# EMPLOYMENT TRIBUNALS

**Claimant:** Ms V Williams

**Respondent:** Creative Support Ltd

**HELD AT:** Manchester **ON:** 8-9 July 2020

**BEFORE:** Employment Judge Phil Allen (sitting alone)

**REPRESENTATION:**

**Claimant:** In person
**Respondent:** Mr Z Malik, solicitor

# JUDGMENT

The judgment of the Tribunal is that:-

1. The claimant was not dismissed by the respondent and her claim for constructive unfair dismissal does not succeed;

2. The respondent did breach the claimant's contract of employment with regard to notice and the claimant's breach of contract claim is well founded;

3. The respondent is required to pay the claimant the gross sum of **£74.17** as damages for breach of contract. The sum is to be paid within 14 days.

# REASONS

## Introduction

1. The claimant was employed by the respondent from 15th June 2015 until 17th May 2019, having TUPE transferred to the respondent with continuity of employment from 2nd July 2007. At the end of her employment, the claimant was employed as a Registered Support Living Manager. The claimant resigned on 16th April 2019. She alleges that she was constructively dismissed by the respondent (which is denied). The claimant also alleges that she was dismissed in breach of contract because she gave two months' notice, so that her employment should have terminated on 15th

June 2019. The respondent contends that it was agreed that the claimant's employment should end after one month's notice, but the claimant denies this and contends that the respondent terminated the contract in breach when it decided the contract should end on 17th May 2019.

**Claims and Issues**

2. The claims and issues in the claim were identified by Employment Judge Sharkett at a Preliminary Hearing held on 24th February 2020. At the start of the final hearing it was confirmed with the parties that the issues in the constructive dismissal claim remained those previously identified (save that the respondent confirmed that it would no longer be pursuing the argument that any dismissal was for a fair reason).

3. Accordingly, the issues to be determined in the constructive dismissal claim were as follows:

a. Was the respondent in breach of an express or an implied term of the claimant's contract of employment, whether oral or in writing?

b. Was the breach a fundamental breach going to the root of the contract?

c. Did the claimant resign in response to the breach, or will she rely on the last straw doctrine?

d. If so, what was the last straw?

e. Did the claimant waive the breach by waiting too long before resigning, or some other reason?

4. The case management order expressly recorded at paragraph 10 that "*The claimant relies on the last straw doctrine, stating that this occurred during the conversation with Anna Lunt in October 2018. It is the claimant's case that immediately after that she started to look for alternative employment*".

5. The order also recorded the breaches of contract relied upon by the claimant in alleging that the respondent had fundamentally breached her contract of employment. The claimant confirmed at the start of this hearing that the list remained correct in recording the breaches she relied upon. The alleged breaches relied upon were that the respondent:

a. (i.e. Grace Ennis and Anna Lunt) failed to address the claimant's verbal complaints about her working conditions and pay;

b. Failed to put in put in place additional support to alleviate the stressful environment the claimant was working in;

c. Failed to carry out supervision or appraisals over two years;

d. Failed to financially recognise the increased work carried out by the claimant;

e. Failed to promote the claimant into a higher role which would have increased her salary; and/or

f. The CEO (Anna Lunt) failed to show any support during a conversation about the claimant's personal circumstances in October 2018.

6. The claimant also claimed breach of contract with regard to notice pay. At the start of the hearing the Tribunal proposed that the issue of remedy in respect of the breach of contract claim only, would also be addressed at the same time as the liability issues for both claims, as the relevant evidential issues significantly overlapped with the liability issues in the breach of contract claim. Both parties agreed to that approach.

**Procedure and evidence heard**

7. The claimant appeared in person at the hearing. The respondent was represented by Mr Z Malik, solicitor.

8. The parties had exchanged witness statements prior to the hearing. On the first day of hearing the Tribunal read the statements prepared by each of the witnesses. The Tribunal heard evidence from the claimant. The Tribunal also heard evidence in person from Ms Lunts, the Chief Executive Officer of the respondent, and Ms Ennis, an Area Manager. Each witness had prepared a witness statement which was read by the Tribunal and each witness was cross examined, and asked questions by the Tribunal.

9. The Tribunal was also provided an agreed bundle which ran to 110 pages. The Tribunal read only the documents to which it was referred either in witness statements or in the course of the hearing.

10. The respondent had also prepared a witness statement on behalf of Ms Cooke, a Service Director for the respondent, and that statement was also read on the morning of the first day. Ms Cooke attended throughout the first day of hearing. At the end of the day she was the only witness yet to give evidence to the Tribunal. Unfortunately, due to a family bereavement, Ms Cooke was unable to attend on the second day of hearing. The reasons given were accepted as entirely genuine.

11. At the start of the second day of hearing, the respondent made an application for the hearing to be adjourned to enable Ms Cooke to attend and give evidence. The claimant opposed the application.

12. Ms Cooke's evidence was contained in a two-page statement containing seven paragraphs. The statement related to the breach of contract claim only, and was limited to providing evidence which related to the period from on, or around, 15th May 2019. The claimant disputed only one sentence in the statement, which is a statement made by Ms Cooke (at paragraph 3) which says "*We had understood that the claimant wanted to cut her notice down from 8-weeks to 4-weeks [71]*". The page in the bundle referred to is an email which explains in more detail than the statement the basis for the evidence given and which gives the source of the explanation as being Ms Lunts (that is a witness from whom the Tribunal had already heard evidence and who had been cross-examined).

13. The respondent relied upon ***Teinaz v Wandsworth LBC*** **[2002] EWCA Civ 1040** and, in particular, paragraph 21 of the Judgment in that case. The respondent's representative made submissions. The claimant also made submissions and, in particular, emphasised the impact on her of a further delay in the case being resolved.

14. The Tribunal took into account the authority cited by the respondent (albeit it noted that the case involved the non-attendance of a party to the proceedings, which was a very different situation to the non-attendance of the witness in this case). The Tribunal also noted: the need for discretion to be exercised with regard to reason, relevance and fairness; Article 6; the Presidential Guidance; the ET rules of procedure; and the overriding objective. The Tribunal noted the entirety of the overriding objective, but particularly identified the need for: flexibility in proceedings; avoiding delay; saving expense; and acting in a way which was proportionate to the importance of the issues. The Tribunal considered this last point to be particularly important in determining this application, when the witness' evidence was only relevant to the breach of contract claim (which was relatively low value, particularly in the light of mitigation), and the limits to the disputed part of the evidence identified (for which there was supporting documentary evidence available in any event).

