Case Number: 2206476/2018

THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON CENTRAL**
BEFORE: **EMPLOYMENT JUDGE ELLIOTT**

BETWEEN:

Ms D Wolfslag

Claimant

AND

Atos IT Services UK Ltd

Respondent

ON: **12 and 13 March 2020**
Appearances:
For the Claimant: **Ms L Mankan, counsel**
For the Respondent: **Ms H Slarks, counsel**

JUDGMENT

The Judgment of the Tribunal is that the claim succeeds and the respondent shall pay to the claimant the sum of **£7,690.41.**

REASONS

1. This decision was given orally on 13 March 2020. The claimant requested written reasons.

2. By a claim form presented on 19 October 2018 the claimant Ms Diana Wolfslag claimed unlawful deductions from wages. The claimant works for the respondent as a Disability Analyst and her employment transferred to the respondent from a company called Ultrasis under TUPE on 29 May 2015.

3. The claim was for the sum of £5,749.92 gross as at the date of the presentation of the claim (Grounds of Complaint paragraph 24).

Background

4. The claim was originally listed for a one-day full merits hearing on 30 April 2019. I gave instructions that the parties should be asked whether one

day was sufficient and the parties gave a two day time estimate. It was listed for 14 and 15 May 2019.

5. The parties attended the tribunal on 14 May 2019 and unfortunately the hearing could not proceed due to lack of judicial resource. It had to be relisted and was given dates of 12 and 13 September 2019. There was a at that hearing about the list of issues which had been sent to the tribunal on 3 July 2019 as an agreed list of issues.

6. For the purposes of this decision and reasons on liability [and quantum] I do not go into the detail of what took place the hearing on 12 and 13 September 2019. This is set out in a decision on Reconsideration by Employment Judge Sharma sent to the parties on 26 September 2019 and in a case management order from Acting Regional Employment Judge Wade on 14 November 2019.

7. A telephone preliminary hearing was listed for 1 October 2019 but Acting Regional Employment Judge Wade informed the parties that that was listed in error. It did not take place. The full merits hearing was relisted for 13 and 14 November 2019.

8. There was a postponement application from the respondent which was initially refused by Judge Wade. It was subsequently decided that an in-person preliminary hearing take place before Judge Wade on 14 November 2019 for case management. The full merits hearing was relisted for two days on 12 and 13 March 2020.

9. The List of Issues applicable to this hearing was attached to Judge Wade's order made on 14 November 2019. Judge Wade refuse the claimant's application to amend the list of issues.

The issues

10. The issues as appended to Judge Wade's order of 14 November 2019 are as follows (bundle pages 43q-s):

<u>Agreed facts and principles</u>

11. The claimant was not contractually entitled to an automatic salary increase in July 2017.

12. The claimant was entitled to a salary review in July 2017.

13. In carrying out the salary review, the respondent was entitled to take into account the following factors: "*quality, overall performance, location and length of service".*

14. If the claimant met these requirements:

    a. she was entitled to have her salary increased to £34,400 pa in July

2017:

b. any subsequent salary review would take that increased salary is the starting point;
c. as such, figures claimed in the claimant's schedule of loss are not disputed (save in respect of the 25% uplift as the respondent denies any breach of the ACAS Code of Practice in investigating the claimant's grievance).

15. The claimant met the requirements of the salary review in relation to "*location*" and "*length of service*".

16. The respondent chose to assess each employees "*quality*" and "*overall performance*" for the purposes of the salary review by reference to the previous year's H1 and H2 appraisal grades.

