sit on Wednesday **8th November 2023**. Both counsel made oral submissions on the final day of the hearing, Monday **13th November 2023**. By agreement this was done remotely, by CVP. Further deliberations were held on **28th November 2023**.

Findings of fact

10. The Respondent is a company involved in the provision of the structural testing and analysis of lighting columns in the street lighting and rail sectors. It carries out structural surveys of lighting columns, signal poles, traffic signals and other vertically mounted poles. Jon Hall is the Managing Director and majority shareholder, the only other shareholder being his wife, Joanne. Mr and Mrs Hall purchased the Respondent business in **December 2007**. At that time, the business had been located in Kettering, Northamptonshire, although it had previously been based in Stockton-on-Tees, which is where the Claimant and Mr Hall first met in about 2002. They had both worked for a related company called Roch Services Limited, the former on the technical side and the latter, Mr Hall, in sales.
11. Mr Southern was employed as the Respondent's General Manager. As recorded above, he and Mr Hall had worked together – albeit not closely – back in **2002**, at Roch Services Limited. Mr Southern left there in about **2003**. In **2009**, he contacted Mr Hall, who was by then the owner of the Respondent company, seeking employment. Mr Hall agreed to employ him. The Claimant commenced employment on **09 March 2009**, initially as a technician. Over the years he was promoted to Operations manager and ultimately, in **2020**, to the position of General Manager. Over the years from 2009 Mr Southern and Mr Hall built up a good relationship.
12. The Claimant was based at the Respondent's depot in Primrose Business Park in Stockton, to where the business relocated either around or soon after the time he joined the company. The depot was close to Mr Southern's home. In about **2012**, Mr Southern's wife, Victoria joined the business in an administrative capacity. She too was based at Primrose Business Park.
13. Mr Hall, on the other hand, lived in Buckinghamshire, which was also his place of work. The Claimant, effectively, ran the operations side of the business in respect of which he had considerable autonomy. Mr Hall took care of everything else, especially sales, contracts and financial matters. He would visit Stockton for a few days every couple of months or so and the two men spoke daily, multiple times each day, by telephone and in later years by video.
14. On his appointment to the role of General Manager, the Claimant entered into a new written contract of employment with effect from **01 April 2020 [pages E16 – E22]**. Among other things, clause 13 of that agreement entitled the Claimant to 31 days in each holiday year (1st January to 31st December) inclusive of recognised public holidays. It further stated: "*if you are dismissed for gross misconduct, or you fail to give the required notice of resignation, you are not entitled to be recompensed for unused holidays in excess of the minimum statutory entitlement in the current holiday year.*" It was common ground that the daily rate of pay for the purposes of calculating holiday pay was **£191.14**.

15. Clause 16 of the contract provided: *“You and the Company are required to give three months’ written notice to terminate your employment.”*
16. Clause 17 provided that the company’s disciplinary procedure was set out in an Employee’s Handbook, a copy of which had been given to the Claimant. The disciplinary procedure provides for suspension from work and requires that the employee be informed verbally of any decision to suspend and for this to be followed up in writing. It also makes provision for initiating and holding investigation meetings and hearings up to appeal [**pages E12 – E14**].

The relationship between Mr Southern and Mr Hall

17. What both men have lost sight of through this bitter litigation is how they viewed each other in real time, as opposed to looking back in time (with now poisoned views of each other). In paragraph 4 of his witness statement, Mr Hall sought to impugn Mr Southern’s character by referring, unnecessarily, to a vague allegation regarding Mr Southern’s previous employment. Further, in his witness statement at paragraphs 13-14, Mr Hall portrays Mr Southern as attempting to extract as much money as possible from the business from an early stage in the events that occupied these proceedings. Those sentiments, I find, are the result of the ultimate breakdown in their relationship, of the bitterness of this litigation and, on Mr Hall’s part, a belief that that he has been the victim of Mr Southern’s greed and pursuit of him for money through these proceedings. However, Mr Hall did not always see Mr Southern as greedy until relations came to break down as will be seen. His view of Mr Southern changed. In seeking to understand the situation he came to find himself in come April/May 2022, Mr Hall began to question in his own mind whether the man he had worked closely with for many years had a darker side to his character.
18. For his part, Mr Southern has sought to portray Mr Hall as a devious, deceitful and manipulative individual who was never to be and cannot be trusted. However, he did not always regard Mr Hall in this way. He has come to view Mr Hall as a man bent on doing him out of money he deserves and is entitled to; money that Mr Hall was duty bound to give him. He believes there was some kind of unwritten ‘bond’ between him and Mr Hall, borne out of his unrelenting belief that Mr Hall’s success has been very largely down to his hard work and contacts, without which Mr Hall would be nothing. Further, Mr Southern had a very strong sense of ‘loyalty’ or at any rate, his perception of what amounted to loyalty. He also struck me as a passionate and rather impetuous person, prone to emotional outbursts and someone who could on occasion engage in or feign boorish behaviour to suit his purpose (examples of which are in paragraphs 109 and 130 below).
19. The explanation as to how the views of two men who worked closely together and how the relationship changed is complex and I attempt to set it out below as the facts unfold. At this juncture, I record my finding that, right up to the end of **2021** Mr Southern did not regard Mr Hall in the extreme way he came to regard him. He started to become suspicious of Mr Hall from around then but, on my findings, he

began to regard Mr Hall as untrustworthy when he received the first written draft employment contract. In the case of Mr Hall, on my findings he did not believe that Mr Southern was seeking to extract as much money as he could from him until relationships had irretrievably broken down in **mid-April 2022**. In paragraph 18 of his witness statement, whilst referring to the situation in **October 2021**, Mr Southern describes the situation thus: *'it was clear that the working relationship was on the edge'*. I could not see any factual basis for such an assessment at that time and certainly there was no reasonable basis explaining why Mr Southern might have felt that at that time. I was satisfied and so find that Mr Southern did not genuinely see the relationship as being on the edge in **October 2021**. I would add that, although he subsequently began to lose trust in Mr Hall, I could not discern an objectively justifiable basis for the extreme description of Mr Hall given by Mr Southern towards the end of his employment and repeated in these proceedings.

20. Mr Southern was undergoing some significant stresses in his life at that time and his mental health started deteriorating from about **November 2021**. I have no doubt that this had some impact on his outlook and behaviours. As he put it himself [page **K73**] there came a point in time when he was *'starting to feel paranoid that Mr Hall was up to something which he did not like'*.
21. Mr Hall was also undergoing some health concerns of his own during the period relevant to these proceedings. As events unfolded, he too began to feel under strain, mainly by the Spring of 2022. Their relationship could be volatile at times. Equally, the relationship could be friendly and caring. Both men shared their feelings openly. This can be seen in many of the WhatsApp exchanges included in the bundle. Messages from **July to November 2021 (N22 to N33)** and many of the messages in **2022 to 2023** reflect a frank and open relationship. The exchange on **page N22 to N23** reflects the warmth of that relationship. In one message, Mr Southern referred to them as *'more like friends than colleagues'* [page **N-15**]. Other messages reflect the volatility. Of the two, Mr Hall was the least irascible. It is a terrible shame that, as will become apparent, what was, for most of their time together, a good relationship ultimately broke down and these two erstwhile friends have become what I can only describe, without hyperbole, as bitter foes.
22. It is clear to me, and I so find, that both Mr Hall and Mr Southern took a rather unconventional approach to payment of remuneration and reward. For example, in clause 6 of his contract of employment, in addition to identifying Mr Southern's salary as £50,000 a year in **April 2020**, it states that two salary increases of £5,000 a year in **2019** and **2020** respectively, were attributed to Victoria at Mr Southern's request [page **E-17**]. Mr Southern maintained that this was, in fact, at Mr Hall's insistence and that he agreed to it as it was out of his control. I do not for one moment accept that this was out of Mr Southern's control. He could easily have refused to attribute any pay increase for him to Mrs Southern. Equally, Mrs Southern could have questioned the arrangement and refused to agree to it. For his part, Mr Hall maintained that things like this were the suggestion of Mr Southern and that he simply agreed. I do not accept that either. Mr Hall could easily have refused such an arrangement and attributed the pay increases to Mr Southern. He

was after all, the managing director and major shareholder. The reality was, and I so find, that all three agreed to this rather unconventional arrangement, irrespective of whose suggestion it first was. It most probably worked more advantageously to all three in terms of tax and/or and national insurance. More importantly, it reflected the closeness of the relationships between them and that Mr Hall and Mr Southern were quite happy for such unconventional arrangements to be agreed.

23. I have set out this assessment of the two protagonists in these proceedings because one of the main difficulties in this case was that, very sadly, both men have become so bitter and twisted against each other that their accounts and recollections have been shaped by a now firmly held belief that the other is (and always had been) duplicitous and not to be trusted. Both men have given unreliable evidence in various parts as a consequence of their unshakeable views. Each of them gave sworn evidence which I have in parts rejected and in parts accepted. Sometimes I have rejected their evidence because I have found that they have lied. Sometimes it is because they are, on my findings, mistaken or wrong. However, in most instances, it is because this intense dislike of each other has coloured and distorted their beliefs and understandings and shaped their evidence to their respective litigation narrative.

The proposed sale of the business

24. In about **August 2021**, Mr Hall was considering his future. He had turned 60 the year before and for a number of reasons which included his health, he had been contemplating selling the business in anticipation of retirement. Although early days in the sense that he had just started contemplating the prospect of selling up, he decided to share his thoughts with Mr Southern. His primary motivation in doing so was a desire to reassure the Claimant that he would look after him financially. He felt a genuine sense of loyalty towards Mr Southern, who had worked hard in the interests of the business and who, through his operational management of the depot, management of technicians and others contributed significantly to the success of the business. It was also, I find, partly commercially pragmatic on his part. If he was going to sell the business as a going concern, he would not wish to lose his General Manager especially one with such autonomy and influence. I emphasise, however, that his driving motivation was a sense of loyalty towards Mr Southern and his family.

25. Therefore, in **September 2021**, he met with the Claimant and his wife, Victoria. Although there was little common ground in these proceedings it was agreed that this meeting was an emotional one for both men. Mr Hall shared his thoughts and issues with respect to his health. Mr Southern also shared issues regarding his personal life, much of which was known to Mr Hall already. Mr Southern had been suffering with his mental health and had to cope with external family issues concerning his son which, understandably, placed him under some considerable stress. This too was touched on. It was also in this context that Mr Hall felt an even greater wish to reward Mr Southern for his efforts. However, no sums of money were mentioned at this stage. It was simply stated by Mr Hall that he intended to

look after both of them (i.e. Mr and Mrs Southern) financially. He was giving them the 'heads up' so to speak.

26. Mr Southern was, as indicated above, suffering with anxiety and stress during this period. His mental health deteriorated further from **November 2021**. There are sufficient references in the WhatsApp messages from him, and sufficient messages of recognition, concern and sympathy from Mr Hall on the subject to enable me to arrive at such a finding. Whether because of those external stressors or whether it was a part of his personality, or (as is most likely) a combination of those things, Mr Southern would steadily become more suspicious and more volatile as the weeks and months were to pass.

27. As articulated above, there was little common ground between Mr Southern and Mr Hall. Much of the dispute in these proceedings centred around what was discussed or agreed 'in principle'. One point of dispute was that Mr Hall portrayed Mr Southern as bent on extracting as much money from him right at the beginning when he told him of his plans to sell the business. However, as became clear, the account provided by Mr Hall in paragraphs 13 and 14 of his witness statement regarding discussions in **August 2021** about a reward package was simply wrong. The exchange of messages that he refers to on **pages N18 – N19** does not in any way relate to discussions regarding a reward package for Mr Southern on a potential sale of the company, as Mr Humphreys (on instructions) put to Mr Southern in cross-examination. That exchange of messages relates to a 'COVID award' made to the company. This covid award (or 'grant') and the associated exchanges were in or about **August 2021**. Prior to taking the oath, Mr Hall corrected paragraph 13 of his witness statement to make clear that the exchange related to a COVID award. Although Mr Hall did not swear to the truth of paragraph 13 as it was originally drafted, this was, I find, only because it had been made obvious during Mr Southern's cross examination and prior to him coming to the witness table to give his evidence that what he said was demonstrably incorrect.

28. In his cross examination of Mr Hall, Mr Benjamin nevertheless explored the original wording of paragraph 13 and the exchanges regarding the covid grant. In fact, what pages **N18-N22** show is a discussion (of a sort) regarding paying Mr Southern a percentage of a grant which the business had obtained, through a contact of Mr Southern's ('Roland'). Mr Hall's evidence was as follows:

"I think he messaged me and said if I can get you free money, are you interested; I said okay; he said he wanted 30%; I did not know what it was until I effectively agreed to give him 30%; he then said he could get a grant from someone called Roland, who works in the government; Roland plays golf I think; I was to complete a grant application form, cos apparently time running out; I did not know what grant was for; we were awarded £15k"

29. I was very dubious about this professed ignorance of the nature of this grant by Mr Hall. I accept that the Claimant came up with the idea and that it emerged through a golfing acquaintance of his - Roland. I regarded the whole arrangement as

somewhat dubious, including the obtaining of the grant and the making of any kind of payment to Mr Southern for securing the grant. The arrangement resulted in a dispute over money and corporation tax. In a message which shone some light on Mr Southern's view of his status and his relationship with Mr Hall, he said:

"When did I become just an employee over a good friend first! That's how I feel so think we need to have a one to one meeting this week to work out what's best going forwards for both of us and make arrangement so suit" [page N17]

30. Mr Hall said in evidence that the payment of 30% to the Claimant was given to him, almost as a bonus, for passing on to Mr Hall 'a lead'. I expressed at the time, and set out here, that this did not put either the Claimant or Mr Hall in a good light, in my judgement at least. As articulated above, I did not accept Mr Hall's protestation of ignorance as to the details that underpinned the company's entitlement to the money. He accepted the grant without question, knowing that it arose out of a personal contact – a 'golfing friend' of the Claimant - and he agreed to pay the Claimant a sum of money for obtaining that award, the merits of which seemed extremely questionable to my eye. Although neither man realised it, in my assessment this was a good illustration of Mr Hall's and Mr Southern's combined unconventional approach to payments and rewards.
31. Mr Hall, as I have stated, corrected paragraph 13 of his witness statement, where it said: "*Mr Southern expressed his annoyance following their initial discussions over headline terms*". The reality is that no headline terms were discussed. That did not happen until **07 October 2021** at a meeting in York, which was requested by Mr Southern for reasons I shall come to in due course. It was difficult to see how Mr Hall could have made the mistake in his witness statement as to the meaning and context of the messages at **N18 – N22**. The messages were entirely unrelated to any '*initial discussions over headline terms*'. Mr Hall explained the mistake by saying that it was not a deliberate attempt to confuse, that when writing his statement 'as a whole' he recounted this episode in the context of describing how the Claimant had been asking him for more money. He said he thought it appropriate to put the context and also, when realising the error, to make the correction. I accept some of this. I accept it was not done deliberately to 'confuse' me but I find that it was done deliberately to give me the impression that the Claimant was, at an early stage of discussions, demanding unreasonable sums of money and doing so unreasonably.
32. In paragraph 14 of his witness statement (which Mr Hall said still 'held good' despite his correction of paragraph 13) he clearly paints the matter regarding what we now know to be an exchange regarding the Covid grant as an attempt to extract money. But it was not. It was a simple (albeit unattractive) discussion between the two regarding the taxation on an amount of money to be paid to the Claimant in circumstances where his or the company's entitlement to any of the money was dubious. This painting of the Claimant as a man bent on extracting money from Mr Hall has some basis in it, but not at that early stage – that comes later. Here was

a perfect example of how Mr Hall's bitterness towards Mr Southern has coloured his recollection. Even when the messages obviously showed what the exchanges were about, his written statement described them as something else. This is one of those instances where I rejected the evidence of Mr Hall on the basis that he was simply wrong but where his mischaracterisation of events is down to a later-developed dislike of Mr Southern which has poisoned his view of events.

David Lodge

33. Returning to the sequence of events, the day after he met Mr and Mrs Southern in **September 2021**, Mr Hall met with Mr David Lodge of David Lodge Lighting Limited. This was a pre-arranged meeting to coincide with Mr Hall's visit to the North East. During this meeting, as they were discussing business generally, Mr Hall took the opportunity to tell him that he was thinking of selling the company. Mr Lodge in turn said that he might be interested in buying it and asked if Mr Hall would let him know when it came up for sale. Mr Hall said that he would but asked him to say nothing to anyone in the meantime. He explained that he had done nothing as of yet to progress any sale.
34. Within two weeks or so of this conversation, Mr Southern received a telephone call from Mr Lodge. Mr Hodge said told him that Mr Hall mentioned he was selling the business. He asked the Claimant whether he would stay if he bought the company and asked Mr Southern what his salary was, saying that he would increase it by £10,000. After this phone call the Claimant contacted Mr Hall and asked for a meeting. He mentioned that he had spoken to Mr Lodge but did not go into any detail about what Mr Lodge had said.
35. The Claimant in his evidence maintained that his conversation with Mr Lodge was overheard by Sean Rowbottom, the Respondent's then Operations Manager, because it took place over loudspeaker. He was, in essence, contending that it was outside his control that Mr Rowbottom discovered the proposed sale. He added that he then had no option but to tell some of the other staff himself as they were bound to find out. Mr Hall, when cross examined on the subject, said that – although he did not know about the loudspeaker, as he was not present, he found that to be rather 'convenient'. I agree with Mr Hall. I was incredulous about what Mr Southern said, namely that the only reason Mr Rowbottom learned of a potential sale was due to the call being on loudspeaker. People can answer calls in one of two ways: by picking up the receiver and then making a conscious decision to place the caller on loudspeaker; or answering the call from the outset by pressing the loudspeaker function.
36. Experience of life tends to suggest that most answer by picking up the receiver. If he was like most people, then Mr Southern would have deliberately placed Mr Lodge on loudspeaker, knowing that Mr Rowbottom would overhear what was being discussed. If, on the other hand, Mr Southern did indeed answer the call by pressing loudspeaker right at the outset, once it had become apparent that Mr Lodge was talking about a potential sale, he could quite easily have cancelled the

loudspeaker, reverting to use of the handset thus ensuring that Mr Rowbottom would not overhear what Mr Lodge was saying. I find it convenient for Mr Southern to say that Mr Rowbottom only became aware of Mr Lodge's conversation accidentally. I did not accept his evidence on this point at all convincing and I reject it. I find that he either placed the call on loudspeaker knowingly or he knowingly failed to take it off loudspeaker. Either way, he did so knowing the sensitivity of the subject matter. I find that he was surprised to hear that Mr Hall had spoken to Mr Lodge and he felt that Mr Hall should have spoken to him first. It angered him. I infer from this that he wanted Mr Rowbottom to hear what Mr Lodge had to say. He was upset and angry with Mr Hall for telling Mr Lodge, or moreover, for telling Mr Lodge of his plans without first notifying him that he was going to do so. Immediately after the call, Mr Southern then told other operations staff at the depot that Mr Hall was looking to sell the business.

