EMPLOYMENT TRIBUNALS

Claimant **Ms J Carling**

Respondent **The Fisher Partnership Ltd**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT MIDDLESBROUGH **ON 24 and 25 January 2019**

EMPLOYMENT JUDGE GARNON **Members Ms C Hunter and Mr D Cattell**

Appearances
For Claimant in person
For Respondent Mr S Healy of Counsel

JUDGMENT

The unanimous judgment is :
1 The claim of wrongful dismissal is well founded. We order the respondent to pay damages of £ 2266 plus an uplift of £339.90 pursuant to section 207A of the Trade Union & Labour Relations (Consolidation) Act 1992("section 207A").
2. The claim of unfair dismissal is well founded. We order the respondent to pay to the claimant compensation of £ 3399 being a basic award only to which the Recoupment Regulations do not apply
3. The claims under the Equality Act 2010 (EqA) are not well founded and are dismissed.

REASONS (bold print is our emphasis and italics are quotations)

1. The claims and issues

1.1.The claimant was employed by the respondent, a provider of care, residential and nursing homes, as a Health Care Assistant, from 21 August 2006 until 28 December 2017 when she says she was dismissed and the respondent says she resigned. By a claim form presented on 22 February 2018, she brought complaints of unfair dismissal, disability discrimination and breach of contract – notice pay. The alleged dismissal followed a lengthy absence due to a prolapsed disc causing sciatica. Disability is now admitted. The issues were defined at previous preliminary hearings.

1.2. Unfair dismissal

(i) Was the claimant dismissed or did she resign?
(ii) If there was a dismissal, what was the principal reason for it and was it a potentially fair one under sections 98(1) and (2) of the Employment Rights Act 1996 ("ERA")?
(iii) If so, was dismissal fair or unfair in accordance section 98(4), and, in particular, did the respondent in all respects act within the 'band of reasonable responses'?

(iv) If the dismissal was procedurally unfair, what adjustment, if any, should be made to any compensatory award to reflect the possibility the claimant would still have been dismissed had a fair and reasonable procedure been followed ?

1.3. Wrongful dismissal
(i) Was the claimant dismissed?
(ii) To how much notice was she entitled and how much pay for not being given it ?

1.4. Direct discrimination because of disability
(i) Has the respondent subjected the claimant to dismissal?
(ii) Was dismissal less favourable treatment than was or would have afforded to others ("comparators") in not materially different circumstances?
(iii) If so, was this because of disability?

1.5. Section 15 discrimination (see later)
(i) Did the claimant's absence/inability to perform her full work duties arise in consequence of her disability?
(ii) Did the respondent treat her unfavourably because of that?
(iii) If so, has it shown the treatment was a proportionate means of achieving a legitimate aim?
(iv) Alternatively, has the respondent shown it did not know, and could not reasonably have been expected to know, the claimant had the disability?

1.6. Remedy
If the claimant succeeds, in whole or part,
(i) did the respondent unreasonably fail to comply with a relevant ACAS Code of Practice? If so, would it be just and equitable in all the circumstances to increase any award, and by what percentage, up to a maximum of 25%, pursuant to section 207A?
(ii) did the claimant unreasonably fail to comply with a relevant ACAS Code of Practice? If so, would it be just and equitable in all the circumstances to decrease any award and if so, by what percentage (again up to a maximum of 25%), pursuant to section 207A?

1.7. The main factual issue is who said, wrote or did what at and after a meeting on 28 December 2017 between the claimant and Mr Inman a director of the respondent.

2. Relevant Law
2.1. Section 95 of the ERA says an employee is dismissed by his employer if *(a) the contract under which he is employed is terminated by the employer (whether with or without notice).*The claimant does not rely on any other part of the section. The EqA contains a definition of dismissal in practically identical terms.

2.2. Unambiguous words cannot normally be retracted, unless there are circumstances such as words being spoken under pressure or by someone who is not functioning normally, when an employer should allow some time to check its understanding of what was said was correct see Kwik-Fit GB Ltd -v- Lineham 1992 IRLR 156 .

2.3. Where words of dismissal or resignation are ambiguous , it is neither the subjective intention of the speaker nor the subjective interpretation of the person to whom the words are spoken which is determinative. It is what objectively an onlooker with knowledge of the facts and background would have taken the words to mean (J&J

Stern-v-Simpson 1983 IRLR 52). Martin –v- MBS Fastenings, held, whatever the respective words and actions of the employer and employee at the time, the question remains, " *Who really terminated the contract?"* If the respondent's words and/or conduct show **it** was terminating the contract that will be dismissal under 95(1)(a).

