



EMPLOYMENT TRIBUNALS

Claimant: Mr J Armstrong

Respondent: Incremental Group Limited

Heard at: Manchester **On:** 1 & 2 February 2021

In chambers: 22 March 2021

Before: Employment Judge Porter (sitting alone)

Representation

Claimant: Mr B Williams of counsel

Respondent: Ms L Rennie of counsel

RESERVED JUDGMENT

The judgment of the tribunal is that:

1. The respondent made an unlawful deduction from wages within the meaning of s13 Employment Rights Act 1996 by failing to pay to the claimant commission.
2. The respondent is ordered to pay to the claimant the sum of £46,470.

REASONS

Issues to be determined

1. At the outset of the hearing counsel for the claimant provided a revised List of Issues – termed as a narrowing of the Issues. After an adjournment that document was agreed by counsel for the respondent. This is a claim of

unlawful deduction wages in relation to the non-payment of commission. It was agreed that the claimant was eligible to receive a commission payment if he had achieved his Q3 target of £848,250.

2. The respondent accepted that the following opportunities could legitimately be counted towards the claimant's quarterly and Cumulative SGP:

- 2.1. OPP-002100 with a Sold Gross Profit (SGP) of £19,810;

- 2.2. OPP-002533 with a SGP of £746,209 ; and

- 2.3. OPP-03422 with a SGP of £78,867.

3. This gave a total SGP of £844,886 against a target of £848,250. The respondent asserted that commission for Q3 was not properly payable because the claimant had failed to achieve the cumulative quarterly target. It did not accept that the following opportunities could legitimately be counted towards the claimant's quarterly and cumulative SGP:

- 3.1. OPP-002959 with a SGP of £4,500

- 3.2. OPP-003100 with a SGP of £4,500

4. The issue to be determined is whether the Sold Gross Profit (hereinafter referred to as "SGP") for the disputed opportunities OPP-002959 and/or OPP-003100 ought to be included within the Claimant's Cumulative SGP target for Q3.

Orders

5. A number of orders were made for the conduct and good management of the proceedings during the course of the Hearing. In making the orders the tribunal considered the overriding objective and the Employment Tribunals Rules of Procedure 2013. Orders included the following:-

- 5.1. It was agreed and ordered that for the purpose of this judgment the clients of the respondent should be anonymised. In exchange of written submissions the parties agreed the anonymisation by reference to the named clients as Company A, Company B and Company C. A formal Anonymisation Order has been sent under separate cover.

- 5.2. It was agreed and ordered that additional documents disclosed for the first time at the hearing, should be included in the hearing documents. These are listed below at paragraph 12.

Submissions

6. Both representatives agreed that there was insufficient time, at the conclusion of the Hearing, to make submissions. It was agreed that the parties should exchange written submissions and an Order was made for that exchange and the provision of copies for the tribunal's deliberations in chambers.

Evidence

7. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was Code V, each of the parties and the Employment Judge attending by video via CVP. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.
8. The claimant gave evidence.
9. The respondent relied upon the evidence of:-
 - 9.1. Craig Donnelly, Chief Commercial Officer,;
 - 9.2. Jamie Wark, Finance Director,;
 - 9.3. Neil Logan, Chief Executive Officer;
 - 9.4. Scott Leiper, Chairman; and
 - 9.5. Stuart Kerr, Chief Financial Officer.
10. The witnesses provided their evidence from written witness statements. They were subject to cross-examination, questioning by the tribunal and, where appropriate, re-examination.
11. An agreed bundle of documents was presented. References to page numbers in these Reasons are references to the page numbers in the agreed Bundle.
12. Additional documents were presented during the course of the Hearing, in accordance with the Orders outlined above. Those additional documents are:
 - 12.1. Claimant's Bid Pricing Form for OPP- 002959 – Company A – “AD1”;
 - 12.2. Claimant's Bid Pricing Form for OPP – 003100 – Company B – “AD2”;
 - 12.3. Respondent's Bid Pricing Form – OPP- 002959 Company A – “AD3”;
 - 12.4. Respondent's Bid Pricing Form – OPP – 003100 Company B – “AD4”;
 - 12.5. Company B Timesheets relating to OPP-003100 – “AD-5”;
 - 12.6. Company B Purchase Order relating to OPP-003100 – “AD6”;
 - 12.7. Company A- Diagnostics Proposal – “AD7”;
 - 12.8. Claimant's screenshot – “AD8”;
 - 12.9. Bid Pricing Form – Company B– Version History- “AD9”;

- 12.10. Bid Pricing Form – Company A – Version History – “AD10”;
- 12.11. Claimant’s document properties 1 –“AD11”;
- 12.12. Claimant’s document properties 2 – “AD12”.

