Appeal No. UKEAT/0262/13/BA

EMPLOYMENT APPEAL TRIBUNAL

FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal
On 13 December 2013

Before

THE HONOURABLE MR JUSTICE SINGH

MS P TATLOW

MR M WORTHINGTON

CABINET OFFICE — APPELLANT

(1) MS A BEAVAN
(2) MISS J BREMNER
(3) MR A POTTHURST — RESPONDENTS

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant	MR J TINDAL (of Counsel) Instructed by: The Treasury Solicitor 1 Kemble Street London WC2B 4TS
For the Respondents	MS R WHITE (of Counsel) Instructed by: Thompsons Solicitors The Synergy Building Campo Lane Sheffield S1 2EL

SUMMARY

UNLAWFUL DEDUCTION FROM WAGES

CONTRACT OF EMPLOYMENT – Implied term/variation/construction of term

At the material time the Treasury had imposed a pay freeze on public sector workers including the Claimants. They claimed that, in spite of that pay freeze, they were entitled to increases in their pay from 2010 which were referable to guaranteed pay progression points. They contended that those progression points had been agreed in the pay round which had led (in substance if not in form) to a collective agreement in 2008. Accordingly, they claimed that the Respondent had unlawfully deducted wages to which they were entitled under their individual contracts of employment, which incorporated the terms of the collective agreement. That agreement was reflected in a letter sent by management to union representatives in 2008. The Employment Tribunal accepted the Claimants' contentions. The Respondent appealed on the ground that the Employment Tribunal had erred in its construction of the agreement. In particular it contended that the letter of 2008 set out what was agreed for a two year period only because the pay increase agreed at that time was to last only for the years 2009/10.

Held, on its true construction, the agreement in this case dealt with two subjects. The first was the pay increase for staff generally, which was limited to the years 2009/10. However, there was also agreed a structural change, which introduced guaranteed pay progression points: that structural change was not limited in time to those two years. The Employment Judge had not erred in failing to have regard to relevant background evidence or other matters. Accordingly, its construction was correct and the appeal would be dismissed.

THE HONOURABLE MR JUSTICE SINGH

1. This is an appeal against the decision of the Employment Tribunal at Norwich, which was sent to the parties on 14 January 2013 after a hearing which took place before Employment Judge Postle, sitting alone, on 17 October 2012. In allowing this appeal to go forward to a full hearing, HHJ McMullen QC directed that there should be lay members sitting in this Tribunal. That decision has been vindicated not least because the case raises questions in which the knowledge and experience of the lay members of this Tribunal of employment relations has been of great assistance.

2. The decision which the Employment Tribunal took was essentially to allow the complaints by the three Claimants, who are now the Respondents to this appeal. They complained that they had suffered unlawful deductions from their wages, contrary to section 13(1) of the **Employment Rights Act 1996.** They complained that that had occurred after a pay freeze had been applied to those in their position from 1 August 2010. Accordingly, as will be apparent, these cases have been regarded as to some extent test cases, raising issues of importance not only for the Claimants and other employees in a similar position, but also of course for the Appellant, which is the Cabinet Office, and for the government more generally.

Factual background

3. The factual background can be summarised briefly so far as it is necessary in order to understand the legal issues which arise. Each of the Claimants had a statement of terms and conditions of employment, which can be illustrated by reference to the first page of those terms and conditions in the case of the Claimant, Miss Bremner, which is at page 117 of the appeal bundle. After setting out the job title, grade and place of work along with the date of

commencement of employment and its duration in clause 6, which dealt with pay, the annual salary was set out and there appeared the following clause:

> **"Increases in salary are performance related and paid in accordance with the pay award negotiated annually between Management and the Trade Union. The pay ranges are reviewed as part of these negotiations..."**

4. From time to time, there have been negotiations between the Cabinet Office and the relevant unions. This Tribunal's attention has been drawn, although only briefly, to a number of pay rounds since 2004. It is clear that the subject of pay progression was not dealt with for the first time in 2008. On the documents before this Tribunal it would appear that it was dealt with in earlier pay rounds from 2004. However, what is principally in issue in the present case is the meaning and effect of the outcome of the pay round in 2008. Strictly speaking, there was no collective agreement ultimately reached. However, it has been common ground before this Tribunal, as it was before the Employment Tribunal, that the document which needs to be construed is a letter dated 15 September 2008 from Mr Mike Long of the Office of Government Commerce in HM Treasury, addressed to Julie Bremner, the PCS OGC Branch Chair. It is headed "OGC pay final offer".