2.4. Section 98 of the Act provides:
(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair it is for the employer to show –
(a) the reason (or if more than one the principal reason) for dismissal
(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

2.5. Abernethy v Mott Hay & Anderson held the reason for dismissal is a set of facts known to the employer or may be beliefs held by him which cause him to dismiss the employee. The claimant asserts the reason for dismissal was her absence and restricted ability to perform her job which related to her "capability" . If it was not the reason , and the respondent shows no other potentially fair one, we never reach s 98(4) which requires us to decide whether dismissal was within the band of reasonable responses and was a fair procedure followed? If we do get to it, cases on fairness are Spencer-v- Paragon Wallpapers and East Lindsay DC –v-Daubney .The claim could succeed even though a fair procedure may have made no difference to the outcome.

2.6. The ACAS Code of Practice says a grievance is " *concerns, problems or complaints employees raise with the employer*".

2.7. The EqA claims are direct (s 13) and discrimination because of something arising in consequence of disability (s15). There have been two thorough preliminary hearings and no claim of failure to make reasonable adjustments (s 20) or victimisation(s27) were identified. The tribunal can only adjudicate upon the claims that have been pleaded see Chapman -v-Simon.

2.8. Section 13 says
(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.
and s 23 adds :

(1) On a comparison of cases for the purposes of section 13, there must be no material difference between the circumstances relating to each case.

(2)The circumstances relating to a case include a person's abilities if—

(a) on a comparison for the purposes of section 13, the protected characteristic is disability;

Section 6 (3) includes that in relation to the protected characteristic of disability a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability. Stockton Borough Council-v- Aylott held direct discrimination was less favourable treatment because of a particular disability.

2.9. Section 15 says

(1) A person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

2.10. In Charlesworth v Dransfields Engineering Services Ltd, the then President of the EAT Simler P considered the leading authorities Hall v Chief Constable of West Yorkshire Police and Basildon and Thurrock NHS Foundation Trust v Weerasinghe . In the latter Langstaff P laid down a two-stage approach: first, there must be something arising in consequence of the disability; secondly, the unfavourable treatment must be 'because of' that 'something'. Simler P agreed with his observation that, while the words *'arising in consequence of'* may give scope for a wider causal connection than '*because of*', the difference, if any, will in most cases be small. She rejected the argument that a connection less than an operative cause or influence is sufficient to satisfy the causation test. Hall clearly required an influence or cause that operates on the mind of a putative discriminator, whether consciously or subconsciously, to a significant extent, and so amounts to an effective cause.

2.11. Past and anticipated future absence as well as an inability to perform her full range of normal duties were something, arising in consequence of the claimant's disability. If that was a material factor (it need not be a main factor) in the decision to dismiss (the only discriminatory act relied upon) there will be a breach of section 15 unless it can be justified. On the facts even as put by the respondent the suggestion they did not or could not reasonably have been expected to know she was disabled is preposterous.

3. Findings of Fact

3.1. We first heard the evidence of the claimant who called no witnesses .For the respondent we heard Ms Vicky Lambert Head of Care, Ms Susan Tunstall the Registered Manager of Greenwell House and Mr Richard Inman, a director. We also read the witness statements of Mr Darren Walker, Ms Carol Ewbank, Ms Jackie Scott and Ms Joy Shaw. Mr Healy elected, for reasons we understand, not to call them.

3.2.The respondent at the time had five care homes, two in the small town of Bedale Greenwell House and Bedale Grange .The claimant did 2x 12 hour shifts a week on Friday and Saturday night at Greenwell House. Such shifts are unpopular with most people, but suited her. She was a valued employee. Mr Inman has been employed since 1999 by the respondent which has its head office in Harrogate. He did not have day to day contact with the claimant.

3.3. On 16 October the claimant says she had an accident at work lifting a patient. On that day she wrote in the care home diary "*could not find staff accident book, pulled back Rm 6. Will call in in the week, jan*" . Neither she nor anybody else transcribed the incident into any official record. She did not come in the following week to complete an accident form and continued to work until she commenced sick leave on 29 December 2016. The claimant later intimated a personal injury claim arising out of this event.

3.4. The written evidence of Ms Ewbank a Registered Nurse employed since January 2004 who worked on Friday and Saturday nights with the claimant for several years, is the claimant had had a back problem for a long time ,would often attend work wearing a back-support belt and ask Ms Ewbank for advice as to which pain killers to take.