Facts

13. Having considered all the evidence, the tribunal has made the following findings of fact. Where a conflict of evidence arose, the tribunal has resolved the same, on the balance of probabilities, in accordance with the following findings.

14. The respondent is a digital transformation company, established in 2016. It has five offices situated throughout the UK . The claimant was employed by the respondent as a Business Development Manager from 19 November 2018 until his employment terminated by way of resignation on 1 April 2020.

15. As part of the claimant’s role he was entitled to participate in a commission and bonus scheme (the FY20 scheme) (p71). The claimant was provided with the terms of the commission scheme for the financial year 1 April 2019 to 31 March 2020. This was signed by both the claimant and respondent (p75). The scheme provided the claimant with a potential entitlement to earn commission based on sales achieved across the financial year. He was given a quarterly target [73]. Those quarterly targets were cumulative. There was also a separate element to the scheme relating to quarterly bonuses, but there is no claim under this part of the scheme.

16. Extracts from the FY20 scheme read as follows:

1.1 Revenue Quota and Sold Gross Profit target.

Each year you shall be set a quarterly target of sold gross profit against which performance shall be measured and Commission shall be payable

Contracted work at a Gross Margin % of less than 25% will not count towards the quarterly or cumulative SGP targets unless previously agreed by the chief commercial officer

1.4 Payment Conditions

Payments under the commission scheme shall only be payable upon satisfaction of the following conditions:

- the individual has achieved the Cumulative SGP in the quarter in which a claim is being submitted (e.g. if Cumulative SGP is not achieved in Q1 no commission is payable but if Cumulative SGP is met in Q2 then all qualifying SGP in Q1 and Q2 is commissioned);
- all required signed contractual cover with relevant customers is in place (the decision of the Chief Commercial Officer will be final on whether the required signed contractual cover is in place);

- Full evidence of CRM being consistently and accurately updated throughout the sales process is mandatory. This includes accurate recording of order value, gross margin, revenue forecast and close date;
- win capture forms have been completed and lodged with Marketing for all relevant wins;
- commission claims have been submitted for approval to the Sales Director in the first week following the end of the relevant quarter;
- Commission claims only include the relevant agreed SGP recorded in CRM for that quarter.

If the above conditions are satisfied Commission amounts will be payable at the end of the month following the quarter to which the Commission claim relates. For the avoidance of doubt, Commission amounts can only be earned on the basis of the agreed SGP profile recorded in CRM .

17. There is no reference in the written FY20 scheme (p71) to the requirement for a Bid Pricing Form for every opportunity claimed as part of the commission scheme.
18. Entitlement to commission is calculated on the contract when signed. If it later turns out that more work was needed than originally calculated, if it turns out that the sold profit margin was not as high as calculated at the point of sale , then this does not affect entitlement to commission.
19. The claimant did not meet his targets for Q1 or Q2 in the financial year 2019/20.
20. The claimant's cumulative target by the end of Q3 was £848,250 (p73).
21. Throughout the financial year the claimant worked towards his target with the assistance of JJ, Business Unit Director. All proposed deals had to receive her approval before the proposal was put to the client. Prior to any proposal being put to the client the delivery team agreed the amount of work that needed to be done. The respondent was keen to ensure that any deal gave the respondent a good profit margin. It was important that the sold profit margin was identified before any deal went ahead. For complex deals a Bid Pricing Form was a key document: its preparation helped to establish the sold profit margin. However, for less complex deals, such as consultancy exercises sold at a daily rate, a signed Bid Pricing Form was not required prior to the proposal being made and the contract signed. It was not the practice that every such deal had to be approved by both the Sales director and the Finance team, as well as the Business Unit Director. by way of completion of a Bid Pricing Form.
22. On this the tribunal, on the balance of probabilities, accepts the evidence of the claimant. There is no documentary or other satisfactory evidence to support the respondent's evidence that for every opportunity, of whatever nature and however small, there had to be, at the point of proposal and/or sale, a signed Bid Pricing Form. There is no documentary or other satisfactory evidence to support the respondent's evidence that every