Meeting in York, 07 October 2022

37. Mr Southern and Mr Hall met in a pub in York on **07 October 2021**. This meeting was not set up with the express purpose of discussing any heads of terms or benefits package, albeit they did get around to discussing such things, Mr Southern having been intent on securing protection for his future. It was, as Mr Southern said in his evidence, set up for him to discuss matters generally with Mr Hall – in particular, what the future held. Mr Southern had been unhappy and angry that Mr Hall had discussed a potential sale with Mr Lodge. In speaking to Mr Lodge without telling Mr Southern in advance, this violated Mr Southern's notion of 'loyalty'. That is so even though Mr Hall had no obligation to tell Mr Southern he had spoken to Mr Lodge about selling the business. He was perfectly entitled to do so without alerting Mr Southern to this. In any event, so indignant was Mr Southern that he arrived at the meeting in York with a resignation letter.
38. This resignation letter was never produced in evidence and was not produced to Mr Hall at the meeting or thereafter. However, the Claimant did say at the meeting in York that he was considering resigning because of what had happened regarding Mr Lodge. Mr Hall said that Mr Lodge should not have contacted him, that he had been asked to keep the matter confidential. He sought to diffuse the situation. From this, the discussion turned towards Mr Hall 'looking after' the Claimant and his wife and what that would look like when the business came to be sold, which in very loose terms Mr Hall thought might be around March or April the following year. I find that by telling Mr Hall he was thinking of resigning, Mr Southern was taking a tactical step to flush out Mr Hall's reaction. I do not accept that, at that stage, he had any real intention to resign. It was to 'test' Mr Hall. It was enough to get the subject moving towards Mr Southern's future. The Claimant had spoken to a friend, Andy Pickett before that meeting who had suggested, at the very least, that he request a two year 'rolling contract (see further in paragraph 67 below).
39. The two men went on to discuss what lawyers would refer to as 'heads of terms'. Indeed, that is how counsel in the proceedings have referred to them. One of the very few areas of common ground in this case was that no binding agreement was

reached on anything at the meeting on **07 October 2022** or indeed at any time thereafter right up to the point of the Claimant's resignation as to the reward package to be provided to the Claimant on and after the sale of the business.

40. Mr Hall scribbled these 'heads of terms' on a piece of paper, which was found at page **N44** of the bundle. The note reads as follows:

7/10/2021 STEVIE

NET FIGURES

- £60K - AT POINT OF SALE
- £35K - YEAR 2) Advance £15k

Now Negates 35k

2 year contract - 2 yrs pay ?
2 yrs security.

Rolling contract

- Uplift to £70 –
- + 10% - £7000 into pension
- Private Health care:-
 Increase Holidays? 23 30 Days

41. There was a major dispute as to the nature of the payment of £15k which appears after the word '*advance*' and which is followed by the words '*now negates 35k*'. This dispute is also the subject of the first part of the **ECC**. I come to that later. For now, it is important to record that this note was written by Mr Hall as a record of his understanding of the discussion. It was not an agreed note. It was not shown to the Claimant at the time or in fact until late into this tribunal litigation. Mr Hall wrote most, but not all, of the note shortly after the meeting.

42. Mr Hall said that he subsequently updated the note following a request from the Claimant for an upfront payment. This evidence was the subject of dispute. In paragraph 20 of his witness statement, Mr Hall said: "*whilst we were still negotiating, I did want to do something for the Claimant as a gesture of goodwill. Therefore, following a phone call with him later that month and at his request, I agreed that instead of paying him £35,000 a year after the sale, I would make an upfront payment of £15,000 on account.*" It was at that point he says he updated the note. The Claimant disputed this. He maintained that the agreement to pay £15,000 had been discussed at the meeting in York, on **07 October 2023**. Although he could not say for sure – because he was not present when the note was made - he did not accept that Mr Hall had amended the note subsequently.

43. On the issue of when Mr Hall agreed to pay £15k and made the note, I prefer and accept the evidence of Mr Hall. I find that he did, as he says, update the note following a further discussion with Mr Southern after the meeting on **07 October 2021**. The Claimant's account that the £15k payment was agreed on **07 October 2021** at the meeting in York made little sense. Had the outcome of the October York meeting been that Mr Hall would pay the Claimant £15k before any sale and had that been agreed by the time the note was written, I would have expected to see just that recorded in the note. There would be no need for the word '*now*' immediately before the word '*negates*'. These words suggested that something happened after that meeting which caused Mr Hall to update the note by adding the words '*Advance £15k now negates 35k*'. That is consistent with Mr Hall's evidence that the note was amended. I accepted Mr Hall's evidence and find that those words were added sometime after the October York meeting as he said in paragraph 20 of his witness statement. However, I rejected his evidence that this payment of £15,000 was expressed or agreed to be '*on account*' of the payment of £35,000. That too, made little sense to me. Had the payment been '*on account*' of a payment of £35,000, it is more likely than not that Mr Hall would have noted this and he did not. Further, a payment '*on account*' of £15,000 would mean that a balance was due to the Claimant of £20k and there is not a single reference to that being the case anywhere by either individual or in any of the documents. Further, had it been '*on account*', it is difficult to see why Mr Hall would write that it '*negates*' a payment in year 2 of £35k.
44. Therefore, by the end of the meeting on **07 October 2021**, Mr Hall and Mr Southern had agreed what might be called 'heads of terms' on the understanding that nothing was binding and that everything had to be drawn up in a new contract. The heads of terms at that stage were as follows:
- (1) At the point of sale of the business, the Claimant would be paid £60,000 free of tax,
 - (2) One year after the sale, the Claimant would be paid £35,000,
 - (3) The Claimant would be put on a two-year rolling contract (by which they understood to mean that he would be entitled to two years' notice of termination of employment).
 - (4) The Claimant's annual salary would increase from £60,000 to £70,000.
 - (5) The Respondent would pay an amount equivalent to 10% of his salary towards his pension.
 - (6) The Claimant would be provided with private health care.
 - (7) The Claimant's annual leave entitlement would increase from 23 to 30 days a year (plus statutory holidays).

45. When I say 'heads of terms', this is a convenient shorthand to describe what Mr Hall and Mr Southern had sketched out in principle, namely what was envisaged as a potential reward for the Claimant for his loyalty and commitment to the business. Both men were at pains to say during their evidence that there had been no concluded agreement and that this was, as Mr Southern put it, just a '*first discussion*', that '*nothing was finalised*'. It was always understood that both men were to take legal advice once a draft written contract had been drawn up before any sale of the business. This was necessary to ensure that any new owner could see what Mr Southern's contractual benefits were. At the end of the meeting, Mr Hall said that he would get the paperwork to the Claimant.
46. Following that meeting, the Claimant became uneasy and unsettled at the prospect of Mr Hall selling the business for two reasons: firstly, they had worked closely together for many years and Mr Hall's departure would mean uncertainty and secondly, he was concerned that he might leave without making good his commitment to look after his family. He was, in short, nervous about his future. The two men spoke multiple times on a daily basis. During one such call Mr Southern made it quite clear that he was unsettled and anxious. He asked for a payment to be made upfront as a gesture of Mr Hall's commitment to him. Mr Hall, for his part, recognised this and understood the Claimant was uneasy about his future and wanted to do something immediate as a gesture of goodwill to demonstrate that his intentions to look after him and his family were indeed genuine. Therefore, he offered to make a payment to his family immediately to demonstrate this good faith. The agreed amount was £15,000. That money was to be paid in two parts. A payment of £7,500 was paid into the Claimant's bank account on **22 October 2021** [page L1]. A second payment was paid into Victoria Southern's bank account on **19 November 2021** [page L2]. It was this money that was reflected in the note on **page N44**.
47. There was an exchange of WhatsApp messages between Mr Southern and Mr Hall on [pages **N25 – top half of N31**]. The exchange from page **N25** to the top of **page N31** took place on **22 October 2021**, just over two weeks after the York meeting. It largely concerns the £15k payment.
48. At this point it is relevant to return to the fact that the Respondent has brought an **ECC** regarding the payment of this £15,000. As alluded to above, Mr Hall would have me believe that the sum of £15,000 was a payment on account of the £35,000 referred to on the note at **page N44** and that it was repayable by the Claimant if a sale did not go through. If that were indeed the case, it is curious that half was paid to Mr Southern's wife, Victoria (Vicky). In his oral evidence, Mr Hall said he paid half to Mrs Southern simply because he was requested to do so by the Claimant and he agreed as a helpful person. It was his evidence that the Claimant wanted it to be done in that way. In contrast, Mr Southern said that Mr Hall wanted to pay half to him and half to Mrs Southern. On this point of dispute, I accept the Claimant's evidence. I find that the Claimant asked for a personal payment upfront from Mr Hall, before any sale, as a gesture of goodwill from him to his family. After that, Mr Hall was the one who proposed paying half the money into Mrs Southern's

account, which is supported by the WhatsApp exchange on **04 November 2021** on page **N24**:

From Claimant: *“If you need to pay that money into Vicky’s account then pay into old one, she knows about 1st payment by not 2nd [smiling, winking emoji]. Got plans for that doesn’t include her [laughing emoji]”*

From Claimant: *“If needs to be in Vicky’s name then pay into [account details]”*

From Mr Hall: *“Needs to be in Vicky’s....”*

49. The Claimant did not, at the time, challenge Mr Hall’s statement that half the money needed to be in Mrs Southern’s name. He did not question why it needed to be done that way. Mr Southern was quite happy with the arrangement and accepted it. What was important to him was that his family would receive a goodwill payment. Mr Southern referred a couple of times to his expectation that Mr Hall should make payments to his ‘family’ – as opposed to him personally. This concept of looking after his family was important to Mr Southern and sat comfortably alongside his strong notions of ‘loyalty’. Equally important to him was that the payments were to be made ‘with no strings attached’, so to speak, i.e. that the payment of £15k was unconditional. As he put it in a message to Mr Hall on **22 October 2021**, the payment of £15k would ease his mind [**page N25**]. It was, in Mr Southern’s mind, a test of Mr Hall’s commitment to him. Mr Hall understood this and agreed to it unquestioningly.

50. I do not know why half the payment ‘needed’ to be in Mrs Southern’s name, as Mr Hall put it in his WhatsApp message. Mr Hall was less than frank about the arrangement. I find that he was being untruthful in saying that it was at Mr Southern’s insistence that the money was to be paid in this way. I infer that he wished for me to see Mr Southern as the initiator of what might be described as unusual reward arrangements. In fact, it reflected both men’s unconventional and cavalier approach to such matters.

51. As regards the payment of **£15,000** then, I find that this was a personal payment from Mr Hall of **£7,500** to Mr Southern and **£7,500** to Mrs Southern, making a total of £15k for his family. In arriving at that finding I had regard to the content of the subsequent email exchange between the two men on **17 December** and **04 January 2021** [**pages E27-.E25**]. On **17 December 2021**, Mr Hall set out what he understood to be the agreement in relation to the £15k:

“£35,000 at the end of the first year working for new Owner. However, agreement was reached to pay £15,000 to be paid in November 2021, which will forfeit the aforementioned £35,000. Payment already carried out in two instalments.”

52. The Claimant agreed that this reflected what they had discussed [**page E26**] but placed it under a heading *“personal contract agreed commencement date – November 2021”*. Mr Hall responded on **04 January 2022** saying:

“the amendments you have mentioned below are what was discussed and apologies for missing those few elements off from my original email.”

53. The ‘*amendments mentioned below*’ was a reference to the following:

- the pension contribution increase of 10% to be ‘*employer contributions only*’,
- the placing of the Claimant’s wife Victoria onto the private health care policy,
- the 30 days holiday arrangement and
- the 6 months full sick pay arrangement.

54. The Claimant had placed those things under the heading ‘*Amended Employment Contract Agreed Commencement date – November 2021.*’

55. Thus, both men referred to the payment of £15k as being ‘personal’ and as **forfeiting** the original request for a payment of £35k a year after the sale of the business. I simply do not accept that two experienced individuals such as Mr Hall and Mr Southern used the word ‘forfeit’ in ignorance of its natural meaning, which is to forgo, surrender a claim to or give up any right to something.

56. Further, Mr Southern refers to the payment of **£15,000** as being “*our personal deal*” and that it “*isn’t contractual*” [page N25]. He asked Mr Hall:

“can you pay across half of it as a commitment to me, and the other half in mid November as discussed.”

57. Following a response from Mr Hall, the Claimant messaged him back:

“The cash sum of £15,000 was from you to me we discussed and not part of the contractual. I’ve committed to you for two years and the deal for me was very good for both parties. I just think half now would show your commitment until all in place and £7,500 is fuck all in the scheme of things Jon”. [N26]

58. Mr Hall replied to say:

“Don’t worry about it. I wasn’t worried about what we discussed, but I have to look at it all in its entirety and I’m working to make it all work and for November’s payroll as we said and as I promised.”

59. The Claimant became frustrated and impatient with Mr Hall. However, it was clear from the exchange that both men were talking about a ‘personal’ payment from Mr Hall’s account. Following a few rather petulant messages from the Claimant, Mr Hall sought to reassure Mr Southern by reminding him:

"I'm looking at giving you the 15k as planned." [page N28]

60. By saying he was *'giving you the £15k as planned'*, Mr Hall meant just that. The £15k was a 'gift' to the Claimant and his wife. These two payments were never intended by Mr Hall or understood by Mr Southern to be *'on account'* of a future payment of £35k and to be repaid if there was no sale. If that had been the respective intention and understanding one would expect to see it reflected in the draft written agreements when they subsequently came to be drawn up but they did not feature in either draft. It is no wonder that they did not. He always knew this payment was unconditional. That the Respondent claimed repayment of this amount as part of an **ECC** does Mr Hall no credit. I infer he has done so because he has subsequently come to see the Claimant as someone who sought to extract money from him, who tried to destroy his business and this counterclaim was a way of putting pressure on the Claimant in response to his claim against the company, about which Mr Hall felt very aggrieved.
61. By **November 2022** then, Mr and Mrs Southern had received payments of £7,500 into their accounts. From then through to early **January 2022**, Mr Hall made little progress with regards obtaining advice and a draft contract of employment. His business adviser and his employment solicitor were both absent for varying periods of time with their own personal health issues with the result that nothing had been reduced to a draft written format. Nonetheless, he and Mr Southern continued to talk about the amounts to be paid to Mr Southern and the way in which payment would be made.
62. Looking at events as of **04 January 2022** then, the only amount on the table in the event of a future sale was a tax-free payment to the Claimant of £60k at the point of sale. A further payment one year after sale was not on the table at this point. That had been 'negated' by the advance 'gift' of £15k to the Claimant's family. However, this situation was to change again on **11 January 2022**, with the subsequent re-introduction of a payment one year after the sale, this time in the sum of **£40,000**.

The Claimant's health and fit notes

63. As I have previously referred to, the Claimant's mental health started to deteriorate **from November 2021**. He visited or spoke to his GP on **16 November 2021**, who signed him as unfit for work from **08 November 2021** to **10 December 2021**, recording the reason as *'mental health issues'* [page G5]. Further fit notes were provided stating variously *'mental health issues'* [page G6], *'stress and anxiety'* [page G7], *'headache'* [page G8], *'work related stress'* [page G9]. In all, the Claimant was recorded as unfit for work from **08 November 2021 to 30 May 2022**. However, for much of this period he chose to work from home. Mr Hall did not put him under any pressure to do any work. Mr Southern, who was very good at what he did, felt compelled to work when he could, to keep the operations running. As he said in evidence, Mr Southern, of his own volition, worked from home and then later forced himself back to the office. During this period of time, he was in

touch with the staff and, when he wanted, Mr Hall. I could see no evidence of Mr Hall putting any pressure on Mr Southern to do any work at all during the period covered by the fit-notes and I find that he did not. It was entirely Mr Southern's decision to 'soldier on', so to speak, working mainly from home. However, his absence from the site was bound to have an unsettling effect on the staff given his prominence within operations and his closeness to the technicians.

64. Mr Southern returned to the workplace in **January 2022**. Again, this was so even though the Fit-Note [**page G6**] recorded him as unfit for work up to **23 January 2022**. In reality, he should not have been at work but, as he described in his witness evidence, although the doctor advised him not to work, he wanted to as he felt that things would come to a standstill if he didn't. Mr Southern became upset and emotional at this point describing how he had 'worked round the clock' for the business.