5. Before we turn to some of its terms in more detail, it is right to note that it was common ground in these proceedings that, although this document formally has the status of an offer only and does not have the status of a collective agreement, it was in substance imposed although not finally agreed as to the details of the figures. It is also common ground in these proceedings that there was in effect affirmation of it by conduct. Accordingly, it has been common ground in these proceedings that it falls to be construed in the same way as if there had, strictly speaking, been a collective agreement and, secondly, that it was incorporated by reference into each individual contract of employment pursuant to the clause relating to increases in salary to which we have already referred.

6. In the first paragraph of the letter of 15 September 2008 Mr Long stated:

> **"I am writing to formally set out our final pay offer, which we have discussed. The offer builds on the very useful discussions we have had over the past couple of months. The offer covers a two-year period and is worth 3.70% in both 2008 and 2009."**

7. Under the heading "Strategic Reward Priorities" it was stated:

> **"OGC's strategic reward priorities in the short and medium term are:**
>
> - **To address the issues highlighted in the Equal Pay Audit:**
>
> **By shortening the length of our pay bands by increasing the minima by more than pay inflation and freezing or increasing the maxima by less than pay inflation;**
>
> **And improving progression through the bands by introducing a series of guaranteed progression points;**
>
> - **To increase the size of bonuses paid to the very best performers with the aim by 2010 of paying bonuses averaging 10% of salary to the top 10% of performers;**
>
> - **To improve the overall transparency to provide greater clarity about the pay strategy and what people can expect from it, both in terms of base pay and bonuses, and total reward.**
>
> **Clearly, there will be a tension between what can be afforded for each of these issues, whilst at the same time looking to deliver a reasonable award to all satisfactory performers. We believe that the best way to address these issues was through a multi-year settlement covering 2008 and 2009."**

8. There was then a passage which dealt with what the focus over the two-year period was to be. It can be noted that the last bullet point under that heading said: "Respect the Government's policy on targets and public sector pay." There was then a heading "Pay Bands", under which was stated:

> **"In order to shorten our Pay Bands and improve progression the offer:**
>
> **-- Increases the Band minima significantly over the 2-year period;**
>
> **-- Freezes the Band maxima (except at Band 1 (London)) in 2008;**
>
> **-- Introduces further guaranteed progression points in each pay band.**
>
> **Band minima will increase by at least 6% in 2008 and a further 5% in 2009."**

There was then this paragraph:

> **"Progression points will be introduced in each Band for those who have been in their grade for 2 years, 4 years, 6 years and 8 years on the 1 August of each year. After the 2009 settlement, the 8 year progression point in each Band will be over 95% of the band maximum, except at Band 1 where it will be the same as the maximum.**
>
> **The resulting Pay Bands are attached."**

We will return to that attachment.

9. There was then a heading "Base Pay uplift" where it was stated that base pay increase in both 2008 and 2009 would be as follows, and then the details of the uplifts were set out. There was then a heading "Performance related bonus payments", which has not played a material part in the present hearing. Then there appeared a heading "Follow up to Equal Pay Audit" where it was stated that:

> **"The measures to shorten the length of pay bands and to improve progression will help to address some of the inequalities highlighted in the Equal Pay Audit. Furthermore the outcome of this year's bonus panels indicates that any gender inequality in the awarding of bonuses under the previous system has been corrected under the new arrangements.**
>
> **Nevertheless, there are further measures that we will want to consider in response to the Report. We will therefore set up a working group with you to consider what else needs to be done to address the issues raised in the Report. This will include the arrangements for setting starting salaries of new recruits and bonus bonds."**