15. The Tribunal rejected the application to adjourn and determined that the case should continue to be heard on 9th July without Ms Cooke's attendance. In doing so, the Tribunal confirmed that the adjournment would have been granted if: Ms Cooke had been a key witness; significant parts of her evidence had been in dispute; or she was a witness of fact to relevant issues in the constructive dismissal claim. However, in the circumstances and in the light of the limited ambit of Ms Cooke's evidence (and the limited element in dispute), the respondent had not proved the need for an adjournment and, in any event, the exercise of the Tribunal's discretion and the application of the factors outlined in the overriding objective, meant that the application was rejected.

16. The parties subsequently each made oral submissions in the substantive claim. At the end of submissions, the Employment Tribunal reserved judgment and accordingly provides the judgment and reasons outlined below. The Tribunal was grateful to the claimant and the respondent's representative for the way in which the hearing was conducted.

## Facts

17. The respondent confirmed in the hearing that the claimant was a wonderful and effective manager, who was held in high regard by the respondent. When she left the respondent's employment, it was sad to see her go.

*Pay*

18. When she transferred to the respondent, the claimant was a Deputy Manager paid an annual salary of £20,000 per annum. From 12th September 2016 the claimant became an Acting Supported Living Manager on an annual salary of £25,590 per annum. From 1st December 2017 (or at least from a date during December as it appears that the change was backdated) the claimant became a

Registered Supported Living Manager on £27,657 per annum. From 1st December 2018, the claimant's salary increased to £28,387, as she moved to the highest point on the scale payable for that role.

19. At the time that she moved into the Registered Support Living Manager role, the claimant transitioned onto the respondent's own terms and conditions rather than the terms upon which she had transferred. Her official hours per week reduced from 40 to 37.5, albeit the claimant's evidence was that as standard she worked more hours per week than required (and therefore this change made no practical difference to her). The respondent emphasised that this meant that the claimant's hourly rate increased from £12.30 (and £9.60 at the time of the transfer) to £14.18 (and £14.56 from 1st December 2018).

20. However, with the change in contracts, the claimant ceased to be entitled to a monthly payment of £350 per week which she was paid for being on-call (in addition to the time actually paid for on-call work). This had the impact of meaning that the claimant's take home pay did not in practice increase following her promotion in December 2017 and the claimant's perception was that it reduced. This perception may have arisen from, or at least been exacerbated by, an interim period when both the on-call payment and the salary increase were paid (in error), which meant the claimant's actual take home pay reduced significantly after May 2018. The claimant in her evidence admitted that she was not aware of exactly what she was paid each month in terms of the structure of her pay, she noticed what she had in her bank account each month.

*Contract*

21. The relevant contract was issued to the claimant dated 15th December 2017, which set out the terms which applied to the claimant in the role of Registered Supported Living Manager (pages 43-48). In evidence the claimant emphasised that she never actually signed the contract. However. the claimant confirmed that she had seen the contract and she continued to work in that role under the contract's terms without explicit complaint or objection. The Tribunal accordingly finds that the contract was implicitly accepted by the claimant and that this document records the contractual terms which applied.

22. The relevant parts of the contract include:

a. It confirmed that the claimant may be required to perform other duties according to the needs of the respondent (43);

b. It emphasised that it was an express condition of employment that the claimant would, where applicable, transfer to appropriate duties within the company as reasonably directed (43);

c. The pay-scale for the claimant's role was detailed, with the contract giving both the claimant's basic salary on commencing the role and the band within which it sat (recording a salary at top of scale the same as that ultimately paid to the claimant from 1st December 2018) (43);

d. Overtime was to be paid at the claimant's standard hourly rate (45);

e. Under a heading "*Grievance Procedure*" it said "*It is important that if you feel dissatisfied with any matter relating to your work you should have immediate means by which such grievance can be aired and resolved. If you feel aggrieved at any such matter during the course of your employment you should raise the grievance with your Line Manager or Julie Cooke (Service Director) if appropriate*" (47);

f. The notice of termination to be given by the employer for the claimant's role was two months notice, but with the added sentence that "*With 9 years service or more – 1 week for each complete year of service up to a maximum of 12 weeks after 12 years*". There was no requirement that notice must be given in writing, but there was a statement that the respondent may at its discretion terminate employment without notice and instead make a payment of basic salary in lieu of notice (48); and

g. The provision detailing the notice of termination to be given by the employee contained the same terms as to length of notice, but there was no statement regarding pay in lieu of notice (48).

*The claimant's issues*

23. The claimant's evidence was that she had been raising concerns about roles and responsibilities with those managing her for some time, highlighting what she had raised with her then manager (Ms Bolan) on 9th May 2016 in a noted supervision meeting. The note records the claimant as seeking clarification on her role. The Tribunal accepts the claimant's evidence that she was concerned throughout her employment with the respondent about roles and responsibilities. That note (87) is the only formal document which records the claimant raising such issues.

24. The claimant's evidence was that throughout her employment with the respondent she was expected to take on additional roles and responsibilities. She said that from December 2017 to the final day of her employment she was made to take on additional service provision including those outside the Trafford area, with a lack of support and without being rewarded.

25. The claimant's statement also refers to her view that there was a lack of being rewarded by way of promotion and pay review. The Tribunal finds that, when looked at in the context of the claimant's employment with the respondent as a whole, this statement is not consistent with the pay increases and role changes which occurred and are detailed above.

26. In her evidence when answering questions, the claimant stated that her issues were not about her salary, but rather about her roles, responsibilities, workload and rights. She said it was not about money. Based upon the evidence from the claimant which the Tribunal heard, it finds that the issue for the claimant was not genuinely about her pay, but rather about the additional roles and responsibilities which she took on (or at least perceived that she took on). This finding is further supported by the claimant's lack of awareness about precisely what she was paid (when the pay data in the bundle was reviewed with her -104-106).

