

Conditional job offers

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Labelling a job offer as 'conditional' does not necessarily prevent a binding contract being entered into

[**Kankanalapalli v Loesche Energy Systems Ltd \[2026\] EAT 49**](#)

The facts

The Claimant ("C") applied to the Respondent ("R") for the post of project manager. Following an interview process, C was offered the job on 23 September 2022. The offer letter, sent by email, proposed 1 November 2022 as the start date. C was asked to return a signed copy of the offer letter. C was also sent, with the offer, a form for referee contact details and what was described as a "new starter information form".

The offer letter included the following paragraph:

"I am pleased to offer you the position of project manager for Loesche Systems Limited. This is subject to receipt of satisfactory references, a right to work check and a successful six-month probation period which will commence on your start date. The contract of employment will be forwarded to you before your first day."

The letter did not provide any details about the notice period required to terminate the employment.

C responded to the job offer, raising some queries, including whether relocation expenses would be included. R confirmed it would provide £3,000 towards relocation expenses that would be repayable if C resigned within a year of joining. C confirmed the terms were acceptable and that he would sign and return the documents. Thereafter, C completed the new starter information form and also the form containing the reference contact details. R reminded C to email documents confirming his right to work in the UK and that they would

need to see the original documents on his first day at work. C emailed the documents that day. He never returned a signed copy of the offer letter.

On 7 October 2022, R advised C that there had been a delay on the contract notice to proceed, and the role of project manager would not be required to start until 3 January 2023. C was asked to confirm if this was acceptable. C did not expressly accept the change of date; he replied to the effect he had already booked flights to the UK and sought clarification as to what payment he would receive for November and December when not working.

On 11 October 2022, R emailed C, referring to notice to proceed on the contract having been delayed, and said: *"As a result we are no longer able to offer you the contract for the position of project manager commencing 1 November 2022."* It continued: *"We are able to consider a conditional offer based on the notice to proceed. However, we understand if you no longer wish to be considered."*

R never sent a written contract of employment to C.

C presented a claim to the ET for breach of contract. He said that the offer had been withdrawn without appropriate notice, and this amounted to a breach of contract.

The ET

The ET found that the offer had been accepted by C, notwithstanding that it was not in the format initially requested by R. It found that the offer was subject to the two conditions set out in the letter of 23 September 2022: firstly, the receipt of satisfactory references and, secondly, the carrying out of a right to work check. It found that the contract was not subject to a condition of notice to proceed on the contract for which C was to be employed.

The ET found that neither of the two conditions were satisfied. Although referee details were provided, it concluded this was not the same as receipt of satisfactory references and that the right to work check could not be completed until R had seen the original documents. The ET concluded that because the offer was still conditional when R withdrew, there was no binding contract between the parties. In the alternative, if the ET had found there to be a binding contract, it concluded that it was an implied term that, as C had less than one month's service, R would not be required to give any notice and they had in fact given him a week's notice.

The EAT

The EAT allowed C's appeal.

In relation to the various grounds of appeal, the EAT concluded that:

1. The ET had failed to consider whether the conditions in the job offer letter were conditions precedent or conditions subsequent.
2. The ET had misapplied **Wishart and Mellors v RPS Tainer** EAT 760/00. C had contended that **Wishart** was a relevant authority where an offer of employment is made subject to satisfactory references and the prospective employer does not regard the references as satisfactory. C argued that as R did not see references at all, the principles in **Wishart** did not apply. The EAT agreed.
3. The ET had erred in its approach to the implication of a term of notice.

Rather than remit the case to the ET, the parties agreed that the EAT could determine the case.

The EAT's conclusion

On the facts of this case, the EAT concluded that the conditions specified in the offer letter (i.e. the right to work checks, the employment references, and the six-month probation period) were conditions subsequent to the contract.

In arriving at this decision, the EAT noted that there were three conditions in the offer letter, including the satisfactory conclusion of a probationary period. The EAT concluded that that condition was clearly a condition subsequent and the only logical interpretation is that this would be grounds to terminate an existing contract of employment. There was no attempt to differentiate between these three conditions; they were all grouped together. Therefore, all three conditions should be interpreted as conditions subsequent.

The EAT considered it was necessary to imply a term of reasonable notice because there had been no discussion about a notice period at the time of entering into the contract. The EAT noted that section 86 of the Employment Rights Act provided minimum thresholds; it does not

suggest that these apply in the absence of other provisions. Reasonable notice may exceed these statutory minimums. Taking into account all the facts of this case, including that C was travelling to a different country to take up the post, the interview process had taken several months, the position was a senior one, and R had suggested C take on a 12-month rental, the EAT concluded that a period of three months was a reasonable one.

The EAT therefore concluded that R was in breach of contract by failing to give reasonable notice (being 3 months) in accordance with the implied term.

Comment

Labelling a job offer as 'conditional' does not necessarily prevent a binding contract being entered into.

If employers intend for any conditions in an offer letter to operate as conditions precedent, this ought to be stated expressly.

Employers would also be well-advised to include notice provisions in the offer letter.

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27 May 2026



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