



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms S Davison  
**Respondent:** GDMA Group Limited  
**Heard by CVP** On: 15 March 2022

**Before:** Employment Judge Rogerson  
**Members:**

## Representation

**Claimant:** In person  
**Respondent:** Ms Sophie Garner (Counsel)

# RESERVED JUDGMENT

The claimant's complaint of unlawful deductions is not well founded and is dismissed.

# REASONS

1. By a claim form presented on 11 January 2022, the claimant brought a complaint of unlawful deduction of wages of £724.58 (comprising training costs of £320, training time of £404.58 and a DBS check of £40).
2. The claimant had been employed as a recruitment manager for the respondent from 12 April 2021 until 5 October 2021 when her employment was terminated by the respondent shortly before the probationary period ended on 12 October 2021.
3. In the claim form the details of the complaint provided at section 8.2 are as follows:

*"At no point during my interview or offer of employment was I advised that I would be required to pay for mandatory training. I received my contract on day 2 of training and asked the HR manager about this. He advised the costs*

*relate to the support workers as they are put through NVQ qualifications and as I was working in head office it was not relevant. I was later advised by another member of staff that I would need to pay for mandatory training. I questioned the HR manager about this who advised it was correct. I asked for a breakdown of costs and was advised he couldn't give them to me as he was not able to get them from the training company. The training company is a sister company to Progressive Care Ltd. I requested this information on a number of occasions during my probation period and voiced my concerns. This was agreed by the HR manager.*

*Upon being advised my employment was being terminated one week prior to my six-month probationary period (where fees would not have needed to be repaid) I was sacked with no mention that any fees would be deducted from my final wage later that week. I only found out about the deductions when I was almost £800 down. As I had come to work closely with HR I knew that for those who are sacked or left that a payment plan was offered for those struggling to have such a large amount deducted. This was never offered. And I was advised by a member of HR that they were not deal with me and no offer of payment plan to be offered. Progressive Care are well aware that I am a single mum working full time and that such deduction would leave me in financial hardship. **I am aware that costs for training were to be recouped and accept that, but I was led to believe this in relation to career progression training. Not only was I charged for the mandatory training I was also charged for the time it took for me to sit the course.***

4. The respondent resisted the claim and provided an ET3 response on 26 January 2022. The correct name of the respondent was identified as 'GDMA Group Limited'. The response confirms the respondent is part of a group of companies that operate across a variety of sectors including social care, property, training and education. Progressive Care Limited is a company within that group but was a separate company and was not the claimant's employer. In its grounds of resistance, the respondent confirms that the claimant was employed as a recruitment manager at the respondent's head office in Sheffield in the terms agreed in a written contract of employment which commenced on 12 April 2021. She was dismissed by the respondent on 5 October 2021 during her six month probationary period. On termination the respondent asserts it lawfully deducted the sum of £724.58 from the claimant's final salary in accordance with the terms agree in the employment contract. The relevant paragraphs of the ET3 response are:

**“Training and DBS Costs**

*7. In order for its employees to carry out their role lawfully and effectively, the respondent's employees are required to undertake various training courses throughout their employment. All training courses that employees are required to undertake are reasonable, justifiable, and appropriate for their job roles and duties.*

*8. When an employee applies to the respondent if they have already completed any necessary training then the respondent will ask the applicant to supply their certifications and review them as appropriate. If the applicant has completed training to a similar level/standard provided by the respondent, they would not be required to undertake the training again until necessary.*

9. Shortly after commencing her employment the claimant was required to undertake certain training courses. The total cost of these courses to the respondent amounted to £724.58, consisting of the costs of providing the training (£320) and the time spent by the claimant undertaking the training (£404.58). The respondent also paid for her DBS check, at a cost of £40.

10. On occasions, the respondent will invest a significant amount of time and money in providing a DBS check and training to an employee and paying them for their time spent training, only for the employee to resign shortly after. To mitigate the financial impact of this and make its training provisions sustainable, the respondent has a regime in place where it deducts training costs from its employee's final salary payments on a sliding scale depending on their continuous service after completing the training.