opportunity, of whatever nature and however small, had to be approved in advance by the Business Unit Director, Sales Director, and Finance by way of production of a completed Bid Pricing Form. It is not credible that such a condition and/or policy did exist when:

- 22.1. There is no documentary evidence to support it;
- 22.2. It was not mentioned to the claimant during the grievance procedure that he had breached a fundamental procedure by not having a signed BPF for the disputed opportunities and/or having the relevant BPFs approved by sales and finance prior to the sales being agreed;
- 22.3. The respondent did not prior to this tribunal hearing inform the claimant that the two deals OPP - 002959 and OPP-003100 were made without authority and contrary to standard policy re production of bid pricing forms at the point of sale;
- 22.4. The respondent has taken no action in relation to its assertion that JJ acted outside her delegated authority;
- 22.5. The tribunal accepts the evidence of the claimant and finds that JJ had held senior positions within the respondent company and was a long serving employee. It is unlikely that she would have acted contrary to well-established policy/procedure;
- 22.6. The tribunal does not accept the evidence of Mr Logan that he spoke to JJ about her approval of these opportunities - that evidence was given for the first time in the tribunal, is not contained in his witness statement, and is unsupported by any documentary evidence;
- 22.7. By her emails in March 2020 JJ confirmed that she had approved the deals as set out in the draft BPFs attached to the claimant's emails (see paragraphs 43-49 below);
- 22.8. JJ has not been called to give evidence;
- 22.9. JJ remains in a consultancy arrangement with the respondent following her dismissal by reason of redundancy;
- 22.10. The respondent has adduced no satisfactory evidence in support of its assertion that JJ was lying in those March e-mails, and/or that she was not concentrating on the accuracy of her response because she was in consultation re redundancy and/or had been made redundant;
- 22.11. The claimant recorded all his opportunities on the respondent's CRM system. It includes the two disputed opportunities with details of the profit margin and days of consultancy sold. The accuracy of that CRM was not challenged by the respondent during the course of the claimant's employment;

- 22.12. The respondent offered the claimant the sum of £30,000 in full and final settlement of his claim for Q3 commission, a claim which they now say has no merit because the claimant and JJ sold, without the appropriate authority, opportunities which were break - even and/or loss- making to the respondent company.
23. The two disputed opportunities, OPP- 002959 and OPP-003100 , were each 10 day consultancy exercises based upon the standard day rates and profit margins for this type of work. These deals were approved by JJ prior to the proposal being put to the clients and the sales were agreed without a Bid Pricing Form having been signed by JJ and/or approved and signed by finance and sales. The sales were agreed after JJ approved the deals at the gross profit margins indicated in the draft Bid Pricing Forms attached to the claimant's emails in March 2020 (see paragraphs 43-49 below). At the time of sale neither of those opportunities was identified as being break even or loss-making. The SGP identified was in line with the work being charged at standard day rates.

[On this the tribunal accepts, for the large part, the evidence of the claimant, in part supported by the documentary evidence. It is clear from the email exchange between the claimant and JJ in March 2020 (see paragraphs 43-49 below) that JJ had approved these deals and the profit margin stated in the Bid Pricing Forms. In reaching this finding the tribunal notes that the bid pricing forms attached to the March emails were not created until February 2020, and that the claimant made no reference to the draft bid pricing forms until the grievance hearing before Mr Logan (see paragraph 39 below). The tribunal notes in particular that the claimant made no reference to draft bid pricing forms in his email of 30 January 2020, when he withdrew his claim for money commission for the two disputed opportunities (see paragraph 33 below). However, on balance, the tribunal accepts the evidence of the claimant and finds that there were other draft bid pricing forms in existence and discussed with JJ before then. He withdrew his claim for the money commission because he did not have the final signed bid pricing forms. The claimant no longer has access to some of the documents created at work and was unable to disclose the earlier draft bid pricing forms which he discussed with JJ. It is noted that the respondent has not disclosed all relevant documents prior to the hearing. For example, it did not disclose the bid pricing forms which were attached to the claimant's emails to JJ in March 2020, which emails were in the agreed bundle. There is no criticism of the respondent in this regard. It is not clear to the tribunal why such important documents were not disclosed by either party prior to the hearing.]