27. The Tribunal heard evidence from the claimant about the additional duties and responsibilities which she took on in the South Manchester area. The claimant's evidence was that these additional responsibilities followed a meeting in December 2017 and commenced in January 2018 (that is fifteen months before she resigned). The respondent's evidence was that: these responsibilities replaced some contracts lost in the Trafford area; that the claimant, Ms Ennis and Ms Begum were all tasked with taking on some responsibility for parts of a contract in South Manchester as part of their role; and, that the services at the time had the right level of management support (which was the evidence of Ms Lunts). It is accepted that the claimant's job with the respondent was a demanding one, but where there is a dispute between the respondent's evidence and that of the claimant in respect of duties and responsibilities, the respondent's evidence is preferred by the Tribunal, as Ms Lunts and Ms Ennis were both clear and credible when giving evidence on this issue.

28. There is no written record of the claimant raising issues about workload, responsibilities or stress (save 87). The claimant did not raise a formal grievance at any time. The claimant's evidence was that she had heard the grievances of other people, and therefore she was aware of the grievance procedure.

29. The only other written reference to such issues, is an exchange of text messages with Ms Ennis on 16th July 2018 (being nine months before the claimant resigned) in which the claimant said "*I just can't manage any more and I'm at the point of make or break*". The text exchange (60-63) commenced with Ms Ennis informing the claimant that she was "*so mashed*". The number used was Ms Ennis' personal mobile number and Ms Ennis described them as personal text messages. The terminology of the texts is friendly in nature and not formal or work-like ("*okay babe*" for example). It was not in dispute that Ms Ennis and the claimant were close (at the time) and that was evident to the Tribunal from their interaction in the hearing. This message was not perceived by Ms Ennis to be a request for support. Ms Ennis' evidence was that she did not recall the claimant raising issues around roles and responsibilities, although she did recall her raising pay. Ms Ennis, understandably, did not consider the text-messages to be the claimant raising a formal grievance (even though this was a text sent to the claimant's line manager). The Tribunal found Ms Ennis to be a genuine and credible witness who was sympathetic to the claimant. Ms Ennis' evidence about her perception of the issue raised by the claimant as being linked to pay, appears consistent with the content of the particular message when it is read as a whole.

30. The claimant had no formal reviews or supervision meetings with Ms Ennis after 27th September 2017. Ms Ennis in evidence explained this as being because she met with the claimant regularly regarding services and service users, and that they spoke regularly, being seated in the same office and in close proximity. In her witness statement, the claimant placed particular emphasis on the requirements for supervision in respect of regulated activities under the relevant legislation. She contrasted her own supervision of others with that undertaken by Ms Ennis. It is clearly the case that Ms Ennis' supervision of the claimant in terms of recorded meetings or supervision fell short of what would have been ideal. Had there been such recorded meetings, that may have given the claimant an opportunity to raise her concerns in a formal environment. However, the claimant's own evidence was that she did not herself ever specifically raise the lack of supervision meetings.

*Conversations with Ms Lunts*

31. In March 2018 the claimant suffered a difficult personal event. In her evidence she detailed a discussion with Ms Lunts when the claimant became upset when talking to her. The claimant describes Ms Lunts as being "*emotionless*" and says she would have benefited from greater support from Ms Lunts. Ms Lunts did not refer to this conversation at all in her witness statement. When questioned, she recalled the issue which had led to the meeting, which was that a service-user had gone missing. Ms Lunts described this as a difficult day for all concerned and recounted support being offered to employees as a result (with which the claimant agreed). Ms Lunts evidence was that she recalled the difficulties of the day, but not the claimant crying or referring to her personal circumstances. Ms Lunts confirmed that she thought the claimant had told her about the specific personal event, but she could not remember whether it was on that day or the detail about what she was told.

32. On 31st October 2018, the claimant and Ms Lunts attended a meeting with Commissioners at Trafford Town Hall. After the meeting, the two of them had lunch together. Ms Lunts evidence was that they needed to discuss issues which had arisen from the meeting and it was a relatively short lunch in a café (she referred in evidence to 45 minutes), following which Ms Lunts needed to attend a further meeting. Ms Lunts recalled her and the claimant speaking about the meeting with Commissioners and the actions which needed to be progressed as a result.

33. Ms Lunts statement provided very little detail about this meeting, stating only that "*the claimant informally asked for a pay rise, due to her own personal circumstances. I confirmed that she was on the correct scale for her position and I suggested to the claimant she could increase her earnings by undertaking Duty Manager weekend shifts as part of a rota involving other senior managers*". In oral evidence Ms Lunts expanded on this account. It was clear that she found the conversation to be somewhat awkward, describing it as difficult. She recalled the claimant being, what she described as, a bit below par, which is why she asked if the claimant was ok. Her recollection was that the claimant had raised concerns about her pay in the context of difficult personal circumstances. She was very clear that she explained that she could not alter an individual's pay as a result of personal circumstances and she did not think that she left the claimant with the impression that her pay could be changed. The claimant was paid in accordance with the scale for the role fulfilled. Ms Lunts was also very clear in answer to questions, that the conversation was about pay, not roles and responsibilities. It was, in her view, an informal request for more pay made during lunch, to which she responded. Ms Lunts did accept that maybe it was not an entirely satisfactory conversation for the claimant.

34. The claimant's view of the 31st October lunch differs from Ms Lunts'. Unsurprisingly the claimant has a very clear recollection of her own personal issues and why she was upset at the time. She recalls explaining her recent bereavement and her own resulting financial difficulties, as she was struggling to afford the funeral. The claimant says that she only raised her personal issues because Ms Lunt had asked her why she was upset. The claimant says that she went on to request a pay review linked to the additional services which she had taken on. The claimant says that Ms Lunt agreed to discuss issues with Ms Ennis.