10. There was then a heading "Significant change of circumstances during the period":

> **"During the period of the agreement in year two we will review, and possibly seek additional remit cover, in the event of:**
>
> - **Significant changes in the Whitehall Pay Coherence agenda or the pay remit guidance for 2009;**
> - **Significant increases in inflation figures, which in the view of either party devalue the pay system;**
> - **Changes in legislation, or widespread changes in other departments' terms and conditions that would leave OGC out of line with the norm;**
> - **Recommendations arising out of the follow up review to Equal Pay Audit that require additional funding."**

11. There was then a summary at the end of the letter in which Mr Long thanked the unions for the cordial way in which they had approached the negotiations and the constructive way in which they had worked together to arrive at a pay structure that was acceptable to both management and the unions.

12. Before the Employment Tribunal there was a witness statement of Mr Long. At paragraph 7 of that statement he said:

> **"In the preceding pay year a deal had been agreed with the Trade Unions which included two pay progression points after 2 and 5 years service. There was no question that I was in any way restricted in my negotiations by the earlier pay deal or that it was binding beyond the length of that pay deal. Obviously the pay history and historic pay issues within the organisation influence the way in which the subsequent pay package is put together but do not fetter OGC's power to make a new pay offer for the next pay period."**

13. He then went on to describe his understanding, at least, of the terms of the pay deal for 2008-9 and 2009-10 and the reasoning behind it, which he said was set out in his letter of 15 September 2008. He said at paragraph 9 of his statement that he cannot say what the position would have been at the start of negotiations for the pay year 2010-11 had it not been for the government's pay freeze. He said that they would have hoped to continue with the progression points if there was justification for this and it had been affordable within the pay remit for that year.

Legislation

14. As we have said, this claim arose under section 13(1) of the **Employment Rights Act 1996**, which 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, or**
>
> **(b) the worker has previously signified in writing his agreement or consent to the making of the deduction."**

15. In the present case, it is common ground that the only issue which arises is whether there was an authorisation under a relevant provision of the worker's contract. Put another way, was there a contractual entitlement to certain pay increases by reference to the pay progression structure, said by the present Respondents to be in the 2008 agreement, or was there no such contractual entitlement to such an incremental increase? If the latter there would be no unlawful deduction from the relevant worker's wages

Relevant legal principles

16. It was common ground, as we understood it, between the parties that it was unnecessary to recite at length from the relevant authorities. As we understood it, it was common ground that the issue which arises in the present appeal concerns the proper construction of the "agreement" represented in the letter of 15 September 2008. It was also common ground, as we understood it, that the relevant principles as to construction of such documents have been helpfully and recently summarised by the Court of Appeal in **Anderson v London Fire and Emergency Planning Authority** [2013] IRLR 459. The main Judgment in that case was given by Maurice Kay LJ, the Vice President of the Court of Appeal (Civil Division). At paragraphs 14 to 16 of his Judgment, Maurice Kay LJ stated as follows:

> **"2. Construction**
>
> **14. The modern approach to the construction of contracts is to be found in the exposition of principles by Lord Hoffmann in *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896, 912H – 913E…The following passages from his speech in the *Investors Compensation Scheme* case are of particular relevance in the present case:**
>
> > **'(1) Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract …**
> >
> > **(3) The law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent …**
> >
> > **(4) The meaning which a document … would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been**

understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax …

(5) … if one would conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had. Lord Diplock made this point more vigorously when he said in *Antaios Campania Naviera v Salen Rederierna* [1985] AC 191, 201:

> ***'if detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business commonsense, it must be made to yield to business commonsense'*.'**

15. The context in the present case is not one of a commercial contract but of contracts of employment between an employer and employees which contain terms incorporated from a collective agreement.

