THE EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr D Williams	**v**	**Home Office**

Heard at: London Central **On**: 18 April 2019

Before: Employment Judge H Clark

Representation:
Claimant: In Person
Respondent: Mr B Randle

JUDGMENT

The judgment of the Tribunal is that the Claimant's claims for unlawful deductions from wages are not well-founded.

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Employment Judge Clark

Dated: 22 May 2019.

Judgment sent to the parties on:

28 May 2019

…….....
For the Tribunal Office

REASONS

1. By a Claim Form presented on 29 October 2018, the Claimant brought a breach of contract claim against the Respondent. As the Claimant remains employed by the Respondent, the Tribunal has no jurisdiction to consider such a claim. The Claimant was, however, permitted to proceed with his claim as one for unlawful deduction from wages and to amend his application on 25 February 2019. In a Response Form dated 12 February 2019 the Respondent defended all aspects of the claims, save to the extent that it was admitted that the Claimant was owed some arrears of wages by another government department (the Department for Exiting the European Union "DExEU").

2. This case concerns the operation of modernised terms and conditions introduced in the Civil Service after 2012, specifically, whether the Claimant's contract was lawfully varied following his promotion on 23 December 2016 such that the modernised terms and conditions applied to him on his return to the Respondent on 22 January 2018 following a period working for DExEU.

The Hearing

3. For the purposes of this hearing the Tribunal heard oral evidence from the Claimant and from Mr Kirkham on behalf of the Respondent. They both adopted the contents of their written witness statements and were cross-examined on their evidence. There was a joint bundle of documents running to some 254 pages. The evidence did not finish until 4.25pm so directions were made for sequential written submissions from both parties, with the Claimant given the opportunity to respond to the Respondent's legal submissions. Written submissions from Mr Randle were provided on 2 May 2019 to which the Claimant responded on 9 May 2019 enclosing further documentation.

4. The Respondent was given leave to respond on matters of law, which they did by email dated 16 May 2019, pointing out that there was no objection to the Tribunal's having regard to the contents of an application pack for the Claimant's role in DExEU submitted by the Claimant with his closing submissions. However, it objected to any consideration of new documents adduced by the Claimant relating a recent role advertised at BEIS, which supported the Claimant's oral evidence that not all Government departments placed employees on modernised terms and conditions if they were promoted. Since the primary issue for this Tribunal related to the Claimant's terms and conditions on his return to the Respondent, the Tribunal considers that the contractual position in a Government department apart from DExEU is not relevant to this decision.

5. In the course of confirming the scope of the issues at the start of the hearing, the Claimant explained that he was seeking outstanding holiday

pay of 1.5 days for the year 2018/2019. This holiday pay had not been accrued at the time of the Claimant's application. In light of the fact that a fresh application for this pay in lieu of holiday could have been made by the Claimant (and would have been in time), and given the substantial overlap in the issues of such a claim with those in this hearing, the Tribunal permitted an oral amendment of the Claimant's claim to this effect. Whilst the Respondent did not consent to this amendment, a pragmatic view was taken not to oppose it.

The Issues

6. The issues for determination were agreed at the outset of the hearing as follows:

    6.1 Whether the Claimant's contract was varied such that it was governed by the Respondent's modernised terms and conditions (as a necessary issue to determine the unlawful deduction from wages claims).
    6.2 If so, was the Claimant entitled to an additional 1.5 days of accrued holiday for the year 2018/2019 (it being conceded he was not paid it).
    6.3 What wages were properly payable to the Claimant on his return to the Respondent department on 22 January 2018? The Claimant suggests he was entitled to an annual salary of £33,479. The Respondent paid him the salary equivalent of £32,867. It is the Claimant's case that he was entitled to an additional 1% salary increase on his return from secondment to the Respondent department.
    6.4 Who is liable for the Claimant's salary up-rating for the period July 2017 to January 2018, totalling £328.67. The Claimant suggests it is the Respondent. The Respondent asserts it is DExEU. Whilst it was accepted at the start of the Tribunal that £328.67 was outstanding, in his closing submissions, Mr Randle revised the figure to £175.38.