17. The respondent says the claimant scored 3 in her H1 2106 appraisal and a 2 in her H2 2016 appraisal.

18. An appraisal score of 3 equates to "*meets expectations for the role*".

19. An appraisal score of 2 equates to "*yet to meet expectations for the role*".

20. The claimant says the H2 2016 appraisal did not take place and therefore she was not scored a 2.

21. The parties agree that:

    a. If the H2 2016 appraisal did take place and the claimant was awarded a 2, the claimant was not entitled to a salary increase in July 2017 and her claim for unlawful deductions under section 13 ERA 1996 fails.
    b. If the H2 2016 appraisal did not take place then the only appraisal grade upon which the 2017 salary review could have been based was her score of 3 from H1 2016, in which case the claimant was entitled to the salary increase and her claim for unlawful deductions succeeds.

22. The claimant accepts that if it is proven that the H2 2016 appraisal did take place, she did not appeal her grade in time and she is not able to reopen the merits of that appraisal as part of this claim.

23. The claimant further accepts that any claim alleging that the respondent should have disregarded her H2 2016 appraisal grade (if established) in carrying out the 2017 salary review or that it should have exercised its discretion in a particular way would constitute a breach of contract claim and would not constitute an unlawful deductions claim under section 13 ERA 1996.

24. A breach of contract claim has not been pleaded and it is not justiciable in the tribunal in any event because the claimant is still employed.

Issues in dispute

Unlawful deductions from wages

25. Did the claimant's H2 2016 appraisal take place? (If it did/did not, the consequences set out above will follow and the claim either fails or succeeds).

Remedy

26. If the H2 2016 appraisal did not take place (such that the claim for unlawful deductions succeeds), did the respondent breach the ACAS code of practice on disciplinary and grievance procedures in relation to its handling of the claimant's grievance dated 15 January 2018; namely:

    a. Did the respondent undertake a sufficiently thorough review of the issues complained of by the claimant?
    b. Did the respondent failed to offer the claimant the right to appeal her grievance outcome?

27. If so, should the claimant's award be increased to reflect the breach and if so, by how much? (Up to 25%).

The respondent's costs application

28. There was a very detailed costs application from the respondent, the detail of which need not be referred to here. The parties agreed in email correspondence on 9 and 10 March 2019 that there should be a separate listing of the costs application and I agreed with this.

Witnesses and documents

29. The tribunal heard from the claimant and Mr Matthew Axworthy a union officer from the RCN.

30. For the respondent the tribunal heard from Mr Andrew Russell, a Service Delivery Manager and the claimant's line manager at the material time and Ms Katie Seneglow, an HR Advisor. There was a witness statement from Ms Parnath Brar also an HR Advisor but she did not attend to give evidence and only limited weight could be given to her statement.

31. There was a bundle of documents of over 300 pages

32. The tribunal had oral submissions from both parties.

Findings of fact

33. The claimant works for the respondent as a Disability Analyst and her employment transferred to the respondent from a company called

Ultrasis under TUPE on 29 May 2015. From May 2015 to July 2017 claimant's role involved carrying out face-to-face assessments for the Department for work and pensions for personal independence payments. Initially the claimant worked at the respondent's centre in Vauxhall.

34. In 2015 the claimant had some periods of sickness absence and has medical conditions which are not the subject of these proceedings. In March 2016 she moved to the respondent's Islington Centre as this was closer to home. Due to her health situation she did not carry out home consultations.

35. Employees at the respondent are appraised twice a year and their appraisals are referred to as H1 for the first half of the year and H2 for the second half of the year. The scores that can be given are from 1 to 5.

36. On 10 June 2016 the claimant was informed that the annual pay review date had been changed from 1 April to 1 July. This took effect in 2017.

37. The claimant's line manager at the time was Service Delivery Manager Mr Andrew Russell. He appraised the claimant for H1 in 2016 and scored her with a 3 which meant that she "*meets the expectations for the role*". This is not in dispute between the parties. The H1 appraisal was at page 61a of the bundle.