3.5. Not until 29 December 2016 did the claimant visit her doctor. She was given an immediate sick note for severe sciatica and signed off work until 5 January 2017. She handed in the sick note at Greenwell House. On 5 January she was given different medication. and another sick note for 21 days stating severe sciatica. She handed that in at Greenwell House. Her statement describes how her health deteriorated badly in the early part of January culminating in a further sick note on 8 February for 42 days.

3.6. Ms Lambert was sometimes on duty when the claimant visited to submit her sick notes and asked how she was. The claimant also sometimes spoke to Ms Tunstall who had been employed since 1998 and is a registered nurse. She was in no doubt the claimant's absence on ill health grounds was genuine. Her statement says she kept in touch informally during the first 6-9 months of her absence.

3.7. Ms Scott, a Housekeeper employed since September 2012, kept in contact with the claimant over the phone until March 2017 , but her statement says " *we have not been in contact since then following a phone call conservation from the Claimant*". We did not have the opportunity of asking what that conversation was about.

3.8. Ms Shaw **a** Senior Care Assistant employed since January 2000 also worked alongside the claimant. Over the Christmas/New Year period 2016 the claimant came into the home to collect a bottle of wine and chocolates which were gifts from the respondent's directors. This all fits there being no problem until about March 2017.

3.9. At the end of Mr Inman's statement, he says the claimant "*was well looked after like all our employees* " . He describes Greenwell House as " *a family environment*", and the claimant as "*a long serving employee with a clean disciplinary record who we would have liked to have retained if at all possible*" .The staff handbook is very large and has a lengthy sickness management procedure. Unlike many employers the respondent does not insist upon regular contact from a sick employee and appears to be content to leave them alone to get on with their recovery provided their absence is genuine. Mr Inman drew a distinction between such absences and what he called "*weekend absences*". We formed the view he would use the written procedure for weekend absences but he has never dismissed somebody for long-term ill-health and indeed is rightly proud that another member of staff who has been having treatment for cancer for a long time still has his job. Mr Inman is, in addition to many other duties " the HR Department" and has been in that role for about five years. Based in Harrogate, he would not have any day to day knowledge of what was going on in Bedale.

3.10. This case vividly illustrates the dangers of rumour and gossip. The claimant complains there was no contact from the respondent or Greenwell House, only rumours some staff were saying sciatica does not last that long and nobody believed her . There is no doubt the claimant's illness was genuine but perhaps some people were sceptical her symptoms could be ascribed to a single incident which caused or exacerbated them to such a degree as to render her disabled. Also perhaps some people felt it unlikely her injury was caused by the respondent's negligence or unsafe working practices.

3.11. In the week of 17 March, which she describes as a very bad week, she was feeling very low because of the rumours and pain. She attempted to take her own life. A new sick note was handed in to Greenwell House but not by her. She was referred for her physical condition to the James Cook Hospital and by early May she started attending a psychiatric hospital, the Friarage, which continued for several months.

3.12. On 27 March she wanted to speak to Ms Lambert A text at page 368 shows Mr Lambert apologised for missing her but invited her to ring . The claimant did not. By May she complains work colleagues were ignoring her and deleting her from social media. We asked who told her the intimation by her of a personal injury claim was resented. She said it was Ms Scott and Ms Ewbank. On 8 May there is a text on page 369 from Ms Tunstall who also missed an appointment the claimant had arranged to talk about the gossiping staff. Ms Tunstall asked her to come the following day but she did not because her back was bad. She did not contact Ms Tunstall again.

3.13. The claimant says she did not ask staff to "support" her personal injury claim but did ask if anybody knew where the diary was because a problem her solicitors had identified was the absence of an date of the alleged event. This ties in with the witness statement of Mr Walker who says she asked him on one occasion to provide her with a copy of the office diary.

3.14. The claimant is not imagining the rumours or exaggerating her sense of isolation. She took both to heart because she was feeling so low. Mr Inman would have no idea what was going on because he did not speak about these matters with Ms Tunstall who would have been the ideal person to inform him.

3.15. The claimant's statutory sick ran out in early August, so from then on she was costing the respondent nothing. By this time she had heard another rumour. The wife of a man who worked at Greenwell House reported he had heard Mrs Fisher, the wife of the owner, using the words an "***ex-****employee*" had put in a personal injury claim.