Covertly recorded conversation: 11 January 2022

65. On **11 January 2022**, the Claimant and Mr Hall spoke by Microsoft Teams. By this time, the Claimant was becoming suspicious and in his own words, somewhat paranoid [**page K73**], that Mr Hall was not going to look after his best interests. It was by now some four months after Mr Hall first mentioned he was intending to sell up and the Claimant was becoming fixated on the need to have his future rewards reduced to a binding contractual commitment. He had recalled that Mr Hall had mentioned March or April. With this period of time looming, he began to get agitated by the absence of a written contract. I would add here that the Claimant had by now received a substantial increase in salary from £60,000 to £70,000 a year. This had happened back in **November 2021**. His paranoia (as he put it) and his suspicious nature was such that he started to record some meetings and conversations covertly, the first of which was a conversation on **11 January 2022**. Mr Southern provided a transcript of the discussion at **pages E30 to E48**. It is clear that the parties were still negotiating on the precise terms of a future contract. Mr Hall had, by this stage managed to obtain some advice from his solicitor – although no draft contract was in place, something the Claimant was very keen to see.

66. However, at this juncture a sticking point arose, namely the Claimant's request for a '*24 month rolling contract*'. Having spoken to his solicitor, Mr Hall became concerned that this might deter a potential future buyer, it being such a long period of notice. He expressed as much to Mr Southern.

67. I found the Claimant to be rather inconsistent on this issue. Firstly, he acknowledged in his evidence that he and Mr Hall had been negotiating and that nothing was agreed until reduced to writing and reviewed by respective solicitors. Secondly, Mr Southern always knew that a 24 month notice period/rolling contract could be a sticking point. It had been Andy Pickett, after all, who had suggested he '*aim high*' and ask for two years' notice [**page K15**]. Mr Pickett was known to both the Claimant and Mr Hall. Mr Pickett had put Mr Southern in touch with solicitors who would review and advise him on any draft contract when drawn up. Despite

these two things, Mr Southern expressed unhappiness with what he regarded as Mr Hall going back on his word that he would ensure the contract contained such a notice clause. The inconsistency lay in the disconnect between Mr Southern's acceptance that they were in a process of negotiation and his simultaneous contention that Mr Hall had gone back on an agreement. This disconnect was on my findings, due to Mr Southern's notion of trust and 'loyalty'. There is sufficient emphasis by Mr Southern in the documents to the value of his own 'word' and to the 'word' of Mr Hall, to enable me properly to infer that he placed a premium on trust and loyalty. Even though rationally he understood they were in a process of negotiation and that everything was subject to advice, approval and sign off, he regarded any kind of departure from what had been discussed as Mr Hall breaking his word. In essence, Mr Southern was unhappy and annoyed that Mr Hall so easily agreed to the notion of 24 months' notice only then to come back after receiving advice to identify it as a problem. This was so even though he himself knew that it might be an issue.

68. Mr Hall explained things on **11 January 2022**. He had also made it clear on **07 October 2021** that he did not personally believe the 24 months' notice period to be extreme but needed to take legal advice on it, which the Claimant understood. That much is reflected on **page E38**. Mr Southern ultimately accepted Mr Hall's position about the 24 months period of notice as something else was introduced to replace the longer period of notice: "... I knew that was gonna come back so that's fine mate, its fine" [**page E31**].

The 're-introduction' of a payment 12 months after the point of sale

69. I return to the sequence of events as they unfolded, staying with the discussion on **11 January 2022**. Having discussed the issue of a 24 month notice period, the Claimant said he wanted a payment of £90k on point of sale and a 12 months' notice entitlement [**page E39**]. Mr Hall said:

"Yeah, urm my initial thought when we've been talking was whether that we would re-introduce some money at 12 months. So at 12 months I'd either then pay you know £30k", then

"...I'm just thinking urm about the amount at the other end, you know £40k or something like that in 12 months cause I think the 12 months is industry norm should I say"

[emphasis added]

70. There was also discussion about Mr Hall personally 'underwriting' payments to the Claimant following the sale. By 'underwriting', Mr Hall meant that he would make a personal payment to the Claimant. However, Mr Southern was not keen on this. The discussion developed into Mr Hall considering paying the Claimant £60k on the point of sale (which had always been and remained on the table from the outset) plus a further £40k one year after the sale:

“ss: okay, but like I’ve just said there, if they don’t want me and I’m only there for 6 months then I get that £40 after 6 months?”

JH: I can do that, I’m not worried about that if from day one they turned around and said we don’t need Steve, fuck off and they gave you a cheque for £60k”

Ss: they pay me a years’ salary and you pay me the other £40k.

JH: yeah, absolutely, there’s no way you’re not gonna get that £40k.

SS: and then I also get the £60k off you tax free?

JH: At the front, yeah

[pages E41-E42]

71. The Claimant was happy with that, or at least, he said he was. There was then discussion about the mechanics of payment, the need to get things drawn up in writing and reviewed by respective solicitors and there was discussion about the issue of taxation. Mr Hall said he was looking at a timescale of about 4 weeks in order to get a draft contract to Mr Southern. The Claimant also said he was happy with that **[page E47]**.

72. To the extent that Mr Hall said in paragraph 34 of his witness statement that the reference to payment by him ‘personally’ was simply a turn of phrase and that he intended it to be a payment by the company, I reject this. Mr Hall’s evidence on this is not borne out by the documents. The discussion about personal payment was not, as he suggests in his witness statement, about the Claimant’s ‘salary’ at all. It was about the subsequent payments on sale. I find that he did mean at this juncture that he would pay such payments personally. Another aspect of Mr Hall that struck me from his evidence and from the documents was that he was prone to speaking about such matters before thinking and certainly before taking advice. He had a tendency to ‘shoot from the hip’. I find that this was partly out of a genuine desire to demonstrate to the Claimant that his intention was to ‘look after’ him and partly due to his inexperience in selling a business. In any event, nothing that was discussed on **11 January 2022** amounted to a binding agreement – and it was not suggested otherwise by Mr Benjamin. It remained the case of both parties that nothing was agreed until reduced to writing, reviewed and signed off. Everything was subject to a written contract being drawn up by the Respondent’s solicitors and checked by the Claimant’s solicitors and approved by the Claimant with or without any amendments to the draft.

73. Following this conversation, on **14 January 2022**, Mr Hall emailed the Claimant setting out his understanding of what so far had been ‘agreed’. The email was headed *subject to contract* **[page N104]**. It is to be noted that the email sets out under ‘Personal Contract’:

- *“At point of sale – pay £60,000 to Mr Stephen southern (Private payment – no taxes)*

- £35,000 at the end of the first year working for new Owner. However, agreement was reached to pay £15,000 (Paid two instalments in November 2021 and forfeits the afore mentioned £35,000, as requested and agreed)
- £40,000 to be paid at 12 months from point of Company Sale or sooner and irrespective Steve Southern's employment status with the new company owners (Confirmation of taxation to confirmed during week commencing 17th Jan 2022)."

74. This reference to the £35k being 'forfeited' was further confirmation – if by now it were needed - that this sum of money had simply dropped out of the equation. Any future payments to be made, following a change of control, were to be the £60k and £40k. What had been discussed and agreed in principle was that the £60,000 was to be a payment by Mr Hall, personally, not by the company. Mr Hall had also talked of paying the £40k as a personal payment from him to the Claimant. The Claimant expressed that he would be happy to agree a 12 months' notice period on the basis that, on point of sale he would be paid £60k and believing that if a new owner were to dispense with his services at any point thereafter, the company would pay him a year's salary (£70k) and he would be paid a further £40,000 by Mr Hall. This is reflected in the exchange on **page E41 -E42**:

"JH: but either way that 12 months you'll get that £40k pay from me.

SS: Ok, but like I've said there, if they don't want me and I'm only there for 6 months then I get that £40k after 6 months?

JH: I can do that, I'm not worried about that if from day one they turned around and said we don't need Steve, fuck off, and they gave you a cheque for £60k

SS: £70K

JH: then you'd get your money, it's as simple as that.

SS: They'll give me my years' salary and you'll give me the other £40k

JH: Yeah, exactly

.....

SS: They pay me a years' salary and you pay me the other £40.

JH: Yeah, absolutely, there's no way you're not gonna get that £40k

SS: And then I also get the £60k off you tax free?

JH: At the front, yeah

75. On **page E43 – E44**, the discussion turned to tax:

SS: And I still get my £60 at point of sale between me and your family, that doesn't change.

JH: No, that doesn't change no.

SS: The £40k would be taxable I understand that.

JH: Uumm, I'm thinking not, but let me check on that..... But my personal view I'd like to be paying the £40k without the tax but we might have to be a bit careful that's all it could bite us both in the bum.

.....

JH:....let me check with my lawyer.....we might have to play it straight down the line.....It could end up being paid through the company which at the way it is that could be the deal, that'd be written in. Or it could be written in time to a personal contract, but let me check on that cause either way I want it to be buttoned down so you're happy with it.

76. The Claimant said he would be happy to pay tax on the £40k but wanted it written into his contract of employment as a payment to be made personally from Mr Hall:

"That has to be in the caveat of my employment contract that if I leave the business in 12 months but Jon's gonna pay me this, but I dunno. But I just feel as if like, yeah right we agreed one thing, but I'm happy to do that, I'm happy to do that but I want it in writing tonight, Jon."

77. The £40k payment plus 12 months' notice period was negotiated in exchange for the 24 months' notice period. Mr Hall expressed that he wanted the Claimant to receive the £40k tax free if possible. At one point the Claimant suggested that Mr Hall pay him £100k privately at the point of sale and that he sign up to a 12 month contract [**page E45**]. It is clear, and I so find, that the discussion at this stage was about tax avoidance. It may be that Mr Southern was willing to accept the £40k as taxed but I have no doubt that he would have welcomed it as tax free if at all possible.

78. The Claimant asked Mr Hall if he had a buyer for the business yet, to which Mr Hall replied he had not. He explained that the only person to have 'stepped out of the frame' was David Lodge but that he had not approached anyone yet. The Claimant still had it in his mind that the business was to be sold by the end of March. Indeed, in these proceedings the Claimant maintained that there had been an 'agreement' that Mr Hall would sell the business in March. This is reflected in paragraphs 19 and 35 of Mr Southern's witness statement. However, there was no such agreement to sell in March/April nor was there any commitment to do so by Mr Hall. All there had ever been was an expression by Mr Hall of a hope to sell the

business by then. There was no rational basis for ever considering that Mr Hall had agreed with the Claimant that he would sell by then. Because Mr Hall had mentioned a time-frame in which he hoped to sell, Mr Southern took this as him giving him his 'word' that this would happen. As March loomed and there was no sign of a sale, Mr Southern started to become more suspicious of Mr Hall, considering him to be going back on his word to sell the business by that date. He believed from his friend Andy Pickett that a sales pack would have been produced by now [page E47]. This suspicion drove him to become increasingly desperate to have his 'guarantees' set out in a binding contract before any sale pack went out. I have no doubt, and so find, that on **11 January 2022**, Mr Southern deliberately repeated the need to have the £40k privately agreed by Mr Hall in the knowledge that he was covertly recording the call. That he covertly recorded this discussion (and at least one other) reflects badly on Mr Southern. I do not accept that there was any need to record the conversation because – as Mr Southern put it - Mr Hall was not to be trusted. The simple reality is that the two men were negotiating and I am entirely satisfied that Mr Hall was doing do in good faith. He had never done anything like this before. He was unsure of the legal mechanisms required for paying £100,000 to Mr Southern, if possible by avoiding tax for both of them and he needed to obtain legal advice on this.

79. Although Mr Hall was, at the time dealing with Mr Southern in good faith, I do not accept what he says in paragraph 43 of his witness statement that Mr Southern sought to persuade him to pay the money privately. The suggestion that the money be paid as a private arrangement emanated from Mr Hall. I find that Mr Hall had been 'shooting from the hip'. He believed this to be a good way of rewarding Mr Southern. I find that Mr Hall was untruthful about the origins and initial discussion about 'personal' payments. His sense of having been wronged and his bitterness towards Mr Southern has led him to cast the Claimant as always having been bent on extracting money from him personally. It would have reflected better on Mr Hall had he acknowledged the true origin of this proposal for 'personal' payments. Nevertheless, the key point is that both men, at the time, were continuing their negotiations as to the method by which a significant amount of money was, in the future, to make its way to the Claimant.

Radisson Blu meeting: 08 February 2022

80. The next significant event occurred when the Claimant and Mr Hall met at the Radisson Blu Hotel at east Midlands Airport on **08 February 2022**. This was arranged at the Claimant's request as he was frustrated by the length of time it was taking to get him a draft contract, even though this was still within the four-week timeframe he had agreed with Mr Hall on **11 January 2022**. Mr Southern glosses over this meeting in his witness statement and I find he did so deliberately, underplaying his behaviour at the meeting. In paragraph 29 of his witness statement, Mr Southern describes the meeting as 'ill-tempered' which became heated and that he had to walk away before he lost his temper. He then merely

adds that Mr Hall cannot have felt too threatened by him as he drove him to the station after the meeting.

81. The two men discussed whether there was any progress with the sale of the business, which there had not been. The absence of any written agreement had now led Mr Southern to believe that Mr Hall was trying to trick him. He told Mr Hall at this meeting that he (Mr Hall) was '*disloyal and nasty*'. Although he had not been put under any pressure by Mr Hall to work while signed off by his GP, Mr Southern brought up the fact that he had continued to work to keep the business running even though his mental health was poor. He insulted Mr Hall by referring to him as disloyal and nasty and, although he denies it, I accept Mr Hall's evidence that Mr Southern went further and threatened him and threatened to damage Mr Hall's car. This was what Mr Hall later meant when, on **17 March 2022**, he subsequently referred back to this meeting and '*all the nasty stuff you said at the Radisson Blue*' [page E70].
82. Mr Southern's behaviour towards Mr Hall was abusive. I find that he did, in fact, lose his temper and that he walked away from the table only to prevent a further, more serious escalation. The red mist had descended and he manifested fury towards Mr Hall. I find that he wisely walked away to calm down as he did not trust himself not to lash out. He returned when he had calmed down. It was an unpleasant meeting for Mr Hall, who found himself in an awkward position. He did not wish to provoke matters and I accept that he felt wounded by Mr Southern's comments and behaviour. Yet despite this, he still considered the Claimant to be a friend and someone he wished to reward. He was also conscious of Mr Southern's poor mental health and the family stressors, which may explain much of Mr Southern's behaviour at the time. After the meeting, Mr Hall drove the Claimant to the station. To the extent that Mr Southern suggests that Mr Hall cannot have felt threatened because they drove together, I reject this. He had calmed down by then and the whole episode is symptomatic of the volatile nature of their relationship. Expression of deep emotions was unusual for these two men. However, this was the first serious dent in the relationship. Mr Hall was hurt by Mr Southern's behaviour. On his part, Mr Southern would only become more suspicious of Mr Hall and more demanding as to the terms of his future reward as time went on.
83. I have no doubt, and so find, that Mr Southern was acting irrationally. It is also very likely that his irrational conduct was partly explained by the state of his mental health at the time. By the end of **February 2022**, had Mr Southern looked at matters rationally and objectively, he would have realised that Mr Hall's intentions to reward him were looking very genuine indeed. His salary had been increased to **£70,000** a year back in **November 2021**. He and his wife had been paid **£15,000** as a gesture of goodwill. Then in **January 2022**, Mr Craig Dyball confirmed that the changes to the pension had been made and in **February 2022**, Mr Shaun Tyson of North East HealthCare Solutions confirmed that the Claimant and his wife had been added to the Health Care Scheme with Vitality. It is difficult to see these things as anything other than positive developments and making good the things that Mr

Hall and the Claimant discussed. That is especially so given that Mr Southern's position as an employee had not in any way changed. The only reason he was afforded any of these benefits was that Mr Hall wanted to look after him, to reward him for his loyalty. Further, there was no sign of a sale on the horizon. Rather than creating suspicion that ought to have signified to Mr Southern that there was no sense of urgency.

The first draft contract

84. Following this meeting, a first draft contract was then drawn up. It was sent to Mr Southern on **01 March 2022 [pages E77 to E92]**. It stated that the contract was for a fixed term of one year – as opposed to providing for a 12 month notice period. It also introduced post-termination restrictions which had not previously been raised. Still at this stage, no sale of the business was imminent and Mr Southern was aware of this.
85. There was no reference in that first draft contract to the payments of £60k or £40k on sale of the business as discussed during the conversation on **11 January 2022**. That is because Mr Hall had embarked on what was ultimately to turn out to be a wild goose chase. He investigated the possibility of paying the money (£60k and £40k) to the Claimant under a 'Deed of Gift' arrangement. He had gone as far as instructing a different solicitor who dealt in private client work to advise on this. It was Mr Hall who came up with the suggestion of a deed of gift, not the Claimant. The two exchanged text messages on the subject on **07 March 2022 [page K37]**.
86. The Claimant was unhappy about not having the arrangements for the payment of the £100k (£60 + £40K) reduced to writing, On **09 March 2022**, Mr Hall emailed Mr Southern attaching two deeds of gift relating to £60k and £40k respectively [**page K74 – K78**]. I have no doubt that this mechanism was conceived by Mr Hall, in discussion with his private client solicitors, as some form of tax avoidance scheme which he hoped would work to the benefit of Mr Southern – indeed his email of **09 March 2022** makes that abundantly clear. The draft deeds of gift serve as a window into the mind of Mr Hall at the time, which was – as reflected in the WhatsApp messages – that he was intending to pay this money personally to Mr Southern as a gift from him. This 'personal' element of the suggested arrangement was consistent with how Mr Southern had understood matters and expressed them as 'personal' payments before there had even been any mention of deeds of gift. What Mr Hall had been exploring was how to make the payments as tax efficient as he lawfully could, most likely to his advantage and not only the Claimant's. That is where the Deed of Gift arrangement came in.
87. However, Mr Hall was later advised that this was not a viable option for rewarding an employee and that it may well have tax implications. He visited the Claimant at his home on **15 March 2022** and explained the advice he had received. However, this served only to add to Mr Southern's irrational distrust of Mr Hall and further irritated and frustrated him. It was, in Mr Southern's mind, reminiscent of how Mr

Hall had gone back on his 'word' in respect of the 24 months' notice period. He was becoming more convinced that Mr Hall was just stringing him along.

