



EMPLOYMENT TRIBUNALS

Claimants: Miss C Elliott, Miss C Keary, Miss E Mountford, Mrs R Saville, Ms K Ghambaryan, Miss L Hardy

Respondent: The Chief Constable of Greater Manchester Police

HELD AT: Manchester **ON:** 10 April 2018

BEFORE: Employment Judge Porter

REPRESENTATION:

Claimants: Mr S Brittenden, counsel

Respondent: Mr D Basu, Queen's counsel

JUDGMENT

1. The claimants are entitled to the enhanced maternity pay rates set out in the 2017 Police Staff Handbook between 1 April 2017 and the expiry of their 18th week of maternity leave.
2. The respondent made an unlawful deduction from the wages of each of the claimants by failing to pay to each claimant the enhanced maternity rates to which each claimant was entitled.
3. The respondent failed to comply with a relevant Code of Practice. It is just and equitable to make an adjustment of the awards under s207A Trade Union & Labour Relations (Consolidation) Act 1992. The award to each claimant shall be increased by 12.5%.
4. The respondent is ordered to pay to:
 - 4.1 Miss C Elliott, the sum of £1,203.34;

- 4.2 Miss C Keary, the sum of £1,873.07;
- 4.3 Miss E Mountford, the sum of £1,1134.03;
- 4.4 Mrs R Saville, the sum of £3,001.28;
- 4.5 Ms K Ghambaryan, the sum of £1,466.60
- 4.6 Miss L Hardy, the sum of £399.44

REASONS

1. Written reasons are provided pursuant to the request of counsel for the claimants at the hearing.

Issues to be determined

2. At the outset it was confirmed that the issue is whether the claimants are entitled to the enhanced maternity pay rates set out in the 2017 Police Staff Handbook between 1 April 2017 and the expiry of their 18th week of maternity leave.

Submissions

3. Both Counsel relied upon written submissions set out in their Skeleton Arguments, which the tribunal has considered with care but does not repeat here.
4. Counsel for the claimants made a number of further submissions which the tribunal has considered with care but does not rehearse in full here. In essence it was asserted that:-
 - 4.1 the respondent failed to comply with the ACAS code relating to grievance procedure;
 - 4.2 each of the claimants submitted a grievance but were not invited to a meeting, thereby breaching para 33 of the ACAS code;
 - 4.3 it followed they were not offered the right to be accompanied to a meeting, a breach of para 35 of the Code;
 - 4.4 the claimants were deprived of an opportunity to address a panel as to their grievance, breach of para 39 of the Code;

- 4.5 None of the claimants were invited to an appeal hearing in person, a breach of para 44 of the Code;
 - 4.6 three of the claimants– Elliot, Mountford and Saville –have received no decision on their grievance, a breach of para 40 of the Code;
 - 4.7 there has not been a wholesale failure to follow the Code;
 - 4.8 there is no evidence from the respondent as to why he did not comply with the Code;
 - 4.9 the respondent does not seek to explain the non-observance of the Code, save to say that the dispute was a matter of law;
 - 4.10 that does not excuse the breach. The claimants apply for an uplift of 12.5%.
5. Counsel for the respondent made a number of further submissions which the tribunal has considered with care but does not rehearse in full here. In essence it was asserted that:-
- 5.1 this is the sort of dispute that is not in any way a dispute of fact. Grievance procedures are about fact not the law. This was always going to be a dispute about law, about what the law was, and so any grievance or appeal hearing would simply have been an exchange of view on the relevant law;
 - 5.2. this is at the less serious end of breaches of the Code.

Evidence

6. The claimants relied upon their own witness statements, together with the written evidence of Stephanie Bell, Unison Branch Secretary. Counsel confirmed that they did not seek to ask questions of, or to cross examine, any of the witnesses. The tribunal agreed to consider the written evidence.
7. An agreed bundle of documents was presented. References to page numbers in these Reasons are references to the page numbers in the agreed Bundle.

Facts

8. Having considered all the evidence the tribunal has made the following findings of fact. There was no conflict of evidence. Both parties relied on

the agreed documentary evidence. The dispute was as to the interpretation of the documents.