3.16. On 22 September the claimant first consulted ACAS . On the same day she telephoned Mr inman recounting the rumour and asking if she was still employed. He assured her she was and the rumour was "rubbish" . He said she sounded depressed and suggested a meeting to discuss matters. The claimant agreed. He said they could meet at Greenwell House but she did not want to meet there because of the negative rumours. Bedale Grange was suggested and Mr Inman said he would be with Ms Tunstall . The claimant said she would bring someone with her His reply was "why" and she did not need anyone. They agreed to meet on their own and he said he would be in touch. From this point at latest, and right to the end of the claimant's employment and beyond, Mr Inman's young daughter was very ill and had regular visits to a Leeds hospital. The claimant on 10 November received a report from the same hospital about her sciatica.

3.17. For the whole of October and early November the claimant tried to speak to Mr Inman by phoning but had no answer and no return phone call. On 21 November she spoke to ACAS who suggested emailing. She then emailed page 146 with the heading ACAS suggested " constructive dismissal". She complained about the unanswered phone calls and continued" *No one has been in touch with me so after careful consideration and advice from ACAS I am now putting this in writing. Your staff have*

made it impossible for me to return, As have the management. I will await your reply". **This was a grievance in all but name.**

3.18. Mr Inman says he "*was a little surprised"* to see this adding *".Prior to the email on 21st November I had spoken to her on the telephone and exchanged pleasantries etc. The Claimant informed me that she had some hospital appointments to attend and I also stated that my youngest daughter had been in and out of hospital. Our conversations were pleasant and conciliatory.* Mr Inman wrote to her on 29 November:
" *I am puzzled by your reference to constructive dismissal and I don't accept that we have done anything wrong at all.*
You have been absent from work approaching 12 months. When we spoke recently I suggested that you and I meet to discuss your continuing absence I offered to come and see you when I am next up in Bedale. This remains my intention.
As to your allegation that you suffered an injury at work this is entirely in the hands of our insurers who I understand have rejected your claim. I have nothing more to say on that issue at all.
It is important that we now focus on a potential return to work for you as if this is unlikely to be achieved in a reasonably foreseeable future then we will ***ultimately*** *need* ***to consider whether*** *your employment with the company can be continued".*

3.19. The danger is always that people who have formed an opinion about another person's intentions will approach any meeting with a "mindset" of expecting to hear something . Two meetings on 12 and 17 December 2017 were cancelled because of Mr Inman's daughter's ill health but they re-arranged to meet in Costa at Lemming Bar Services on 28 December 2018 at 9.30 **for an informal chat.** Due to an electrical problem in Costa, it was very cold so they moved to McDonalds.

3.20. The claimant parked in the disabled bay. When she entered Mr Inman offered her a sandwich and a drink . She accepted a drink, he had both . The chat started about him being tired as was up half the night. She said the respondent and staff at Greenwell House had made her feel she had died and added " *maybe if I had I might have got a card or flowers*". His reply was "*you wouldn't have known*". He denies saying this but it is a small detail we find credible. Moreover, between people who are chatting informally, we find nothing wrong in him saying it.

3.21. The claimant explained she could not sit or stand for long or walk far and did not know if it would get any better . Her statement alleges Mr Inman then said the respondent " *would be terminating my employment*". This is not quite what she said in oral evidence when the Employment Judge asked if she could recall the conversation in direct speech. Her best recollection was after discussion of her health Mr Inman said: "*I think* ***the way forward*** *is we are* ***going to*** *have to terminate your employment*"

3.22. Mr Healy is quite right that is not a dismissal, only a statement of what might happen . Mr Inman denies he said it , but we find he did , and again there would be nothing wrong in him saying it .To finish the claimant's account, she says at no point was she offered another position . Mr Inman then continued to tell her about his cottage, they chatted about Leeds Hospital, he suggested ways to get financial help and after half an hour she said she was in discomfort and pain so said she needed to leave. During the meeting Mr Inman did not make notes and she did not give him her resignation. They shook hands as they parted. We accept this account.

3.23. Mr Inman's version is that after the claimant said she was awaiting a further scan and surgery may be required he asked if she would like to come back and assist with activities with the residents as adjustments could be made to this role to accommodate her mobility problems . He thought it may help her to get back to some normality and have contact with residents and staff. He adds" *I made some notes at this meeting, but it wasn't formal "*

3.24. The notes at page 148 are 14 lines of manuscript in a fairly small notebook. There is no mention of any of the points in paragraph 3.23 above. The claimant agrees with the first two paragraphs of the note , The third says " *JC confirmed she would resign with immediate effect and RI confirmed FP would pay holiday entitlement and would put it in writing with P45 when payroll is processed on 5 Jan 18* " Mr Inman's statement says he was surprised by her response when she declined his offer of a modified role and asked what she would be entitled to if she resigned. When he said the respondent would pay her holiday entitlement she replied she would like to resign. He says he reiterated the offer she could carry out activities she felt she was able to do and/or the res[pendent could set her up as a Bank Staff member as and when she felt able, but she maintained her resignation which he accepted. We do not accept she resigned.