88. Although he had had his doubts about a deed of gift arrangement when Mr Hall first suggested it, nevertheless Mr Southern was willing to agree to such an arrangement albeit with some tweaks. This was so, even after Mr Hall had explained to him that his employment solicitor had advised against it. This is when Mr Southern started to become more demanding in his expectations. In a WhatsApp message to Mr Hall on **17 March 2022** [page E59-E60 – also at K42-K43], Mr Southern said:

“We’re happy to make the deeds of gifts £50,000 each so equal for both families. We would like the first DofG paying now so can be signed off and shows trust & loyalty from you to us, the second £50,000 I’m happy to not be contractual or even signed but when you leave Roch I would expect you to pay us. This way you trust me to sort this mess out and I’ll trust you to pay the second DofG without any security but your word, which means more to me than any contract. You know how I work and loyalty & trust is everything!

... If this is not acceptable for you and Jo let me know, however this is what me & Vicky want to try and put everything right as this is all about trust for both families without contracts. We can then sit down and sort the employment contract when I’m back at work.”

89. Therefore, the Claimant wanted the first payment by deed of gift to be paid immediately. As Mr Southern said in evidence, he asked for this because he wanted Mr Hall to show him the loyalty. He wanted to put him on the spot as he believed Mr Hall to be playing mind-games, engaging in 'shenanigans' and 'manipulation'.

90. Mr Hall responded [page E61-E63 – also at K43 – K44]:

“Hi Steve, a number of things were discussed last night and as promised I spoke to my solicitor. Exploring the avenue of other ways to show my appreciation of all your hard work over the last 13 years has only dragged out a process, which was originally planned to be contractual and easy. With all the difficulties surrounding your health in between and me backing off discussions in the process because of my obvious concerns for you inadvertently haven’t helped. In trying to do the right thing, I seem to have done the wrong thing, but nothing more than that and our emails to each other since have only sought to highlight the proposal we set out in York. Like I said last night, the DoG turned out to be the wrong way to go, worth exploring, but has only lead to mistrust and the implications lead to risk on several levels, so ultimately not the route we should go down. I know I was talking about a mix but having mulled over this and confirmed with my solicitor, the only way to make this work properly for you is to write this into ur new contract with specific entries confirming amounts and conditions of when payments are to be made, which we’ve already agreed upon’. As a condition of the sale of the company,

monies will be set aside for this specific purpose and thus guaranteeing the reward I feel you deserve and always promised. My solicitor has asked if you can send through the amendments to your employment contract because we can delete as you see fit. It is after all, your employment contract to benefit you. He will immediately insert the reward payment paragraphs and then you scrutinise with your HR solicitor. This is the final element to be added and the amounts we agreed will be paid to you and taxes accounted. Ergo, £60k £ 40k net. I want to put this to bed now so you feel secure in the knowledge you'll get your reward, we can both move on and get the operations side back on track, you doing what you do best. Like I said this whole thing has brought the worst out in us and I want that side of things out back in the box where it deserves to be so you and [I] can repair the trust, which has wavered due to procrastination for the most part and looking and debating things we shouldn't have wasted our breath on and I take the blame for that. I want my reliable trustworthy friend and Gen Mgr back on board and in full health too. You'd got challenges ahead and I don't want to be contributor to that as will be hard enough as it is. Apologies for the long winded message, but I promised to speak to my solicitor, resolve immediately and in that vein, for you and for me, I can have this resolved perhaps by end of pay tomorrow if you can return your initial employment contract amendments. I will ask for an immediate turn around so you can then make final assessments with ur solicitor next week...It's not right what's happening and I want to end the ill feeling right now. I hope you understand what I'm saying and we can move on"

91. I have set that message out in full as it accurately reflects the situation to date. I find that Mr Hall was entirely genuine in the sentiments expressed in that message.

92. Mr Southern replied to say that he agreed. However, he had not sent the draft contract through to his solicitor, even though that had been the expectation of both men when negotiating the terms. He asked Mr Hall if his, i.e. Mr Hall's, solicitor could add the proposal with terms and conditions and he would then go through the lot with his own solicitor [page E64]. There followed some further mutually reassuring messages between them on pages E64 and E65. At 15:52 on 17 March Mr Hall messaged again to say that his solicitor was 'sorting this tomorrow' [page E65]. Mr Hall had, as he said he would in his earlier message at 15:17, contacted his solicitor right away.

93. However, Mr Southern then had a change of heart after discussing matters with his wife Victoria. At 17:19 he messaged Mr Hall saying among other things:

"I've had a chat with Vicky and everything just seems wrong, arrangements changed at the drop of a hat, since Tuesday it's changed 3 times on your behalf and things quoted weren't discussed. Just funny how your solicitor is very active and willing to change things immediately! Wasn't like before pal as couldn't get him to do nothing! Vicky and myself want the proposal we sent this morning as everything else doesn't work.... Sorry pal but I'm willing to wait until you leave for second payment and trust you with this but not 1st. The last few months have put

things in prospective for my family too and as a result I'm back on the sick with stress!" [page E65-E66 – K44-45]

94. The reference to 'the proposal we sent this morning' was a reference to Mr Southern's proposal that Mr Hall pay the Claimant the sum of £50,000 immediately – as opposed to a payment of £60k on the point of sale of the business. I infer from the delay between the Claimant's message at 15:22 on **page E65**, from his response on page **E66** and from the fact that his message began with the words 'I've had a chat with Vicky', that Mr Southern's wife was an influence on his change of heart. It is clear from her subsequent behaviour in April (which I address below) that she had a very low opinion of Mr Hall and I infer that she expressed her distrust of Mr Hall to the Claimant, thereby fuelling his own burgeoning sense of distrust in him.
95. Mr Hall responded in a further lengthy but reassuring message to the Claimant at 18:41 [**page E66 to E71 / K45 – K46**]. Among other things, he recognised that delays had spoiled their relationship and that matters had dragged without that being the intention. He also referred to 'all the nasty stuff you said at the Radisson Blu', which (see paragraph 81 above) was a reference to the discussion on **08 February 2022**. He added:

"...there was always going to be a process to make sure we were approaching this properly and yes it could've been done quicker, but I explored a number of avenues cos I haven't done this before and it's brought us back to the beginning. I apologise for that, but like I said, not done to create a bad situation. This was always about me showing you gratitude for all you've done and that's never changed. For my friend and the man who grew into my Gen Mgr my trust and promise has never changed..... You're my friend Steve and we should be kicking this into touch so we can get on.... I don't want to lose you as a friend and rightly or wrongly, I should've just done this even when you were ill, but I only tried to do what was right. Nothing more Steve, only what I thought was right for you under horrible circumstances."

The second draft contract

96. Mr Hall then instructed his solicitors to prepare a second draft contract. He sent this second draft to Mr Southern by email dated **08 April 2022 [page E74]**. He said:

*"Sorted it and I've attached the latest version, which you can go through with your solicitor. The document is bolt n braces and no offence is intended because of the legal speak.... I don't want any concerns for you or me moving forwards, so **if you have any amendments I'll understand and if you fire back then we can quickly discuss and finalise and move one.**"*

[emphasis added]

97. This second contract [**pages E93 to E117**] contained the references to the payments of £60k and £40k in clause 23.4 [**page E104**]. Mr Southern noted that

the contract still contained a provision for a fixed term of one year and the post-termination restrictions (for a period of six months or twelve months post termination depending on the nature of the restriction). He was unhappy with this.

98. Clause 23 of the draft agreement of **08 April 2023**, contained what were referred to as 'Change of Control' provisions. It is to be noted that there was no reference there to the original '£35k' (first discussed at the **07 October 2021** meeting). Nor is there any reference to £15k having already been paid purportedly 'on account' of that £35k. Any reference to £35k had gone in its entirety. This is consistent with my earlier finding that the £15k was never contractual or intended to be repaid at all (see paragraph 60 above). Had it been understood by Mr Hall that the £15k was 'on account' or repayable if the company was not sold, I would have expected to see this properly reflected in the draft contract – especially in light of Mr Hall's own words in his WhatsApp message of **17 March 2022**: *"the only way to make this work properly for you is to write this into ur new contract with specific entries confirming amounts and conditions of when payments are to be made, which we've already agreed upon"*.

99. The draft agreement was to pay a sum of £60k ('the First Agreed Sum') within one month of the Change of Control and £40k within one month of the first anniversary ('the Second Agreed Sum'). The company was going to bear the tax on these payments, with the result that Mr Southern was to receive £100,00 in total tax free. The draft contract also recorded the things already put into effect, namely the increased salary, holiday, pension and the availability of private healthcare for Mr and Mrs Southern. The plan to prepare a Deed of Gift had gone. The contract of employment – if agreed by the Claimant - would now reflect two substantial tax free payments to him. Mr Southern never sent the draft contract to his solicitors for their review or advice. He did not respond in writing with suggested amendments, as one might expect in a negotiation.

Meeting of 13 April 2022 at the Claimant's home and his subsequent suspension

100. Instead, the two men met at the Claimant's house on **13 April 2022**, again at Mr Southern's request. On any analysis this was a long meeting. Mr Hall estimates it as lasting about 5 hours or so, whereas Mr Southern estimates around 7 hours. Whether it was 5 hours or 7 hours or something in between, it was a marathon session. In his witness statement, Mr Southern dedicates two relatively short paragraphs to this meeting (paragraphs 39 and 40). In his statement, Mr Hall says a bit more about the meeting (paragraphs 62 to 70) but still not a great deal. There were no notes and Mr Southern, when questioned, said that he had not covertly recorded any of it.

101. There were conflicting accounts as to what happened. I prefer and accept the evidence of Mr Hall. Mr Southern was still angry with Mr Hall. He did not like what he read in the second draft contract. At one point he threw the document across the room. This behaviour is consistent with behaviours he had demonstrated at the

meeting at the Radisson Blu in February and in keeping with the tone of some of the WhatsApp messages exchanged between the two men. I find that Mr Southern's irrational belief that Mr Hall was looking to deceive him was now leading him to make unreasonable demands of Mr Hall. As the Claimant saw it, he needed to emphasise to Mr Hall just who ran the operations and the state the business was in and how things had been and would be adversely affected by his absence from work. Mr Southern painted a poor picture of morale at the Stockton depot. He referred to the operations staff as 'his team'. Although he did not go into detail, told Mr Hall that staff had been complaining about pay relative to the amount of work they had to do. Mr Southern was – in a very direct and uncompromising manner – making it clear to Mr Hall in no uncertain terms that things were not running smoothly and that he needed to do something about this. Mr Hall wanted to understand some operational matters and what needed to be done. At one point, Mr Southern called John Higgins, an external contractor, regarding some essential maintenance issues. He put the call on loudspeaker. Mr Southern emphasised the closeness of his relations with Mr Higgins to Mr Hall. Mr Higgins said to Mr Hall during this call that he would not carry out any maintenance until Mr Southern returned to work.

102. Mr Hall was not a passive participant at this meeting. I cannot conceive that a meeting which lasted between 5 and 7 hours was entirely one sided. Both men are emotional individuals and based on my other findings as to how they engaged with each other, I infer that they expressed their emotions sometimes effusively during this meeting. They also discussed the second draft contract, the operations and what needed doing at the depot. I accept the Claimant's evidence that Mr Hall wanted to understand more about the operations. That is understandable. However, by asking questions about the operations, this only further confirmed to Mr Southern that Mr Hall had some hidden agenda. Mr Southern, I am satisfied, expressed himself in a very firm way, bordering at times on the dramatic – for example when he threw the draft contract across the room. However, I do not accept that at this meeting, in his own home, Mr Hall was physically threatening or aggressive towards Mr Hall. He was angry for sure and upset and demonstrative. That, I am satisfied of. He demanded forcefully to know why his contract had not been completed and why the business had not been sold. However, he did not lose his temper anywhere near to the extent that he had at the Radisson Blue. Mr Hall was not unused to Mr Southern expressing himself strongly or forcefully.

103. If it is possible to capture the essence of such a long meeting, it is this: Mr Southern felt let down and disappointed by Mr Hall whom he had come to regard as failing to demonstrate loyalty to him. He made this known to Mr Hall in no uncertain terms. Mr Southern made it clear that he demanded and deserved loyalty. He believed he deserved to be handsomely rewarded as he was certain that he was the driving force behind Mr Hall's successful business. That is why he emphasised the operations were not running smoothly without him. He wanted Mr Hall to know just how much Mr Hall depended on him. Mr Hall, for his part, expressed that he understood how hard Mr Southern had worked and sought to reassure him that he still intended to look after him financially when the business

was sold. They raked over old ground since the proposed sale was first raised and Mr Southern expressed his unhappiness with how he was being treated. I have no doubt that the meeting ebbed and flowed emotionally.

104. It was, I find, only towards the end of the meeting that things took what was to turn out to be an irretrievable step towards a total breakdown in their relationship. Mr Southern said to Mr Hall that he had told the operations staff back in **October 2021** that he was planning to sell the business. It is more likely than not that this was said in the context of Mr Southern emphasising that Mr Hall did not pay the staff enough, that morale was low due to this and Mr Southern being away from work. Mr Southern was making the point that things would only improve if he were to get back to work quickly. It was at this point, I find, that Mr Southern demanded a payment of £100,000 by Easter, which is what it would take to show him loyalty and to ensure that he returned soon before matters got worse. Although I have broadly accepted Mr Hall's account of this meeting, as with other aspect of the evidence of both men, I did not accept all of it. In particular, there was one point in paragraph 69 of Mr Hall's statement that I did not accept. There, Mr Hall states that the Claimant said if he did not give him £100,000, the staff would leave on him saying so. Although I find that Mr Southern did say that staff would leave, I do not find that it was precisely as Mr Hall recalled it. On this issue, I do not consider that Mr Hall was looking to deceive the Tribunal. I am satisfied on this point that he has given a genuine recollection of Mr Southern's 'threat' as he perceived it. Mr Southern said nothing in his witness statement about demanding £100,000 by Easter, yet that is precisely what he did – as he conceded in cross examination. He also, I find, linked this to his return to work. The message he knowingly conveyed to Mr Hall that he was essential to the smooth running of the business and that if he did not receive a payment of £100,000 in that time-frame, he would remain off work, staff morale would remain low without him being there, things would not get done and that staff would leave the business. However, I do not accept that he used the words '*on my say so*'. He did not need to. The message was clear enough to Mr Hall without this. That essential message was that it was in Mr Hall's interests to pay him £100,000 by Easter, or he would remain on sick leave, the business would be in dire trouble given his influence over the operations staff, who would leave the business if he did not come back. Mr Hall took this as a threat. He felt that he was being blackmailed.

105. I do not accept Mr Southern's evidence in paragraph 39 of his statement where he says that the reference to staff leaving was simply in the context of him warning Mr Hall that they might leave because they were not being adequately rewarded. Nor do I accept what Mr Southern says in paragraph 40 that there was no ill-feeling at the end of what was a difficult and unpleasant meeting. That is simply implausible in light of the evidence and of the build-up to this meeting. I consider Mr Southern was being untruthful in this respect. He knew perfectly well what message he conveyed to Mr Hall and the failure to mention in his witness statement anything about demanding a payment of £100,000 by Easter was, I infer, a deliberate omission on his part.

106. Mr Hall immediately came to see the things that Mr Southern had said at the meeting regarding 'his team' and morale as implicit threats. He felt betrayed by the Claimant. As far as he saw matters, he had only ever looked to do the right thing by him, to provide Mr Southern and his family with financial security. He had increased his salary. He had improved his benefits and all that had tried to do was to ensure the correct mechanics were in place for the payment to him of a substantial sum of money should the business be sold which was not imminent.
107. I accept and find that Mr Southern did have a sense of entitlement to a substantial reward. He saw this as his rightful reward. I also accept and find that by demanding the payment of £100,000 in the context of making it clear who ran the show and with the additional comment that staff would leave the business, he was effectively challenging Mr Hall's leadership and threatening the efficient running of the business. By now, the relationship had broken down. So concerned by what had happened, and unsure how to handle the situation, the next day, **14 April 2022**, Mr Hall contacted Mr Phil Griffin of P. Griffin Consulting Limited. He explained about the meeting, that he felt that Mr Southern had breached confidence by telling staff about the proposed sale. He gave Mr Griffin background information for the purposes of seeking advice on what to do. Mr Griffin gave evidence to the Tribunal. I was impressed by him as a witness. He was measured and credible and made no attempt to embellish any aspect of his evidence.
108. Mr Hall expressed to Mr Griffin that he had significant concerns about his most senior manager which had developed since he had disclosed the fact that he was proposing to sell the business. Mr Griffin emailed on **16 April 2022** with advice on how to proceed [**pages F5-F9**]. His first recommendation was to suspend the Claimant pending investigation for misconduct arising out of the events primarily of the meeting on **13 April 2022**. Mr Griffin advised on and drafted the wording of the allegations against the Claimant (see **page F6**). Mr Hall followed this up by providing some information in writing, in an email dated **16 April 2022** [**page F3-F4**]. Aside from expressing concern about how Mr Southern might react to being suspended he expressed the view that Mr Southern would see suspension as '*complete treachery towards him*'. He was right. That is precisely how Mr Southern saw things.
109. I have previously mentioned that Mr Southern had experienced a number of stressors in his life and his mental health and wellbeing had declined since about **November 2021**. Mr Hall was himself under considerable stress as a consequence of Mr Southern's gradually changing behaviour towards him following the disclosure regarding the sale of the business. As I have also set out, Mr Southern appeared to me as the more demonstratively passionate of the two men. He could fly off the handle, from time to time and could express himself aggressively, even if passing it off as a joke – for example when referring to breaking the nose of Mr Hall's solicitor [**page E40**] and his behaviour at the Radisson Blu. Looking at the WhatsApp messages as a whole, and upon reading the transcript of the covert recording taken by Mr Southern, there was, I find, a gradual and creeping insidiousness about Mr Southern's increasingly demanding attitude towards Mr

Hall, whom he came to see as devious and manipulative. I find that Mr Hall endured this behaviour for a number of reasons: firstly, the two had enjoyed a warm, albeit, volatile relationship; secondly, Mr Hall sympathised with Mr Southern's mental health issues and his personal stressors; thirdly, Mr Southern was a very strong personality and Mr Hall, in my assessment, lacked the strength of character to deal with the force of his personality. Just as Mr Southern had in his evidence, Mr Hall also became upset and emotional during his evidence when recounting what had happened, saying that the situation was very difficult for him, *'more than some people think'*.