7. Although the Claimant sought to amend his claim to include pension payments, this amendment was refused on 25 February 2019. In his written submissions, the Claimant appears to invite the Tribunal to make findings as to whether he was consulted and notified of an increase in his hours and a reduction of his sick leave entitlement. This was not one of the agreed issues before the Tribunal and, in any event, is not framed as an unlawful deduction from wages claim.

<u>The Law</u>

8. The law which the Tribunal must apply is contained in the Employment Rights Act 1996. The right for a worker not to suffer unauthorised deductions from wages is contained in section 13 of the 1996 Act as follows:

"*13 – Right not suffer unauthorised deductions.*

(1) 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.
(b) The worker has previously signified in writing his agreement or consent to the making of the deduction.

9. "Wages" are defined in section 28 of the 1996 Act to include outstanding holiday pay. The primary question for the Tribunal is what wages were properly due to the Claimant. For this, it is necessary to look to the terms of his contract of employment, in particular as to whether his relevant terms and conditions were amended on his promotion.

10. Mr Randle has referred the Tribunal to the case of *Wess v Science Museum Group (UKEAT/0120/14/DM)* for the proposition that where an employer makes it clear that future employment is offered on the basis of a new terms and the employee continues to work the employer over a significant period of time, the employee cannot cherry pick between the old and new contracts, even if they object to part of it.

Factual Background

11. The Claimant was appointed to a role in the Civil Service (in the Department of Communities and Local Government) as an Administrative Officer on 1 February 2010. On 14 July 2014 he transferred into the Respondent department on promotion as an Executive Officer (EO). A statement of principal terms and conditions of appointment were issued to him pursuant to the Respondent's duties under section 1 – 7 of the Employment Rights Act 1996. This document set out:

"*You will be told about any significant changes in the Home Office Notices. Details of Home Office civil servants' conditions of service are in Home Office manuals and in the Staff Handbook and in accessible Human Resources' policy leaflets posted on the Home Office Intranet ("Horizon").*"

The appellant's starting salary was recorded as £26,242 per annum and his annual leave allowance was 31.5 days.

12. In the Autumn of 2012 the Cabinet Office directed a Departmental review of terms and conditions for civil servants pursuant to the Civil Service Reform plan in order to bring the Civil Service more in line with private employers. The changes included a small reduction in annual leave entitlements and less favourable sick leave provisions. Although it was anticipated that there would be a general move to the modernised terms and conditions, individual departments were given a discretion as to what changes they wanted to implement and how.

13. In the Respondent department, the existing terms and conditions for most civil servants, such as the Claimant, were unchanged, but for new roles advertised on or after 30 June 2013 some of the modernised terms and conditions were introduced on a phased basis. For roles advertised on and after 31 August 2014, the Respondent decided that if a member of staff moved to a new role on promotion within the Respondent, they would move to the modernised terms and conditions. Lateral moves would not be affected. This would be the same for permanent and voluntary transfers to other government departments advertised on or after 31 August 2014. It is the Claimant's case that he was unaware that his promotion would involve moving to the modernised terms and conditions.

14. The Respondent has provided a copy of the news feed which appeared on its Intranet, "Horizon" on 5 August 2014, which, under the heading, "Terms and conditions" provided as follows:

"*Last year, as part of civil service reform, the Home Office, including Her Majesty's Passport Office, introduced changes to terms and conditions, now referred to as modernised terms and conditions.*
While the first phase of changes applied only to new entrants, the next phase of implementation will apply to

- *Staff who are promoted, who will be required to accept modernised terms and conditions as conditions of their promotion.*
- *Staff who go on loan to another government department and gain a permanent promotion linked to the loan, who will have their promotion honoured on return to the Home Office providing the promotion is advertised through a fair and open competition and the individual accepts modernised terms and conditions.*
- *Staff joining the Home Office from other government departments who will be required to accept modernised terms and conditions as condition of their transfer.*

Staff moving on level transfer within the Home Office and HM Passport Office will not be affected by any of these changes.
The changes will come into effect for any posts advertised from 31 August for grades up to and including grade 5….