9. Under the terms of each of the claimants' contract of employment it states:

20. Prior and subsequent agreements.

20.1 Your terms and conditions of employment (including certain provisions relating to your working conditions) include existing collective agreements negotiated both nationally and locally with trade unions recognised by the employer for collective-bargaining purposes. These agreements are embodied in the police staff Council Handbook and have been incorporated into GMP police staff Handbook (as amended from time to time).

20.2 From time to time variations in your terms and conditions of employment will result from collective agreements with the trade unions and these will be separately notified to you or incorporated into documents to which you can refer. The employer undertakes to ensure that future changes will be entered into these documents or otherwise recorded for you to refer to, within 28 days of change. Any changes in the terms and conditions of employment which are agreed after the date of this contract shall be incorporated automatically into your contract of employment.

10. As at the date of commencement of each of the claimant's maternity leave her maternity leave entitlements were determined by the police staff Council pay and conditions of service Handbook which came into effect on 1 April 2004 (the 2004 Handbook). The 2004 Handbook was incorporated into each of the claimant's contract of employment. Section 5 of the 2004 Handbook sets out the occupational maternity scheme stating at paragraph 1:

The occupational maternity scheme shall apply to all pregnant employees regardless of the number of hours worked per week.

11. Each of the claimants was a member of the police staff.

12. On 10 March 2017 the employer side and trade union side issued a joint circular number 92 (159) which included the following:

The Police staff Council has agreed a revised terms and conditions of service Handbook.....

The revised Handbook will replace the current version with effect from 1 April 2017. As a result, any reference in police staff contracts of employment to national terms and conditions arrangements will from this date be to the revised Handbook.

This circular was signed by the trade union side's secretary and employer's side's secretary

13. The 2017 Handbook was issued. Section 5 of the 2017 Handbook sets out the occupational maternity scheme stating at paragraph 1

The occupational maternity scheme shall apply to all pregnant employees regardless of the number of hours worked per week.

14. Neither the 2017 Handbook, nor the joint statement in circular number 92, set out any transitional period or express qualification as to entitlement to the new terms.

Remedy

15. The parties agreed the amounts of the unlawful deductions in the following sums:

15.1 Miss C Elliot – £1069.64;

15.2 Ms K Ghambaryan - £1303.65;

15.3 Miss L Hardy - £355.06;

15.4 Miss C Keary - £1664.95;

15.5 Miss Emma Mountford - £1008.03;

15.6 Mrs R Saville - £2667.80

16. Each of the claimants raised a grievance in relation to their allegation that the respondent had made an unlawful deduction from wages in failing to pay the enhanced maternity pay under the 2017 Handbook.

17. The respondent did not invite any of the claimants to a meeting to discuss the grievance. The claimants were deprived of the opportunity to address the grievance officer as to the nature and grounds of their grievance. None of the claimants were invited to an appeal hearing. The respondent failed to provide Miss Elliott Miss Mountford and Mrs Saville with the outcome of their grievances.

The Law

18. The tribunal is required to ascertain the parties' objective intentions in light of the words used. The starting point is that the parties meant what they

said and said what they meant. However, any document must be construed in its factual setting as known to the parties at the time.

19. The tribunal has considered and where appropriate applied the authorities referred to in submissions. It does not repeat the law here. There was no dispute between the parties as to the applicable law.

20. Section 207A (2) of the Trade Union and Labour Relations (Consolidation) Act 1992 provides:

“If, in any proceedings to which this section applies, it appears to the Employment Tribunal that:-

- a) the claim to which the proceedings relate concerns the matter to which a relevant Code of Practice applies;
- b) the employer has failed to comply with that Code in relation to that matter;
- c) the failure was unreasonable.

The Employment Tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%.

Determination of the Issues

(This includes, where appropriate, any additional findings of fact not expressly contained within the findings above but made in the same manner after considering all the evidence)

21. It is an express term of each of the claimant’s contract of employment that any subsequent collective agreement shall be incorporated automatically.