110. The very act of involving Mr Griffin caused Mr Hall some anxiety. He was genuinely worried how Mr Southern would react. He came to believe that Mr Southern might even react violently towards him. The concerns he expressed to Mr Griffin in his email of **16 April 2022 [page F3]**, were, I find, genuinely held concerns. In light of these, Mr Griffin advised Mr Hall to change the locks on the premises, and to tighten I.T. security.

111. On **19 April 2022**, Mr Hall called the Claimant and suspended him. Mr Griffin had prepared a call script which Mr Hall read out on the call **[pages F17 – F18]**. Reading from the script, he said that the allegations included:

- *'An implied breach of bribery legislation,*
- *Misuse of confidential information (specifically the unauthorised disclosure to other staff members about the proposed sale)*
- *Serious insubordination (including threats to act against the best interests of the organisation and not adhering to the standards expected of a General Manager)*
- *All this leading to a serious breach of confidence'*

112. Mr Hall also said that *'while conducting and concluding this investigation in a thorough and speedy manner is in the interests of all parties, it should be expected that aspects of this investigation may be paused given that you are currently off sick.'* He expressed his concern for Mr Southern's wellbeing. The same day, Mr Hall called Mrs Southern, again reading from a script prepared by Mr Griffin **[page F19-F20]**.

113. Mr Southern's suspension was confirmed by letter dated **20 April 2022 [page F23]**. The discussion with Mrs Southern was followed up in writing also on **20 April 2022 [page F24]**. She was instructed not to discuss any aspect of the case with any clients, customers, suppliers, staff or colleagues. Mr Hall reminded her of her own conduct responsibilities. As set out above, Mr Hall was concerned by how Mr Southern might react to his suspension and was conscious that he had significant influence over staff and access to commercially sensitive information. He implemented Mr Griffin's advice regarding precautionary steps to guard against any reaction. These included changing locks, preventing his and Mrs Southern's access to certain information and installing cameras.

Victoria Southern: 22 April 2022

114. On **22 April 2022**, there was an incident involving Mrs Southern. Given that Mr Hall's alleged treatment of Mrs Southern formed a part of Mr Southern's claim of unfair constructive dismissal (see paragraph 3h of the list of issues) it was notable that Mrs Southern was not called to give evidence in these proceedings. When questioned on this, Mr Southern said it was because it would be a stressful experience. I do not accept that as the genuine reason. Litigation can be stressful. Mrs Southern attended the first day of the proceedings and sat at the back of the tribunal. Her absence meant that the only witnesses who could speak directly about what happened on **22 April 2022** were Mr Hall and his son, Ryan Hall.
115. On that day, Mrs Southern entered Mr Hall's office while he was in a meeting with a technician, Gavin Atma Row. She was angry, motivated by a sense of injustice towards her and her husband and upon learning that Mr Hall had changed the locks on doors and denied her access to certain information. She had gathered around her a number of technicians, namely Sean Rowbottom, Josh Atkinson, Christopher McLaren and Nick Jordan to witness this confrontation. In addition to Mr Atma Row, that meant that five technicians were about to witness what ensued. I infer from this, from the nature of her conduct and by her failure to give evidence, that her motivation was to humiliate, embarrass and intimidate Mr Hall. She shouted at him and verbally attacked him. He asked her to desist a number of times and to speak privately but she pointedly refused and persisted. She insisted that the others stay and hear what she had to say. Ryan Hall was witness to all of this. From the time he saw Mrs Southern storm into the room and heard her raise her voice, he got a bad feeling so he decided to record what he could of the exchange on his phone. He did not capture the entire event but he got most of it.
116. Mrs Southern subsequently obtained statements from the five technicians referred to above. These were obtained for the purposes of a complaint she made against Mr Hall [**pages H1 -H7**]. I considered those statements but gave relatively little weight to them as the makers were not present to be challenged and they were obtained by Mrs Southern to serve her own complaint. I was conscious that the Respondent's witness was the son of Jon Hall and that his evidence should be treated with some caution. However, I found Ryan Hall to be an honest and considered witness. It was clearly very difficult for him to be in this arena at all. I noted that he had remained outside the hearing room until called to give evidence and had not been swayed by anything that he had seen or heard taking place in the room. I accepted the oral evidence of both Jon Hall and Ryan Hall as an accurate and truthful account of what happened on **22 April**. I also had the benefit of a transcript of the recording made by Ryan Hall [**pages H8 – H54**].
117. Mr Hall emphasised to Mrs Southern that she should not be speaking openly about Mr Southern's suspension and the allegations against him, that these things were confidential and that she should not be talking in front of his employees. She refused, referring to the technicians as '*my friends, they are my husband's friends*'.

She was dismissive of Mr Hall's plea that procedures had to be followed. She mocked Mr Hall and insulted him. It was an ugly display of anger, a tirade of abuse. Mrs Southern provoked Mr Hall. She refused to leave the office, refused to stop berating him. After some extensive provocation he momentarily lost his control and shouted '*fuck off, stop right now*'. As he did, he walked in her direction. At that point, Mrs Southern attempted to portray this movement and his swearing as something it was not. She accused him of being about to hit her, stating that she was a woman. She looked round the room for support from her witnesses, adding '*you went towards me Mr Hall, big mistake*'. She was, I find, goading him, feeling secure in the presence of her friends and not in any way intimidated by Mr Hall. On the contrary, it was he who felt intimidated.

118. Mrs Southern's actions on that day amounted to serious insubordination. The transcript reveals a vitriol and contempt for Mr Hall, whom she variously refers to as deluded and dishonest. She also made it clear to Mr Hall and those listening that Mr Southern ran the company. In gathering the staff round her she believed she had them on her – and Mr Southern's – side. She was, in effect, stirring an insurrection in those who witnessed the event. Understandably, her conduct shocked and greatly upset Mr Hall.

119. Later that day, Mr Southern messaged Mr Hall saying that his wife had come home shaking and crying and that Mr Hall had apparently lunged for her in anger. Clearly that was the story she had given to Mr Southern but I am satisfied that it was not a true account. Mr Hall responded to Mr Southern, attempting to explain the situation. His responses were an honest, concise and accurate summary of the situation. Mr Southern messaged Mr Hall again after midnight and asked for an independent HR company to investigate the days' events to which Mr Hall agreed.

120. Shortly after this, on **23 April 2022** Mr Southern messaged Mr Hall to say: "*I'm willing to try once more if you want before it ends up all messy and legal, want to try and resolve once more?*" [page N64]. That is a surprising message from someone who believed Mr Hall had lunged at his wife in anger.

121. Mrs Southern was suspended on **25 April 2022**. She retaliated by raising a grievance against Mr Hall on **26 April 2022** [page H57]. She subsequently sent the five statements from the technicians referred to in paragraph 115 above. These statements had been taken privately. They were not taken by the independent HR adviser who, at Mr Southern's request, was appointed to investigate the incident. Having read those statements and in the absence of any witness giving live evidence to support the content, I find it difficult to equate much of what they say with what I have read in the transcript and heard from Ryan Hall and his father, Mr Hall. The statements do not give a measured and balanced account. They do, however, reveal a loyalty towards Mr and Mrs Southern.

122. Mr Hall appointed Emma Barugh of MB Human Resources Consulting Limited to investigate the grievance. She met with Mrs Southern twice: on **10 June 2022** and **27 June 2022**. The hearings were recorded and transcribed, [pages H70-H89

and **H79-H89** respectively]. Ms Barugh asked Mrs Southern if she wished to listen to the recording of the incident on **22 April** made by Ryan Hall but she declined. Ms Barugh did not uphold Mrs Southern's grievance. She wrote to her on **08 July 2022** with her outcome letter and report [**pages H90 – H140**]. Her report is impressively thorough. Mrs Southern was afforded the right to appeal against the outcome. However, she did not do so. She resigned with immediate effect on **10 July 2022 [page I-33]**.

123. Nothing happened with regards to progressing the investigation into the disciplinary allegations against the Claimant following his suspension. As set out above, when Mr Hall suspended the Claimant by telephone on **19 April 2022**, he said that the investigation 'may' be paused. This was also re-stated in the letter of suspension on **20 April 2022 [page F23]**. Mr Hall was also conscious that the following week was going to be a stressful week as it was when the criminal trial against the person who assaulted Mr Southern's son was to take place. Mr Southern had also at one point disclosed to Mr Hall that he had attempted to take his life on two occasions, which horrified and concerned Mr Hall. I accept his evidence that he was always conscious of this and of Mr Southern's mental wellbeing and that he did not wish to put any additional pressure on Mr Southern. Therefore, for these reasons the Respondent paused the investigation. Attention was then diverted by the events of **22 April 2022** involving Mrs Southern. As it transpired, the trial which had been the subject of much anxiety for Mr and Mrs Southern was postponed, something about which they found out on or about **23 April 2022 page N63**].

124. On **26 April 2022 [page I -1]**, one of the technicians, Josh Atkinson submitted his resignation on giving notice to terminate his employment with effect from **01 July 2022**. Mr Atkinson had been planning to and subsequently did emigrate to Australia. Two days later, on **28 April 2022**, Christopher McLaren resigned [**page I-4**]. He did so because he did not feel comfortable working the remainder of his notice, being 2 weeks. I infer that what prompted his resignation was the deteriorating state of affairs within the business exacerbated by the events of **22 April 2022** of which he was a witness. He was not encouraged or induced to leave by Mr Southern.

125. Coincidentally, on **28 April 2022**, the Claimant messaged Mr Hall to ask for an update on the investigation as he would '*like to get this nipped in the bud as anything dragging on will just affect my health more*' [**page N75**]. As at this point in time then, Mr Southern had asked to meet to avoid things getting messy and then subsequently asked for the investigation into his conduct to be nipped in the bud. On **05 May 2022**, Mr Hall responded to Mr Southern explaining that whilst the investigation had been suspended, it was now felt that this was not in the Claimant's best interests. He proposed that they continue with the investigation in way that would minimise stress for him [**page G10**]. On **12 May 2022**, Mr Hall wrote again to say he would like to meet up with him with regards to a number of things, including the investigation process and a recent request made by Mr Southern to

collect property from the site [page G12]. That meeting was envisaged to be at the Parkmore Hotel in Stockton but was subsequently changed by agreement.

126. The rearranged meeting was held on **26 May 2022**. Mr Southern met with Mr Hall and Mr Griffin at the Hamptons by Hilton Hotel in Stockton. By agreement between counsel, evidence was given about that part of the meeting which was not a 'protected conversation'. By consent, the meeting was recorded by the Claimant and a transcript was produced [pages N106 – N109]. The transcript mistakenly identifies Phil Griffin ('PG') as 'PB'. Other than that, the content was not in dispute (as indeed was the case with the other transcribed recordings). The Claimant had asked to recover his personal items from the premises. Although that was agreed to, Mr Griffin suggested he might not want to remove all his belongings as that might suggest he was not coming back. He did not want the team to think that, as it was not the case as the investigation had not been carried out yet. They then went on to discuss the investigation process. Mr Griffin explained that there was work to be done in gathering evidence. He explained that the business was engaging Emma Barugh to undertake the investigation. He said that they were meeting with her later that day and that they would give her Mr Southern's contact details for her to contact him regarding the investigation.

Eaglescliffe Golf Club: meeting of 27 May 2022

127. Following the meeting at the Hilton hotel, the Claimant asked Mr Hall to meet him at his golf club to try and resolve matters. Mr Hall agreed, against the advice of Mr Griffin. They met on **27 May 2022**. Mr Southern and Mr Hall were, once again, at odds as to what happened at this meeting, save in one respect: Mr Southern accepted in cross-examination that he put a wildly unrealistic offer to Mr Hall, knowing it to be unreasonable. I return to this below.

128. Mr Hall attended the golf club with his son, Ryan. This turned out to be another marathon session which lasted up to 3 hours. Ryan Hall was present for a short time only, at the beginning of the meeting. After about fifteen minutes or so, Mr Southern suggested he leave the two men in private. He gave Ryan his putter and he then went to the practice green leaving his father and Mr Southern to talk.

129. Ryan Hall was present when Mr Southern told Mr Hall that there were a lot of problems in the business without going into details. Again, I accept Ryan Hall's evidence as honest and truthful and find that Mr Southern told Mr Hall that he wanted to buy the structural side of the business as well as the lighting side. It is highly likely that he had no intention of buying both and it was not a serious remark, designed simply to unsettle Mr Hall. He added that the first thing he would do on acquiring that side of the business would be to sack John Charles, the Director of Transportation, about whom he was dismissive.

130. Ryan Hall gave unchallenged evidence in paragraph 14 of his witness statement that Mr Southern said that he was looking to have a meeting with his investment people the following week and that had they not had this meeting he

would have told the whole operations team to walk out. I accept what Ryan Hall says there and accept his description of Mr Southern's mood as being superficially jovial. This was his golf club where he felt comfortable and in control. He was on home territory so to speak. Ryan Hall also gave unchallenged evidence, which I again accept, that at one point Mr Southern said: '*do not worry Jon, I will not hit you*'. Even though this went unchallenged, in my cautious approach to his evidence I nevertheless considered the possibility that Ryan Hall was making this up to protect his father. However, I was satisfied that he was not making anything up. He was an honest witness. I am satisfied that this comment of Mr Southern, delivered in a superficially jolly way, was meant as an implied threat to Mr Hall. It was consistent with the passing 'jokey' comment the Claimant made in his covertly recorded discussion with Mr Hall on **11 January 2022** where Mr Southern said about Mr Hall's solicitor: "*just tell your lawyer to not pull the wool over Steve's eyes and offer me 6 months the fucking clown... Because I'll come up there and break his nose as well...I'm only joking.*" [page E40]. Mr Southern may well have been joking but these were now two occasions where he had alluded to violence directly in conversations with Mr Hall. Mr Hall had a concern that Mr Southern had a propensity towards violence, based on one of those viscerally emotive conversations he had had with Mr Southern in the past. Whether his concern was justified from those previous conversations I am in no position to say. However, I find that Mr Hall's concerns were genuine. He was fearful of him. Further, I find that Mr Southern was aware that Mr Hall was fearful of him and he was prepared to play on this when matters suited, as was the case on **27 May 2022**. I agree with Ryan Hall that when Mr Southern said, in a superficially jovial manner, '*don't worry, I will not hit you*', that this was meant to intimidate Mr Hall. Although they had been close colleagues and friends, there was a part of Mr Hall that was afraid of Mr Southern and Mr Southern understood this.

131. Ryan Hall also gave unchallenged evidence that Mr Southern told Mr Hall he wanted a £50,000 credit line to start up his own business and he wanted Mr Hall to buy Mrs Southern a £40,000 car which, if was struggling, he could fund by selling his own 'super car'. Indeed, Mr Southern accepted in cross examination that he had demanded these things, in addition to a payment of £30,000 to be paid into his account before the start of the Jubilee weekend. Mr Southern had also offered for him and his wife to resign. He agreed in cross examination that these were unrealistic payments and that Mr Hall would never give him. When asked by me, in that case why ask for them in the first place, Mr Southern said that he knew that he (i.e. Mr Hall) would agree to them to get him to stay, but that he would later manipulate things and go back on his word. He said he asked for these things because he wanted to look in him the eyes, to see Mr Hall's reaction as he was a man who never delivered on his promises. He added: '*he was never going to do that, why would he, but he agreed to it.*' The reference to needing a credit line to start up his own business was a reference to opening up a garage [page I-12]

132. It is not easy to understand why someone would ask for something that he knew to be unrealistic and that he never expected to get but that is precisely what the Claimant did. Mr Southern was, I find rather perversely, testing Mr Hall, even

though it is difficult to see objectively to what end. He had, as I have set out come to see Mr Hall as manipulative and devious, a man who goes back on his word. He shared the view of Mrs Southern, clearly expressed on **22 April 2022**, that Mr Hall was deluded and dishonest. This was, I find, a reflection of Mr Southern's irrational thinking, underpinned by his deep-seated belief that he was entitled to be paid a substantial sum of money on sale of a business that he had made successful. This odd situation whereby he knowingly made unreasonable demands was Mr Southern's own way of proving to himself that Mr Hall was indeed untrustworthy. If Mr Hall agreed to the unreasonable demands on the spot, it was proof to him that he was indeed devious and manipulative because, from Mr Southern's perspective no honest or reasonable person would agree to them. Mr Southern further suggested – while Ryan Hall was on the practice green - that he leave the company but that he could work collaboratively with it and any future buyer through a new venture. However, he did not believe this would ever happen. Mr Hall did not believe this would work either.

