# EMPLOYMENT TRIBUNALS

**Claimant:** **Ms P Sergeant**

**Respondent:** **Royal Borough of Greenwich**

**Heard at:** **Croydon and via CVP** **On: 7/12/2020 to 10/12/2020 and in chambers on 8/1/2021 and 14/1/2021**

**Before:** **Employment Judge Wright**
**Ms C Beckett**
**Ms N O'Hare**

**Representation:**
**Claimant:** **Mr W Augustine - relative**

**Respondent:** **Mr C Milsom - counsel**

# LIABILITY JUDGMENT

It is the unanimous Judgment of the Tribunal that the claimant's claims of a failure to provide written particulars, failure to pay holiday pay, unauthorised deduction from wages, detriments as a result of claiming holiday pay and breach of contract fail and are dismissed.

# REASONS

Introduction

1. The claimant has presented the following claims: 2302910/2018 on 5/8/2018; 2301383/2019 on 20/4/2019; and 2300635/2020 on 15/2/2020. The claims were consolidated on 5/3/2020 and were heard together (page B25).

2. The first claim relates to a failure to provide holiday pay and was settled in part, by means of a consent order on 2/7/2019 (pages A74-75). The second claim is that the claimant was subjected to detriments as a result of claiming holiday pay. The third claim is in relation to further detriments as a result of claiming holiday pay, breach of contract, unauthorised deduction from wages and a failure to provide written particulars of employment.

3. The hearing proceeded as a hybrid hearing over four days (it was originally listed for five days, however inexplicably, the fifth day did not materialise). The claimant's representative stated that he did not have sufficient devices for a full CVP hearing and so a hybrid hearing was held.

4. The Tribunal heard evidence from Lorna Lee (Head of Social Care[1]), Stephanie Mills (Head of HR) and Alex Greenchester (Mr Bright's line manager and lead on Approved Mental Health Professionals). There was a witness statement from Harold Bright, the claimant's line manager. In the respondent's view, he was not fit to give evidence and the respondent did not call him, despite the hearing being a hybrid hearing. The claimant gave evidence on her own behalf.

5. The Tribunal had before it a bundle of approximately 700-pages. Unfortunately, the bundle was not in the format recommended by the Presidential Guidance for remote hearings dated 14/9/2020. In addition, some pages of the bundle were illegible or of very poor quality. Some pages had been recycled from a previous bundle, such that there were other page numbers appearing on them and the text was obscured where they had been previously hole-punched. Handwritten notes had not been transcribed. Some documents which had originally been in portrait format had been copied in landscape format, such that the entire page was not visible. That said, the index had been kept separate so that the page numbers on the electronic and hard copies were consistent, although the six sections were not easy to navigate. Prior to his closing submissions, Mr Milsom apologised on behalf of the respondent for the faults with the bundle. He also apologised to the claimant for the delay in processing her DBS check.

6. Mr Augustine made an application for documents to be added to the bundle which he said were crucial to the claimant's case. The documents which existed were added, however Mr Augustine did not refer to them

[1] Ms Lee works for Oxleas which had entered into a partnership agreement with the respondent under the National Health Service Act 2006 which provides a framework within which they exercise their various local authority and NHS functions by working together to achieve shared aims and outcomes.

during the course of the hearing. The Tribunal accepted the representations of the respondent's legal representatives, regarding what documents did exist and which were no longer available.

7. The intention was to read during the first morning of the hearing, however, the hearing did not commence until 10.50am due to connectivity issues. The first hour or so was taken up with various applications (further postponement applications by the claimant, applications to amend and for specific disclosure) until midday. The hearing resumed at approximately 12.40pm and Mr Augustine made a Rule 50 application, which took until 1.30pm; which Mr Augustine subsequently withdrew.

8. The Tribunal commenced the reading after the lunch adjournment. The timetable was then for Mr Augustine to complete his cross-examination of the respondent's three witnesses on day two, for Mr Milsom to cross-examine the claimant in the morning of day three and for closing submissions during the afternoon. Thus, leaving the fourth day for panel deliberations.

9. Both parties were in breach of the Tribunal's order in respect of exchanging witness statements. The respondent sent its witness statements to the claimant on Friday 4/12/2020.

10. Mr Augustine served the claimant's 66-page witness statement at approximately 3am on the second day of the hearing. He said that he had not reviewed the respondent's statements. Mr Milsom said that was precisely why the respondent's witness statements were served on the 4/12/2020 so as to give the claimant the weekend to prepare. Mr Augustine said that he had not read the respondent's witness statements as the claimant had not yet served her statement; so that there was a level playing field. How he chose to conduct the litigation was a matter for him and it was noted there was no embargo on the respondent's witness statement. In view of the late service of the claimant's statement, the Tribunal adjourned to read it until 11.30am on day two. This also provided time for Mr Augustine to prepare his cross-examination questions for the respondent's witnesses. Despite reminding Mr Augustine that the Tribunal did not have unlimited time, he spent the remainder of day two and the start of day three questioning Ms Lee (approximately three hours and 35 minutes).

11. In order to stick to the timetable as far as possible, Mr Augustine was given a further hour to complete his cross-examination on day three. Despite this, Mr Augustine and the claimant did not sign in at the Tribunal building until 9.52am. This meant that the hearing did not start at 10am as

anticipated. Mr Augustine took his time setting up and his cross-examination of Ms Lee started at 10.05am and continued until 10.45am. Of the allotted hour, this left Mr Augustine 15 minutes to complete his questions of the respondent's two remaining witnesses. Mr Augustine was then granted a further 20 minutes for each witness. He was then much more focused in his questions. Making these allowances, it took until lunchtime to conclude the respondent's case.

12. The hearing resumed at 1.25pm. Mr Milsom had indicated that he would be a half-day with his questions for the claimant. Half-way through the afternoon he was asked how he was progressing and he replied he would be finished by 4pm. Due to a Tribunal panel member's commitment, the hearing had to finish at 4pm. When it was pointed out that time was required for panel questions and any re-examination, Mr Milsom accepted that and said his questions would be completed by 3.45pm, which they did.