24. The SGP had to be established prior to the sale for every opportunity. If the opportunity was going to be break even or loss-making it would need the authority of Mr Stuart Kerr, Chief Financial officer, prior to sale.

[On this the tribunal accepts the evidence of Mr Kerr.]

25. Over the course of the financial year the claimant tracked his progress and commission entitlement using a spreadsheet, called a Commission Calculator, (p99) a company document provided to him by a colleague. In that document the claimant recorded the number of contracts signed with clients, providing the tracking reference number for the respondent's CRM system, the client name, the month that the order was closed, details of the sold gross margin percentage for the work sold at the time of signature and total sold SGP representing the sold gross profits in monetary terms to the business. From this document the amount of Commission could be calculated.
26. The claimant also recorded all his opportunities on the respondent's CRM system, in accordance with the requirement of the FY20 commission scheme that "Full evidence of CRM being consistently and accurately updated throughout the sales process is mandatory."
27. In December 2019 the claimant secured a lucrative sale with Company A (OPP- 002533 and OPP- 003422 above). He calculated that he had achieved his cumulative Q3 bonus and in December 2019 submitted a commission claim, using the information from his Commission Calculator. He failed to attach the relevant commission plan at the time. In January 2020 he provided his commission claim and, for each opportunity listed in his claim, a copy of each relevant proposal and order form signed by the customer.
28. The purchase order re Opp-003100 (AD6) is dated 26 November 2019, is signed by the customer, Company B, and shows an agreement for 10 days consultancy exercise work at a price of £9,500.00.
29. The purchase order re OPP – 002959 is not in the bundle. The respondent does not dispute that this document was produced by the claimant when he made his commission claim. The proposal for that opportunity (AD 7) was dated 2 August 2019. It put forward to the customer, Company A, the proposal for the consultancy work including a collaboration discount of 50%:

Description	Unit cost (per day)	Units required (days)	Total cost
Phase 1 - workshops	£950	10	£9,500
Phase 2- write up and playback	£950	10	£9,500
Collaboration discount	-50%		-£9,500.00
Totals		20	£9,500.00

30. Following the submission of his Commission claim the claimant entered into correspondence with Craig Donnelly, Stuart Kerr and Jamie Wark about the claim. By email dated 23 December 2019 Mr Donnelly advised the claimant that he would need to review the bid pricing form and asked the claimant to “liaise with JJ and ensure that the final version is available “ (page 78A). This request referred to the larger opportunity for Company A, OPP – 002533, not one of the disputed opportunities. In January 2020 the claimant entered into a conversation with Stuart Kerr (pages 94- 98) about his claim for Commission. Mr Kerr advised the claimant that his claim for commission had not been included in the January payroll because, although it had been discussed, it had not been agreed. On 22 January 2020 Mr Kerr advised the claimant that his claim was still unapproved as there was a disagreement at supervisory board level on whether commission was payable on the order, given the significant discounting that was provided. There was a reference to the invoicing of the larger opportunity with company A, not the disputed opportunities. At no time did Mr Kerr advise the claimant that his claim for Commission had been rejected and/or was in dispute because he had failed to provide signed bid pricing forms for each opportunity and/or that he had failed to obtain the approval of sales and finance at the point of sale and/or at the time the proposal was made to the client
31. When reviewing the commission claim the respondent undertook a review of the amount of work done for Company A under OPP-002533 in deciding whether the gross profit percentage as claimed by the claimant was accurate. The managers were aware that the claimant had offered 20 days diagnostics which took staff a lot of time, for which the company was not paid. This was discussed and built into the SGP of OPP – 0025333 with Company A – cost of non-recoverable pre-contract delivery effort (p 104). This review reduced the profit percentage to 45% on that opportunity, which the claimant agreed.

