

Withdrawing job offers: why “subject to” does not mean risk-free

In *Kankanalapalli v Loesche Energy Systems Ltd*, the Employment Appeal Tribunal (EAT) confirmed that a binding contract may be formed before employment starts. Standard conditions such as references or right to work checks may not prevent that. Where no notice terms are agreed, employers may still be required to give (and pay) reasonable notice to terminate.

What happened in this case?

The Claimant was offered a project manager role on 23 September 2022, with a proposed start date of 1 November 2022. As is standard practice, the offer was stated to be subject to satisfactory references, a right to work check, and a six-month probation period. No notice provisions were set out in the offer.

On 26 September 2022, the employer confirmed additional terms, including a £3,000 relocation contribution repayable if the Claimant left within 12 months, and suggested that he secure a 12-month tenancy. The Claimant accepted the offer the same day and indicated that he would sign and return the relevant documents shortly. The next day the employer replied that it looked forward to him joining them. The Claimant began onboarding, providing personal details and referee information. On 6 October 2022, the employer requested right to work documents, which were provided that day.

On 7 October 2022, the employer postponed the start date to 3 January 2023 due to a delay in a client contract. The Claimant queried how he would be paid in the meantime, having already made travel arrangements. Then on 11 October 2022, the employer withdrew the job offer due to delays in the project. It proposed a new conditional offer dependent on a “notice to proceed”.

The Claimant brought a breach of contract claim. The Employment Tribunal found that the offer had been accepted by the Claimant’s email of 26 September 2022. However, it held that the conditions (namely the satisfactory references and right to work check) had not been fulfilled. This meant that the offer was conditional at the point it was withdrawn, meaning no binding contract was in place. Alternatively, if a contract was in place, there was an implied term that as the Claimant had less than one month’s service, the employer would not have been required to give him any notice. This was on the basis of the standard terms and conditions that the employer said it would have given to the Claimant.

The claim was dismissed. The Claimant appealed to the EAT.

What was decided?

Were the “subject to” terms conditions precedent or conditions subsequent?

The conditions in question were the right to work checks, the employment references, and a six-month probation period.

The EAT found that the Tribunal had taken too narrow an approach in treating the conditions as “conditions precedent” i.e. conditions that prevent a binding contract from forming until they are fulfilled. Instead, the conditions relating to references, right to work and probation were properly characterised as “conditions subsequent” i.e. a binding contract had formed but could be terminated if the conditions were not met.

In reaching that conclusion, the EAT emphasised that the key terms of the role had been agreed and that both parties had begun taking steps towards the start of employment, including arrangements for his security pass. Further, the referee form stated that *“I understand that my employment may be terminated without...satisfactory references”*, rather than providing that there was no contract until these had been supplied. It also placed weight on the inclusion of a probationary period, which could only operate once employment had begun.

Taken together, this pointed towards a binding contract already having been formed, with the conditions operating as potential grounds for termination rather than barriers to formation.

Separately, the EAT noted that if the conditions *had* been conditions precedent, this did not mean there was an unrestricted right to withdraw the offer. Instead, the correct approach would have been for the Tribunal to have considered whether the employer was under an obligation not to withdraw before the date on which the conditions should have been fulfilled.

Was a notice term implied?

The EAT held that, in the absence of an express notice provision, a term of reasonable notice should be implied, and that this could exceed the statutory minimum period under the Employment Rights Act 1996.

The employer had referred to its standard conditions which offered one week's notice in the probationary period, but no notice if the employee has less than one month's service. However, the EAT said internal practices, and other employees' contracts, did not amount to a binding custom and practice capable of supplying a contractual term.

What was reasonable notice?

The EAT said that it is not the case that notice is presumed to start from zero and that there must be a reason to increase it. Section 86 of the Employment Rights Act 1996 (which sets out statutory notice requirements) only contains minimum thresholds – this should not be taken as meaning that they apply in the absence of any other provisions. What is “reasonable notice” may exceed those minimums.

On the facts, the EAT concluded that three months' notice was reasonable. This reflected the seniority of the role, the length and nature of the recruitment process, and the fact that the Claimant was to relocate. The employer's suggestion that the Claimant commit to a 12-month tenancy was also significant. The EAT rejected the employer's argument that this should have been reduced during the probation period – this had never been suggested to the Claimant.

In those circumstances, withdrawing the offer without notice

amounted to a breach of the implied term to give three months' notice.

Other claims

The EAT rejected the Claimant's claims for holiday pay and the relocation payment. Employment had not commenced, so no entitlement to holiday pay arose. The relocation payment was conditional on starting employment and was, therefore, not payable.

The EAT substituted judgment in favour of the Claimant for three months' notice pay.

What does this mean for employers?

This decision is a useful reminder that "subject to" wording is not necessarily enough to prevent a contract of employment from arising. Where an offer sets out the key terms and both parties proceed on the basis that employment will begin, a Tribunal may find that a binding contract is already in place.

What are the key practical takeaways for employers?

- **Be clear about the impact of conditions:** state clearly whether any conditions prevent a contract forming or apply after formation and set deadlines for satisfying them.

- **Include notice provisions in offer letters:** ensure offer letters specify notice rights that apply once a contract has formed, including any reduced notice that applies until the end of any probationary period.
- **Manage the process carefully:** onboarding steps and communications can indicate that a contract is already in place so be careful with the language used. HR should check any communications to be sent from managers.
- **Avoid relying on informal practice:** internal norms or other employees' contracts will not usually be enough to imply terms.

[Kankanalapalli v Loesche Energy Systems Ltd](#)

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