133. Contrary to what Mr Southern said, Mr Hall did not in fact agree to any of his demands. However, neither did he tell Mr Southern there and then that he was making unreasonable demands and that he would not agree to them. He played along with Mr Southern's unreasonable demands, neither agreeing nor refusing. Looking at matters objectively (something of which Mr Southern and Mr Hall are incapable) a reasonable person would not have made such an offer and a reasonable 'offeree' would have said immediately that the offer was unrealistic and could not be agreed. Mr Hall did not do that. Further, despite not believing that his suggestion of collaborative arrangement would work, he asked for Mr Southern to set the proposals out in an email for him to look at. When, in his subsequent message on **page I-9**, Mr Hall said to Mr Southern: "*...don't think I'm asking for too much when we both have so much work on four our mutual benefit. I don't see any problems, just a good start.*", he was, I find, being disingenuous. They both were. This relationship had broken down and a disingenuous Mr Southern was now met by a disingenuous Mr Hall. Any goodwill either man previously had for the other was gone.

134. I accept Mr Hall's evidence and so find, that at one point during the discussion, Mr Southern advised Mr Hall that unless he paid him £20,000 by the end of the day he was going to destroy Mr Hall's business. He said that he would persuade the operations staff to leave. However, Mr Southern knew very well that Mr Hall would not agree to pay him £20,000. Upon leaving the meeting, Mr Hall and his son, Ryan, drove back to their home in Buckinghamshire. Mr Hall, concerned by what Mr Southern had told him about persuading staff to leave, called several of the technicians in an attempt to mitigate against the risks of them leaving. He spoke to the Operations Manager, Paul Bambrough. Mr Bambrough explained that he, Mr Rowbottom, Mr Atma Row and Mr Atkinson were going to leave their employment on Monday and join the Claimant if he asked them to.

135. Later the same day, **Friday 27 May 2022**, Mr Southern messaged Mr Hall to say: *'You didn't need to call the guys for confirmation pal. All okay as I'd do the*

same bud but my word should have been enough again [page I-5]. As I have set out above, I had accepted Mr Hall's evidence that at the meeting at the golf club, Mr Southern said that he would persuade people to leave. This message supported that finding. Mr Southern had learned from Mr Bambrough that Mr Hall had called him from the car on his way back down to Buckinghamshire. I infer from Mr Southern's words "*my word should have been enough again*" that Mr Southern meant that Mr Hall ought to have understood that when Mr Southern told him that staff would leave, his word on that should have been enough for Mr Hall to know that they would and that he need not have bothered calling the staff for confirmation of this.

136. Mr Hall responded at **page I-6**, to say that he had to find out for himself. He then went on to say disingenuously that he was keen to explore the arrangement discussed at the golf club – that is, about working collaboratively [**pages I-6 to I-8**]. As proof of his own disingenuousness, Mr Southern replied to say he was not interested, that Mr Hall should proceed with the investigation (which they had discussed the previous day) [**page I-8**]. Mr Southern then informed Mr Hall that he would proceed with his business opportunities once all the disciplinary stuff was over [**page I-9**]. There continued to be an exchange of messages [**pages I-9 to I-14**] in which Mr Hall set out some of the things that had been discussed at the golf club and his call to the technicians to be told they were leaving on Monday. Mr Hall's long message at **pages I-11 to I-14** referred to the proposals put by Mr Southern at the golf club giving the reader the impression that he wanted further to discuss them as he 'was interested' about working collaboratively. When asked by me why he put matters in such a positive way, Mr Hall said that he did so because he knew the Claimant was lying and that he wanted to flush this out. He said that he knew the Claimant would not put any proposal in writing, that he just wanted money. I find that both men were now playing some perverse mind-games with each other.

The Claimant's resignation

137. In the early hours of Saturday morning **28 May 2022**, Mr Southern messaged to say that he was resigning with immediate effect [**page I-14**]. This was followed by a further exchange of messages, where Mr Southern said that his offer today was '*a test*' and he was done with false promises [**pages I-16 to I-17**]. He went on to say that the '*lads are my team and not yours and that's why I'm the best in the business and you haven't a clue*'. He added that: "*they all said if I leave today then they won't work for you as if you can do that to a man who set everything up for you*". Mr Southern emailed Mr Hall and a Mr Heerin of Rob Heerin HR at around 4am on **28 May 2022** saying that he had resigned and, among other things, referring to Mr Hall as a fraud and a liar. He said he would look at constructive dismissal [**page I-22**].

138. Following the termination of his employment, Mr Southern was paid **£1,852.59** in respect of accrued, untaken holiday pay. He gave unchallenged evidence that he had not taken any holiday in that holiday year, which I accept and so find.

139. Sometime after **27** and on or before **31 May 2022**, the Claimant sent a message to Mr Hall and others saying:

"I was just phoning to advise that all people who receive this message! No it's not a joke! Will no longer be working for you with immediate effect. Most have already told you but your probably too busy driving round shabbington with other village idiots, in your Aston with a straw hot on (laughing emoji). What a sausage.

Tomorrow they will be offered new employment starting on the 1st of July for my good loyal friend David Wainman from DMW Recruitment! He's got some poke Jon! And hasn't got a bald patch that look like an egg in a bun. Sean will like that one!

He's not yet decided what role to give each but will decide once he meets them after everyone's holiday.

I've told him about how much they have looked after me through my darkest days and have become my good loyal friends before I even start to tell him about each individual personalities and ability and core family values.

Let's just say Jon that Dave can pay them more than you can each month for been drivers to the shops for out bait. Ha ga.

He's also agreed to pay them a months current salary in advance as thinks most of them deserve more, so need to assess strengths and weaknesses and make sure all are happy every day to come to work for him.

That's what it all about pal. Do the hard graft for nice employers who look after his or hers staff and not a southern shandy drinking idiot. That's what you call proper NORTHERN PEOPLE which you never could be! You silly baldy skinny man.

I think that's it for the minute as need to go and kiss my gorgeous wife and ask her what role she would like in his company! Knowing Vicky she'll decline any offer as will be too busy filing her nails for our next holiday. Think she deserves more than anyone a bit of time to wind down. (can chat about that later Vicky with Dave).

Good luck Jon and we wish you a shitty Jubilee.

Dave will see you tomorrow for bank details of all in this message.

Good night fellas."

140. The Tribunal was not told to whom, in addition to Mr Hall, Mr Southern sent that message but it was sent to more than one person. Mr Hall reported the Claimant to the police in line with Mr Griffin's advice. I accept Mr Hall's evidence that this was not done maliciously or vindictively but because he genuinely believed that Mr

Southern had attempted to 'blackmail' him and was trying to bring his company down. The police were provided with a collection of the WhatsApp messages, the Claimant's contract, documents and audio recordings of the meeting of **26 May 2022** and the incident regarding Mrs Southern on **22 April 2022**. Having considered the material and spoken to some of the former technicians, the police took no action against Mr Southern. A police report was provided [**page K100 – K146**]. In brief, the investigating officer did not see the concerns as a criminal matter but as a civil and/or employment dispute.

Resignation of technicians

141. Some of the Respondent's technical operation staff resigned around the same time as the Claimant. Some resigned a few days later and others within a few weeks. Those were:

- **Paul Bambrough**: resigned without notice on **28 May 2022**,
- **Sean Rowbottom**: resigned without notice on **29 May 2022**,
- **Gavin Atma Row** resigned without notice on **30 May 2022**,
- **Nick Jordan** resigned without notice on **02 June 2022**,
- **Chris Metcalfe** resigned without notice on **02 June 2022**,
- **Josh Taylor** resigned without notice on **09 July 2022**,
- **David Taylor** resigned without notice on **11 July 2022**,
- **Dan Hodge** resigned without notice on **12 July 2022**,
- **Jonny Reed** resigned without notice on **12 July 2022**,
- **Connor Evenden** resigned without notice on **13 July 2022**

142. Paul Bambrough was the first to resign, on **28 May 2022** shortly after he visited the Claimant's home. Mr Rowbottom, the Operations Manager, resigned on **29 May 2022**. In his resignation email [**page I-28**], he said among other things that he '*watched in disgust at the way you treat Steve when he had a severe breakdown which was caused by you and then when you attacked Vicky in front of all our staff, I worked alongside Vicky for many years her family helped me move back into my own house which was tenanted due to financial situation.*' He went on to say: '*over the last 6 years I have been loyal to Steve, you and the company and feel that I can no longer fulfil my role as Operations Manager....*'

143. On **01 June 2022**, the Respondent's solicitors wrote to the Claimant, among other things, referring to the resignation of Paul Bambrough, Sean Rowbottom, Josh Atkinson and Gavin Atma Row and accusing the Claimant of committing an unlawful act namely inducing others to breach their contracts in respect of which the Respondent said would (in the event that there be further inducements) result in proceedings before the High Court. They quoted from the Claimant's contract, reminding him of his obligations of confidence [**page K80 – K81**]. I would state in passing that the reference to Josh Atkinson in that letter was entirely misplaced (see paragraph 124 above).

144. On **01 June 2022** the Claimant messaged Chris Metcalfe: *“sorry to mess you around but I’m going away later for a few days at the lodge.... I’ll call you next week for a chat and see how you are and what options you may have... I understand your loyal to Roch and I appreciate that 100%, you’ve got a mortgage and a baby on the way so don’t worry if your not interested.”* [page N12]. Mr Metcalfe resigned with immediate effect the next day. The same day, Mr Jordan resigned.
145. Shortly before Mr Jordan and Mr Metcalfe resigned, the Claimant messaged Mr Hall to say: *“I think you’ll also receive a couple of emails in about 30 min off Chis & Nick as they don’t also want to work for a rat who offered him £35,000 to stay”* [page I-46 also at K83]. That was a reference to Mr Jordan and Mr Metcalfe. He followed this with a fatuous message that he would buy the company for £1 cash.
146. From those primary facts, I infer that the Claimant approached Mr Metcalfe and induced or encouraged him to leave the Respondent’s employment with the promise of future employment with his soon to be formed new venture. I accept Mr Hall’s evidence and so find that Mr Metcalfe told Mr Hall that the Claimant had approached him. Mr Hall tried to persuade Mr Metcalfe to stay but failed as Mr Metcalfe found the situation too unstable [pages N6 – N9]. I similarly infer that Mr Southern encouraged Mr Jordan to submit his resignation. It may be that they would both have left in any event due to the instability caused by recent events but I have no doubt that Mr Southern did took the opportunity to persuade them to leave.
147. On **03 June 2022**, the Claimant then messaged Mr Hall to say that he was interested in buying Mr Hall’s business with potential investors.
148. On **04 July 2022**, Mr Southern set up and incorporated a business called Southern Asset Management Limited [page J1]. The work is the same as that offered by the Respondent company [page J8]. The company structure, set out on page J9 shows the following personnel:
- Mr Southern, Managing Director
 - Paul Bambrough, Business Development Manager
 - Sean Rowbottom, General & Operations Manager
 - David Taylor, Software Development
 - Joshua Atkinson, Senior Training Officer
 - Joshua Taylor, Ultrasonic Technician
 - Nicholas Jordan, Ultrasonic Technician
 - Christopher Metcalfe, Senior Technician
 - Gavin Atma Row, Senior Technician
 - Jonathan Reed, Trainee Ultrasonic Technician
 - Conner Evenden, Trainee Technician

149. That company structure was set out in a presentation document prepared by Mr Southern and others in **July 2022**. It had been emailed to potential clients by Mr Bambrough and then forwarded to Mr Hall by a Mr Dan Moorley on **19 July 2022 [page J4]**. It is difficult to reconcile that with Mr Southern's evidence that he did not operate until **September 2022** but even if that is right, the intention in **July 2022** was to be up and running as soon as possible. I find that Mr Southern started contemplating his new venture right at the beginning of **June 2022** after the first three technicians referred to in paragraph 141 above had resigned. It was with that in mind that he subsequently sought to encourage Mr Metcalfe and Mr Jordan to leave. Messrs Bambrough, Rowbottom and Atma Row did not, I find, need much encouragement beyond simply learning that the Claimant was resigning. They were so much part of his team and were so loyal to him and Mrs Southern that they needed no further encouragement. I infer from the facts that they would have left in any event, with or without Mr Southern's encouragement. That was not necessarily the case with the seven other technicians identified in paragraph 141.

150. On **10 July 2022**, Mrs Southern resigned, also with immediate effect [**page I-33**].

151. I do not accept Mr Southern's protestations of innocence in paragraph 61.4 of his witness statement. Where he says that he '*was touched by their loyalty*' when he had '*found out what they had done*' (i.e. that the staff had resigned). Mr Southern was, I find, being untruthful regarding his involvement in the departure of staff. He meant to give the impression that staff had resigned without his influence. I reject his evidence and find that they were so influenced, through his impugning of Mr Hall's character. There are sufficient references to the Claimant speaking of Mr Hall in the most derogatory of terms (for example, referring to him as a rat, and a liar and being a person with no morals etc..) to enable me properly to infer that he had expressed these sentiments directly to the staff. He was in regular contact with staff, with some visiting his home. Further, the display by Mrs Southern, in which she solicited the backing of the technicians, only served to embed in many employees support for Mr Southern and a distrust of Mr Hall of whom the technicians saw relatively little during their employment. They were Mr Southern's "team". He had fostered their loyalty and by now, I find, poisoned their minds against Mr Hall. He did not have to do much to induce Messrs Rowbottom, Bambrough and Atma Row to leave. Once it became clear that he was leaving, it was highly unlikely that they were going to remain with the Respondent.

152. Although encouraged, I do not find that Messrs Rowbottom, Bambrough and Atma Row resigned on the understanding that they would walk into employment by Mr Southern or a company formed by him or that they would be employed through some intermediary company. The reality was that Mr Southern had at that time no work to offer them. It is right that the Claimant found them work through his contacts, with a business called Motif8. Although I am satisfied that he encouraged them to leave the Respondent's employment, I am not at all satisfied that he encouraged them to or induced them to do so in breach of their own contracts of

employment, that is by terminating their contracts without notice. I infer that they did so of their own volition, out of a sense of loyalty to Mr Southern.

Road Management Services (A13) PLC

153. Earlier, on **28 April 2022**, the Respondent had quoted for a contract with Road Management Services (A13) PLC [page N97]. It was anticipated that the work (should the bid be successful) would start on **06 June 2022**. The bid was successful. The Respondent had earmarked Connor Evenden, a trainee technician, to do the work on the contract. On **13 July 2022**, at 7.35pm, Mr Hall wrote to the client to say that he would be unable to fulfil the contract as his 'new technician' (Mr Evenden) had failed to respond to his communications, leaving Mr Hall to conclude that Mr Evenden had '*been turned*' by the Claimant [page N102]. The previous day, on **12 July 2022**, Mr Evenden had called Mr Southern (paragraph 61.9 of the Claimant's witness statement). He said that he was concerned about being out of his depth. I accepted Mr Southern's account of this. During the discussion, on the basis that Mr Evenden was unsettled in his position, Mr Southern offered Mr Evenden a role with his newly formed company. The phrase used by Mr Hall was apt. Mr Evenden had indeed '*been turned*' and he resigned at 9.10pm on **13 July 2022** [page I-43]. However, Mr Southern did not induce or encourage Mr Evenden to terminate his employment immediately and/or in breach of his obligation to give the Respondent notice. The Respondent lost the A13 work [page N102]. The quote to carry out the work was **£41,300 + VAT**. Mr Hall gave unchallenged evidence that this would have afforded a profit to the Respondent of approximately **£11,000**.

Precision Recruitment UK Ltd

154. The Respondent produced two invoices from Precision Recruitment UK Ltd, each in the sum of £900 + VAT. The first was dated **26 September 2022** [page L4] and the second was dated **28 September 2022** [page L3]. Both invoices contain the same description: '*Retainer part 1: Search fee for the position of Trainee Service Engineer.*' There were two further invoices dated **27 September 2022** both with the description: '*Retainer part 2: Invoice on offer acceptance for the introduction of [NAME] in the position of trainee Service Engineer*' in the amount of £2,700 plus VAT, payable by **11 October 2022** [pages L5 and L6]. A final invoice was produced dated **27 October 2022**, in the amount of £3,300 plus VAT, payable by **10 November 2022**, with the description: "*Retainer Part 2. Invoice on offer acceptance for the introduction of [NAME] in the role of Operations and Compliance Manager*" [page L7].

155. Mr Hall gave no evidence as to the period of time covered by these invoices, for example whether they covered work undertaken by Precision Recruitment in the period **28 May to 28 August 2022** or in any period thereafter. There is nothing on the face of the invoices to that effect. None of those invoices related to the cost of replacing the Claimant. They were, it was argued, the costs incurred for replacing other employees who had resigned immediately and, the Respondent

contended, in breach of their contracts of employment. Mr Hall's written witness evidence amounted to a single sentence (paragraph 141 of his witness statement).

Relevant law

Constructive dismissal

156. Section 95 Employment Rights Act ('ERA') defines the circumstances in which an employee is dismissed for the purposes of the right not to be unfairly dismissed under section 94. Section 95(1)(c) provides that an employee is dismissed by his employer if the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is **entitled** to terminate it without notice by reason of the employer's conduct. This is known as 'constructive dismissal'.

157. The word 'entitled' in the definition of constructive dismissal means 'entitled according to the law of contract.' Accordingly, the 'conduct' must be conduct amounting to a repudiatory breach of contract, that is conduct which shows that the employer no longer intends to be bound by one or more of the essential terms (express or implied term) of the contract of employment: **Western Excavating (ECC Ltd) v Sharp** [1978] I.C.R. 221, CA.