38. The issue in these proceedings is what happened in relation to the H2 appraisal for 2016.

<u>The appraisal process</u>

39. The appraisal process was shown in two documents, Performance Management Guidelines starting at page 193 and an Appraising Manager's Checklist dated April 2015 at page 254. The Guidelines at page 207 set out the steps for Appraisal Preparation. In order for the employee to prepare for the appraisal meeting, he or she must enter their progress against their objectives, "GCM" characteristics and competencies as part of a self-assessment. Mr Russell could not tell the tribunal what GCM stood for.

40. I find that this is the point at which the employee is required to give written input to the appraisal document, namely by giving their self-assessment on the appraisal form. It is intended that this should happen before and not after the appraisal meeting. This is confirmed in the Manager Checklist which says under the heading "*Preparing for the Appraisal*" that the individual will be expected to complete their self-assessment comments. Under the heading "*During the appraisal discussion*" it states that the manager will review the self-assessment comments.

41. I find that in terms of process, the employee's written input is expected to take place prior to and not after the appraisal meeting.

42. I also find that it is not uncommon for appraisal meetings not to take place when they should. On 28 February 2018 the claimant sent an email to her then manager Mr Mark Stonestreet telling him that she had two appraisals overdue for H2 2017 and H1 for 2018. In a monthly review on 21 March 2018 the claimant told her Team Manager Mr Shaw that she had not had her last appraisal (review document at page 94).

The claimant's appraisal forms for H1 and H2 2016

43. The claimant's H1 2106 appraisal form was at page 61a and showed the claimant rated by Mr Russell under all the competencies. Other than under the objective of Financial (on which she was rated as a 2) she was rated as a 3, meaning that she met her objectives. She was also rated under all the mandatory and additional competencies. There were manager comments under some of the competencies such as for Financial, Client and Customer and Business Process. It was signed off by Mr Russell on 5 September 2016 (page 61e). It is signed off electronically by the manager via a drop-down box.

44. The document which was disclosed by the respondent as the H2 appraisal form was at page 139 and was very different. It showed "*unrated*" under all the objectives and no ratings under the mandatory or additional competencies. They just showed "NA" not applicable. Other than giving an overall rating of 2, everything else was unrated. It showed that the employee, namely the claimant, had agreed objectives on 7 September 2016 and this had been signed off by her manager on the same date but unlike her H1 form, the manager signature was absent from the conclusion of the form (page 142).

Did the appraisal meeting take place on 23 November 2016?

45. The H2 appraisal was due to take place between July and December 2016. The claimant's evidence was that this "*never took place*". The tribunal was taken to an Outlook calendar entry at page 65f of the bundle identifying the claimant's H2 appraisal meeting as taking place between 1pm and 2pm on Wednesday, 23 November 2016.

46. This was Mr Russell's calendar entry. The claimant said she did not remember accepting this invitation and even if she did, her evidence was that she certainly did not attend an appraisal meeting. She accepted in oral evidence that she did accept the meeting invitation. I accept the claimant's submission and find that just because a meeting invitation is accepted, is not evidence that the meeting took place. Scheduled meetings often do not take place for all sorts of reasons.

47. The claimant accepted that in late 2016 Mr Russell asked her on a few occasions whether she had indicated on the electronic appraisal form that she agreed with the objectives prior to the meeting taking place. The claimant said she did not agree with the objectives as they included a

requirement to undertake home consultations which she was not then carrying out for health reasons.

48. The claimant's case was that as Mr Russell managed around 20 members of staff, he must have forgotten about her H2 2016 appraisal.

49. Mr Russell's evidence in chief was that the meeting took place on 23 November 2016 at the Islington assessment centre and that this was the H2 appraisal for the second half of 2016. He said at paragraph 5 of his witness statement, that at the appraisal his main concern was the claimant's sickness record and the effect it was having on her ability to carry out her role. He said he took into account her poor performance and rated her at 2.

50. Mr Russell's evidence was that he manually inputted the score into the H2 form and that as far as he was aware the only way for such a score to appear was for the manager to input it manually. He did not know why the H2 appraisal form showed no other scores because his evidence was that he input those scores.