13. Mr Milsom had prepared written closing submissions and sent them to the Tribunal and claimant after the conclusion of the evidence on day-three. Mr Augustine was informed that if he wished to provide written closing submissions, they needed to be received by 10am on day-four. Mr Augustine sent his document at 10.01am and there was a short adjournment so that the document could be read. The supplementary oral submissions were completed by 11.15am, with the remainder of that day for deliberations. The Tribunal managed to finish deliberations on day-four but needed to reconvene in chambers on 8/1/2021 and on 14/1/2021 in order to complete its deliberations on the third claim.

The list of issues

14. The respondent produced a list of issues based upon the three pleaded claims. That list is appended to this Judgment.

Findings of Fact

15. The claimant is an approved mental health professional (AMHP) within the meaning of s. 114 Mental Health Act 1983. The claimant's primary employer is the London Borough of Lewisham (LBL) and she has worked for the respondent as a sessional worker since 2013. LBL is responsible for approving the claimant to act as an AMHP. The respondent however has to authorise the claimant to act on its behalf by issuing her with a warrant. The claimant was first authorised by the respondent and warranted on its behalf for a five-year period. That authorisation/warranty came up for renewal in 2018.

16. The first claim was presented on 5/8/2018 and it related to unauthorised deductions from wages, a breach of the Working Time Regulations 1998 by reason of a failure to pay holiday pay and a failure to provide written particulars of employment. A consent order was entered into on 2/7/2019 (pages A74-A75) which settled the holiday pay claim between the period 22/10/2016 to 18/8/2018. The reason for those specific dates was that that claimant did not work for the respondent during the period 1/1/2016 to 22/10/2016. There was therefore a break in work which generated holiday pay of almost 11-months. The two-year period calculated from 5/8/2018 was therefore 6/8/2016 as per s.23 (4A) ERA. The claimant is therefore prevented by s.23 (4A) ERA from making a claim in respect of the period 7/10/2013 to 22/10/2016. There is therefore no outstanding holiday pay due to the claimant in respect of the first claim.

17. In respect of the claim that there was a failure to provide written particulars of employment, the Tribunal finds that a written statement was provided to the claimant on 20/8/2013 (pages C25-C26). That statement complied with the requirements of s.1 ERA, save that it did not cover pensions/pension schemes and collective agreements. The Tribunal was told that the claimant subsequently joined the respondent's Nest pension scheme and that there were no collective agreements which applied to the claimant.

18. The claimant seeks compensation of £931 or alternatively £159,317 in respect of this part of her claim (page A105), that there was a failure to provide a written s.1 statement.

19. The issue in the second claim is whether or not the claimant was subjected to a detriment as a result of raising the issue of holiday pay.

20. The claimant's contract provided (page C25):

> 'Under regulation 13 of the Working Time Regulations, you are entitled to a pro-rata annual leave allowance, based on the hours you have actually worked. Your annual leave entitlement will be calculated and paid to you as an hourly payment via your monthly salary payments.'

21. At some point, the claimant discovered that she was not being paid holiday pay. According to the chronology, the claimant contacted Mr Bright on four occasions prior to sending him a letter.

22. The Tribunal is prepared to accept that the claimant contacted Mr Bright from January 2018 and the other personnel on the occasions she said she did. The respondent was her secondary employer and the claimant's preferred method of contact was by telephone. It is accepted she would

call Mr Bright and wait for him to act, before putting something in writing. The respondent accepts the claimant raised the issue of holiday pay in writing and so engaged the statutory protection on: 22/3/2018 (page A58); 22/5/2018 (page A59); 27/5/2018 (page A59); 17/7/2018 (page A62); and 5/8/2018 (the first claim). Ms Lee also accepted the matter was raised with her at a meeting on 10/5/2018 (page A58) and at a preliminary hearing on 12/9/2019 (page A133).

23. There are nine detriments listed paragraph 6 [i – ix]. The claimant withdrew the first detriment in the course of her evidence.

24. The Tribunal finds that the claimant's primary employer (LBL) was responsible for approving the claimant to work as a AMHP and the respondent then authorised the claimant to act on its behalf as a sessional AMHP and indeed the claimant accepted this.

25. The respondent did not reject the claimant's authorisation, the re-warranting panel on 29/6/2018 found the claimant did not meet one of the required competencies for its authorisation (page C51). The respondent set tasks for the claimant to undertake (such as to undergo child safeguarding training) and for steps for Mr Bright to take with a view to the claimant retaking the panel to be warranted for a further five-year period. The respondent extended the claimant's warrant until the 30/9/2018. After meeting with Mr Bright on 15/1/2019 (page C107) the claimant went before the panel again on 23/1/2019. On this occasion she was successful and the warrant was reissued on 15/2/2019, backdated to 21/1/2019 for five years (page C108).

26. The claimant was understandably upset by the panel's decision and felt it reflected badly upon her professionalism. When it was put to the claimant however, she said that having reflected, she could understand that the panel had a different perspective to her and could see why the panel did not find her answer was up to standard (even though she disagreed).

27. The panel was comprised of Ms Lee, Mr Bright and Mr Mark Reason - the service user representative and so an independent member.

28. The claimant accepted Mr Reason did not know of the holiday pay issue.

29. Mr Bright wanted the claimant to be re-warranted as soon as possible and he met with the claimant and contacted her to find out what was happening. He pointed out that the claimant had agreed to source the child safeguarding training with her primary employer.

30. Progress on rewarranting was hampered by the claimant's availability. It is not a criticism of the claimant, however, due to annual leave and her main commitment to her primary employer, she was unavailable for a large part from August 2018 until January 2019. On the 26/7/2018 she informed Mr Bright that she would be on annual leave from 22/8/2018 until 25/9/2018 and she gave two dates she was available in August (the main summer holiday period) and two days in September (page C71).

31. Mr Bright said to the claimant on 18/10/2018 when discussing the rewarranting process, that he was 'happy to move [his] diary around to accommodate the dates selected by you' (pages C79-80).

32. When the claimant raised the issue of holiday pay, Ms Lee did not initially understand what the issue was as Oxleas had an alternative method of processing holiday pay. The respondent can quite rightly be criticised for the delay in resolving this matter, such that it can be considered incompetent. The claimant raised the issue with Mr Bright and subsequently Ms Lee became involved. The claimant went through Acas early conciliation and even had to take the step of presenting a claim to the employment tribunal and still the respondent did not resolve the matter; although it appeared the respondent did not disagree that the claimant was entitled to holiday pay, albeit the respondent defended the claim on the basis of a gap in employment of more than three months.