35. This meeting was described at the preliminary hearing as being the last straw upon which the claimant relied in pursuing her constructive dismissal claim. In her evidence the claimant said "*I went away from this meeting feeling totally demoralised, undervalued and very upset as I felt that Anna had snubbed my personal circumstances on every level, in addition totally overlooked the actual role that I had been undertaking and most definitely did not value this. This was the point where I felt I had had enough of being treated so poorly, with no compassion, recognition or support and I commence looking for alternative employment".*

36. Whilst the claimant's and Ms Lunts' perception of the lunch is completely different, there are limited factual differences in their recollection. This was an unrecorded and informal conversation in an informal setting (a café), without notes. This was not a meeting arranged to discuss the claimant, her pay or her role, and therefore it is unsurprising that Ms Lunts does not have a detailed recollection of the issues raised by the claimant. In terms of the differences, the Tribunal does find that the claimant explained her personal circumstances and the reasons for her having financial difficulties. The Tribunal does not find that Ms Lunts left the claimant with any expectation that her pay would be reviewed. The fact that the pay-scale was role-based, not dependent upon personal circumstances, is not something which Ms Lunts would have varied. The Tribunal accepts Ms Lunts' account that she did not perceive the claimant to be linking pay to the responsibilities of the role (as opposed to the personal issues which the claimant explained). Whilst the claimant clearly found Ms Lunts to be unsympathetic in this meeting, the Tribunal does not find that Ms Lunts snubbed the claimant as alleged or said anything which objectively undervalued the claimant's contribution. In the context of an informal enquiry, in the Tribunal's view, there was nothing in the way in which Ms Lunt responded which was intended to, or was likely to, seriously damage the employment relationship.

*Events after 31st October 2019*

37. The claimant's verbal evidence was that on 31st October 2019, after the meeting with Ms Lunts, the claimant uploaded her CV to Indeed. The claimant was subsequently contacted by some agencies, however the claimant did not take any other steps to actively look for employment at that time. In both her evidence and her submissions, whilst the claimant was clear that the 31st October conversation was the prompt for her to start the search for other work, she made clear that this search was paused by her following the subsequent information from Ms Ennis (addressed below) and the hope that would lead to a change in the claimant's role and responsibilities. It was only after those hopes were not fulfilled, that the claimant effectively renewed her interest in any enquiries which she received.

38. Ms Ennis evidence is that the claimant did not raise any grievances. The claimant did "*moan*" about money and her personal circumstances in the last six months before leaving but she describes that as being "*through our very close relationship*". Ms Ennis was very clear that the work-related issues raised with her were about the fact the claimant felt she should be earning more money.

39. In December 2018 Ms Ennis informed the claimant and others that her role would be changing. Ms Ennis took on the Tameside Mental Health services and a new title of Area Manager. The claimant's evidence was that she hoped that this change (and the change of role of a Mr Durkin about whom the Tribunal heard no

evidence) would lead to a change for the claimant. The claimant's evidence was that she stopped looking for another role as a result of this expectation. However, she was disappointed when it did not lead to any change. In her submissions the claimant described this meeting as giving her hope that her role would change, but that hope ceased following a conversation with Ms Ennis in February 2019. It was after this realisation that the claimant decided to leave the respondent's employ (having paused that intention).

40. The claimant emphasised that she could not afford to leave the respondent's employment without having a job to go to due to her financial situation. She also evidenced her loyalty to the team and commitment to the respondent and highlighted that the length of time which she remained in employment demonstrated that she did not take a decision to leave lightly.

41. The claimant was contacted on 21st March 2019 by a recruitment agency with information about the role she ultimately accepted. She attended an interview on 25th March and a further interview on 3rd April. The new role was one which clearly excited the claimant, being a role appropriate to her skills and experience in the right geographical area and providing the type of service to service-users which was clearly an important factor to the claimant. After obtaining the role, the claimant resigned.

42. The claimant did not evidence any attempts by her to apply for other roles, save for responding to the contact she received from the agency who put forward the role which she ultimately accepted. Ms Ennis statement referred to the claimant as being "*headhunted*". The Tribunal does not find that the claimant was headhunted, as the reason she was contacted about the role was because she had indicated her interest in other jobs through a website, but the Tribunal does find that the claimant: did not proactively seek other employment throughout the period from 31st October to 21st March 2019; and paused her interest in other roles for a period following Ms Ennis announcement in December 2018 until February 2019.

*Resignation and notice*

43. On 16th April 2019 the claimant resigned verbally to Ms Ennis. On 17th April 2019 Ms Ennis and the claimant agreed that two months notice was required. Contractually this was incorrect, as (in the light of her length of continuous service) the claimant was required to give eleven weeks notice. The claimant's evidence was that she spoke to someone in the respondent's HR team who confirmed it was two months. Ms Ennis acknowledged when answering questions from the Tribunal that this error was her own. However it came about, the agreement between the claimant and her line manager was that two months was the notice required from the claimant and the period which she would work.

44. The respondent's case is that it was agreed with the claimant that she would work one month of her two month notice period, and therefore the date of termination was agreed with her. None of the respondent's witnesses actually evidenced such an agreement being reached. Ms Ennis' statement contained no detail whatsoever about what was actually agreed with the claimant. In answering questions, Ms Ennis could not recall much about what was said. The claimant's evidence was that she did not request to, or agree, a shorter notice period.

45. On 22nd April 2019 the claimant emailed Ms Lunts and Ms Ennis (65): "*I am writing to formalize my notice given verbally to Grace on the 16th April 2019, my last day of working following my two months notice period will be the 14th of June 2019. I want to thank you both for the opportunities that have been given to me during the period I have worked for Creative Support and I value you both very much as my colleagues, this isn't a decision I have taken lightly, however for my own professional development and personal circumstances I do feel it is the best option for me at present*".

46. The claimant's evidence was that on 23rd April she spoke to Ms Ennis who advised her that Ms Lunts had advised that the claimant was to leave after one month. This leaving date was confirmed in writing by Mr Wilkinson of the respondent's HR department in a letter of 2nd May which noted that the claimant's final day of employment would be 17th May 2019 (66). This was also recorded in a termination of contract form signed by Ms Ennis on 2nd May confirming that the termination date would be 17th May 2019 (67). The conversation and receipt of the form were also detailed by the claimant in her email to Ms Ennis of 14th May 2019 (70).