158. In many cases, the breach of contract relied upon by the claimant is of the implied term of trust and confidence. That is expanded upon in a well-known passage from the judgment of the EAT (Browne-Wilkinson J) in **Woods v WM Car Services (Peterborough) Limited** [1981] I.C.R. 666

*"It is clearly established that there is implied in the contract of employment a term that the employers will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee **Courtaulds Northern Textiles Ltd. v. Andrew** [1979] I.R.L.R. 84. To constitute a breach of this implied term it is not necessary to show that the employer intended any repudiation of the contract: the tribunal's function is to 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: **see British Aircraft Corporation Ltd. v. Austin** [1978] I.R.L.R. 332 and **Post Office v. Roberts** [1980] I.R.L.R. 347. The conduct of the parties has to be looked at as a whole and its cumulative impact assessed: **Post Office v. Roberts**"*

159. The test for determining whether this term of trust and confidence has been broken is an objective, not a subjective one. An employee may well genuinely lose trust and confidence in his employer (and vice versa) but that, of itself, does not mean that the term has been broken. A tribunal or court must assess objectively whether the conduct of the Respondent is such that it can be said the relationship of trust has been seriously damaged.

160. If so, the employee must resign in response to that conduct and not delay too long in doing so, lest he be found to have affirmed the contract.
161. It is a question of fact in each case whether there has been conduct amounting to a repudiatory breach of contract: ***Woods v WM Car Services (Peterborough) Ltd*** [1982] I.C.R. 693, CA. In determining this factual question, the tribunal is *not* to apply the range of reasonable responses test (which applies instead only to the final stage of deciding whether the dismissal was unfair), but must simply consider objectively whether there was a breach of a fundamental term of the contract of employment by the employer: ***Buckland v Bournemouth University*** [2010] IRLR 445, CA.
162. It is enough that the employee resigned in response at least in part, to fundamental breaches of contract by the employer. The fact that the employee also objected to other actions or inactions of the employer, not amounting to a breach of contract, would not vitiate the circumstances of the repudiation: **Meikle v Nottinghamshire County Council** [2005] ICR, CA. It follows that once a repudiatory breach is established, if the employee leaves and even if he may have done so for a whole host of reasons, he can claim that he has been constructively dismissed if the repudiatory breach is one of the factors relied upon: **Wright v North Ayrshire Council** UKEATS 0017/13 (27 June 2013); **Abbey Cars West Horndon Limited v Ford** UKEAT 0472/07.
163. The final incident which causes the employee to resign does not in itself need to be a repudiatory breach of contract. In other words, the final incident may not be enough in itself to justify termination of the contract by the employee. However, the resignation may still amount to a constructive dismissal if the act which triggered the resignation was an act in a series of earlier acts which cumulatively amount to a breach of the implied term. The final incident or act is commonly referred to as the 'last straw'. The last straw must itself contribute to the previous continuing breaches by the employer. The act does not have to be of the same character as the earlier acts. When taken in conjunction with the earlier acts on which the employee relies, it must amount to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant so long as it is not utterly trivial: **Omilaju v Waltham Forest London Borough Council** [2005] IRLR 35.
164. The thorny issue of how the law on affirmation applies in 'last straw' cases where there has been past repudiatory conduct has recently been addressed (and resolved) by the Court of Appeal in **Kaur v Leeds Teaching Hospitals NHS Trust** [2019] I.C.R. 1. The effect of the last straw is to revive the employee's right to resign in cases where arguably an employee had affirmed an earlier fundamental breach by the employer. The tribunal should consider:
- a. 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?

- b. Has he or she affirmed the contract since that act?
- c. If not, was that act (or omission) by itself a repudiatory breach of contract?
- d. If not, was it nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of trust and confidence?
- e. Did the employee resign in response (or partly in response) to that breach?

165. In a complaint of unfair constructive dismissal, because the employer has not expressly dismissed the employee, it is not a case of it having to show a reason for the 'dismissal'. The employee has, after all, resigned in response to what he says is repudiatory conduct / a fundamental breach of contract. However, the Respondent must still show the reason for the constructive dismissal, which for all intents and purposes means it must show the reason it repudiated the contract of employment: see **Berriman v Delabole Slate Ltd** [1985] I.C.R. 546, CA.

Unlawful deduction of wages

166. Section 13 Employment Rights Act 1996 provides as follows:

- (1) An employer shall not make a deduction from wages of a worker employed by him unless:
 - (a) the deduction is required or authorised to be made by virtue of a....relevant provision of the worker's contract or
 - (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.
- (2)
- (3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

Employer's Contract Claim

167. If an employee resigns without giving his or her contractual notice, he or she will be resigning in breach of contract. Where an employee resigns in breach of contract, the prima facie measure of damages will be the cost of procuring another

person to do the work, less the amount that would have been paid under the contract to the defendant. Any loss to the employer would also be partially offset due to no longer having to pay the employee his or her notice pay.

168. Consequential loss may also be recovered where the consequences might reasonably be expected to have been in the contemplation of the parties at the time the contract of employment was made as likely to result from breach, with the result that in certain circumstances the employer may recover the value of work lost by reason of an employee's failure or refusal to work under the terms of the contract.

169. The remedy is to put the employer in the position it would have been in if the employee had abided by the terms of their contract. Damages for breach of contract are normally based on the financial loss to the claimant resulting from the non-performance by the defendant of the obligation in question. Damages are compensatory and not punitive.

Discussion and conclusions

170. I shall set out my conclusions by reference to the agreed list of issues.

(1) Unfair dismissal

Was the Claimant constructively dismissed?

171. The answer to this question is no. Mr Southern was not constructively dismissed. The Claimant resigned from his employment. He was not entitled contractually to terminate his employment without notice (see paragraph 157 above). He did so in breach of his own contractual obligation to give three months' notice of termination.

Why have I arrived at this conclusion?

172. The Claimant relied on a breach of the implied term of mutual trust of confidence. More specifically, he contended that one or more of the acts identified in paragraph 3 a to j of the list of issues (either taking them in isolation or taking some or all of them cumulatively) amounted to repudiatory conduct on the part of the Respondent. That required him to establish that the Respondent, without reasonable and proper cause, conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. The Claimant has failed to establish this on the civil standard of proof. In arriving at this conclusion I considered each of the alleged acts/failures identified in paragraph 3 separately and cumulatively. I set out my conclusions on each of them below. Paragraphs 3 (a) to (c) of the issues relate to the same subject matter (the failure to draw up of a written contract reflecting what had been agreed) as do paragraphs 3 (3) and (f) (the Claimant's suspension)

- (a) The failure by the Respondent to produce documentation around a revised employment contract and lump sum payments which reflected what the Claimant says has been verbally agreed between the parties.

173. Firstly, documentation around a revised employment contract was produced. Secondly, there was documentation reflecting payments of £60,000 and £40,000. The Deeds of Gift documents dealt with those payments and the second draft contract dealt with those payments. It is right to say that there had been a delay in producing draft employment contracts following the initial discussion on **07 October 2021**. The first draft was not sent until **01 March 2022** and the second draft on **08 April 2022**. The case advanced was not on the delay as such but on the failure to produce a contract which reflected what he says had been verbally agreed between the parties.

174. However, by his own admission – and as positively advanced by counsel Mr Benjamin on his behalf – there had been no agreement. It was accepted by the Claimant that the parties had, from **October 2021** been ‘negotiating’ on the terms of a future contract and that whatever they had discussed or agreed ‘in principle’ was always subject to contract and specifically subject to review and approval of a written contract by the parties, following advice from their respective solicitors. Therefore, the case as advanced was not made out. Even applying a generous interpretation by reading ‘the failure’ to produce documentation as meaning ‘a *delay*’ in producing documentation which reflected what the parties had verbally agreed ‘*in principle*’, the Claimant has still failed to establish that this in and of itself amounts to repudiatory conduct on the part of the Respondent. Firstly, as stated, there had been no binding agreement which was subsequently reneged.

175. Taking the issue of delay in chunks of time: between **October 2021** and **January 2022** the parties were negotiating. The initial proposal for a payment of £35,000 changed in return for an unconditional payment (a gift) of £15,000 to Mr and Mrs Southern after the **07 October** meeting (see paragraph 43 of my findings). Mr Hall’s advisers were then unavailable for some time into early **January 2022** (see paragraph 61). Upon obtaining advice, the 24 months’ notice period then became an issue, something which the Claimant anticipated (see paragraphs 66-68). This resulted in further negotiations on **11 January 2022**. Mr Hall then suggested a time-frame of four weeks to which Mr Southern agreed (see paragraph 71). Before the expiry of that agreed time-frame, there was the unpleasant meeting on **08 February 2022**, requested by Mr Southern. Mr Hall then looked into ways of paying the Claimant and Mr Southern privately by way of a Deed of Gift, something which although Mr Southern did not suggest, he did not object to. A draft contract was produced on **01 March 2022**, a not unreasonable period of time after **08 February 2022**, particularly bearing in mind that by then the Claimant had secured substantial increases to his benefits and there was no sale of the business on the horizon necessitating any urgency to set down in writing future payments on sale of the business.

176. When the Deed of Gift suggestion came to nothing, a revised contract was then sent on **08 April 2022**, again a not unreasonable period of time given the need for legal input and the absence of any pressing deadline as regards to the sale of the business.

177. As there was no sale of the business on the horizon there was no urgency. Mr Southern's pay and other benefits had substantially increased. Mr Hall was genuinely intending to pay him a further substantial sum of money in circumstances where he had absolutely no obligation to do so. The delay in getting matters signed, sealed and delivered in writing was due to a combination of factors: the periodic unavailability of advisers, the desire to make the payments as tax efficient as possible and the attempts to explore how this could be done. Given that Mr Southern's position was not under any threat and no new buyer was looming, the delays occasioned by these things was not, in my judgment objectively capable of seriously damaging or destroying the relationship of trust and confidence. Mr Southern had no entitlement to a new contract, something he has entirely lost sight of. Further, Mr Southern did not forward the draft contract to his solicitors for their review and input. Had he done so, they might have made some valuable contribution.

(b) The Respondent's failure to follow through with promises which had been verbally agreed

178. It was common ground that there had been no agreement reached. Therefore, the Respondent did not fail to follow through on any agreement. The Claimant has not made out his case as advanced. I repeat, any 'promises' in principle were always understood to be subject to review and formal written agreement. This was not a case of Mr Hall legally committing to something only to renege on matters later.

(c) The Respondent's production of a new employment contract to the Claimant which contained additional restrictions which the Claimant felt were excessive.

179. This is a reference to the post-termination covenants. It may well be that the Claimant felt these clauses were excessive but it was not unreasonable of the Respondent to suggest that the Claimant consider them. That is all that happened. It is certainly not unusual to see clauses of the sort that were included in the draft contracts. The Claimant was very senior. He was to be rewarded handsomely on sale of the business. When the draft contract was sent on **08 April 2022** (see paragraph 96 above) Mr Hall explicitly said that the Claimant should make any amendments. Nothing was forced upon the Claimant. It is not unreasonable, in my judgment, for a business which is affording significant financial benefits to the most senior employee in the business, with access to confidential information, technical staff and clients to suggest he agree to post-termination restrictions. The Claimant after all, did not have to agree to them. This is not conduct which, looked at objectively was such that it seriously damaged or destroyed the relationship of trust

and confidence. The Respondent had reasonable and proper cause for suggesting the clauses in the course of negotiating a new contract.

(d) The Respondent's failure to make additional payments to the Claimant's pension agreed in **November 2021**

180. This was pursued by Mr Benjamin with a very light touch. Initially, there had been a claim of unlawful deduction of wages in respect of pension contributions but this was withdrawn. Mr Benjamin submitted no more than that the delay in making the pension payments contributed to the Claimant's mistrust and deteriorating health. The payments had been made by **January/February 2022**. (paragraph 83 above). This had been done before any written agreement had been drawn up. Strictly, the Respondent had been under no contractual obligation to increase the Claimant's salary in **November 2021** or to make the pension contributions or afford private health care benefits until the parties had drawn up and agreed a written contract. That had been their intention throughout. The Claimant's salary was increased in November – and the pension payments when made by **February 2022**. These were signs of Mr Hall's good faith in the negotiations. Subjectively, the Claimant was unable to see this. However, in not making the pension contributions until February 2022 (when the parties were still in negotiation and prior to the drawing up and approval of a written contract) the Respondent did not, objectively speaking, conduct itself in such a manner as was likely to destroy or seriously damage trust and confidence. Further, I conclude that this played no part whatsoever in Mr Southern's decision to resign.

(e) The Respondent's suspension of the Claimant, in **April 2022**

(f) The Respondent's allegations contained in the suspension letter of **20 April 2022**

181. I take these two together. The Respondent had reasonable and proper grounds for suspending the Claimant. I refer to my findings in paragraph 100 to 113 above. Further, upon leaving the Claimant's home on **13 April 2022**, Mr Hall genuinely understood Mr Southern's position to be that if money was not paid to him forthwith the technical staff would leave on his encouragement and that this was being done to put pressure on him to pay the money. He also genuinely believed that the Claimant had told staff about the proposed sale of the business back in **October 2021**, even though he had been asked to keep this confidential. Based on my findings of fact, Mr Hall had reasonable and proper cause for believing these things and therefore acted reasonably in treating these as serious matters and – given the position and influence of the Claimant – for suspending him pending an independent investigation into them.

182. Suspension was expressly provided for in the Respondent's handbook (paragraph 16 above). In his evidence the Claimant conceded that the procedures had been followed properly. In circumstances where there reasonable and proper grounds for suspending the Claimant and where the procedure followed was within

that envisaged by the handbook, this was not conduct which, on an objective analysis, could be said to seriously damage or destroy the relationship of trust and confidence. I did not accept Mr Benjamin's submission that Mr Griffin should have carried out an investigation prior to taking the decision to suspend the Claimant so as to validate the information given to him by Mr Hall, for example, by speaking to other employees. Owing to the seriousness of the two men in question, it was perfectly reasonable to act on the version of events given by Mr Hall and as a protective measure, to suspend Mr Southern, pending a future independent investigation.

(g) The Respondent's failure to conduct a meaningful and reasonable disciplinary investigation

183. From the point of suspension, the investigation into the Claimant's conduct was paused due to the Claimant's health. When Mr Southern subsequently asked Mr Hall for an update it was decided to progress matters on **05 May 2022** (see paragraphs 123 to 126 above). Attempts were made to fix up a meeting. Eventually that meeting was agreed for **26 May 2022**. At that meeting, Mr Hall and Mr Griffin discussed the investigation and explained that Emma Barugh was to investigate the allegations, that they were to meet with her that day and she would be in touch with the Claimant.

184. The Claimant then resigned from his employment two days later before these steps could be put into effect. In my judgement, the Respondent had reasonable and proper cause for pausing the investigation given concerns regarding the Claimant's health and the then impending trial involving his son. There was no fault attributable to anyone in the time taken between **05 May** and **26 May** to meet and discuss what was going to happen. The Claimant then resigned after the golf club meeting at which he knowingly made unrealistic and unreasonable demands for certain payments. Mr Griffin had emphasised at the meeting on **26 May 2022** that the employment relationship continued. He was at pains to point out how damaging it might look to others were the Claimant to remove all his belongings from the site, although recognising that this was a matter for Mr Southern. Neither he nor Mr Hall gave any indication that the investigation was prejudged. Indeed, they had committed to having an external third party carry out the investigation. None of this, looked at objectively was undermining of the employment relationship and is not conduct which seriously damaged or destroyed the relationship of trust and confidence.

(h) The Respondent's suspension and treatment of the Claimant's wife

185. I refer to my findings of fact in paragraphs 114 to 122 above. Based on those findings, the suspension of Mrs Southern was justified. There was nothing in what the Respondent did that could be said, on any objective basis, to amount to conduct which seriously damaged or destroyed the relationship of trust and confidence between the Respondent Mrs Southern and certainly not between it and Mr Southern. I agree with Mr Humphreys that it was rather extraordinary that the

Tribunal did not hear from Mrs Southern given that this matter was pursued as a repudiatory breach of the implied term in the Claimant's contract. I reject Mr Benjamin's submission that the Respondent 'weaponised' Mrs Southern's position against Mr Southern. It was nothing of the sort. The sole reason for Mrs Southern's suspension was her own conduct. Had Mrs Southern heeded Mr Hall's pleas when she first entered his room on **22 April 2022** to desist from what she was doing, matters probably would not have turned out as they did.

(i) The Respondent's alienation of the Claimant

186. It was not clear what this was referring to. In cross examination, Mr Humphreys asked the Claimant whether paragraph 30 of his witness statement constituted all that he had to say on this matter. Mr Southern said that it was. I made no finding that Mr Hall did anything to alienate the Claimant from the workplace or from the staff. The Claimant has failed to make good this allegation. In any event, Mr Southern was not in fact alienated from anyone. He was, of his own volition, in touch with staff throughout the period covered by his fit-notes. It was because Mr Southern saw himself as the man behind the success of the business and because he felt compelled to keep the operations running which he believed would collapse without him, that he soldiered on. However, there were no facts from which I could infer that the Claimant was alienated by anything that the Respondent did or failed to do. In closing submissions Mr Benjamin submitted that it was the Claimant's case that Mr Hall never picked up the phone to ask him how he was doing. However, I do not accept that. There is ample evidence of both men opening their hearts and feelings to each other throughout this whole sorry period. That was the case during their meetings, when speaking on the phone and when messaging each other by WhatsApp/text.

(j) The Respondent's failure to honour its initial agreement to pay the Claimant £100,000 upon the sale of the business.