16. Even before the *Investors Compensation Scheme* case, Sir Thomas Bingham MR had set out the approach to the construction of contracts of employment which contain terms incorporated from a collective agreement in *Adams v British Airways PLC* [1996] IRLR 574. His judgment anticipated and was consistent with the speech of Lord Hoffmann. Having referred to the need to construe the argument 'in its factual setting as known to the parties at the time', he said (at paragraph 22):

> **'On the facts here, it was a collective agreement which was incorporated into the contracts of the individual plaintiffs. A collective agreement has special characteristics, being made between an employer or employers' organisation on one side and a trade union or trade union representative of employees on the other, usually following a negotiation. Thus it represents an industrial bargain, and probably represents a compromise between the conflicting aims of the parties, or '*sides*' as in this context they are revealingly called. But despite these special characteristics, a collective agreement must be construed like any other, giving a fair meaning to the words used in the factual context (known to the parties) which gave rise to the agreement.'"**

17. We would add only this, that the parties before us were agreed that, just as in the commercial context regard must be had to business common sense, so in the context of employment relations regard must to be had to what has been described as industrial common sense.

18. Our attention was also specifically drawn to the judgment of Davis LJ in **Anderson**, in particular at paragraph 35, where he stated:

> **"If one possible interpretation gives rise to a result which makes a lot of sense and another possible interpretation (even if at first sight the more linguistically precise interpretation) gives rise to a result which makes – put into context – little sense then the former, all other things being equal, should prevail. In my view, in the present case, the language of the clause does permit such an interpretation."**

Put another way, as Mr Tindal for the Appellant submitted by reference to this and other authorities, if a particular construction would lead to absurd results or results which could not properly be attributed to a rational party to the agreement, that would be a powerful reason not to adopt that construction.

The Appellant's grounds and submissions

19. The fundamental submission which has been advanced on behalf of the Appellant is that the agreement encapsulated in the letter of 15 September 2008 was simply an agreement for a two-year period applicable to 2008 and 2009. Mr Tindal has submitted that that is apparent from the opening paragraph of the letter itself. He says that it is also apparent from other references to those years in the body of the letter, for example where, under the heading "Base Pay uplift", it stated: "Base pay increase in both 2008 and 2009 will be as follows". He submits that the attachment to the letter also supports this, as it was expressly referred to in the body of it as setting out the resulting pay bands (not, he submits, the resulting pay bands for future years or for 2008 and 2008 only). He submits that that attachment, headed "OGC Pay Bands", is in terms a set of tables expressly concerned with the years 2008 and 2009 and with nothing else. Certainly, he submits, there is nothing there to suggest that the contract had future life beyond the two-year period to which it related. Finally, in terms of the text of the letter, Mr Tindal draws attention to the fact that there was expressly provided the possibility of a review even within the two-year term of the contract, in the second year of it, under the heading "Significant change of circumstances during the period".

20. We will return to the Appellant's grounds in due course in this Judgment in more detail as we consider them more specifically. We hope to do justice to them, although we will not seek to deal with every point of detail which has been helpfully set out at length in a skeleton argument and developed more concisely in oral submissions. Before we do, we will

now set out the relevant terms of the Employment Tribunal Judgment which are criticised in relation to the interpretation of the agreement to which we have referred.

21. Mr Tindal submits that the Judgment was not helpful because it was an old-style "narrative" Judgment because it simply recited the evidence and submissions of both sides without synthesising the evidence into a series of findings of fact. In the end, we have not found it necessary to concern ourselves overly much with that sort of criticism. This is because, as Mr Tindal fairly accepted, at the end of the day what this appeal concerns is the question of the correct construction of the relevant agreement. This is not a reasons challenge, certainly not at this stage in these proceedings. And as Mr Tindal fairly accepted again, this Tribunal is in as good a position as the Employment Tribunal to say what it considers the correct construction of the agreement to be, and whether it agrees or disagrees with the construction placed upon it by the Employment Judge.