47. There was no clear evidence about how this date came about. Ms Ennis in her evidence describes it as being as a result of "*a misunderstanding between me and Anna Lunts with regard to the claimant's notice period*". Ms Lunts says that when she spoke to Ms Ennis about the claimant she "*misunderstood that she was looking to work a shorter notice period due to wanting to start in her new role*". Ms Cooke in the disputed line in her statement says "*We had understood that the claimant wanted to cut her notice down from 8-weeks to 4-weeks [71]*". Page 71 is an email from Ms Cooke to the claimant of 15th May 2019 in which she says "*There genuinely has been miscommunications with regards to Anna genuinely understanding that you had wanted to leave earlier than your notice period and therefore agreeing that you could leave after 4 weeks*". None of these statements or documents evidence the claimant agreeing to a shorter notice period.

48. The Tribunal finds that the claimant did not request or agree to her employment terminating earlier than 15th June 2019, being the date initially agreed with Ms Ennis. The respondent's termination of the contract on 17th May 2019 (however that decision was reached) was accordingly a breach of contract.

49. The claimant arranged for her new employment to commence on Tuesday 28th May 2019 (that is the Tuesday following a bank holiday weekend). She did this in the light of the respondent's statements that her employment was to end on 17th May 2019.

50. On 7th May 2019 the claimant evidenced that Ms Ennis told her that Ms Lunts had contacted Ms Ennis to say there had been a mistake and that in fact the claimant had to work her full two month notice period. The claimant informed Ms Ennis that she had rearranged her start date with her new employer and therefore could not do so.

51. On 14th May 2019 Ms Ennis, in an email, stated that she advised the claimant that if she wished to receive two months pay she should complete the two months

work (70). On 15th May 2019 Ms Cooke emailed the claimant to say that the respondent was more than happy for the claimant to work her full two month notice period (72). The claimant responded explaining why she now felt the need for a gap between roles (72). Ms Cooke responded (including the explanation referred to above) and went on to say (71) "*I accept that you now want to have a break before you commence your new position and as an alternative to you working the additional 2 weeks' notice we will pay you an additional 2 weeks' pay (inclusive of any annual leave accrual for May)*".

52. The claimant's employment with the respondent terminated on 17th May 2019. On 23rd May she was paid salary due up to termination. On 31st May 2019 she was paid in lieu of two weeks notice. The claimant commenced her new employment on 28th May 2019 and in that job is paid more than she earned with the respondent. She received her first pay in that job on 10th July 2019.

*Breach of contract remedy*

53. In her schedule of loss, the claimant claimed £1,091.80 as being two weeks pay (which the respondent agreed as being the amount of pay for the period). She also claimed £74.17 as lost pension contributions for two weeks, and £49.01 as national insurance contributions for two weeks. She also claimed £909.28, being two monthly mortgage payments of £454.64, for a two month payment break agreed with the Halifax due to lack of funds. The claimant's verbal evidence was that this came about due to the later salary payment date in the new employment. There were no documents available to evidence this loss and the claimant included no evidence in her statement about this loss.

**The Law**

54. The unfair dismissal claim was brought under Part X of the Employment Rights Act 1996. An unfair dismissal claim can be pursued only if the employee has been dismissed as defined by Section 95. Section 95(1)(c) provides that an employee is dismissed by her employer if:

> **"the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."**

55. The principles behind such a constructive dismissal were set out by the Court of Appeal in **Western Excavating (ECC) Limited v Sharp [1978] ICR 221** (an authority upon which the respondent relied). The statutory language incorporates the law of contract, which means that the employee is entitled to treat herself as constructively dismissed only if the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract.

56. The respondent emphasised the words of Lord Denning in that case (at 226B):

> "**the conduct must … be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded to have elected to affirm the contract.**"

57. One term of the contract upon which the claimant relied in this case was the implied term of trust and confidence. In **Malik and Mahmud v Bank of Credit and Commerce International SA [1997] ICR 606** the House of Lords considered the scope of that implied term and the Court approved a formulation which imposed an obligation that the employer shall not:

> **"…without reasonable and proper cause, conduct itself in a manner calculated [or] likely to destroy or seriously damage the relationship of confidence and trust between employer and employee."**

58. It is also apparent from the decision of the House of Lords that the test is an objective one in which the subjective perception of the employee can be relevant but is not determinative. Lord Nicholls put the matter this way:

> **"The conduct must, of course, impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer. That requires one to look at all the circumstances."**

59. The objective test also means that the intention or motive of the employer is not determinative. An employer with good intentions can still commit a repudiatory breach of contract.

60. Not every action by an employer which can properly give rise to complaint by an employee amounts to a breach of trust and confidence. The formulation approved in **Malik** recognises that the conduct must be likely to destroy or seriously damage the relationship of confidence and trust. In **Frenkel Topping Limited v King UKEAT/0106/15** the EAT put the matter this way:

> **"12. We would emphasise that this is a demanding test. It has been held (see, for instance, the case of BG plc v O'Brien [2001] IRLR 496 at paragraph 27) that simply acting in an unreasonable manner is not sufficient. The word qualifying "damage" is "seriously". This is a word of significant emphasis. The purpose of such a term was identified by Lord Steyn in Malik v BCCI [1997] UKHL 23 as being:**
>
> > **"… apt to cover the great diversity of situations in which a balance has to be struck between an employer's interest in managing his business as he sees fit and the employee's interest in not being unfairly and improperly exploited."**

> **13. Those last four words are again strong words. Too often we see in this Tribunal a failure to recognise the stringency of the test. The finding of such a breach is inevitably a finding of a breach which is repudiatory: see the analysis of the Appeal Tribunal, presided over by Cox J in Morrow v Safeway Stores [2002] IRLR 9.**
>
> **14. The test of what is repudiatory in contract has been expressed in different words at different times. They are, however, to the same effect. In Woods v W M Car Services (Peterborough) Ltd [1981] IRLR 347 it was "conduct with which an employee could not be expected to put up". In the more modern formulation, adopted in Tullett Prebon plc v BGC Brokers LP & Ors [2011] IRLR 420, is that the employer (in that case, but the same applies to an employee) must demonstrate objectively by its behaviour that it is abandoning and altogether refusing to perform the contract. These again are words which indicate the strength of the term."**

61. In some cases, the breach of trust and confidence may be established by a succession of events culminating in a "last straw" which triggers the resignation. In such cases the decision of the Court of Appeal in **London Borough of Waltham Forest v Omilaju [2005] ICR 481** demonstrates that the last straw itself need not be a repudiatory breach as long as it adds something to what has gone before, so that when viewed cumulatively a repudiatory breach of contract is established. However, the last straw cannot be an entirely innocuous act or be something which is utterly trivial.