51. Mr Russell was asked by the Judge whether he kept a record of the appraisals he had carried out and which were left to be carried out. He confirmed that he managed about 20 employees at the time and he kept a record of whose appraisals had been done and whose had not, with names and dates and whether the person had been off sick on the day. He said it had red and green markings with tracking and he made comments in the document. He was asked if he had disclosed this document in these proceedings and he said he had not "*because I didn't think it would be important".* This is despite the key issue in this case being whether the claimant's H2 appraisal took place on 23 November 2016 or at all.

52. On 8 December 2016 Mr Russell sent a chase up email to three employees including the claimant (page 65i) saying: "*Hello, You 3 guys are the only ones who have not entered your H2 comments, if this isn't done as discussed in the last team meeting you will not be rated which can reflect in the next year's pay review*". The email did not refer to any appraisal meeting having taken place. It referred to a discussion at a team meeting.

53. Apart from explaining in his witness statement his concern at the appraisal being the claimant's sickness record, Mr Russell gave no evidence in chief as to what happened or what was said at the appraisal meeting. Neither had he done so within the grievance process referred to below. It was put to him in cross examination, that if he had received the claimant's self-assessment comments in time for the appraisal on 23 November 2016, it would not have been necessary for him to chase up these comments in his email of 8 December 2016 at page 65i. This was an email that formed part of the claimant's disclosure in these proceedings and Mr Russell could not remember whether he had been

asked for it as part of the disclosure process. The claimant did not respond to that chase up email, for example by saying, my appraisal has or has not taken place.

54. Mr Russell's clear oral evidence was that the point at which the individual puts in their comments was for the self-assessment part of the process. In oral evidence he said that at the appraisal meeting on 23 November 2016 the claimant said she had not had chance to input her comments, she had written down some preparation notes in her notebook and she promised to input them at a later date. Mr Russell said that this was the reason for his 8 December email chasing comments for the input. At no time prior to day one of this hearing had Mr Russell said this, whether in any internal process or within these proceedings.

55. The appraisal process also includes a moderation process where the appraiser, in this case Mr Russell, discusses each individual case with line manager, in this case Ms Miriam Beales. Mr Russell gave no evidence in his witness statement about this part of the process or this discussion with his manager. He said that after the moderation process he is instructed to hold a meeting with each employee individually to tell them their score. Mr Russell agreed that the claimant was not told her score in writing or given a right of appeal, but said she had access to the policies.

56. On 9 August 2018, one year and nine months after the date given for that appraisal meeting, Ms Clare Hubschmid, Head of Back-office Clinical Operations, sent an email to Mr Russell (page 137 – 138) seeking comments on the claimant's second grievance. He replied within half an hour saying "*Hello Clare, this is really testing my memory now……. The H2 did take place, every single member of the team had a face-to-face appraisal…..".*

57. Mr Russell was asked that if his memory was "*really tested*" then, which was one year and nine months after the date given for that meeting, how was it that he now remembered this detail three years and nearly four months later. He said that when he was emailed by Ms Hubschmid he needed "*time for reflection"* but could not explain why he did not take time to reflect and then reply; he said it was a generic email, I find it was not – it was a specific query and he accepted that his memory was not better now than it was on 9 August 2018.

58. Mr Russell was also asked whether he had looked into the question of why he thought the H2 appraisal form had "defaulted" as was his evidence. He said he did not look into it because the claimant's new line manager was looking into it. Despite the fact that he knew he would be the person giving evidence on the matter, he said it did not occur to him to look into it.

59. Most of his oral evidence on the matter of the 23 November 2016 meeting was about what "*would have*" or "*should have*" happened and was based

on policy or process. He said for example that if the meeting had not happened, his manager would have taken this up with him or the claimant would have done so.