33. The respondent settled the holiday pay claim for the period 22/10/2016 to 18/8/2018 on 2/7/2019 (pages A74-A75). The respondent did not therefore at the time the issue was raised in 2018 pay the claimant's holiday pay. The Tribunal finds the respondent did not withhold holiday pay as a result of the claimant asserting her right to holiday pay. The respondent had not paid the claimant any holiday pay since her contract started on 20/8/2013. It is clearly nonsensical to say that having not paid the claimant holiday pay in accordance with her contract since 2013, the respondent then changed its reason for not paying holiday pay from (the Tribunal finds) incompetence, to the reason being retribution for the claimant having asserted her statutory right to holiday pay.

34. The claimant then complained that the respondent 'withheld' her written statement of terms between January 2018 (or alternatively August (it is not clear which year)) and 20/4/2019. There is also a reference to the 2017 written particulars. Irrespective of the duplication, the Tribunal finds the claimant received the written particulars of employment in 2013 and signed to confirm receipt on 7/10/2013 (page C26).

35. The written particulars were updated in 2017 in that the rate of pay was changed. The claimant did not receive a written document confirming this. She said the detriment to her was not having a piece of paper to file away. That is not a detriment. There is no evidence that the claimant complained about this at the time. The other more obvious point is that not receiving an updated hard copy of the written terms in 2017 cannot be as a result of the claimant having raised holiday pay concerns in 2018.

36. The penultimate issue in the list of issues in the second claim (viii) referred to the matters set out in paragraphs 91 and 100 of the claim form. The Tribunal observes that the two paragraphs are largely identical (paragraph 91 covers matters (a) to (t) and paragraph 100 covers (a) to (s)). Many of the matters raised in those paragraphs have been addressed above. Others are purely management issues which the Tribunal finds have been raised as a matter of good practice and are not as a result of the claimant having raised holiday issues (such as (h)). Some are factually incorrect – such as the allegation that new conditions were imposed upon the claimant which had not been previously communicated to her (n). There was a delay in the claimant being rewarranted. That was however, in a large part, due to the claimant's unavailability. Her role at the respondent was her secondary role and so this is not an adverse comment. She quite properly prioritised her primary role. What with annual leave and her other commitments however, this did result in delays. Those delays were not the fault of the respondent and were not as a result of the claimant's holiday pay claim.

37. The Tribunal finds that the allegations made were simply not detriments. For example, requesting the claimant's dates of availability was not a detriment.

38. The final issue from the second claim referred to the claimant being subjected to a disciplinary process. That is factually incorrect and the claimant was never taken through a disciplinary process. She did go through the rewarranting process as referred to above. The claimant also states that she was prevented from raising a grievance. The claimant led no evidence-in-chief on this issue. The Tribunal finds that the claimant was not prevented from raising a grievance and there was no animosity or hostility towards her as a result of her raising the holiday pay issue.

39. Again, it is not a critique of the claimant, however she did lack impetus and vigour in following the steps put in place to be rewarranted. The Tribunal notes that once those steps had eventually been taken by the claimant, she met with Mr Bright on 15/1/2019 and two dates were set for the rewarranting a week later (page C107) . The claimant's warrant had been temporarily extended and the claimant did not ask for a further extension

of her warrant. The claimant informed Mr Bright on 10/8/2018 that her availability had significantly changed and she had no space in her diary to meet until the week of 22/10/2018 (page C73). After referring to a 'recent' telephone conversation, the claimant wrote to Mr Bright on 5/10/2018 (page C77). There was an email exchange between 18/10/2018 and 22/10/2018, when the claimant suggested meeting on 8/11/2018, 9/11/2018, 13/11/2018 and 16/11/2018 (pages C79-C83). A supervision meeting took place on 9/11/2018 (page C91). Mr Bright emailed the claimant on 23/11/2018 and observed that the claimant had said that she did not think she would have any availability 'this side of Christmas' (page C97). Mr Bright said:

> 'I reiterated that I was keen to get you back on the rota and that the delay in achieving this would be as a result of you not being able to confirm your availability for the panel.'

40. Mr Bright emailed the claimant on 14/1/2019 saying (page C104):

> 'I have tried to call you today with no joy.'

41. A 'final meeting with [the claimant] to complete AMHP approval/plan' took place between the claimant and Mr Bright on 15/1/2019 (page C107). Mr Bright also reported to Ms Lee on the same date that all tasks had been completed (page C106).

42. In respect of the child safeguarding training, at the panel on 29/6/2018 that task was given to the claimant and in cross-examination, she agreed that she would seek that training via her primary employer. That took time and the claimant underwent the training in late November 2018 (C107). Had the claimant been able to undergo the training sooner and had she been available, the Tribunal finds that the process would have concluded much earlier.

43. Mr Bright wanted the claimant to be rewarranted as soon as possible. Once the claimant was passed by the panel, the warrant was issued on the 15/2/2019. According to the time-sheets, the claimant then worked a shift on 17/2/2019 and on other occasions in February and March 2019 (pages C137-C140). This demonstrates to the Tribunal that once the steps to be rewarranted had been completed, that the rewarranting process itself and getting the claimant back working shifts, all took place within a short period of time.

44. The rewarranting was a two-way process and input, cooperation and availability from the claimant was required, although with participation from

Mr Bright. Which Mr Bright provided once the claimant had done what she needed to do.

45. The issues to be determined in the third claim are set out as at paragraph 6 [x – xx] in the list of issues.

46. It is accepted the claimant's claim for failure to pay holiday pay was discussed at the preliminary hearing on 12/9/2019 and that fact is recorded in Employment Judge Tsamados' order (page A107).

47. The first allegation is that on 20/9/2019 the respondent failed to recognise the claimant as an AMHP by reason of pursuit and enforcement of the DBS issue. The Tribunal finds the respondent did not fail to recognise the claimant as an AMHP and that is nonsense to say so. In respect of the updated DBS certificate, the Tribunal accepts the respondent's view that it is correct to require an updated certificate every three years. The role required DBS clearance. The respondent would require this irrespective of whether or not the claimant had raised the holiday pay issue. The claimant's second DBS certificate was issued on 3/5/2016 and the respondent was entitled to require the claimant to obtain a renewed certificate if it were to continue to the authorised the claimant to act for it.