22. Circular number 92 evidences clear agreement that the implementation date for the new terms was the 1 April 2017. The wording of circular number 92 is clear: the revised Handbook replaces the current version with effect from 1 April 2017 for all police staff. The key word in the joint statement is “replaced”. There was no agreement that the two collective agreements of 2004 and 2017 should operate simultaneously or in parallel.

23. The respondent asserts, firstly, that the terms of the 2017 Handbook as to maternity leave and pay can only apply to employees who were pregnant as at 1 April 2017. That assertion relies on paragraph 1 of section 5 of the 2017 Handbook. The argument is that the trigger condition, in order for

- employees to be entitled to the new terms, is that they were pregnant on 1 April 2017. If this interpretation was correct then the claimants, to ascertain their rights to maternity pay, would have to look to the 2004 Handbook. That interpretation is contrary to the clear joint statement that the 2017 Handbook replaced the 2004 Handbook. If the respondent's interpretation is correct then the employees would need to look to the 2017 Handbook and the 2004 Handbook to find out their contractual terms and conditions throughout their maternity leave. In the absence of any agreed transitional provisions, in the absence of any agreement that the two collective agreements of 2004 and 2017 should operate simultaneously or in parallel, the respondent's asserted interpretation is not consistent with the words used by the parties and makes no business common sense.
24. The respondent asserts secondly that the claimants' rights to maternity pay/leave accrued at the point that each of the claimants became entitled to maternity leave. Therefore, if the claimants started their maternity leave and entitlement to maternity pay prior to 1 April 2017 then their rights continue under the 2004 Handbook and they are unable to enforce entitlement to the enhanced rights under the 2017 Handbook.
25. Again, that interpretation is contrary to the clear joint statement that the 2017 Handbook replaced the 2004 Handbook from 1 April 2017. In the absence of any agreed transitional provisions, in the absence of any agreement that the two collective agreements of 2004 and 2017 should operate simultaneously or in parallel, the second interpretation of the respondent again is not consistent with the words used by the parties and makes no business common sense.
26. It was the clear objective intention of the parties, in light of the words used, that the new terms and conditions of the 2017 handbook applied to all police staff from 1 April 2017. There is no ambiguity.
27. The Tribunal agrees with counsel for the claimants that the provisions of the 2017 Handbook automatically applied to each claimant from 1 April 2017.
28. The tribunal also agrees with counsel for the respondent that all and any agreed changes in the terms and conditions of employment would be incorporated automatically into each of the claimant's contract of employment – whether any such changes were to the advantage or disadvantage of the claimants. That is the clear agreement as set out in the Contracts of employment.

29. The claimants are entitled to the enhanced maternity pay rates set out in the 2017 Police Staff Handbook between 1 April 2017 and the expiry of their 18th week of maternity leave.
30. As to remedy, the parties have agreed the amount of the deductions.
31. In relation to the claim for an uplift under s207A, there is no dispute that the ACAS Code of Practice applied, that there was a failure by the respondent to comply with the Code as asserted on behalf of the claimants. The tribunal agrees with the respondent that the failure is at the less serious end of such breaches. There was no wholesale failure to address the grievances or to follow the Code. However, the law is there for a purpose and grievances need to be considered following the guidance given in the ACAS code. The fact that this was a dispute as to the interpretation of the contractual documentation and Joint statement does not exclude the claimants' right to pursue a grievance and to have that grievance fairly considered. The tribunal considers it just and equitable in all the circumstances to increase the award. It agrees to the requested 12.5% uplift.
32. The amount of the uplift was agreed between counsel during the hearing.

Employment Judge Porter

Date: 2 May 2018

JUDGMENT SENT TO THE PARTIES ON

14 May 2018

FOR THE TRIBUNAL OFFICE



THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case numbers: 2405015/17, 2405016/17, 2405017/17, 2405019/17,
2405020/17, 2405021/17

Name of cases: Miss C Elliott v The Chief Constable of
Miss C Keary Greater Manchester Police
Miss E Mountford
Mrs R Saville
Ms K Ghambaryan
Miss L Hardy

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is:	14 May 2018
"the calculation day" is:	15 May 2018
"the stipulated rate of interest" is:	8%

For the Employment Tribunal Office