11. The respondent's DBS and training costs repayment regime are set out in clauses 10.5, 12 and 22 of the employment contract as follows:

*"10.5 If you leave the employment of the employer within the probationary period then you will be required to repay the employer the cost to or incurred by the employer in obtaining your enhanced disclosure check from the disclosure and barring service.*

*12.1 During your employment you will be required to participate in training in connection with your job to enable you to better fulfil your duties under this contract. Where you are required to attend any lecture, seminar or workshop, you will be paid at your normal hourly rate of pay for the time you attended minus breaks.*

*12.2 Refusal to undertake training in connection with your job as required by your employer or failure to complete such training may constitute grounds for dismissal.*

*12.3 If you leave the employment of the employer within the probationary period then you will be required to repay to the employer the cost to or incurred by the employer in providing you with induction training and any other training provided.*

*12.4 If you leave the employment of the employer within a two year period following the completion of any other training that you have undertaken in connection with your job or before that training has been completed then you will be required to repay to the employer the cost of that training incurred by the employer in providing/procuring such training on a sliding scale.*

*12.5 The amount you will be required to pay is dependent upon how close you are to completing the two year period.*

*12.6 The cost of training to be reimbursed will be reduced by 1/24<sup>th</sup> in respect of each full month of your employment with the employer during the two year period.*

*12.7 The employer is authorised and by signing this contract of employment you authorise and agree that your employer may deduct any such monies from any wages, salary or other money due to you.*

*22.2 The employer reserves the right and by signing this contract of employment you authorise and agree that your employer will be entitled at any time during your employment and in the event on termination to deduct*

*from your remuneration under the contract or from any sums owed or owing by your employer to you any monies due from you to your employer including, but not limited to, any outstanding loans, overpayments, advances, the cost of training, the cost of DBS checks, the cost of medical reports, the cost of repairing and damage or loss to the employer's property caused by you or any annual leave taken in excess of your pro-rata'd entitlement accrued to the relevant date".*

12. *The respondent sent the employment contract to the claimant before she commenced employment which she subsequently signed. The claimant therefore knew that she could be liable to reimburse a proportion of her DBS and training costs when her employment terminated.*
13. *As the claimant's employment with the respondent terminated during her six-month probationary period, she was liable under clauses 10.5 and 12.3 of the employment contract to repay the whole of the respondent's costs incurred in providing the claimant with training and her DBS check.*
14. *The respondent was contractually authorised under clauses 12.7 and 22.2 of the employment contract to deduct from the claimant's salary the full amount of training and DBS costs owed. The respondent therefore made a deduction of £764.58 from the claimant's salary on 8 October 2021. At all times the respondent complied with the national living wage requirements.*
15. *The claimant raised a complaint in relation to the deduction from her wages and a hearing took place on 26 October 2021. Following the hearing the claimant's complaint was dismissed".*

### **Findings of fact**

5. I heard evidence from the claimant and from Mr Jonathan Waite HR manager (currently employed as the respondent's compliance officer). I also saw documents from an agreed bundle of documents to which the claimant added her copy of the signed copy of employment which she had annotated with comments. Her copy had a different annotation to the copy of the contract in the bundle which I will deal with later in these reasons. From the evidence I saw heard I made the following findings of fact:
6. On 30 March 2021, the claimant was interviewed for the role of recruitment manager. She was successful and was offered and accepted the job that day. On 1 April 2021 the offer was confirmed in writing.
7. On 6 April 2021 by email the claimant received her contract of employment and a training schedule identifying all the mandatory training she was required to undertake in relation to her role. She complains that she did not have a printer at the time and was unable to properly consider these documents prior to commencing her employment on 12 April 2021.
8. On 13 April 2021 Mr Waite asked the claimant to provide a signed copy of her contract. The claimant says she advised him that she didn't have a printer. Mr Waite provided her with a copy of the contract. Mr Waite does not recall any conversation about the claimant not having a printer. He does recall sending the claimant her induction timetable and contract on 9 April 2021, three days before her start date, so that she was fully aware about what training she needed to undertake. He confirmed the respondent's training

requirements would also have been discussed with the claimant during her interview because that was the normal practice.