60. He said that on 17 March 2017 he informed the claimant in person that she had been given a score of 2. His evidence was that the claimant seemed to accept this did not raise any query or complaint. His evidence was that she said it was understandable as she had just attended a Supportive Action Plan (SAP) stage 3 meeting and had been retained rather than having her employment terminated. This conversation was denied by the claimant.

61. Mr Russell said he made a decision not to put the claimant on a Performance Improvement Notice because he considered that concerns with her performance were being addressed through the SAP.

62. Mr Russell's evidence was that he could not understand why the scores were missing on the relevant form, other than the overall rating and that his comments were also missing. He said that he inputted the relevant scores and comments.

The grievance process

63. On 15 January 2018 the claimant submitted a grievance in relation to the lack of salary increase in July 2017 (pages 81-82). In her grievance she said that she had been told by her manager Mr Russell that she could not have the salary increase due to being sick at the beginning of the year (January 2017) whilst she was on the SAP. She said she had found no reference to this in any policy. She said: "*I had received the highest possible grades on my annual appraisal*". She referred to "*appraisal*" singular and not to having had two appraisals in 2016.

64. I find that the claimant did not know when she raised her grievance that the reason she was not given a pay rise was because of a rating of 2 in her 2016 H2 appraisal because she made no mention of this. She thought it was because of the SAP. Had she known she had scored a 2 she would have appealed.

65. The respondent's pleaded case was that Mr Russell told the claimant on 17 June 2017 that the reason she did not receive a letter about a salary increase was because of the H2 2016 appraisal meeting (ET3 Grounds of Resistance paragraph 19). The claimant's evidence (statement paragraph 31) was that Mr Russell told her that it was because of her sickness absence. In oral evidence Mr Russell had no recollection at all of the conversation in June 2017. I find that given that Mr Russell said he "*really didn't remember*" even when taken to the paragraph in the ET3, the claimant's evidence is to be preferred and I find that she was told it was because of her sickness absence.

66. On 7 February 2018 the claimant was invited to a stage 1 grievance

hearing to take place on 21 February 2018. The minutes of the grievance meeting started at page 86 of the bundle. The claimant was accompanied by her union representative Mr Matthew Axworthy. The grievance officer was Mr Mitchell Clements, a Service Delivery Manager.

67. The grievance outcome was given by email by Mr Clements on 22 February 2018, page 90. The grievance was not upheld. The email said:

> *"Following our meeting yesterday I have found out the following information:*
> *Pay:*
> *No salary increase in 2017 due to a 2 rating in 2016. The pay review process takes into account the previous year's performance ratings (H1 & H2). For example this year, it will take into account your ratings H1 & H2 2017."*

68. On 28 February 2018 the claimant sent an email to Mr Clements saying that she had to dispute the decision about her grievance, page 103. She said expressly "*There is no H2 appraisal for 2016*"

69. Mr Clements replied on 2 March 2018 stating that her grievance would not be taken any further as clarification had been provided on the two points that she had raised. He also said that the H1 performance rating should have been appealed as part of the process within 28 days of the rating and she was now out of time to appeal this. He failed to address the point that the claimant made, that she had not had an appraisal for H2 in 2016. The respondent does not dispute that no right of appeal was given on the grievance outcome.

70. On 5 March 2018 the claimant's union representative Mr Axworthy sent an email to Mr Clements saying that he may have misunderstood the point as the claimant was saying that her H2 appraisal did not take place.

71. Mr Clements responded on 9 March 2018 and clarified that the claimant had a 3 rating for H1 but the H2 rating was a 2 and that is what impacted her pay. He did not deal with the point at issue which was whether the H2 appraisal had actually taken place.

72. On 21 March 2018 Mr Axworthy raised this point again (page 100-101) and Ms Brar in HR was copied in. Following that email Ms Brar carried out some further investigation and replied on 3 April 2018 (page 100) saying that the Performance Excellence Team had confirmed that the rating was a 2 for the H2 in 2016 and 3 for H1 in 2016.