62. The respondent's representative placed some emphasis upon the **Omilaju** case and the Tribunal accordingly reminded itself of the Judgment. In particular, the respondent emphasised 488G to 489E, which the Tribunal noted (and will not reproduce in its entirety here). That section concludes with the following (at paragraphs 489B-E):

> "**The last straw must contribute, however slightly, to the breach of the implied term of trust and confidence. Some unreasonable behaviour may be so unrelated to the obligation of trust and confidence that it lacks the essential quality referred to. If the final straw is not capable of contributing to a series of earlier acts which cumulatively amount to a breach of the implied term of trust and confidence, there is no need to examine the earlier history to see whether the alleged final straw does in fact have that effect….**
>
> **Moreover, an entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of his trust and confidence in his employer. The test of whether the employee's trust and confidence has been undermined is objective"**

63. The respondent's representative also relied upon **Kaur v Leeds Teaching Hospitals NHS Trust [2019] ICR 1**. Underhill LJ in that case (at 19D) summarises what the Tribunal needs to do:

> "**In the normal case where an employee claims to have been constructively dismissed it is sufficient for a tribunal to ask itself the following questions:**
>
> **(1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?**
>
> **(2) Has he or she affirmed the contract since that act?**
>
> **(3) If not, was that act (or omission) by itself a repudiatory breach of contract?**
>
> **(4) If not, was it nevertheless a part (applying the approach explained in Omilaju) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the Malik term? (If it was, there is no need for any separate consideration of a possible previous affirmation, for the reasons given…)**
>
> **(5) Did the employee resign in response (or partly in response) to that breach?**"

64. The respondent's submissions emphasised the timescales between the alleged breaches relied upon (and, in particular, the alleged last straw), and the claimant's resignation. It relied upon **W. E. Cox Toner (International) Ltd v Crook [1981] ICR 823** and emphasised the comparison between the seven month delay in that case (in which it was found the claimant had affirmed the breach) and this case. Browne-Wilkinson LJ in his Judgment at 830C emphasises that continued performance of the employment contract is evidence of affirmation. At 830F he summarised the position by saying:

> "**there must be some limit to the length of time during which an employee can continue to be employed and receive his salary at the same time as keeping open his right to say that the employer has repudiated the contract under which he is being paid**"

65. The claimant in her submissions made reference to one case as an authority which she said applied to her particular circumstances. She relied upon **Munchkins Restaurant Ltd v Karmazyn UKEAT/0359/09** a case in which the status of the claimants as migrant workers with no certainty of continued employment (save with that employer) having found an equitable equilibrium in their employment, was a legitimate factor for the Tribunal to take into account in determining their response to acts by the employer. The claimant cites this as supporting her position, namely that it was not affirmation of the contract to wait until she found an appropriate role with comparable remuneration, when she could not afford to do otherwise.

66. The breach of contract claim, in respect of notice, requires the application of the law of contract. In this case there is no dispute that the claimant gave notice to end the contract. The key question is whether the claimant agreed to the earlier termination of her contract of employment as a variation to the terms of her contract and the notice she had given. If she did so, the respondent did not act in breach of

what was agreed. If she did not so agree, the respondent did breach the contract by terminating the contract at a date earlier than the date for termination which followed from the notice given by the claimant.

67. If the claimant succeeds in her breach of contract claim, the remedy should put the claimant in the position she would have been had the contract been performed by the employer and lawfully terminated. That requires any losses which result from the breach to be identified. The subsequent question is whether or to what extent the claimant has mitigated her loss. An example of mitigation is where an employee, whose employment is terminated in breach of contract, commences alternative employment during the period which would otherwise have been notice and receives income from that employment (which the employee would otherwise not have received if they had remained in employment throughout the notice period).

**Conclusions – applying the law to the facts**

*Constructive dismissal*

68. The claimant relied in her claim on: breaches of her contract of the terms which applied to roles and responsibilities; and a breach of the duty of trust and confidence. As recorded at paragraph 5 above, the claimant relied upon six breaches (set out as alleged breaches (a) to (f) above), which were alternatively six things which individually or cumulatively amounted to a breach of the duty of trust and confidence.

*Alleged failure to address verbal complaints about working conditions and pay*

69. In terms of the alleged breach 5(a) (that is that the respondent (Ms Ennis and Ms Lunt) failed to address the claimant's verbal complaints about her working conditions and pay), the respondent did increase the claimant's pay throughout the time during which she was employed. The claimant accepted the Registered Support Living Manager role in December 2017 which had a substantial increase in salary and hourly rate for the hours the claimant was required to work. When taking up that role, it is clear that the claimant did not, in practice, receive the expected increase in take home pay which would have been expected from the increase in salary and hourly rate - but that was not a breach of contract by the respondent.

70. The claimant did complain verbally to Ms Ennis about her pay. She also complained in a text message exchange in July 2018. The complaints were raised informally and in the context of the close relationship between the two, as is evidenced by the terminology used in the texts.

71. The claimant also raised pay verbally in a conversation with Ms Lunts on 31st October 2018. That was also in a relatively informal setting and was not a meeting arranged to consider the claimant's pay. Ms Lunts responded appropriately, with the relevant explanation that pay was linked to the role and not to personal circumstances.

72. If the claimant wished to, she was aware that she could raise a grievance, or she could have requested a formal meeting at which her issues could be addressed. The claimant did not do so at any time.

73. Neither Ms Ennis nor Ms Lunts understood the claimant to be raising issues about roles and responsibilities (save in so much as Ms Ennis understood those issues to be linked to pay). If the claimant endeavoured to voice such concerns, they were not understood by Ms Ennis or Ms Lunts. As with the pay issue, if the claimant had wished to, she knew how to raise matters formally under the grievance procedure and did not do so.