22. Therefore we turn in detail to the concluding section of the Employment Judge's Judgment where he set out the essence of his reasoning as to why he found in favour of the Claimants:

> **"14.1 I ask myself the simple question among all the arguments put forward: what the parties, using the words set against the relevant background, would reasonably have been understood to mean.**
>
> **14.2 Looking at the final pay offer dated 15 September 2008... :**
>
> **'the offer covers a two-year period'**
>
> **'To address the issues highlighted in the Equal Pay Audit'**
>
> **'And improving progressions through the bands by introducing a series of <u>guaranteed</u> progression points'.**
>
> **14.3 Pay Bands**
>
> - **Introduces further guaranteed points in each band**
> - **Progression points will be introduced in each band for those who have been in their grade for 2 years, 4 years, 6 years and 8 years on the 1 August of each year. After the 2009 settlement the 8 year progression point in each band will be over 95% of the band maximum, except in Band 1 where it will be the same as the maximum.**

Clearly on any reasonable interpretation the pay progression was not only guaranteed but intended to continue beyond the two year pay deal – this was an entirely separate deal from the normal % increase on the standard base pay. If not, Mr Long's letter would surely have said, if that truly was the intention clearly expressed in his letter that the guaranteed pay progressions in each pay band only applied to the period covering the 2 year pay deal and not further. The letter nowhere limits progression points in each band to the duration of the two year pay deal. A point noted by Human Resources when considering the Claimants' grievances, and responding by letter 27 January 2011... which commented that the suggestion of the continuing existence of the pay progression outside the two year period was unfortunate and dismissed as 'loose drafting'.

14.4 I am firmly of the opinion, given the above...intention – reasonably to be understood by all parties from Mr Long's final pay offer letter – did clearly envisage that the pay progression bands over 2, 4, 6 and 8 years would continue beyond the two year period, being entirely separate from the standard pay increase, and clearly intended to reward and offer financial incentives to retain longer-serving members of staff.

14.5 The Claimants therefore suffered unlawful deduction of wages from the periods claimed."

23. As we have already said, the essential submission that Mr Tindal makes on behalf of the Appellant is that, on its true construction, in accordance with the relevant legal principles which we have summarised, the agreement in this case was time-limited. He submits that it was a pay deal for the two-year period 2008 to 2009. We will address some of the more specific submissions that Mr Tindal has made, both in support of that fundamental argument and in criticism of the Employment Judge's reasoning in more detail in due course. However, in our judgment, the pay agreement, on its true construction, was not solely about the pay increase referred to in the first paragraph. In our judgment, when correctly construed, in accordance with the relevant background as a whole and in its context, the agreement concerned two distinct subject matters. The first was indeed the subject of what pay increase there should be for the relevant two-year period. The second subject matter was to introduce into the pay structure more generally a new, not necessarily for the first time but certainly a new, set of bands, which were referred to as "a series of guaranteed progression points". The purpose of this was said to be to improve progression through the bands. This was also, quite independently in our judgment of any specific pay increase to be given to employees in that two-year period, in part at least in response to the Equal Pay Audit which was referred to on the third page of the letter.

24. In the experience of the lay members, in particular, of this Tribunal, it is not unusual for there to be such structural arrangements or changes made in the context of perhaps an annual pay round. In our judgment, and drawing upon that experience, it would not be at all unusual for the parties to intend, and therefore to agree, that such structural changes are indeed to have effect beyond the terms of the particular pay increase which is agreed at the same time. As a matter of law, it seems to us that the position is as follows. Ordinarily, an individual employee is entitled to be paid the agreed remuneration in his or individual contract of employment in return for the work that he or she has agreed to do. Very often, as in the present case, there will be a clause in the individual contract of employment, which incorporates by reference increases in salary which are negotiated at the collective level, often between a relevant representative trade union and the management concerned. If and when such an increase in salary is agreed, it will then become a term of the individual's contract of employment. Very often, in practice, that is the method by which management will be able to obtain other features of the employment relationship which they wish to renegotiate from time to time. It may be, for example, that they want to renegotiate hours of work, holiday arrangements, or, as in this case, structural arrangements to do with pay progression. In legal theory, at least, the individual employee does not have to accept those terms being imposed upon him or her. However, ordinarily he or she will readily accept because it is the price to be paid for obtaining the relevant pay increase for the coming period. However, as it seems to us, an employer does not have any right as a matter of contract law, leaving aside any possibility of using legislation or delegated powers possibly conferred upon the executive, to impose unilaterally, for example, a structural change or other fundamental change to an employee's terms and conditions. In theory, at least, the individual could take the view that he or she is content to continue to be paid the old rate for the work done because he or she does not wish to agree the new terms and conditions.