9. The claimant's induction timetable set out the training the claimant was required to undertake at the start of her employment (page 49). The requirement to undertake training is referenced in clause 12.1 of the contract (page 46). The offer was conditional on various matters including a successful DBS check (pages 41 to 42). The offer letter, the induction schedule and the claimant's contract of employment (pages 39 to 40) were provided before the employment started. The offer letter of 9 April 2021 specifically drew the claimant's attention to the importance of reading all the enclosed documents carefully before completing and signing them where necessary.
10. The relevant provisions of the contract in place in respect of training are at section 12 and are the applicable terms of the contract relied upon to 'authorise' the deduction. Clause 12.1 provides that ***"during your employment you will be required to participate in training in connection with your job to enable you to better fulfil your duties under this contract. Where you are required to attend any lecture, seminar or workshop, you will be paid at your normal hourly rate of pay for the time you attended minus breaks."***
11. Clause 12.2 *"refusal to undertake training in connection with your job as required by your employer or failure to complete such training may constitute grounds for dismissal"*.
12. Clause 12.3 ***"if you leave the employment of the employer within the probation period then you will be required to repay to the employer the cost to or incurred by the employer in providing you with induction training and any other training provided."***
13. Clause 12.4 *"if you leave the employment of the employer within a two year period following the completion of any other training that you have undertaken in connection with your job, or before that training has been completed then you will be required to repay the employer the cost of the training incurred by the employer in providing/procuring such training, on a sliding scale."*
14. Clause 12.5 *"the amount you will be required to repay is dependant upon how close you are to completing the two year period."*
15. Clause 12.6 *"the cost of training to be reimbursed will be reduced by 1/24<sup>th</sup> in respect of each full month of your employment with the employer during the two- year period. 12.7 the employer is authorised and by signing this contract of employment you authorise and agree that your employer may deduct any such monies from any wages, salary or other money due to you."*
16. Clause 22 *"The employer reserves the right and by signing this contract of employment you authorise and agree that your employer will be entitled at any time during your employment and in the event on termination to deduct from your remuneration under the contract or from any sums owed or owing by your employer to you any monies due from you to your employer including, but not limited to, any outstanding loans, overpayments, advances, the cost of training, the cost of DBS checks, the cost of medical reports, the cost of repairing and damage or loss to the employer's property caused by you or any annual leave taken in excess of your pro-rata entitlement accrued to the relevant date"*.

17. In the copy of the contract in the bundle is the copy retained by the respondent with the claimant's handwritten annotation stating "**need cost information re - training**" at the side of clause 12. This was the copy of the contract sent to the claimant on 9 April which was had already been signed by the employer and was signed by the claimant on 14 May 2021. The copy of the contract the claimant provided at this hearing is annotated differently and says: "**do not agree to training until cost advised**". I accepted on the balance of probabilities that the copy held by the Respondents is the copy the claimant signed and returned which was then placed on her personnel file consistent with the annotations referred to in the appeal outcome letter(see below at paragraph 24).
18. The Induction schedule provided by the respondent identified the training the claimant was required to complete as part of a mandatory training requirement. It identifies each of the courses that the claimant would be attending and the duration of the training but not the cost. The respondent produced timesheets which support the times recorded on the induction schedule. The respondent has also provided a copy of the certificates of training provided to the claimant on completion of the training which are hers to keep as evidence of that training in the future. The respondent also provided the invoices from Progressive Care Academy Ltd to confirm that it had been invoiced for the training provided.
19. Mr Waite confirmed that at interview it is the respondent's practice to discuss the mandatory training and the requirement to repay the costs of that training so that all applicants for employment are forewarned that the costs can be recouped if the employee left employment within the probationary period or on a sliding scale in the first two years. The claimant as a recruitment manager was familiar with that practice and knew that it had been incorporated into the standard written interview questions for potential applicants. The claimant drew my attention to this question at page 70 in the bundle which says "*at Progressive Care we invest in our staff to provide them with the best training to enable them to carry out their job role and like to think that staff will invest in the business. We are always looking for long term relationships. All training is given free of charge **but there is a clause in the contracts that should a staff member leave within two years of completing the training that they will repay that investment in them the cost reduced monthly on a 1/24 basis following the completion of your probationary period. Would you be happy to accept these terms on appointment?***" Next to the question the interviewer is required to record whether the interviewee agrees with contractual clause with a 'yes' or 'no'. The claimant agreed this question had been incorporated into the interviews that she conducted as the recruitment manager.
20. In answer to my questions, Mr Waite accepted that this may deter potential applicants from working for the respondent but confirmed it had always been the respondent's policy to make the position clear at interview before any offers of employment are accepted.
21. The claimant confirms she had also been told by other members of staff that "*if you leave within the probationary period you must also pay for the time it takes to complete the course as well as the cost of the course.*" As a result, she checked the position with Mr Waite who confirmed that was correct. Mr Waite recalls conversation with the claimant when he provided an indication

of training costs for the induction training but explained that the wage element would be dependent on salary. The claimant accepted the position and did not request any of this information in writing. He confirmed as recruitment manager she would likely have been asked about these training costs by many job applicants in the interviews she conducted and would be familiar with the standard clause because of that.