73. Ms Brar also raised the query with the Global Digitalisation and Services Delivery Centre (pages 97-99) as to the claimant's ratings for 2016. They gave a response on 28 March 2018 saying: "*H2 2016 was a 2. H1 2016 was a 3*". I find that this was no more than a confirmation what the IT system showed. It was not confirmation of an appraisal meeting having taken place for H2 in 2016. Ms Brar then said this concluded matters

and no further correspondence would take place.

74. The HR witness Ms Sengelow was asked whether further investigation should have taken place. She could not say if any did take place as she was not dealing with it at the time, but she agreed that further investigation should have taken place. I find that it should. There was a clear dispute as to whether an H2 appraisal had actually taken place. This required an investigation with Mr Russell about the facts of that meeting and an enquiry of him as to what documentary records he held about the appraisal. Had this enquiry been made, it would have revealed the records that Mr Russell kept of the appraisals he had done; the record that he thought was not important, but clearly was.

75. I find that the respondent failed carry out any investigation into the key disputed factual issue of whether an H2 appraisal had actually taken place. They simply relied on what their system told them - that the claimant had been rated a 2, notwithstanding that there were no individual scores and no manager sign off.

The second grievance

76. On 31 July 2017 the claimant raised a second grievance (pages 111-113). She accepted that this covered the same issues as her first grievance. On 9 August 2018 in response to this, Ms Hubschmid said that the reason for the discrepancy in pay, in other words no pay rise compared to her colleagues, was because she rated 2 for H2 in 2016 and this had a knock-on for her 2018 salary.

77. It is not in dispute that there was no grievance meeting on the second grievance and therefore no opportunity for the claimant to attend such a meeting to put her case and if she chose, to be accompanied by her union representative.

Did the H2 2016 appraisal take place?

78. I find as a fact that no H2 appraisal meeting took place in 2016 for the claimant. This is for the following reasons:

- Mr Russell gave no evidence as to what actually happened at the meeting until during this hearing itself, when he said for the first time that the claimant attended with a notebook with her self-assessment comments and said she would input them later.
- This did not fit well with his 8 December 2016 email chasing up the comments from three individuals. Under the appraisal process there is normally nothing for the employee to do after the appraisal meeting had taken place.
- His email of 8 December made no reference to any appraisal meeting with the claimant, only to a team meeting in relation to all three employees he emailed. He made no reference to the claimant needed to follow up with the comments she had

apparently given verbally at the meeting from her notebook.

- There was a failure to disclose Mr Russell's record of the appraisals he had undertaken and not undertaken. His 8 December 2016 email was similarly not disclosed by him but by the claimant.
- Mr Russell told Ms Hubschmid on 9 August 2018 that she was "*really testing his memory*" 1 year and 9 months after 23 November 2016 and yet 3 years and 4 months later he was able to remember a key factual detail as to why the appraisal went ahead without the claimant inputting her self-assessment comments.
- Many of his answers in evidence were that he could not remember or that he did not realise something was important, yet this is a case with effectively a sole issue as to whether that meeting took place.
- In addition the H2 appraisal form was completely lacking in scores and comments other than an overall rating and had no manager sign off. There was no IT evidence to support what might have happened to the electronic form.

79. For these reasons I prefer the claimant's consistent evidence that the meeting did not take place as against Mr Russell's evidence that it had.

80. I therefore find as a fact, on a balance of probabilities, that there was no H2 appraisal meeting for the claimant in November 2016 or at all.

Relevant law

81. Section 13(1) of the Employment Rights Act 1996 (ERA) provides an employer shall not make a deduction from wages of a worker employed by him unless 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 the worker has previously signified in writing his agreement or consent to the making of the deduction. A complaint under this section is made to the Employment Tribunal under section 23 ERA.