74. There was no breach of any express term of the contract in the way in which the respondent responded to the verbal issues raised. Ms Lunts and Ms Ennis certainly did not conduct themselves in a manner calculated to destroy or seriously damage the relationship of confidence and trust between employer and employee. The respondent's conduct was also, in respect of this allegation in all the circumstances and viewed objectively, not such that it was likely to destroy or seriously damage the degree of trust and confidence the claimant is reasonably entitled to have in the respondent, as her employer.

*Alleged failure to put in place additional support*

75. In terms of the alleged breach 5(b) (that is that the respondent failed to put in put in place additional support to alleviate the stressful environment the claimant was working in), the evidence and legal position reflects that addressed for the roles and responsibilities for allegation 5(a). The claimant never raised any written concern that her work or working environment was stressful, save for the informal text referred to at paragraph 29 above. Neither Ms Ennis nor Ms Lunts were aware that the claimant was seeking any additional support.

76. As explained at paragraph 27 above, the Tribunal does not find that the claimant was working in a particularly onerous environment without support, as the Tribunal accepts the evidence of Ms Ennis and Ms Lunts about the claimant's role and the change in her responsibilities.

77. The respondent had no express contractual obligation to provide additional support. The respondent's employees did not conduct themselves in a manner calculated to destroy or seriously damage the relationship of confidence and trust between employer and employee. The respondent's conduct was also, in respect of this allegation in all the circumstances and viewed objectively, not such that it was likely to destroy or seriously damage the degree of trust and confidence the claimant is reasonably entitled to have in the respondent, as her employer.

*Alleged failure to carry out supervision and appraisals*

78. In terms of the alleged breach 5(c) (that is that the respondent failed to carry out supervision or appraisals over two years), as confirmed at paragraph 30 above, it is the case that the claimant had no formal reviews or supervision meetings with Ms Ennis after 27th September 2017 (therefore being a period of twenty months rather than two years). The claimant has not shown that there was an express contractual obligation on the respondent to carry out such supervision or appraisals more regularly.

79. As found at paragraph 30, the absence of recorded meetings of formal supervision fell short of what would have been ideal. Ms Ennis provided a genuine explanation for why such appraisals and formal supervisions did not take place and

the absence was not calculated to destroy or seriously damage the relationship of confidence and trust. Viewed objectively and in particular in the circumstances detailed at paragraph 30 including the close relationship between Ms Ennis and the claimant, their regular contact, and the close physical proximity of their office-base, this absence was not such that it was likely to destroy or seriously damage the relationship of trust and confidence. The position might have been different if the claimant had requested a supervision or appraisal meeting, but the claimant herself confirmed that she never raised the lack of supervisions expressly herself, as she was able to.

*Alleged failure to financially recognise the increased work*

80. In terms of the alleged breach 5(d) (that is that the respondent failed to financially recognise the increased work carried out by the claimant), this has effectively already been substantially addressed in the explanation provided in response to alleged breaches 5(a) and 5(b). There is a difference between the evidence of the respondent and the claimant as to whether there was increased work carried out by the claimant. There were certainly changes to the claimant's roles and responsibilities and the claimant took on responsibility for some services in another area. The increased work carried out by the claimant was recognised in December 2017 by a new role and higher salary. In December 2018 the claimant moved to the highest point on the pay scale for her role. The respondent was not contractually obliged to recognise the claimant's contribution by paying her higher than the top of the relevant pay-scale. There is no evidence that the respondent failed to recognise the work undertaken by the claimant and, in the light of the findings made at paragraph 27 above, the claimant's role changes did not require or necessitate a pay change or review. In any event, in not paying the claimant outside the salary bands offered to the claimant and which applied to her role, the respondent neither conducted themselves in a manner calculated to, nor acted in a way which is objectively likely to, destroy or seriously damage the relationship of confidence and trust between employer and employee. As with the other alleged breaches, the claimant could have raised this formally, including in a formal grievance, had she wished to do so, and did not.

*Alleged failure to offer a promotion*

81. In terms of the alleged breach 5(e) (that is, that the respondent failed to promote the claimant into a higher role which would have increased her salary) there was no evidence before the Tribunal that the claimant should have been promoted into a higher role. The claimant was promoted to a higher role in December 2017. The claimant did not provide any evidence of a role to which she should have been appointed afterwards.

82. The claimant's hope that she would be promoted after Ms Ennis role was changed in December 2018, and that hope subsequently not being realised, was in fact the catalyst for the claimant deciding to leave the respondent's employment when an alternative job offer was received (see paragraph 39 above). However, there was no evidence before the Tribunal of any tangible reason why the respondent should have offered the claimant a promotion or have actively appointed her to a role which would represent a promotion at that time. The claimant did not evidence that she raised this issue at all, whether formally or otherwise.

83. The respondent did not have a contractual obligation to promote the claimant. The fact that the claimant was not so promoted was not the respondent acting in a way which was calculated to, or objectively likely to, destroy or seriously damage the relationship of confidence and trust between employer and employee.

*The alleged failure to show support on 31st October 2018*

84. In terms of the alleged breach 5(f) (that is the allegation that Ms Lunt failed to show any support during a conversation about the claimant's personal circumstances on 31st October 2018), this has been addressed in detail with regard to the facts at paragraphs 32-36 above. There is no doubt that the claimant felt very aggrieved by Ms Lunts' responses to her on 31st October 2018. The claimant left the meeting/lunch feeling demoralised and undervalued. Ms Lunts had clearly not appreciated, or been able to respond sufficiently empathetically to, the personal issues which the claimant had explained in response to Ms Lunts enquiry about how she was. However, as confirmed at paragraph 36, the Tribunal does not find that Ms Lunts snubbed the claimant as alleged or said anything which objectively undervalued the claimant's contribution. In the context of an informal enquiry, there was nothing in the way in which Ms Lunt responded which was intended to or was likely to damage the relationship. The claimant did not raise a grievance or highlight her concerns following this meeting.