22. On 27 September 2021 the claimant tested positive for Covid. She was absent from work until 5 October 2021 when her employment was terminated by letter sent when she was week away from completing her probationary period. The letter confirms that £764.58 would be deducted and provided a separate document providing a full breakdown of the training undertaken the time and costs. The relevant parts state:

*“it was explained to you in your employment contract that if you left the employment of the company within your probationary period then you will be required to repay the cost incurred in providing you with induction training and any other training provided together with the costs of obtaining the disclosure and barring service certificate. The company seeks to recoup these costs as a genuine pre-estimate of loss in that it has invested time and money in providing you with training that has increased your skill and knowledge and in obtaining a DBS disclosure required to enable you to carry out your role but has not received the full benefit of its investment as a result of your employment ending.”*

It continues:

*“in signing your employment contract, you agreed to make the repayments if you left the employment of the company and provided consent for the company to deduct any monies owed from any wages, salary or money owed to you.”*

23. The claimant’s final wage slip (page 91) shows that the deduction was made from her final salary on 8 October 2021 comprising training hours recovered of £404.58, training costs recovered of £320 and DBS recovery of £40.
24. The claimant appealed against the decision to terminate her employment and to make the deduction from her final wage. The appeal was heard by a solicitor appointed by the respondent. It was rejected and the appeal outcome was in a report dated 10 November 2021. In relation to the deduction it states:

*“I’ve considered the position on the deductions for the training. There is a contractual clause in the contract of employment which confirms that if the employee leaves their employment then the costs of training will be deducted from their salary.*

*It is agreed that the training was undertaken so there is no dispute about whether this actually took place or not. Whether a deduction for a training fee will be fair is based on a number of different aspects. I have to first consider if the employer is in breach of contract – given that they gave the required one weeks’ notice there does not appear to be a breach of contract in this respect. If I found a breach, then I would have considered the contract unenforceable, but this is not my view. I then considered the contents of the clause in the contract. They are plainly present, and my view is that they were read and considered by Susanne given that there is an annotation next to them. **The annotation reads “need cost information retraining.”** The*

*contract is then signed by both parties. I find that this evidence is an agreement to these terms. I accept the annotations present, but it does not say “not agreed” or “not agreed until cost information provided”. I do not find that this annotation is a change to the contractual terms that have been agreed and find that the terms are agreed as evidenced by the signature. The clause confirms that repayment would be necessary and that this would be met by way of deductions. Clause 12.7 confirms that this is then authorised by signing of the contract. I considered then whether the deductions were justified – as above, I see no reason to believe that the training did not actually occur. I note Susanne’s comments about higher qualifications, but I have not seen these, and I accept that the training was indeed performed which would give rise to a charge.*

*I have considered whether the clause is effective because of the word ‘leave’ and Susanne’s point is that she did not leave by choice. My view is that the word “leave” is neutral. It does not say if you leave voluntarily and it does not say if you leave non-voluntarily. My view is that leave would take its natural meanings and that leaving the employment simply means no longer being employed. I find therefore that the training was undertaken. The contract contains express terms which confirm repayment. These are agreed by Susanne and signed, and the deductions are therefore appropriate. I find that the wording of the clause covers all ways of someone leaving their employment and for those reasons the complaint was dismissed.”*

25. The claimant has produced in table form a comparison of the training costs of the courses she undertook with the costs charged by other providers to show the amount the respondent charged was excessive and unreasonable. The claimant does not dispute the invoices provided confirming the cost to the respondent of the training. Her argument is it could have been sourced elsewhere cheaper and was a source of profit for the company that provided the training. She also argues that the cost of her time of £23.80 to attend a company presentation should not have been included as part of the cost of mandatory training. She accepts that time was included in the induction schedule provided before she attended the presentation. The claimant’s complaint is that she was only advised of the actual amount of deduction after her employment was terminated and it was unlawful. She is claiming the full amount as a reimbursement because the actual costs were never provided. She says the Respondent was not being transparent, and she was not able to make an informed decision before she accepted the contract which she did not sign until after the training was completed.

### **Applicable law**

26. Section 13 of the Employment Rights Act 1996 provides the statutory right not to suffer unauthorised deductions.

Section 13(1A) provides that:

An employer shall not make a deduction from wages of a worker employed by him unless –

- (a) The deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker’s contract.

“relevant provision” in relation to a worker’s contract means a provision of the contract comprised –



- (a) In one or more written terms of the contract of which the employer has **given the worker a copy on an occasion prior to the employer making the deduction in question** or
- (b) In one or more terms of the contract (whether expressed or implied and, if expressed, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