A summary of the main changes under the modernised terms and conditions were then provided, being a standard full-time working week of 37 hours, occupational sick pay capped at 5 months' full pay and 5 months' half pay and then annual leave of 25 days rising to 30 days after 10 years employment.

15. In the autumn of 2016 the Claimant applied for a secondment from the Respondent to DExEU on promotion, as a Diary Secretary to the Secretary of State and Head of Ministerial Support Unit. A job description and person specification was provided with the application pack. The only mention of terms and conditions in that pack stated that DExEU "*is a newly formed department which is currently operating on Cabinet Office pay scales. Allowances (except London Weighting) will not be carried forward unless*

applicable to the role. Excess costs will only be payable where there is a proven business case."

16. The Claimant was informed on 23 December 2016 that he would be promoted to Higher Executive Officer (HEO), which took effect on his secondment to DExEU in January 2017. When a Civil Servant is released on loan to another government department, they are included in the payroll of the host Department and take on any terms and conditions there. The loan is governed by a loan agreement, which is drafted by the host Department.

17. A screenshot of the Respondent's policy on transfers and loans to other department was provided to the Tribunal dated 6 December 2016, explaining that the host department would prepare a loan agreement setting out the terms of the loan. The Respondent had a policy whereby if a member of staff was loaned or transferred to another department on promotion, through a formally advertised cross-government promotion exercise and it was agreed to by the employee's line manager and the arrangements were set out in the loan agreement, the employee would return to the Respondent department at the higher grade.

18. By letter dated 12 December 2016 DExEU wrote to the Claimant setting out further detail on pay and terms and conditions pending the finalisation of the loan agreement. The letter stated, "*DExEU will pay your salary, National Insurance and all other payments….In the interim period you will be on Cabinet Office terms and conditions until the point that DExEU novates this and formally steps into the shoes of the Cabinet Office. Whilst working at DExEU you will remain an employee of the Home Office but will be reported against DExEU headcount. The Home Office will be responsible for ensuring you have a role at your substantive grade on your return unless this is agreed otherwise with them."*

19. The Claimant's line manager at the Respondent wrote to the Claimant on 23 December 2016 congratulating him on his loan on promotion and confirming his release from the Respondent department for this purpose. He confirmed the arrangements which would apply to the Claimant at the end of his loan, namely that three months before the end of the loan the Claimant should contact him to discuss his return. The letter explained, "*There is an expectation that you will return to the Home Office at the substantive grade that you have been promoted to, however, this also cannot be guaranteed."*

20. On 23 May 2017 the Claimant made enquiries as to the terms of his return (in due course) to the Respondent department. He contacted Shared Services (the outsourced HR function) by telephone, who then forwarded to him the information on Horizon about transfers and loans to other government departments, which was not really the question he was asking, which was as to the precise terms of his return to the Respondent.

21. The Respondent's 2017 Pay Award notice made the following provision for

staff on loan or secondment:

"*Anyone on loan or secondment out of the Home Office but who are on Home Office terms and conditions on 30 June 2017 will receive the 2017 Home Office pay award. Anyone on loan or secondment out of the Home Office and not on Home Office terms and conditions will not receive the 2017 Home Office pay award. On return to the Home Office, pay will be set at the level it would have been set at had an individual not left the Home Office. Staff will not receive back pay in respect of the period during which Home Office terms and conditions did not apply".*

It is common ground that the pay award which the Claimant would have received at the Home Office was 1%.