48. On 15/2/2019 Jill Giddings, the Administrator for the Agency and Recruitment Team emailed the claimant (C142). Ms Giddings enquired about the certificate issued on 3/5/2016. The Tribunal finds Ms Giddings knew nothing of the holiday pay issue. Ms Gidding's email was however quite aggressive in that it appears the respondent had realised that it did not have on record the certificate from 2016. Ms Giddings said in the second sentence that not producing the certificate may lead to disciplinary action and that the renewal was due soon. This email was sent to the claimant's NHS email address. On 21/3/2019 Ms Lee sent a follow-up email to the claimant to enquire whether or not she had produced her DSB certificate for checking further to Ms Giddings' email (pages C141-C142).

49. Ms Greenchester joined the respondent on 1/7/2019 as the Lead Social Worker. She line managed Mr Bright. The Tribunal finds she took a very effective approach and certainly demonstrated a more professional management style. The consent order relating to and resolving the first claim was signed on 2/7/2019. The Claimant's July 2019 payslips shows a payment 'compromise agreement' of £3383 paid on 22/7/2019 (page D11). A telephone Preliminary Hearing in respect of the first and second claims took place on 24/7/2019 (page A99-A101). Directions were given for various steps to take place in August 2019 and a hearing was listed for 12/9/2019.

50. The claimant was however unaware of the respondent's agitation with her over the 2016 DBS certificate and the renewal. More (five) emails were sent, however the claimant was unaware of them; she did not use the NHS email account and so she did not see them. She continued to work for the respondent and her sessions were shown on her payslips (pages D8-D12).

51. Mr Bright then emailed the claimant on 20/9/2019 and suggested she should have a DBS certificate for LBL and that she could produce that[2] to resolve this matter. On 19/9/2019 Mr Bright emailed the claimant at her LBL email address (page C194). There was a side issue raised about Ms Giddings' statement that if the role was designated as requiring a DBS certificate *as stated in your contract* and then went on again to threaten disciplinary action (page C204). The claimant's contract did not contain such a requirement. The Tribunal finds however that the nature of the claimant's role would mean that a DBS certificate as per the respondent's procedure was required and that it was a reasonable management instruction for her to produce or to obtain one.

52. Mr Bright emailed the claimant, again at her NHS email address on 26/9/2019 and finally said that no more sessions would be offered to the claimant until she had met with Ms Giddings and satisfied the respondent in respect of the DBS certificate.

53. The claimant responded on 30/9/2019 from her AOL email address and confirmed this outstanding matter had only come to her attention on 19/9/2019 (page C210).

54. Whatever requests the claimant had made regarding the respondent's method of contacting her, the Tribunal was surprised that if the DBS certificate was outstanding from 2016, not only was the claimant allowed to continue to work for the respondent, but that the respondent did not seek out other methods of contacting the claimant sooner. Either, the claimant should have been directed to use her NHS email only, in respect of the respondent's communications; or, if it was permissible to use a private email address, then that should have been used. Furthermore, on this extremely important public protection issue, the respondent should have made direct contact with the claimant, for example, contacted her by telephone.

55. All the respondent's ineptitude aside, the fact is that not only was the DBS renewal issue not related to the holiday pay issue (it was driven by Ms

[2] The respondent wanted sight of the actual certificate, not a scanned copy.

Giddings and she was not aware of the holiday pay issue) there was no detriment to the claimant as she was unaware of it.

56. Ultimately, once the claimant was aware of the DBS renewal issue, she applied for a certificate on 4/10/2019 and it was issued on 4/11/2019. It is not clear to the Tribunal what action the respondent took over the 2016 certificate and how it maintained its audit trail in that respect. Against this background, the Employment Tribunal preliminary hearing listed for 12/9/2019 went ahead (pages A107-113). At that hearing, various preliminary matters were addressed, directions were given and the final hearing (this hearing) was listed.

57. The claimant's next detriments are in relation to the allocation of shifts from 19/9/2019 and upon resolution of the DBS issue, up until the presentation of the third claim on 15/2/2019. As far as the claimant was concerned, she applied for and was issued with a DBS certificate on 4/11/2019. She gave availability to Mr Bright and for the first time when she had made herself available for shifts, she was not allocated any for that quarter. There had been a preliminary hearing on 12/9/2019 at which the holiday pay claim was further discussed. The Tribunal can understand why the claimant may then link the failure to offer her any shifts, to the holiday pay claim. This was raised by the claimant to Mr Bright on 26/1/2020 and apart from Mr Bright acknowledging the email, the Tribunal was not provided with detail of any further action taken by the respondent (page 264).

58. In fact, what was going on in the background, unbeknown to the claimant, was that on 15/11/2019 Ms Giddings raised an issue with the claimant's completion of the DBS application, which she had assisted the claimant in making on 4/10/2019[3].

59. The Tribunal finds this issue was the reason why shifts were not offered (on the two days the claimant was available in February 2020 that is within the scope of this claim). The Tribunal finds the respondent was grossly incompetent in not only its dealings with the claimant, but completely disregarded its obligations in respect of public protection. Not only did the respondent not have, on its own case, the claimant's DBS certificate from 2016, it allowed her to continue to work (page D8-D12). The respondent had no record of the 2016 certificate and allowed the claimant to continue to work until September 2019, when it[4] knew the certificate was due to be renewed upon the expiry of the 2016 certificate on 2/5/2019. It is highly unsatisfactory that the respondent's failings are exposed and that there

[3] There is no copy of the original application available.
[4] Ms Giddings, Ms Lee, Ms Greenchester and Mr Bright.

does not appear to be any concern over them. No-one at the respondent took any responsibility for this issue.

60. The Tribunal finds, that there was no causal link between the failure to offer the claimant any shifts after September 2019 and the claimant's holiday pay claim. The claimant was never however, put on notice of the respondent's concern over the DBS application in October 2019 and it is therefore understandable, that the claimant did make that link and the result was this element of her claim. It is a detriment not to be offered shifts, when the claimant had made herself available and when in the past shifts had always been offered. The failure to offer the shifts however is not because the claimant had made a claim for holiday pay claim. The Tribunal finds that the reality was, of the personnel who knew of the holiday claim (Ms Giddings excluded as she did not know of it) that they were not concerned[5] about the claim for holiday pay and did not subject the claimant to detriments as a result of the claim.