## Conclusions

27. The key issue is whether there is a contractual provision authorising the type of deduction in question and the scope of the authorisation before considering whether the actual deduction made was justified.
28. Ms Garner refers to the respondent's pleadings which are supported by the oral evidence and the contemporaneous documents and shows the deduction was authorised and justified. The respondent admits that it made a deduction of £764.58 from the claimant's salary on 8 October 2021 in respect of her training costs but contends that it was contractually authorised to make the deduction. In accordance with section 13(1A) Employments Rights Act 1996 the deduction was therefore lawful. The respondent denied that it only provided the claimant with a copy of the contract on the second day of training. The respondent sent the claimant a copy of the employment contract (along with her induction timetable) by email on 9 April 2021 before she did the training and it was her responsibility to read the contract before her training started on 12 April 2021. Ms Garner drew my attention to the inconsistencies in the claimant's case and the fact that as a recruitment manager she should have a better understanding of contracts and contractual terms than other workers. The claimant accepted in her details of claim that she was "*aware that costs for training were to be recouped*".
29. The respondent did provide a copy of the contract and induction schedule on 9 April 2021 and the Claimant admits she was aware training costs and that time would also be recouped for the induction training if she left before completion of the probationary period. The offer letter confirms the importance of carefully reading the contract because it sets out the terms of the contract before the employment begins so the employee knows what to expect. The claimant as a recruitment manager would be expected to have read and understood the terms of the contract before she commenced her employment and completed the training which started on 12 April 2021. All that section 13(1A) Employments Rights Act 1996 requires is that the relevant provision authorising the deduction is that it is in "**one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question**". It was provided by email on 9 April 2021 and by hard copy before the deduction was made on 8 October 2021.
30. Clause 12.3 expressly provides that "*If you leave the employment of the employer within the probationary period then you will be required to repay to the employer the cost to or incurred by the employer in providing you with induction training and any other training provided*". The claimant understood the meaning of that clause and as the recruitment manager saw how it was being applied to employees and applicants in practice. The respondent was being transparent about training costs because it was investing in training

which was a cost to the business. All potential applicants/employees were forewarned of the circumstances in which those costs would be recouped and could have decided not to work for the respondent. It was accepted that including the term in the contract could deter applicants from working for the respondent.

31. Unfortunately, it was not the claimant's choice to leave her employment. The respondent decided she had failed to satisfactorily complete the probationary period and terminated her employment within the probationary period which was how she left her employment. As a result of leaving her employment the contract provides that she will be required to repay to the employer the cost to or incurred by the employer in providing induction training and any other training. Her argument is that she wanted to know the cost of training and had queried this. I accepted Mr Waites evidence in that regard that he provided the cost of the course but not the time cost because that was depended on salary. The claimant knew the time was an associated cost of training that would be recovered because her attendance times were recorded in the induction schedule and clause 12.1 provides that ***"during your employment you will be required to participate in training in connection with your job to enable you to better fulfil your duties under this contract. Where you are required to attend any lecture, seminar or workshop, you will be paid at your normal hourly rate of pay for the time you attended minus breaks"***.
32. In its ET3 response at paragraph 23, the respondent relies on Neil v Strathclyde Regional Council [1984] IRLR 14 CS a first instance case where the employment tribunal held that deductions for hours spent undertaking training were acceptable and represented costs incurred by the respondent as during time spent training the claimant was not providing any profitable services to the respondent. The respondent relies upon clause 12.3 ***"if you leave the employment of the employer within the probation period then you will be required to repay to the employer the cost to or incurred by the employer in providing you with induction training and any other training provided"*** and 12.1 ***"where you are required to attend any lecture, seminar or workshop, you will be paid at your normal hourly rate of pay for the time you attended minus breaks"*** and then listed the times and courses in the induction training schedule. Clause 22 only refers to 'training costs' but read together with the other clauses about recoupment and with the claimants understanding of the clause at the time she understood the time she spent in training was part of the training cost that was recoverable by the respondent because during those times in her induction training she was not providing profitable services to the respondent.
33. Although I could understand why the claimant perceived this as a profit stream for the respondent because the training is provided through an associated group company, the respondent is a separate legal entity and was being invoiced by the training provider for the training which was accredited. The claimant had the benefit of a certificate of training from an accredited provider to take to any future employer. All the training identified in the induction schedule has been paid for by the respondent and the time spent training is not in dispute. Although I had some sympathy for the claimant and could see why she is aggrieved having found cheaper training by other

provides she does not dispute the invoices and the training costs of the induction to the respondent. I could also understand why she feels aggrieved by the deduction of her time of £23.80 for her attendance at the company presentation which she believes should not have been included as part of the cost of mandatory training. She accepts however that this was part of the induction training provided and was listed in the schedule of 6 April 2021 before she attended the presentation. There was no evidence of duress or that the claimant was misled in some way before she was provided with and agreed to the terms of her contract which contained relevant provisions authorising the deduction £724.58 which was not an unlawful deduction of wages under section 13 of the Employment Rights Act 1996. The claim is not well founded and is therefore dismissed.

**Employment Judge Rogerson**

Date 14 April 2022