22. The Loan Agreement in relation to the Claimant's secondment to DExEU provides that the Claimant would continue to be employed by the home department (the Respondent) throughout the loan, although he would be managed on a day-to-day basis by the host department (DExEU). Paragraph 1.3 of the agreement provided, "*The home department will provide further information, on request, of the pay and related terms and conditions applied on return from the loan."* During the loan period, the Claimant had no entitlement to any remuneration under the home department's terms and conditions (paragraph 3.3) and the host department was responsible for his salary, PAYE tax and NI. As to pay awards, paragraph 3.5 provides, "*If the loan start date is between 1 January – 31 March, the employee will remain on the home department's pay award for the year in which they join and thereafter receive the host department's pay award.* Paragraph 3.6 continues, "*On the employee's return to the home department the employee's salary will be calculated in accordance with the home department's relevant pay policy."* Non-salary remuneration would revert to that applicable in the home department on return to it.

23. On 4 January 2018 the Respondent wrote to the Claimant indicating that his terms of employment would remain the same on his return to the Home Office, including to his pre- promotion grade (EO). This was incorrect, as the Respondent was proposing to honour his promotion as indicated in the loan agreement. On 11 January 2018 the Claimant questioned why he would not be upgraded to an HEO and raised a complaint. The Respondent rang the Claimant to ask him to resend his previous correspondence as they had no record of his promotion on file. A subsequent email from the Respondent dated 6 February asked the Claimant to send the information for a third time. However, in the meantime, the erroneous information in the letter dated 4 January 2018 was corrected in a subsequent letter dated 25 January 2018 (discussed below).

24. The Claimant returned to work for the Home Office on 22 January 2018 as an HEO. By letter dated 25 January 2018 he was issued with written

confirmation of his pay and terms of employment. This letter recorded his substantive promotion to HEO, his salary at £32,867 per annum and his annual leave to be 25 days with pay rising to 30 days with pay after 10 years' service plus one privileged day. It was further confirmed that he was on modernised occupational sick pay and was referred to Horizon for further information. Again, a mistake had been made in the letter, in that the Claimant was entitled to 30 days' holiday under the modernised terms and conditions. The Respondent's system corrected this error in May 2018 and when the Claimant raised the mistake with the Respondent in September 2018, he was reassured that it had been an error and he was entitled to 30 days. However, this was not corrected in writing until January 2019.

25. In his witness statement and oral evidence to the Tribunal the Claimant maintained that he had not received the terms and conditions letter dated 25 January 2018 and suggested that the letter provided in the bundle had been falsified by the Respondent in order to mislead the Tribunal. The Tribunal adjourned for inquiries to be made as to how the letter had allegedly been sent, given the Claimant's very serious allegation was not made until his witness statement. Since witness statements were exchanged immediately before the hearing, the Respondent had not prepared to meet such an allegation. Inquiries were made and it was said that the letter had been sent by post.

26. Following the resumption of the Claimant's evidence, at the Tribunal's request, the Claimant was cross-examined about an email he sent to Shared Services on 1 May 2018 in which he appeared to refer the disputed letter dated 25 January 2018, providing its unique 19 letter reference number. On being directed to this email, the Claimant accepted that he had, after all, received the letter. Accordingly, the Claimant withdrew his allegation of impropriety against the Respondent.

27. There remains a dispute as to when the Claimant received the letter dated 25 January 2018. Once he had accepted he had received it, the Claimant initially suggested he did not receive it until May 2018 and then revised this to late April 2018. The Claimant's memory of this letter was clearly flawed (in that he initially maintained he had never received it). In these circumstances, the Tribunal treats his recollection as to the date on which it was received with a substantial degree of caution. It is the Respondent's case that the letter would have been sent by second class post, such that it can be presumed to have arrived within a few days of the 25 January 2018 when it is dated. The Tribunal accepts that evidence.