61. The claimant alleges that she was accused of having failed to complete three reports and this was a detriment as a result of her claiming holiday pay. At a supervision session on 6/10/2019 Mr Bright informed the claimant she had some reports outstanding and the claimant responded that she was certain that was not the case (page C217). The claimant replied on 9/10/2019 and said she would look at her own records to see if there was anything outstanding (page C221). The Tribunal finds this was simply an administration issue and that it being raised was as a result of Ms Greenchester's more thorough approach since she had joined the respondent. Ms Greenchester confirmed on 21/11/2019 to the claimant there were no outstanding reports. The Tribunal finds this was a reasonable management enquiry and nothing more.

62. A further alleged detriment is delaying payment of a pay claim made by the claimant in October 2019 for the sum of £75[6] (page C225-C225). The claim was made after the cut-off date for processing payments in October 2019. Mr Bright was also absent during some of this time and the Team Administrator was also absent. It is correct to say the claimant chased the payment. The payment was processed and paid on 22/1/2020 (page D19). The payment was delayed; however the Tribunal finds that the reason for the delay was not that the claimant had claimed holiday pay. The reason for the delay was the demonstrated general incompetence.

63. The penultimate allegation was that the respondent had failed to provide the claimant with a log book. The Tribunal was told the log book was in

[5] Although they should have been and this is another unimpressive failing.
[6] The size of the pay claim is irrelevant.

fact a note book. There were various emails exchanged and it was clear that a log book had been provided to the claimant. She rearranged various meetings to collect the log book and by the time she attended the office, the log book had been appropriated by another colleague. There was no failure, a log book had been provided, it had however been removed by the time the claimant collected it (pages C232, C233, C237 and C248). In any event, the claimant said in evidence she kept her own log/record. The Tribunal finds that as a professional she would do so, irrespective of being provided with a note book by the respondent.

64. The final allegation is that the claimant was marginalised, including the 'expulsion of her from AMHP team events email invitations'. This is a very dramatic description of what actually happened. On 16/1/2020 Mr Bright emailed the AMHP team regarding a belated festive event planned for the 24/1/2020 (page C260). Less than 24-hours later, Mr Bright realised the claimant had not been on the original invitation and forwarded the email to her (C259). Mr Bright apologised for the original omission and asked the claimant to let him know if she wished to attend. On 17/1/2020 due to the number of apologies for the event, Ms Greenchester postponed it on 20/1/2020 (page C261).

65. The claimant was simply not expelled from team events. She was invited to the event less than 24-hours after the original invitation had been sent. Furthermore, the claimant was not marginalised. She was invited to the event along with her colleagues, albeit the event did not subsequently take place.

66. The lack of competency of the respondent has been demonstrated throughout the findings of the Tribunal and although it does the respondent no credit whatsoever, the Tribunal is prepared to accept the failings are purely ineptitude and are not related to the holiday pay claim. The Tribunal has already found that the respondent bore no ill will towards the claimant as a result of the holiday pay claim.

The Law

67. The claimant claims a failure to provide a written statement of employment particulars under s. 1 Employment Rights Act 1996 (ERA). At the relevant time, that section provided:

> **1 Statement of initial employment particulars.**
>
> (1) Where an employee begins employment with an employer, the employer shall give to the employee a written statement of particulars of employment.

(2) The statement may (subject to section 2(4)) be given in instalments and (whether or not given in instalments) shall be given not later than two months after the beginning of the employment.

(3) The statement shall contain particulars of—

(a) the names of the employer and employee,

(b) the date when the employment began, and

(c) the date on which the employee's period of continuous employment began (taking into account any employment with a previous employer which counts towards that period).

(4) The statement shall also contain particulars, as at a specified date not more than seven days before the statement (or the instalment containing them) is given, of—

(a) the scale or rate of remuneration or the method of calculating remuneration,

(b) the intervals at which remuneration is paid (that is, weekly, monthly or other specified intervals),

(c) any terms and conditions relating to hours of work (including any terms and conditions relating to normal working hours),

(d) any terms and conditions relating to any of the following—

(i) entitlement to holidays, including public holidays, and holiday pay (the particulars given being sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated),

(ii) incapacity for work due to sickness or injury, including any provision for sick pay, and

(iii) pensions and pension schemes,

(e) the length of notice which the employee is obliged to give and entitled to receive to terminate his contract of employment,

(f) the title of the job which the employee is employed to do or a brief description of the work for which he is employed,

(g) where the employment is not intended to be permanent, the period for which it is expected to continue or, if it is for a fixed term, the date when it is to end,

(h) either the place of work or, where the employee is required or permitted to work at various places, an indication of that and of the address of the employer,

(j) any collective agreements which directly affect the terms and conditions of the employment including, where the employer is not a party, the persons by whom they were made, and

…

68. S.11 ERA provides

**11 References to employment tribunals.**

(1) Where an employer does not give a worker a statement as required by section 1, 4 or 8 (either because the employer gives the worker no statement or because the statement the employer gives does not comply with what is required), the worker may require a reference to be made to an employment tribunal to determine what particulars ought to have been included or referred to in a statement so as to comply with the requirements of the section concerned.

69. S.12 ERA provides:

**12 Determination of references.**

(1) Where, on a reference under section 11(1), an employment tribunal determines particulars as being those which ought to have been included or referred to in a statement given under section 1 or 4, the employer shall be deemed to have given to the worker a statement in which those particulars were included, or referred to, as specified in the decision of the tribunal.

(2) On determining a reference under section 11(2) relating to a statement purporting to be a statement under section 1 or 4, an employment tribunal may—

(a) confirm the particulars as included or referred to in the statement given by the employer,

(b) amend those particulars, or

(c) substitute other particulars for them,

as the tribunal may determine to be appropriate; and the statement shall be deemed to have been given by the employer to the worker in accordance with the decision of the tribunal.

(3) Where on a reference under section 11 an employment tribunal finds—

(a) that an employer has failed to give a worker any pay statement in accordance with section 8, or

(b) that a pay statement or standing statement of fixed deductions does not, in relation to a deduction, contain the particulars required to be included in that statement by that section or section 9,

the tribunal shall make a declaration to that effect.