187. Mr Southern accepted in cross examination that this point was going nowhere. He agreed that as there had been no sale of the business, it cannot be said that the Respondent failed to honour an agreement to pay him £100,000 upon the sale of the business. In any event, the draft contract of **08 April 2022** (the last word on the matter) which Mr Southern did not forward to his solicitors provided for a payment of £60,000 on sale and £40,000 a year after the sale. Mr Benjamin in effect conceded in submissions that this matter was going nowhere, when he said that it was safe to say that the Respondent was not in a position to pay £100,000 and that he had no submissions to make on this point.

188. Having considered the issues individually, I took a step back to look at the wider canvass. I was satisfied that the Claimant had failed to establish that the Respondent had, without reasonable and proper cause, conducted itself in such a way as was calculated or likely to seriously damage or destroy the relationship of trust and confidence. The Claimant terminated his contract of employment. He was not constructively dismissed. He resigned. I conclude that Mr Southern had a

sense of expectation of reward beyond that which his position warranted. I do not mean to diminish his contribution to the success of the business in any way. I have no doubt he was very good at what he did and worked hard over the years. He was the most senior person in the business after Mr Hall. However, he was, at the end of the day, an employee. He was not a shareholder in the business. He had, I find, lost sight of that fact. He saw himself as being more than an employee (see paragraph 29 above). He felt that there was some bond of friendship and loyalty that warranted reward when Mr Hall came to sell the business.

189. Mr Hall gradually found himself in a difficult position in terms of managing Mr Southern's expectations after Mr Hall broke the news about his intention to sell the business. Mr Hall was exposed due to the distance of his home and work from the main operations base of the company and due to the fact that Mr Southern ran the operations side autonomously. Although Mr Hall made the key business decisions, he was highly dependent on Mr Southern for the smooth operation of the business on the ground. Mr Southern recruited the technicians, knew them well and knew the external contractors and clients. Although I am satisfied and conclude that Mr Hall genuinely wanted to reward the Claimant for his dedication and hard work over the years, his motivation was not entirely philanthropic. It was part philanthropy and part commercial. Mr Southern was influential among the technical staff. He needed to keep the Claimant on board, thus he wanted to make the reward a good one. It was not in Mr Hall's interests to do anything to upset Mr Southern. Rather than act in a way that was likely or calculated to damage trust and confidence, Mr Hall, by increasing Mr Southern's pay by £10,000 a year, increasing his pension benefits and adding him and his wife to private healthcare protection, in fact, acted in a way to further and enhance the relationship of trust and confidence.

190. Sadly, Mr Southern could not see that Mr Hall was not at any point asking anything of him. All that was ever discussed was the giving of something to the Claimant – and quite a substantial something: a tax-free payment of £100,000. Mr Hall was in no way obliged to make such a generous offer – or for that matter, any offer. This exercise of giving him something was primarily philanthropic on Mr Hall's part, with a twist of commercial pragmatism given the importance of keeping his long-standing Operations Manager on board.

191. Considering my findings of fact as a whole, the Respondent did not breach the term of mutual trust and confidence. For all these reasons, the claim of unfair constructive dismissal claim fails and is dismissed.

(2) Wrongful dismissal

192. It follows from the above that that this claim also fails. Mr Southern was not dismissed. He resigned.

(3) Unlawful deduction of wages: holiday pay

193. The dispute between the parties on this claim was narrow. It appeared to depend on whether the Claimant's holiday entitlement was 31 days or 28 days. There was very little evidence from either party save from Mr Southern who said he took no holidays that year, which I accepted (see my finding in paragraph 138 above). In closing submissions Mr Humphreys said that he was not seeking any finding that the Claimant had in fact done so. The Claimant contended that he was entitled to payment in respect of 12 days' holiday, which on a daily rate of £191.14 equated to £2,293.68.
194. However, Mr Humphreys submitted that because the Claimant resigned without notice, the effect of clause 13 of the contract of employment (see paragraph 14 above) was that payments in respect of untaken holiday was to be calculated by reference to the statutory minimum of 28 days as opposed to 31 days. Mr Benjamin submitted that the calculation should be based on 31 days on the basis that the Claimant had been constructively dismissed. In light of my conclusion that Mr Southern was not dismissed and that he resigned without notice, Mr Humphreys is right to say that the calculation should be based on 28 days.
195. Therefore, by the date of termination of employment on **28 May 2022** Mr Southern had accrued 11.4 days holiday, which in monetary terms equates to **£2,178.99**. He was in fact paid **£1,852.59** leaving a shortfall of **£326.41**. It was conceded by Mr Humphreys that – whether based on 28 or 31 days - there was a shortfall and that the Claimant was owed something in respect of his holiday pay. As the amount paid was less than that which was properly payable on termination of employment, the shortfall amounts to a deduction within the meaning of section 13 ERA 1996, for which there was no authorisation by virtue of a relevant provision of the Claimant's contract. Therefore, the complaint of unlawful deduction of wages in respect of outstanding holiday pay succeeds.

Employer's Contract Claim ['ECC'] (referred to by the parties as the Respondent's counterclaim)

The Claim for repayment of £15,000

196. As set out in paragraph 2 above, there were two parts to the ECC. I deal firstly with the claim in respect of the payment of £15,000. In light of my findings in paragraphs 46 to 62 above this claim fails. It was never a term – express or implied - of any contract that, if Mr Southern failed to sign a new employment contract with the Respondent that the sum of £15,000 would be repaid to the Respondent. Nor was there a term that if the proposed sale of the business did not materialise that money would be repaid.
197. There was no contractual obligation involved in the payment of the £15K. The money was a personal payment by Mr Hall to Mr Southern as a goodwill gesture. He wanted to demonstrate his commitment to the Claimant by making a payment, which on Mr Hall's suggestion would be paid half to Mr Southern and half to his wife. That their relationship subsequently broke down does not alter that. There was nothing in this claim. It was advanced to put pressure on the Claimant (see my finding in paragraph 60 above).

The claim for damages for breach of contract arising from the Claimant's failure to give notice in accordance with Clause 16 of his existing contract of employment

198. I have found that the Claimant resigned in breach of his contractual obligation to give three months' notice of termination. The Respondent contends that it has suffered loss as a consequence. That loss was said to be as follows:

- The loss of profit of £11,000 (see paragraph 153 above), and
- The cost to the Respondent of engaging recruitment consultants to replace the technicians who were encouraged or induced to leave the Respondent's business in breach of their own contracts of employment (paragraphs 154 to 155 above).

199. Both of these claims fail and are dismissed for the following reasons.

Loss of profit of £11,000

200. It was not all clear to me how the Respondent was advancing this part of the claim. It seemed to me, at least on the face of things, that the Respondent was seeking damages against the Claimant for having solicited the Respondent's employees or for breaching a term obliging his fidelity or confidence (which would be excluded from the Tribunal's jurisdiction under article 5 of the ET's Extension of Jurisdiction Order 1994). I referred Mr Humphreys to **page N97** and asked whether the ability to recover damages for loss of profit on that contract was dependent upon a finding that, prior to resignation, the Claimant had breached his contract of employment by causing or inducing the employees to leave. Mr Humphreys submitted that that was how the case was being put and that the technicians left upon Mr Southern's direction. Had the Claimant resigned on notice, so submitted Mr Humphreys, the technicians would not have left, although he accepted that they may have left later. Mr Humphreys submitted that the Respondent would have had three months whereby the technicians would have stayed and they would have secured the contract and had time to secure new technicians. Mr Humphreys accepted that for the counterclaim to succeed it requires a determination by me that had the Claimant resigned on notice, the technicians would have stayed at least for a period of time, to allow the Respondent to plan. Mr Benjamin submitted that this was all very speculative.

201. The Claimant having resigned in breach of contract, the Respondent must be put in the position it would have been had the contract been performed as expected. Giving notice of resignation does not mean that an employee will necessarily work that period of notice. Had Mr Southern resigned on notice, it is extremely unlikely that he would have worked out the notice period because by then the relationship had irretrievably broken down. Both the Claimant and Mr Hall had been playing games at the end. Neither trusted the other. It is inconceivable that they could have repaired things to an extent that Mr Hall would have been content with Mr Southern working out his notice, whereby he would be able to exercise an influence over the staff and have access to clients. Furthermore, he was at the point of his resignation on suspension and covered by a fit-note (up to

30 May 2022). They would either have agreed an earlier termination date or Mr Southern would have served his notice on sick-leave or on suspension for as long as the disciplinary investigation took. I agree with Mr Benjamin that it is speculative to suggest that, had he given notice of resignation in accordance with his contract of employment, the technicians would have remained in employment for a period of three months. Based on my findings regarding the breakdown of the relationship, I conclude that Mr Hall would more likely than not have agreed an early termination date without holding the Claimant to his notice period. As far as the technicians are concerned, whichever of the scenarios played out, in light of the instability within the business with the aftermath of the incident involving Victoria Southern on **22 April 2022**, I conclude that Messrs Bambrough, Rowbottom and Atma Row would have left in any event.

202. The Respondent has not satisfied me on the evidence that the other technicians who, in fact, left (Messrs Jordan, Taylor, Hodge, Taylor, Taylor, Reed and Evenden) would have remained in employment had the Claimant given contractual notice of his intention to resign. They were loyal to Mr Southern and had relatively little involvement with Mr Hall. The situation was not stable. It is right that others were encouraged or persuaded to leave and join Mr Southern's new venture which he was beginning to work on. However, I did not find that Mr Southern encouraged them to leave in breach of their own contracts of employment. Further, there was no evidence from the Respondent as to the contractual periods of notice any of these technicians were obliged to give.

203. An additional problem for the Respondent in its claim for damages in respect of the loss of profit is that the contract, in respect of which the losses are claimed, was anticipated to start on **06 June 2022** (paragraph 153 above). Although Mr Jordan and Mr Metcalfe had resigned by then, other technicians were still in employment then. No evidence was given as to why the work was not performed when it ought to have been. It is possible that, due to other commitments there was no available technician, but the Respondent was silent on this and that is speculation on my part. The Respondent has not satisfied me on the evidence that it was the Claimant's summary resignation that caused this loss. It seemed more naturally to be due to the delay in starting the contract and then the subsequent loss of staff in **July 2022**, especially Mr Evenden. The evidence was that the losses flowed from Mr Evenden's decision to leave. I refer to my findings in paragraph 155 above. Mr Southern then offered Mr Evenden a role with his company. He did not induce or encourage Mr Evenden, however, to terminate his employment without giving the Respondent notice

204. The departure of the employees in **July 2022** was a combination of the instability within the company and Mr Southern's encouragement for others to join his new venture. Had he resigned on notice (and had an earlier termination date been agreed or had he stayed on sick-leave throughout the notice period) it is likely that Mr Southern would have encouraged the technicians in precisely the same way. If there were any recoverable losses, those losses did not flow from the failure to give notice. In my judgement, the argument that the losses flowed from the failure to give notice was a fallacious one, conceived after the event. It had earlier been contended that the losses were the result of the Claimant soliciting staff, not

any failure to give notice and that a High Court action was being contemplated: (see paragraph 143 above)

205. Mr Humphries accepted that, for that part of the 'counterclaim' to succeed, it would require a finding or conclusion that had the Claimant resigned on notice, the technicians would have stayed at least for a period of time, to enable the Respondent to plan. I made no such finding or conclusion. However, there is a further hurdle for the Respondent. This loss may only be recovered where the consequences might reasonably be expected to have been in the contemplation of the parties at the time the contract of employment was made as likely to result from the breach (i.e. failure to give notice). The specific loss claimed was due to another person, Mr Evenden, not responding to Mr Hall and ultimately resigning. It was his choice whether to resign on notice or otherwise. The loss of £11,000 on that contract was not due to the Claimant's failure to give notice of termination of his contract. It was not a loss within the contemplation of the parties at the time the contract of employment was made as likely to result from the failure by Mr Southern to give notice of resignation.

The Recruitment Consultant costs

206. I refer to my findings in paragraph 154 to 155 above. The evidence on these claimed losses was thin on the ground. There were invoices reflecting the fact that a recruitment company had been engaged and of the amounts charged and there was the single sentence in paragraph 141 of Mr Hall's witness statement. It was not possible to say from the evidence or from my findings what period of time these invoices covered or in respect of what work and in relation to the loss of which employees. They were all dated after the expiry of what would have been the Claimant's three month notice period.

207. The Respondent has not satisfied me on the evidence that the technicians who left would not have left in any event. Therefore, it is more likely than not that costs such as these would be incurred in any event. Further, the costs incurred in engaging recruitment consultants for replacing staff who resigned in breach of their own contracts is attributable to their own actions in resigning without notice.

208. Further, the cost of engaging the consultant is claimed on the basis of the failure by the Claimant to give notice. Returning to the basic principle that the Respondent must be put in the position it would have been had the Claimant performed his contract as expected, the Respondent must establish that had Mr Southern given three months' notice, it would not have incurred recruitment consultant costs in the period **28 May 2022** through to **28 August 2022**. However, none of the invoices cover that period and there has been absolutely no evidence to show what period the costs actually relate to. Further, as above, consequential loss on the Claimant's breach may only be recovered where the consequences might reasonably be expected to have been in the contemplation of the parties at the time the contract of employment was made as likely to result from breach. The cost of incurring recruitment consultants following the departure of other employees (whether in breach of their own contracts or not) is not a cost which, at the time the contract was made, would reasonably be in the contemplation of the Claimant and the Respondent. Finally, the Respondent would have to give credit for the savings on

the Claimant's salary and pension contributions in that period, none of which has been factored in by it.

209. For the above reasons, the ECC fails and is dismissed.

Employment Judge Sweeney

Date: 20 December 2023

APPENDIX

The Claimant's Claims

1. The Claimant brings the following Claims:
 - a. Constructive Unfair Dismissal, contrary to s.94 and s.98 of the Employment Rights Act 1996 (“**ERA**”).
 - b. Wrongful Dismissal, alleging that the Claimant was constructively dismissed in breach of contract. This claim is brought under the Extension of Jurisdiction Order 1996.
 - c. Unlawful deduction from wages, contrary to s.13 ERA.

The Respondent's Counterclaim

2. The Respondent brings a counterclaim, claiming breach of contract. This counterclaim is brought under the Extension of Jurisdiction Order 1996.

The Claim for Constructive Unfair Dismissal

3. The Claimant relies on the following alleged acts as amounting to a repudiatory breach of contract by the Respondent:
 - a. The failure by the Respondent to produce documentation around a revised employment contract and lump sum payments which reflected what the Claimant says has been verbally agreed between the parties;
 - b. The Respondent's failure to follow through with promises which had been verbally agreed;
 - c. The Respondent's production of a new employment contract to the Claimant which contained additional restrictions which the Claimant felt were excessive;
 - d. The Respondent's failure to make additional payments to the Claimant's pension agreed in November 2021.
 - e. The Respondent's suspension of the Claimant, in April 2022,
 - f. The Respondent's allegations contained in the suspension letter of 20 April 2022.
 - g. The Respondent's failure to conduct a meaningful and reasonable investigation.
 - h. The Respondent's suspension and treatment of the Claimant's wife.

- i. The Respondent's alienation of the Claimant;
 - j. The Respondent's failure to honour its initial agreement to pay the Claimant £100,000 upon the sale of the business.
4. Did each of the acts relied on by the Claimant happen as pleaded by the Claimant?
 5. To the extent that the Tribunal finds that they did happen, (or they are admitted by the Respondent), did they individually or cumulatively amount to a breach of contract by the Respondent, including a breach of the implied term of trust and confidence?
 6. If so, did they amount to a repudiatory breach of contract by the Respondent, entitling the Claimant to resign and claim that he had been constructively dismissed within the meaning of s.95(1)(c) ERA?
 7. If so, did the Claimant resign in response to the Respondent's repudiatory breach?
 8. If so, had the Claimant by his actions affirmed the contract or waived any breach in the intervening period thereby preventing him from resigning and claiming that he had been constructively dismissed within the meaning of s.95(1)(c) ERA?
 9. If the Tribunal finds that the Claimant was constructively dismissed, was the dismissal fair within the meaning of s.98(4) ERA? In these circumstances the Respondent will rely on the Claimant's conduct as the reason for the dismissal.

The Wrongful Dismissal Claim

10. Was the Claimant constructively dismissed in breach of his contract? In determining this issue, the issues identified at paragraphs 3-8 above are repeated, excluding any reference to the ERA.
11. If so, to what period of notice was the Claimant entitled?

The Claim for Unlawful Deduction of Wages

- ~~12. Was the Claimant entitled to receive pension contributions at a rate of 10% of his salary in the period from January 2022 up to the point of his resignation, amounting to wages within the meaning of s.13 ERA?~~
- ~~13. If so, what amount, if any, was paid to the Claimant in this respect?~~
- ~~14. To the extent of any shortfall between the Claimant's entitlement and what he was paid, did this amount to an unlawful deduction of wages within the meaning of s.13 ERA?~~
15. What amount of accrued but untaken holiday did the Claimant have at the point of his resignation? The Claimant maintains that he had 12 days outstanding and unpaid holiday.
16. To the extent that the Claimant had any outstanding holiday entitlement at that point, has it been paid, in whole or in part?
17. To the extent that any shortfall remains does this amount to an unlawful deduction of wages within the meaning of s.13 ERA?

The Respondent's Counterclaim

18. Was it a term of the payment of £15,000 made to the Claimant by the Respondent on 22 October 2021 and 19 November 2021, that if the Claimant failed to sign a new contract with the Respondent or the proposed sale of the Respondent did not happen, the amount would be repayable?
19. Did the Claimant's resignation and failure to sign a new contract render the amount repayable?
20. If so, has the amount been repaid?
21. If not, to what damages is the Respondent entitled?
22. Was the Claimant's resignation in breach of his contract of employment?

23. If so, has the Respondent suffered loss and damage as a consequence?

Remedy

24. If the Claimant is successful in any of his claims, to what remedy is he entitled?

25. If the Respondent succeeds in its counterclaim, to what level of damages is it entitled?