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

> *If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—*
>
> *(a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,*
>
> *(b) the employer has failed to comply with that Code in relation to that matter, and*
>
> *(c) that failure was unreasonable,*

83. Section 207A(1) states that this applies to proceedings before an employment tribunal relating to any of the jurisdictions listed under Schedule A2 of that Act, which includes a claim for unlawful deductions from wages.

Conclusions

84. I have found that there was no appraisal meeting for the claimant for H2 in 2016 and based on the list of issues above the claim succeeds

85. I have gone on to consider whether there should be any uplift in compensation under section 207A TULR(C)A (above) as a result of the respondent failing to comply with the ACAS Code and whether that failure was unreasonable.

86. The respondent admits that there it gave no right of appeal on the grievance so this amounts to a failure to comply with paragraph 40 and 42 of the Code as well as bullet point six of paragraph 4. Paragraph 40 states that once the employee has the outcome he or she "*….should be informed that they can appeal if they are not content with the action taken".* Paragraph 42 says "*Appeals should be heard without unreasonable delay"* and no appeal was heard at all and bullet six of paragraph 4 again confirms the right of appeal.

87. Bullet point three of paragraph 4 states "*Employers should carry out any necessary investigation to establish the facts of the case".* I have found above that there was a failure to investigate the key factual issue of whether an H2 appraisal had actually taken place. That was a failure to carry out necessary investigation to establish the facts of the case and amounts to a breach of paragraph 4.

88. Was the failure to carry out this necessary investigation unreasonable? Ms Sengelow agreed in her evidence that further investigation should have taken place. I find that it was unreasonable to fail to investigate this key issue as it was pivotal to the whole question of the claimant's pay and the fact that she did not receive the pay rise she expected because of a low rating for an appraisal which I have found did not take place.

89. The respondent relied on what their system told them despite the H2 appraisal document being lacking in scores and did not engage with the question of whether that appraisal actually happened. This was despite having it raised with them by the claimant and also with her union representative. Mr Axworthy politely told Mr Mitchell that he may have misunderstood the point. The point was not followed up by the respondent.

90. I find that it was an unreasonable failure to follow the Code by failing to investigate this key factual matter.

91. I find that in relation to the lack of a right of appeal, the claimant was given a perfunctory answer by Ms Brar on 3 April 2018 that the matter was concluded and no further correspondence would take place. This was at the point where a right of appeal should have been given. This was an unreasonable failure to follow the Code and showed the

respondent had a closed mind on the matter.

92. The respondent mitigated the position to some degree by allowing a second grievance which the claimant accepted covered the same subject matter. Once again there was a failure to investigate the key factual issue of whether an H2 appraisal had actually taken place.

93. I find that as a result of the unreasonable failure to follow the ACAS Code there should be an uplift in the amount of compensation payable to the claimant. I have considered the percentage to apply.

94. I find that there was not a complete failure to follow a grievance process. There was a grievance process which was followed swiftly, a meeting was held promptly on the first grievance, there was some investigation but not on the key point, the claimant was represented at her grievance hearing and she received a prompt outcome. She was given, to quote the respondent from submissions "*a second bite of the cherry"* with a second grievance on the same subject matter, but it was again deficient for the same reasons.

95. As there was not a wholesale failure by the respondent, but more of a failure to acknowledge that what their system told them might need a little more checking and the claimant's key issue taken on board, I apply an uplift of 15%.

Decision on remedy

96. The parties agree that the amount of the deductions from wages is a matter of mathematical calculation which they agreed

97. They also agree that to avoid the need for the claimant to issue a second ET1 to cover the period from the issue of this claim on 19 October 2018, the loss can be taken through to the date of this hearing.

98. In the light of that the parties agree that the amount of the unlawful deductions is £6,687.31.

99. The uplift is applied at 15% being £1,003.10.

100. The total awarded to the claimant is **£7,690.41.**

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Employment Judge Elliott
Date: 13 March 2020

Judgment sent to the parties and entered in the Register on: 16/03/2020 : :
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_____ for the Tribunals