70. The claimant claims the respondent made unauthorised deductions from her wages contrary to s. 13 ERA:

**13 Right not to suffer unauthorised deductions.**

(1) An employer shall not make a deduction from wages of a worker employed by him unless—

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

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

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

(7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer.

71. S. 23 ERA provides:

**23 Complaints to employment tribunals**

(1) A worker may present a complaint to an employment tribunal—

(a) that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18(2)),

(b) that his employer has received from him a payment in contravention of section 15 (including a payment received in contravention of that section as it applies by virtue of section 20(1)),

(c) that his employer has recovered from his wages by means of one or more deductions falling within section 18(1) an amount or aggregate amount exceeding the limit applying to the deduction or deductions under that provision, or

(d) that his employer has received from him in pursuance of one or more demands for payment made (in accordance with section 20) on a particular pay day, a payment or payments of an amount or aggregate amount exceeding the limit applying to the demand or demands under section 21(1).

(2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—

(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or

(b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.

(3) Where a complaint is brought under this section in respect of—

(a) a series of deductions or payments, or

(b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates, the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

…

(4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

(4A) An employment tribunal is not (despite subsections (3) and (4)) to consider so much of a complaint brought under this section as relates to a deduction where the date of payment of the wages from which the deduction was made was before the period of two years ending with the date of presentation of the complaint.

72. The claimant also alleges she was subjected to a detriment as a result of claiming holiday pay under the Working Time Regulations 1998 (WTR) per s. 45A ERA:

**45A Working time cases.**

(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker—

… (a) refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of the Working Time Regulations 1998,

(b) refused (or proposed to refuse) to forgo a right conferred on him by those Regulations,

(c) failed to sign a workforce agreement for the purposes of those Regulations, or to enter into, or agree to vary or extend, any other agreement with his employer which is provided for in those Regulations,

(d) being—

(i) a representative of members of the workforce for the purposes of Schedule 1 to those Regulations, or

(ii) a candidate in an election in which any person elected will, on being elected, be such a representative,

performed (or proposed to perform) any functions or activities as such a representative or candidate,

(e) brought proceedings against the employer to enforce a right conferred on him by those Regulations, or

(f) alleged that the employer had infringed such a right.

73. In submissions, it was said the claimant had brought a breach of contract claim under The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (SI 1994/1623).

> **4.** Proceedings may be brought before an industrial tribunal in respect of a claim of an employer for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if—
>
> (a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine;
>
> (b) the claim is not one to which article 5 applies;
>
> (c) the claim arises or is outstanding on the termination of the employment of the employee against whom it is made; and
>
> (d) proceedings in respect of a claim of that employee have been brought before an industrial tribunal by virtue of this Order.

74. A detriment has been held to be 'putting under a disadvantage' and 'exists if a reasonable worker would or might take the view that [the action of the employer] was in all the circumstances to his detriment' (MoD v Jeremiah 1980 ICR 13), 'disadvantaged in the circumstances and conditions of work' (De Souza v AA 1986 ICR 513 CA, or simply a 'disadvantage' (Porcelli v Strathclyde Regional Council 1986 ICR 564).

Conclusions

75. When the claimant gave evidence, she did not really appear to understand her claims. A 66-page witness statement was served at approximately 3am on the second day of the hearing and although the claimant adopted it as her evidence-in-chief, she did not appear to be familiar with it. The claimant also looked to Mr Augustine for prompting when she gave her evidence.

76. Mr Augustine referred to an application to amend or to presenting a fourth claim further to matters which had arisen after the third claim was presented on 15/2/2020. It was pointed out to Mr Augustine that an application to amend could only be considered if the full application was set out in writing and no such application had been made in advance of this hearing. If a fourth claim was presented, then that would be heard separately as these three claims had been case managed to be effective

at this hearing in the time-frame allotted. Mr Augustine did not make an application during the course of the hearing .

77. In the first claim, there was no unauthorised deduction from the claimant's wages which was live before the Tribunal. This was as a result of the consent order and s.23 (4A) ERA. The claimant cannot bring a claim in respect of any deductions which pre-dated 6/8/2016. It is accepted the respondent did not correctly pay holiday pay from the start of the claimant's employment until the matter was resolved. As unfair as it may seem however, the claimant does not have a legal claim (it is accepted she has a moral one) for any further holiday pay.

78. The claimant's claim under the ERA or alternatively under the WTR therefore fail and are dismissed.

79. The Tribunal finds there was no failure to provide written particulars of employment. Written particulars were provided, although two of the required elements were missing. This was not a case where there was a complete and abject failure to comply with s.1 ERA. There was substantive compliance by the respondent.

80. The monetary 'punishment' for a failure to provide a written statement is an award of two or four weeks' pay. That sum is capped at a week's pay for the purposes of s.227 ERA. The Tribunal views this compensation as a 'slap on the wrist' for an employer who fails to provide written particulars.

81. The Tribunal declines to make an award of compensation under s. 38 Employment Act 2002 (EA) as written particulars were provided. In the alternative, the Tribunal relies upon s. 38 (5) EA and finds that the failure to provide two items in the written particulars render it an exceptional circumstance that any award under s. 38 would be unjust and inequitable.

82. In respect of issues x to xx in the third claim:

    x. The respondent did not fail to recognise the claimant as an AMHP, irrespective of the DBS issue.

    xi. The claimant was not aware of the respondent's pursuit of the DBS issue. The only inappropriate matter was Ms Giddings' aggressive threat of disciplinary action. Ms Giddings was not aware of the holiday pay issue and so the was not motivated by that. Ms Giddings' motivation was to correct the respondent's lax record keeping.

xii. The respondent was not diligent in following up the lack of response from the claimant and did not take practical and proactive steps in this regard. The claimant was not aware of this until 19/9/2019. The claimant worked shifts between March and September 2019.

xiii. The respondent attempted to bring the DBS issue to the claimant's attention, but it did not do so as the claimant did not use her NHS email address; although the respondent was not aware of this. Clearly, once the claimant was made aware of the need to renew her DBS certificate, she did so promptly.

xiv. The respondent did not, in reality, offer the claimant shifts from September 2019 until the presentation of the third claim on 15/2/2020 and the reason for that was the concern the respondent had regarding the 4/10/2019 DBS application. The reason was not that the claimant had raised or had claimed holiday pay.

xv. The renewal of the DBS certificate was resolved on 4/11/2019. Following that, the respondent did not in effect offer any shifts to the claimant once Ms Giddings raised the issue of the DBS renewal application. The lack of shifts offered was not as a result of the claimant's claim for holiday pay.

xvi. The issue of incomplete reports was raised with the claimant. This was a management query and unrelated to the holiday pay claim.

xvii. Ms Greenchester confirmed to the claimant there were no reports outstanding. It was not a detriment in the circumstances to raise a query and for it to be answered.

xviii. The delay in the October 2019 pay claim was due to administrative failings.

xix. A log book was provided. It was appropriated. The claimant did not complain about this at the time, indicating it was not a real concern.

xx. The claimant was not marginalised or expelled from the team event email invitation.