3.25. Although Mr Inman told the Employment Judge he made the notes in the claimant's presence, we reject that . We believe he made them shortly after she left. We also find he did not discuss alternative work with her , though he may have convinced himself with hindsight that he did . His statement says : "*We had not started any processes with the Claimant which may have ended in her dismissal and were bearing with her pending some kind of prognosis as to her condition. We were happy to continue to accommodate the Claimant's sick leave until we could get a clear prognosis as to when she could return and in what role but she indicated she wanted to resign and therefore we accepted that position.I am taken aback by this complaint. As a company there was no benefit to us in terminating the Claimant's employment. Apart from accruing holiday we had satisfied our obligations in relation to sick pay and there was no financial incentive for us to terminate her employment..I accept that the Claimant has an issue with her back, but I refute that I or any employee at the home treated her in any way unfavourably because of it. I did not dismiss the Claimant."*

3.26. We do not believe either Mr Inman or the claimant are deliberately lying. The claimant says in her statement she has worked since she was 15 and now finds herself unable to do so .It was a huge blow to her not just physically but mentally. Her partner has a tanning shop which she attends on a voluntary basis for a few hours a week to help out, sitting, standing and walking about as she felt able, and "*most importantly socialise as this is my outlook for now. Otherwise I would be sat staring at 4 walls***".** The depressing effects of being unable to work must not be underestimated , nor must the effect it has on the accuracy of her recollection and interpretation of what Mr Inman said.She was depressed, in pain and "half expecting" the worst after she read mr Inman's letter of 29 November.

3.27 Mr Inman was under great personal strain . The claimant did ask what she would get **if** she resigned . He told her it would be an unspecified amount of holiday pay estimated at between 80 and 100 hours. She did not react by saying that was unacceptable . He therefore "latched on to" her lack of protest and interpreted it as resignation . By doing so he saved himself a ponderous procedure which would have

had one outcome and one outcome only- a fair dismissal due to her long term ill health and one justifiable under s 15 (2) of EqA. He also had one less problem to worry about. However long the process took , the claimant would have earned nothing during it.

3.27. The claimant rang Mr Inman prior to 5 January 2018 to confirm the amount of holiday hours she would get, and she agreed to 83 hours. In her mind, that was what she would get **if** she resigned, which she had not done yet.

3.28. On 9 January she received a letter from Mr Inman dated 8 January. It said she had resigned and her p45 was enclosed. It ends "*In the event that you have any questions about the content of this letter please do not hesitate to get in touch with me".*

3.29. She tried phoning Mr Inman on 11 January but he was unavailable He called her back at 17.40pm. She stated she did not resign. We accept her evidence he said she was being rude and disrespectful. He accepts he used the word disrespectful but meaning to the content of their meeting not to him personally. We do not accept that as it is not a word normally used in such a context. The claimant hung up.

3.30. Next day she sent an email (capital letters and spelling are as in the email) :

"*Thank you for your letter dated 8/01/18*
Unfortunately I do not accept the content
As after our informal meeting you have chosen to say I resigned. I DID NO SUCH THING During our "informal meeting" I did state I was disabled due to an injury at work but yet again you passed it off. You did however inform me on behave off fisher partnership you would be terminating my employment.
After speaking to ACAS and the Quality advisory service who are supporting me under the Quality act 2010 against discrimination. Protected for employees.
I will await your reply within 7 days"

This was also a grievance in all but name and/or an informally worded appeal against the purported dismissal .

3.31. On 18 January Mr Inman replied:
" I do not accept that I dismissed you in the meeting on 28 December 2017. My recollection of the meeting which is supported by the note of the meeting that I made at the time, is that you clearly and unequivocally resigned from your position at The Fisher Partnership. I then accepted your resignation and confirmed you would be paid your holiday entitlement to the next pay run on 5th January 2018. As far as I am concerned the meeting ended amicably.

Your contention that there is some breach of the Equality Act on disability grounds is denied. Whilst I accept that we did discuss the medical condition which is causing you to be absent from work , this was in order to allow me to obtain further information about your current condition, details of the treatment you are receiving and about your longer term prognosis. It is not discriminatory for an employer to have discussions of this nature with its employee.