25. What that illustrates, in our judgment, is that there is no necessary connection between the continuation of pay and an agreement about fundamental changes to the terms and conditions. It is all a matter for negotiation and a matter for agreement at the end of the day. In the present case, what appears to us to have happened is that there has been no pay increase, at least at the relevant time, since 2010. That does not mean that the other fundamentally distinct part of the agreement reached in 2008 did not continue or was not intended to continue beyond 2009. That was the structural change to which we have referred which dealt with the question of guaranteed pay progression points. That, in our judgment, is the correct construction of the agreement in this case.

26. We turn to address some of the specific criticisms which Mr Tindal has made – we hope to do justice to the gist of them at least. The first point he made was that the Employment Judge had not paid regard to the relevant background information. In particular, he submitted that there was no regard paid to the preceding negotiations in earlier years from 2004. He submitted that everything was dependent on a number of extrinsic factors such as the economic climate and what was affordable within OGC's prescribed spending limits and the budget available for pay progression (see the Respondent's pay policy, which is in our bundle at page 72). He submitted also that to read the agreement in the way that the Employment Judge did, as in our mind, he was entitled to do, would free the pay progression aspect of the agreement from the underlying "mooring" of the pay increase aspect of the agreement. For reasons which we have already explained, we do see any necessary connection between those two aspects of the agreement. He also complained that the Employment Judge had quoted from the letter of 15 September 2008 in a selective way and out of context. We have sought, we hope, to quote it more fully so far as relevant, as far as we could see from the submissions made before us. Nevertheless we can see nothing wrong with the conclusion which the

Employment Judge reached as to the correct construction, for reasons which we have already indicated.

27. Mr Tindal also submitted that, having regard to the text of the agreement itself, it was, in its own terms, not undertaking any legal obligation in respect of a series of guaranteed progression points in the manner asserted by the present Respondents. He drew attention, for example, to the introductory passage, under the heading "Strategic reward priorities", which said:

> **"OGC's strategic reward priorities in the short and medium term are...**
>
> **improving progression through the bands by introducing a series of guaranteed progression points"**

He said that that was not the undertaking of a legal obligation but rather a statement of aspiration. We do not agree. We accept the argument by Ms White, for the Respondents, that the introductory words there explained the rationale which had led up to the agreement. The agreement and indeed the legal obligation thereby undertaken was to introduce a series of guaranteed progression points. Furthermore, we accept the construction put on an important passage on the second page of the agreement, advanced by Ms White. In that passage, which we have already quoted, it was stated:

> **"After the 2009 settlement, the 8 year progression point in each Band will be over 95% of the band maximum..."**

That reference to the progression point surviving a time "after the 2009 settlement" indicates, in our view, that it was indeed envisaged by the parties in their agreement that this aspect of the agreement would continue to have life after the specific pay round dealt with of 2008-9.

28. Finally, in the context of the text of the agreement, we draw attention to a point made by the Employment Judge also and advanced powerfully by Ms White. That is what is not in the agreement, as it could so easily have been. There is no express time limit clause limiting the duration of the introduction of the guaranteed progression points. In the experience of the lay members of this Tribunal one would easily expect such a clause to be insisted on if that had been the intention of the parties.