83. The Tribunal wishes to record its significant concerns at the respondent's conduct in this case. In short, the claimant identified and raised the issue of a failure to pay her holiday pay. The respondent realised there was a failure and admitted the same. During the period January 2018 to August 2018 the respondent took no effective steps to remedy this. Instead, as a result of its inaction, it forced the claimant to participate in Acas early conciliation and then to present the first claim to the Tribunal. In its response to the claim, the respondent admitted holiday pay was owed to the claimant, but defended itself by saying the issue was complicated. It was not a complicated issue as the resulting calculation and payment showed. Not only was the respondent wasting its own resources and therefore public funds, as a result of the claimant's claim, it resulted in further scarce and limited public resources being wasted in the Tribunal. The respondent's failure to calculate and pay the holiday pay resulted in two preliminary hearings, this six-day hearing and in the claimant bringing two (at this point in time) further claims which arose out of the failure to pay holiday pay which it admitted was properly due. The respondent has not, for example, offered an apology to the claimant over the failure to pay holiday pay in the first place and even once it acknowledged holiday pay was due, to calculate and pay that sum to the claimant promptly. It made the claimant wait from January 2018 until July 2019 and that is not acceptable. The Tribunal is affronted at the respondent's blasé attitude to a worker, working in a highly regulated area of work, where resources are scarce[7]. The respondent had a long-serving, capable[8] and experienced AMPH available to it in the claimant and yet through a complete lack of consideration and acceptance of any fault on its part, caused her to decide to retire.

84. This was compounded by the lax attitude over the DBS certificate. Not only was the respondent unreasonably aggressive towards the claimant (although she was not aware of it at the time), it had no record of the claimant's 2016 DBS certificate and it then continued to let the claimant work until 26/9/2018. During that period, it appears the respondent had no proof of the existence of the 2016 certificate and the updated certificate was not issued until 4/11/2019.

85. The breach of contract claim fails. There was not contractual entitlement as alleged by the claimant and therefore, no breach.

[7] The respondent advertised for sessional AMPHs on 9/3/2020 (pages C267-C268).
[8] Notwithstanding the rewarranting issue as this was one competency and was subsequently resolved.

86. Finally, there is no claim under the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (SI 1994/1623) as there is no claim arising on the termination of employment.

29/1/2021

Employment Judge Wright

**Case No: 2302910/2018**

**2301393/2019 and 2300635/2020**

**In the London South Employment Tribunal**

**BETWEEN:-**

**Ms P Sergeant**

Claimant

**- and -**

**Royal Borough of Greenwich**

Respondent

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**Consolidated List of Issues**

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This hearing is listed to determine three consolidated claims only:

1. Claim No. 230910/2018 presented on 5 August 2018 alleging unlawful deduction from wages, a breach of the Working Time Regulations 1998 on the grounds of having failed to pay a leave allowance and a failure to provide particulars of employment contrary to s1 ERA 1996 (**Claim One**);

2. Claim No. 2301383/2019 presented on 20 April 2019 presented on 20 April 2019 alleging detriment on the grounds of having alleged a WTR infringement and/or brought WTR proceedings contrary to s45A(1)(e) and (f) ERA 1996 (**Claim Two**);

3. Claim No 2300635/2020 presented on 15 February 2020 alleging breach of contract, further WTR-related detriments contrary to s45A(1)(e) and (f) ERA 1996, unlawful deduction from wages and a failure to provide written particulars of employment (**Claim Three**).

**Unlawful Deduction from Wages**

1. Any liability for unlawful deduction from wages for the period from 22 October 2016 to 18 August 2018 has been compromised.

2. The Claimant pursues an unlawful deduction complaint for the period 7 October 2013 until 22 October 2016. This claim was pursued by way of **Claim One** presented on 5 August 2018.

   i. Is that complaint time-barred in view of a gap in excess of three months and the two-year period? The Respondent avers that there have been periods of more than three months between two separate deductions.

   ii. What sums are said to be due and on what grounds? These have not to date been quantified by the Claimant.

   iii. Are these sums liable to be paid? The Claimant avers that such sums were due pursuant to s13 (1) ERA 1996 and Regs.13(1), 13A(1) and 16(1) Working Time Regulations 1998.

3. The Claimant also pursues a complaint of unlawful deductions for the period from 4 October 2019 to 22 January 2020: [30] p.A139 **Claim Three**:

   i. What sums are said to be due and on what grounds? These have not to date been quantified by the Claimant;

ii. Are these sums liable to be paid pursuant to s13 ERA 1996? The Respondent avers that in view of there being no contractual obligation to provide or accept work there can be no liability.

iii. Do they form part of a series of deductions?

**Working Time Detriment Claim (s45A ERA 1996)**

4. It is accepted that **Claim One** presented on 5 August 2018 constitutes the bringing of proceedings for the purposes of s45A(1)(f) ERA 1996.

5. Did the Claimant make an allegation of the infringement of a right conferred by the WTR pursuant to s45A(1)(e) ERA 1996? She relies upon the following:

***Claim Two***

i. A telephone call to Harold Bright (HB) on or around 8 January 2018 as set out at [15] p.A58;

ii. A telephone call to HB on or around 29 January 2018 [15] p.A58;

iii. A telephone call to HB on or around 12 February 2018 [15] p.A58;

iv. A telephone call to HB on or around 5 March 2018 [15] p.A58;

v. A letter to HB dated 22 March 2018: [17] p.A58;

vi. A telephone call to Harinder Jutla of HR on or around 6 March 2018 [16] p.A58;

vii. A telephone call to Niamh Moore of payroll on or around 6 March 2018 [16] p.A58;

viii. A telephone call to Rudy Forde on or around 5 April 2018 [16] p.A58;

ix. A telephone call to “Elaine” of payroll on or around 19 April 2018 [16] p.A58;

x. A telephone call to Herminder Chana of HR on or around 3 May 2018 [16] p.A58;

xi. An in-person meeting with Lorna Lee on 10 May 2018: [19] p.A58;

xii. An email to Lorraine Regan cc'ing Lorna Lee on 22 May 2018: [21] p.A59;

xiii. A request for early conciliation to ACAS on 27 May 2018: [22] p.A59;

xiv. An email to Stephanie Mills on 17 July 2018: [44] p.A62.