***I trust that this clarifies The Fisher Partnership's stance on this matter** ."*

3.32. This letter was written after Mr Inman had spoken to Gordons Solicitors with whom the respondent had some "retainer" to provide advice on employment matters. Such advice could be sought by more junior managers like Ms Tunstall. Surprisingly, she was not consulted by Mr Inman at any stage of this process. With so much on his mind, Mr Inman was unwise to deal with this situation on his own, and his misinterpretations are partly due to those circumstances. If Gordons advised an unequivocal resignation cannot be withdrawn and an employer is under no positive duty to check an employee meant what they said, that is correct . However, then the result of any case depends on whether the Tribunal agree what words were used, and whether they were unequivocal.

3.33. As Mr Healy submitted, it is highly unlikely Mr Inman went to the meeting intending to dismiss as he would by doing so walk straight into a tribunal claim . He had taken advice from Gordons as early as the email of 21 November. We find he went to the meeting for an informal chat and misconstrued what the claimant said to him. Mr Healy submitted the claimant did resign unequivocally and then changed her mind when her partner told her she should have received notice pay . Well though he put the argument, we do not accept that happened.

4. Conclusions

4.1. The claim under s13 is hopeless even on the claimant's case because no treatment of her was because of her particular disability .

4.2. In our judgment an objective observer fully aware of the circumstances would conclude there was neither a resignation nor a dismissal on 28 December. Applying Martin-v-MBS Fastenings what really brought the employment to an end was the sentence we have emboldened above in the letter of 18 January by the respondent. By taking an entrenched position, the respondent was the party who really terminated the contract . Mr Inman made matters worse for himself by saying in oral evidence that if a person left and then changed their minds, normally he would consider taking them back. When we asked why did not reconsider in this case, he really had no answer.

4.3. Although Mr Inman has not shown a reason for dismissal as required by section 98 of the ERA, he does give unequivocal evidence as to what **it was not**. Her absence and the restrictions on her ability to work we accept played no part whatsoever in his decision. We accept what he says in the italicised part of paragraph 3.25 above. Nothing arising in consequence of her disability was an effective cause of dismissal.

4.4. The dismissal was wrongful and the figure for damages was agreed . It was unfair so a basic award is due and the sum agreed. However, the claimant has no loss for which it would just and equitable to make a compensatory award.

4.5. As for the s 207A uplift, had the claimant's emails of 21 November and 12 January been dealt with in accordance with the ACAS Code , this case need never have happened, so we believe a 15% uplift is merited.

TM Garnon Employment Judge
Date signed 29 January 2019 .

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): **2500346/2018**

Name of case(s):	**Ms J Carling**	v	**The Fisher Partnership Limited**

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: **8 February 2019**

"the calculation day" is: **9 February 2019**

"the stipulated rate of interest" is: **8%**

MISS K FEATHERSTONE
For the Employment Tribunal Office

INTEREST ON TRIBUNAL AWARDS

GUIDANCE NOTE

1. This guidance note should be read in conjunction with the booklet, 'The Judgment' which can be found on our website at **www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426**

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment tribunal awards (excluding sums representing costs or expenses) if they remain wholly or partly unpaid more than 14 days after the date on which the Tribunal's judgment is recorded as having been sent to the parties, which is known as "the relevant decision day".

3. The date from which interest starts to accrue is the day immediately following the relevant decision day and is called "the calculation day". The dates of both the relevant decision day and the calculation day that apply in your case are recorded on the Notice attached to the judgment. If you have received a judgment and subsequently request reasons (see 'The Judgment' booklet) the date of the relevant judgment day will remain unchanged.

4. "Interest" means simple interest accruing from day to day on such part of the sum of money awarded by the tribunal for the time being remaining unpaid. Interest does not accrue on deductions such as Tax and/or National Insurance Contributions that are to be paid to the appropriate authorities. Neither does interest accrue on any sums which the Secretary of State has claimed in a recoupment notice (see 'The Judgment' booklet).

5. Where the sum awarded is varied upon a review of the judgment by the Employment Tribunal or upon appeal to the Employment Appeal Tribunal or a higher appellate court, then interest will accrue in the same way (from "the calculation day"), but on the award as varied by the higher court and not on the sum originally awarded by the Tribunal.

6. 'The Judgment' booklet explains how employment tribunal awards are enforced. The interest element of an award is enforced in the same way.