28. Although the Claimant accepted in evidence that the document explaining the circumstances in which employees would be moved to the modernised terms and conditions was available on Horizon, he had not accessed it prior to his acceptance of his promotion. He was provided with a link to the relevant policy on 25 April 2018 by Shared Services Connected Ltd, who provide HR services to the Respondent, but this post dated the start of his loan. Had he accessed it, it would have been clear that his loan to DExEU

on promotion through fair and open competition triggered his move to the modernised terms and conditions. In fact, the document sets out that in these circumstances, "*you will have accepted that you will then move onto modernised terms and conditions."*

Conclusions

29. The Claimant suggests that he should have been notified of the introduction of modernised terms and conditions when his employment commenced with the Respondent in July 2014. It is accepted by the Respondent in the Response Form that he was not issued with an individualised notification of a change of terms and conditions in this respect. The Claimant started work with the Respondent in July 2014, which was before this policy was implemented for existing employees. Unless and until the Claimant was promoted, he would not be moved onto the modernised terms and conditions, such that the Respondent was not obliged to formally update the Claimant's statement of main terms and conditions of employment at that time, because his terms and conditions had not changed. The Tribunal does not, therefore, accept the Claimant's submission that the Respondent was under a legal obligation under section 4 of the 1996 Act to provide the Claimant with amended terms and conditions of employment, which would only apply to him if and when he was promoted at some unspecified future date. In any event, whilst a statement of main terms and conditions of employment is good evidence of the terms of a contract, it does not constitute the contract itself.

30. The Claimant challenges the Respondent's assertion that the proposed changes were "widely known" on the basis that a news feed item on Horizon would only have been a "headline" on the intranet for a couple of days in August 2014. He suggested this was an inadequate communication of the new policy. As a person with dyslexia, he suggested it was an act of indirect discrimination, as he found it difficult to understand complex information without additional support. If he had missed the initial news feed, it would have been more difficult for him to access the information on the internet. In his written submissions, the Claimant asserts that the Respondent's practice of notifying staff of potentially important changes to their terms and conditions via the intranet news feed is insufficient for a number of categories of staff, including those with limited access to the internet or those with specific learning needs, such as dyslexia.

31. In general terms, it might well be the case that reasonable adjustments to a general practice of posting changes to policies online would be needed for some disabled employees. Mr Kirkwood confirmed in evidence that assistance would be given to staff who had known difficulty in accessing information on the internet. It may well be that the Claimant would have fallen into the bracket of people for whom a reasonable adjustment was needed, however, he has not made a claim for disability discrimination within these proceedings, so the Tribunal is unable to determine the merits or otherwise of this submission (including whether the Claimant is and was

a disabled person for the purposes of the Equality Act 2010 in August 2014).

32. The Claimant's terms of appointment as an EO in July 2014 set out, "*You will be told about any significant changes in Home Offices Notices in accessible Human Resources policy leaflets posted on the Home Office Intranet ("Horizon").*" If it is now the Claimant's case that an adjustment is required to this provision or practice, it is a matter which he should raise internally with the Respondent. There was no evidence before the Tribunal that the Claimant informed the Respondent in 2014 that such an adjustment was required.

33. Mr Kirkwood considered it was "*inconceivable*" that the Claimant would not have been aware of the introduction of modernised terms and conditions. It was such a major change introduced by the Coalition Government and, in his words, "*massively highlighted*" on the intranet and communications from the relevant Trade Unions, that it would not be possible to be unaware of it. The Claimant accepted that he knew that new entrants would be placed on modernised terms and conditions, but did not realise that his promotion would trigger a transfer onto them.

34. The Claimant accepted that the information about the modernised terms and conditions was accessible on the intranet. He also explained that he had been a Trade Union member and continued to receive email communications from them after his membership lapsed. Mr Kirkwood confirmed that the majority of the Respondent's workforce are now on the modernised terms and conditions. In light of the Claimant's inaccurate recollection of his receipt of the Respondent's letter dated 25 January 2018 and Mr Kirkwood's evidence as to the publicity surrounding the introduction of modernised terms and conditions across the Civil Service, I consider it is likely that the Claimant would have been aware that existing employees of the Respondent were liable to be placed on the modernised terms and conditions on promotion on or about August 2014. I accept that he might have forgotten or overlooked this knowledge when he applied for the role with DExEU in 2016. However, when such a widespread change of employment terms is introduced across an (unionised) organisation such as the Civil Service, the circumstances in which existing employees might be moved to new terms and conditions will have been a widespread topic of discussion and debate. The information was readily accessible on the Respondent's intranet, subject to individual employee's ability to access it.