29. We turn to a number of other criticisms that were made of the construction of the agreement which both the Employment Judge and this Tribunal have reached. Mr Tindal relied upon what was called at the hearing before us "the Treasury remit point". In essence, the argument is that an intention cannot be really attributed to the parties that, whatever the economic circumstances and whatever the budgetary constraints imposed on the Appellant by a third party, namely HM Treasury, the progression point structure would continue to exist.

30. We do not accept that argument insofar as it is raised to contradict the otherwise correct construction of the agreement as we see it. First, the argument if driven to its logical conclusion would tend to prove too much. For example, at least hypothetically, it would lead to the position where the employer might be able to insist upon a pay cut and not just a pay freeze. Whatever the public sector difficulties in the economic climate, which is well known in this country since 2008 or so, it is simply not the case that as a matter of contract law the Treasury or indeed any other government department could insist upon such a term being imposed, certainly not unilaterally. We leave aside, as we have said, the possibility of legislation or some other power being exercised, which is conferred upon the executive by law. We are concerned in this case only with a point of contract law.

31. Secondly, we accept Ms White's submission that in fact the pay progression issue is neutral in terms of its potential impact on public spending. This is because, typically, what it will reward is length of service on an incremental and banded scale. It is perfectly possible, consistent with such a scale, that as long-serving employees leave, perhaps for retirement reasons, new recruits will join the workforce who are not in fact entitled to the relevant incremental increases.

32. The next set of criticisms which Mr Tindal made was that this construction would lead to absurd or unfair results. We do not agree. We see nothing absurd, as we have already indicated, in both employees and employers wishing to have in place a stable structure for incremental pay increases. We would regard that as reinforced by the background, which we are aware of from the letter of 15 September 2008, that this was in part a response to a concern arising from an Equal Pay Audit. That, it seems to us, is not necessarily linked to a particular pay period and certainly the construction we would otherwise adopt does not, in our judgment, lead to any absurdity. Nor does it necessarily lead to any unfairness. In any workplace the presence of an incremental pay structure necessarily will mean that there will be some workers who get a pay increase which is beyond the increase negotiated generally across the workforce. This is for the obvious reason that they are being rewarded, for example, for length of service. Typically, as we understand it, there will often be performance appraisal and other criteria used by an employer before in fact such an increase is awarded. The reason why Mr Tindal is able to say in the present context that there might be some perceived unfairness as between different workers does not flow from the presence of the incremental structure, which as we have said, is commonplace. It flows, rather, from the fact that the pay freeze has been imposed at the relevant time across the public sector. That, of course, is a pay freeze which applies to all workers equally.

33. Mr Tindal also submitted that the construction which the Employment Judge adopted and which finds favour with this Tribunal would lead to chaos. In our respectful judgment, far from leading to chaos, it would tend to promote stability in the employment relationship. One only has to contemplate what, for example, would happen, quite apart from the facts of the present case, in an ordinary employment situation if employees are told in an agreement that this is the pay structure to which they can look forward over many years going, well beyond the current pay round or even a two-year period as in this case. Typically, as indeed in this case, they may well expect, under the agreement which has been reached, that they will be able to look forward to an increase, for example, at the six-year point. If they are then told that actually, in the next pay round, nothing can be taken as read and everything is up for grabs once again because a pay deal has to be struck each year, or perhaps every two years, that in our judgment, would be a recipe for instability and a justifiable sense of grievance in the workplace. That is not only a point in the interests of employees. It seems to us that is a point which is in the interests of employers. After all, the reason why, as we understand it, employers tend to have pay progression structures of this kind is precisely because they wish to reward loyalty and to reward experience. Those are matters which are beneficial to the organisation and to the efficient conduct of its work.

34. In the end, therefore, we have come to the clear conclusion that the construction which in essence the Employment Tribunal placed upon the agreement of 15 September 2008 was the correct one.

Conclusion

35. For the reasons we have given this appeal is dismissed.