***Claim Three (in addition to the above)***

xv. Representations made at the preliminary hearing before the ET on 12 September 2019: [12(o)] p.A133

6. The Claimant relies upon the following alleged acts of detriment:

***Claim Two***

i. The imposition of a requirement for approval and/or authorisation between June 2018 and 15 February 2019: [84] and [93] pp.A66-7 and A71;

ii. The rejection of full authorisation between 29 June (or alternatively 5 August) and 15 February 2019: [85] and [94] pp.A69 and A71;

iii. Precluding the Claimant from undertaking shifts between 1 October 2018 and 15 February 2019: [86] and [95] pp.A69 and A71;

iv. Withholding holiday pay between January 2018 and 20 April 2019: [87] and [96] pp.A69 and A71;

v. Withholding written particulars of employment between January 2018 (or alternatively 5 August) and 20 April 2019: [88] and [97] pp.A69 and A71;

vi. Withholding the 2017 particulars of employment between January 2018 and 20 April 2019: [89] and [98] pp.A69 and A71-2;

vii. Imposing requirements for authorisation between 29 June 2018 and 15 February 2019: [90] and [99] pp.A69 and A72;

viii. Those matters set out at [91] and [100] p.A70;

ix. Subjecting the Claimant to a disciplinary process and preventing the Claimant from raising a grievance: [92] and [101] pp.A70-73.

***Claim Three***

x. On 20 September 2019 failing to recognise the Claimant as an AMHP for the purposes of s114 Mental Health Act 1983 by reason of pursuit and enforcement of the DBS issue: [36(a)] p.A143;

xi. Pursuing and enforcing the DBS issue in circumstances where it was unnecessary and inappropriate: [36(b)] p.A143;

xii. Failing to provide the Claimant by telephone and/or Usual Contact Mediums with sufficient notice of the DBS issue before enforcing the DBS issue and precluding the Claimant from undertaking further shifts between 15 March and 19 September 2019: [36(c)] p.A143;

xiii. Failing to bring the DBS issue to the Claimant's attention and/or communicating the issue to her using Usual Contact Mediums between 15 March and 19 September 2019: [36(d)] p.A143;

xiv. Refusing and failing to offer the Claimant shifts from 19 September 2019 on the basis of the DBS issue or otherwise: [36(e)] p.A143;

xv. Failing to offer the Claimant shifts upon resolution of the DBS issue: [36(f)] p.A143;

xvi. Accusing the Claimant of having failed to complete 3 AMHP reports on 8 October 2019 [36(g)] p.A144;

xvii. Failing to substantiate, rectify resolve or withdraw the reports accusation: [36(h)] p.A144;

xviii. Delaying payment of the Claimant's pay claim: [36(i)] p.A144;

xix. Failing to provide the Claimant with a log book: [36(j)] p.A144;

xx. Marginalising the Claimant including expulsion of the Claimant from AMHP team events email invitations: [36(k)] p.A144

7. Are these detriments well-founded on the facts?

8. To the extent any detriment is well-founded, was the Claimant so treated on the ground that she had:

   i. Presented Claim One and thereby brought proceedings to enforce a working time right; or

   ii. Alleged that the Respondent had infringed such a right?

**Breach of Contract**

9. The Claimant relies upon the following matters: [35] p.A142:

   i. Refusal to offer shifts from 19 September 2019;

   ii. Failure to offer shifts from 19 September 2019 by reason of the DBS issue or otherwise;

   iii. Enforcement and pursuit of the Claimant's provision of the DBS certificate;

   iv. Failure to contact the Claimant by telephone to inform the Claimant of the DBS issue or of any threat to her future allocation of shift offers from the Respondent;

   v. Delayed payment of the Claimant's due wages between 25 October and 22 January 2020.

10. Are these allegations well-founded on the facts?

11. If so, do they constitute a breach of contract? The Respondent avers that the complaint is misconceived in view of the fact that there is no overarching contract of employment and no obligation to offer or accept work.

**Failure to Provide Particulars Compliant with Section 1 ERA 1996**

12. It is accepted that the contract at pp.C25-6 is an accurate reflection of the terms between the parties: [4] pp.A128-9. The Claimant avers that the following particulars are absent from her contract:

    i. Applicable pension schemes;

    ii. The parties' respective notice requirements and periods;

    iii. The Claimant's place or places of work along with the address of the Respondent;

    iv. Any applicable collective agreements;

    v. Any applicable disciplinary rules;

    vi. Any procedure applicable to the taking of disciplinary decisions relating to the Claimant or a decision to dismiss the Claimant; and

    vii. A person to whom and the manner in which redress could be sought by the Claimant for any grievance.

13. Are these provisions lacking from the terms? If so, are such terms required pursuant to ss1-2 ERA 1996? The Respondent avers that shift contracts are outside the scope of the s1 requirements.

14. To the extent that any claim within Schedule 5 is upheld and there has been a contravention of ss1-2 ERA 1996 the Claimant seeks an award of four weeks' pay in respect of each contracted shift. This was last quantified at £159,317.28.

15. Should an award be paid pursuant to s38 Employment Act 2002? The Respondent avers that:

    i. The conditions of s38(5) Employment Act 2002 are satisfied such that no award should be made; and

    ii. Absent a requirement to work there is no sustainable basis to calculate a week's pay and as such no sum can be awarded.

**Remedy**

16. To the extent that any claim succeeds, what is the appropriate remedy having regard to the following:

    i. The absence of mutuality of obligations between assignments;

    ii. The lack of jurisdiction to make awards for injury to feelings following *Santos Gomes v Higher Level Care Ltd* [2018] 2 All ER 740.