35. The Response Form asserted at paragraph 8 as follows:

"*Every time someone applied for a new role, they received (and still do receive) a candidate pack, which includes clear information on the new modernised terms and the fact that any promotion will be made on those terms. The Claimant received this information in the candidate pack when he applied for the HEO role with DExEU. In addition, the job advert published for the DExEU role also contained information about the new modernised terms.*"

36. In the course of the evidence, the Tribunal asked to be referred to both the candidate pack and the job advert with the asserted reference to the new modernised terms. Elements of the "candidate pack" were included in the bundle and the Claimant showed the Respondent a copy of the pack he had received by email on his mobile phone. This was then printed out and provided with the Claimant's written submissions. Neither the job advert, nor the candidate pack explicitly referred to the new modernised terms and conditions. However, I accept Mr Randle's submission that it was an express term of the Claimant's contract with the Respondent (the pre-modernised terms) that the Respondent was entitled to notify him of any proposed contractual changes via the intranet. Even if the Claimant did not see the newsfeed post in August 2014, the information remained on Horizon from then until the Claimant's promotion in December 2016, so was available for him to access for well in excess of two years.

37. Placing such information on the internet is not sufficient to comply with the Respondent's obligation under section 4 of the Employment Rights Act 1996 to provide a statement of changes to main terms and conditions of employment, but that is not what was in issue here. The Claimant's terms and conditions did not change in August 2014, so no obligation to issue amended terms and conditions arose then. When the Claimant returned to work for the Respondent with effect from January 2018, he was issued with the letter dated 25 January 2018, which outlined the changes to his terms and conditions (apart from the inaccuracy as to his holiday entitlement) within 1 month of the changes taking effect, as it was obliged to do per section 4(3)(a). Leaving aside any issue of dyslexia (which I must as it was not an issue for this Tribunal), the Claimant had contractual notice of the effect of a promotion on his terms and conditions and in accepting that promotion, agreed to them.

38. The Claimant relies on the fact that the Respondent's letter to him dated 4 January 2018 confirmed that there would be no change to the Claimant's terms. He submits that although the Respondent now states this letter was issued by mistake, it failed to clarify this at the time. He suggests, "*based on this mistake, I was unable to make an informed decision*." However, the letter dated 4 January 2018 was wrong in a number of respects, including the fact that it suggested that the Claimant would return to the Respondent on his pre-promotion grade of EO (which also explains why there was no reference to the modernised terms, which were only triggered by his promotion). The Claimant appreciated this and challenged it and then received the revised letter dated 25 January 2018. This made it clear that the Claimant's return to the Respondent had honoured his promotion and, therefore, that he had been placed on the modernised terms and conditions. Whilst the Tribunal understands why the Claimant has been left confused and frustrated by the incorrect information he has been given by the Respondent on more than one occasion, the letter of the 25 January 2018 was unambiguous in its reference to his transfer onto the modernised terms and conditions on his promotion.

39. As set out in Mr Randle's written submissions, even if the Claimant was reasonably ignorant of his move to the modernised terms and conditions (which might have been as a result of his dyslexia), once the Claimant had received the Respondent's letter dated 25 January 2018 (on or about 27 January 2018), it was clear that his returning to the Respondent on promotion was on the basis of the modernised terms. The Claimant accepted his promotion and the nearly £4,000 salary increase attached to it (compared to his EO's salary). It might have been open to the Claimant to insist on a return to the Respondent as an EO on the pre-modernised terms and conditions, but he did not do that. He was unable, however, to insist on being promoted by the Respondent on the pre-modernised terms and conditions.