85. The Tribunal agrees with the respondent's submission, based upon the authority of **Omaliju**, that viewed objectively this was an entirely innocuous act on the part of the employer, even though there is no doubt that the claimant genuinely (but mistakenly) interpreted it as hurtful and destructive of her trust and confidence in her employer.

*The alleged breaches generally and collectively*

86. None of the alleged breaches were a breach of an express term of the contract. As recorded at paragraph 22 above, under the terms of the contract the respondent was able to vary the claimant's responsibilities, and flexibility from her in duties undertaken was an express contractual term. Whilst the claimant clearly had concerns about responsibilities changing, which she raised as far back as 2016, the responsibilities given to the claimant and the changes to them, did not breach an express term of the contract.

87. In terms of the duty of trust and confidence, the Tribunal has also considered whether the breaches alleged were collectively such that they were calculated to, or objectively likely to, destroy or seriously damage the relationship of confidence and trust between employer and employee (even if they were not individually). The Tribunal finds that they were not, for the same reasons which have been identified for each of the alleged breaches individually.

88. Applying the tests outlined in the case of **Kaur**, described above, the Tribunal concludes as follows:

a. In her pleaded case the claimant relied upon Ms Lunts' conduct towards her in the meeting on 31st October 2018 as being what she says caused, or triggered, her resignation;

b. The claimant has affirmed the contract since that act – as explained below;

c. In any event, Ms Lunts actions in the meeting were not, by themselves, a repudiatory breach of contract, for the reasons explained above;

d. It was not part of a course of conduct comprising several acts and omissions which viewed cumulatively amounted to a repudiatory breach of contract; and

e. The claimant did partly leave in response to that action, but it is not true to say that she resigned in response to it – as, whilst she signed up to a site which commenced a job search in response, the subsequent pause and lack of proactivity in finding work until after the loss of hope in February 2019, shows that it was not really the reason why she resigned.

89. In practice, the claimant's own submissions confirmed that the meeting of 31st October 2018 was not the last straw which caused her to resign, as alleged. It was the last straw which led the claimant to seek alternative employment. However, the promotion of Ms Ennis and the possibility of a new role/responsibilities for the claimant, caused the claimant to pause. It was in fact when changes did not transpire, which the claimant evidenced to be the case in or around February 2019, which was the prompt which effectively caused the claimant to accept alternative employment and resign. The alleged last straw, was not in fact the last straw at all and the claimant did not resign in response to it.

90. Had it been necessary to do so, as confirmed, the Tribunal would have determined that in respect of the meeting of 31st October 2018, the claimant did delay too long before resigning and therefore did affirm the contract and waive any breach. The claimant was unable to leave immediately due to financial constraints and it is not inappropriate for someone to seek to find alternative employment before leaving. However, the five and a half months which elapsed between the meeting and the resignation, during which the claimant continued to fulfil her role without formal complaint, particularly in circumstances where the claimant paused her job-hunt until February 2019 and did not proactively seek roles, does mean that the contract was affirmed.

*Breach of contract*

91. The claimant resigned giving the two months notice which was contractually required in the light of the variation agreed by Ms Ennis and/or the respondent's HR provider. As confirmed above, the Tribunal finds that the claimant did not agree any further change to that notice period or to leave earlier. The respondent breached the claimant's contract by imposing a termination date of 17th May, rather than 14th June which is when the contract should have terminated. The claimant accepted that breach and acted in reliance upon it by moving her start date with her new employer.

92. The fact that the respondent subsequently endeavoured to change the position and gave the claimant the opportunity to work the full notice period, does not alter the fact that the respondent had already breached the contract. In these circumstances the Tribunal does not find that it was a failure by the claimant to

mitigate her loss by not working the remainder of the notice period (nor was it actually argued that it was).

*Remedy for breach of contract*

93. In terms of loss arising from the breach, the Tribunal needs to take account of what the claimant received to identify if there was any loss. The respondent did not elect to terminate by paying in lieu of notice as it contractually could have done. From 28th May 2019 the claimant had no ongoing loss arising from the breach, as she commenced new employment which paid a higher salary. The claimant did potentially have losses for the period 17th May to 29th May, being a period of less than two weeks. The claimant was paid by the respondent two weeks basic salary, meaning that the claimant had no loss of basic salary as a result of the breach.

94. With regard to the additional amounts claimed at page 42 referred to at paragraph 53 above:

a. the pension contributions were a loss which was not covered by the payment made by the respondent and which has not been mitigated;

b. the national insurance contributions claimed were not a loss to the claimant (or at least there is no evidence presented to the Tribunal showing why the claimant has lost anything as a result); and

c. for the mortgage repayments, there was a lack of evidence available to the Tribunal of the loss. The Tribunal can see no reason why there should two months delay in paying mortgage as a result of a contractual breach where the claimant's employment was ended one month early – the impact can only be in respect of one month (or at least there is no evidence why it should be two). In any event, the claimant's need to delay the mortgage payments arose from the later pay date in her new employment. That would have arisen and caused the claimant the same difficulty whether her employment with the respondent had ended in: mid-June (as it contractually should have done); or mid-May (as it did). The need to delay the mortgage payment and the losses arising did not follow from the respondent's breach of contract, but rather from the difference in pay date between the two employers. The claimant has not evidenced that this is loss which occurred as a result of the contractual breach found.

95. The claimant is therefore awarded £74.17 as the losses arising from the respondent's breach of contract. The other payments claimed were not losses which were as a result of the respondent's contractual breach, that is the claimant has not evidenced that such losses were as a result of the breach found.

**Conclusions**

96. As outlined above and for the reasons given, the claimant does not succeed in her claim that she was unfairly (constructively) dismissed by the respondent.

97. The claimant does succeed in her breach of contract claim and is awarded £74.17 as the losses arising from the breach.

Employment Judge Phil Allen

15 July 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON

17 July 2020

FOR THE TRIBUNAL OFFICE

# NOTICE

## THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: **2410147/2019**

Name of case: **Ms V Williams** v **Creative Support Ltd**

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: 17 July 2020

"the calculation day" is: 18 July 2020

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

MR S ARTINGSTALL
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.