40. The Respondent relies on the case of *Wess* for this proposition. Although factually quite different (in particular because the employee concerned worked for 9 years under a new contract and did not raise an objection to the reduction in notice of termination over that period), the EAT drew a distinction between an employee's failure to object immediately to a single proposed amendment to a contract (which might be understandable if it had no immediate impact) and the situation where a whole new contract was introduced and the employee worked under it, but objected to one of its terms. In that context, the EAT considered that the employee could not "*cherry pick as between the old and new contracts. She was offered a job on a new contract. She accepted the former and worked to the latter. On the particular evidence and facts in this case the ET was entitled to find that amounted to acceptance."*

Liability for Arrears of Pay at DExEU

41. The Respondent conceded in its Response Form (paragraph 21) that the Claimant did not receive a pay award of 1% effective from July 2017 to 21 January 2018 whilst he was on loan. It was also admitted that the loan agreement concerning the pay award did not align with the Respondent's pay award policy. Whilst the Respondent maintained that DExEU was liable for the resultant arrears of pay, it stated in paragraph 22 of the Response Form, "*the Respondent is prepared to pay the Claimant, by way of lump sum, a net value to cover the alleged short all over the period from July 2017 to December 2017 inclusive"* on a voluntary basis. Unfortunately that payment has still not been made, despite the Tribunal's invitation to the Respondent to make good on its offer and confirm payment prior to this decision.

42. The loan agreement explicitly placed responsibility for the payment of the Claimant's salary on DExEU during the loan period. Further, the Claimant had no entitlement to any remuneration under the home department's (Respondent's) terms and conditions (paragraph 3.3). As a matter of fact, DExEU paid his salary for that period even though the Respondent remained his employer throughout the loan.

43. The loan agreement was a tripartite contract between the Claimant, the Respondent and DExEU, but did set out the status of the relationship between the Claimant and DExEU. It may well be that DExEU was also the Claimant's employer for the duration of the loan, although the Tribunal could not make such a determination within these proceedings in the absence of DExEU. The Tribunal raised a concern with Mr Randle in the course of the hearing, that if the Respondent remained the Claimant's employer, notwithstanding his secondment to another government department, he might not be able to enforce his employment rights as against DExEU, including in relation to unlawful deduction from wages, in the Employment Tribunal. In his written submissions, Mr Randle points out that the Claimant would not be without a remedy, because he could make a claim for breach of contract against DExEU in the County Court. Whilst it seems unlikely that the loan agreement would have intended to take the Claimant's employment outside the jurisdiction of the Tribunal in enforcing his rights for the duration of the loan, it is clear that the Claimant does, at least, have a remedy for any deduction from his wages from July 2017 to January 2018 in the County Court.

44. The loan agreement is silent as to which of the Government departments would be liable to the Claimant in the case of any default under the agreement, although it was an express term of the loan agreement that responsibility for the payment of the Claimant's salary lay with DExEU. There is no basis to go behind the express terms of the agreement, such that I am not satisfied that the Respondent unlawfully deducted sums equivalent to the 1% pay award from the Claimant's salary from July 2017 to 21 January 2018. Any such unlawful deduction was made by DExEU. It is hoped that the Respondent will honour its stated commitment in the Response Form to compensate the Claimant for an admitted (by the Respondent) underpayment of his salary whilst at DExEU, together with a very clear statement as to how the outstanding figure has been calculated, in the hope that further proceedings can be avoided.

<u>Pay Increase</u>

45. The Claimant has withdrawn his claim for an additional 1% pay increase to be applied to his salary of £32,867 (which had already incorporated the 1% pay award). This is because Mr Kirkwood explained exactly how the Claimant's pay had been calculated on his return to the Respondent in evidence in the Tribunal. It is perhaps understandable that the Claimant was confused as to his salary entitlement, given he was told on 2 May 2018 by Shared Services Connected Ltd that his salary had been updated to £33,479. This, again, was incorrect and is likely to have compounded the Claimant's lack of confidence in the accuracy of the information he has received concerning his pay and conditions over the past 2 years. Although the Claimant has been given inconsistent information by the Respondent about his salary entitlement on occasions, the Tribunal is not satisfied that the Respondent has unlawfully deducted any sums from the Claimant's wages.