[On this the tribunal accepts the evidence of Mr Wark]

32. The claimant had conversations in January 2020 with Jamie Wark, expressing his concerns about the delay in paying his commission payment. In late January, after he had been told that he would not be receiving the claimed commission in the January payroll, the claimant became concerned that the respondent may have cash flow problems and that he may not receive his commission. On or around 30 January 2020 he had a Teams call with Jamie Wark and explained that he would not claim the money Commission for the two disputed opportunities as he did not have the bid price forms for them. In doing this it was the claimant’s intention simply to remove his claim for the small amount of commission payable on each of the individual orders - £238 each. It was not his intention to remove the SGP from the two disputed opportunities from his cumulative Q3 commission claim. He did this in the hope that his commission would be paid in the

following month and there would be no further delay. The claimant asked that Mr Wark come back if his concession had an adverse effect on anything. Mr Wark asked the claimant to follow this up in writing by email.

[On this the tribunal accepts the evidence of the claimant, even though some of the evidence was not set out in the claimant's witness statement or in his confirmation e-mail. Mr Wark has no recollection of this conversation.]

33. By email dated 30 January 2020 (p111) the claimant advised Jamie Wark and Craig Donnelly:

There are five items I am claiming Commission for, they are the following:

....

For OPP- 002959 – [Company A] this was the 10 day diagnostics which I do not have a bid price for, I am happy for the money claim to be removed .

The OPP- 003100 – [Company B] , this was for a 10 day audit that the team are currently performing . I do not have a bid price form for this op, therefore I am happy for this claim to be removed.

....

In summary I am happy for the two 10 day pieces of work to be removed as I do not have bid price forms , however is anything else required for the remainder of the claim?

34. Mr Wark did not at the time explain to the claimant that either he could not make any claim for commission because there was no bid pricing form and/or because the bid pricing forms had not been approved by the finance Department at the time of sale. Mr Wark did not tell the claimant that removing his claim for the money commission for the two opportunities would automatically mean that his claim for his Q3 cumulative commission would fail.

35. On or around the 11 February 2020 Mr Donnelly asked the claimant to meet him in a private area to discuss his claim for commission. Mr Donnelly informed the claimant that the respondent could not pay his Commission due to cash flow issues. Instead Mr Donnelly proposed that the respondent would pay him £32,500 in commission based upon his achievements, but this would be done in monthly instalments. Mr Donnelly said that the respondent's position on this was final. Mr Donnelly did not explain that this was ex gratia payment, that the claim for commission had been formally rejected by the respondent because the claimant was not entitled to the amount claimed. Mr Donnelly did not at the time explain to the claimant that his claim for commission had been rejected because there were no bid pricing forms and/or because JJ had acted outside the scope of her delegated authority in approving any of the opportunities.

[On this the tribunal accepts the evidence of the claimant]

36. By email dated 12 February 2020 (p120) Craig Donnelly informed the claimant :

As discussed last night please find below a summary of the final position with regard to your FY20 Q3 Commission claim.

Incremental will pay £32.5k in full and final settlement of your claim as detailed below:

- £2.5k in respect of your Q3 sales order bonus which will be paid in your February salary ;
- £30K commission to be paid in six equal monthly instalments of £5k from March 3 to August payroll;
- Should we be in a position to settle the commission element earlier then we will do this.

37. By email dated 14 February 2020 (p120) the claimant asked how Mr Donnelly had reached the figure of £32.5k. The claimant did not receive a response to that request. By telephone conversation on the 14 February 2020 Mr Donnelly advised the claimant that if he submitted a grievance it would be heard by either himself, Neil Logan or Scott Leiper, who were responsible for the decision to pay the claimant the smaller figure of £32.5k. Mr Donnelly confirmed that this was the only offer to pay the commission owed and that his only choice was to accept the figure or to receive no Commission at all. Mr Donnelly did not explain that this was an ex-gratia offer which had been made because there was no contractual entitlement to the claimed commission for Q3.

38. The claimant submitted a formal grievance in relation to the non-payment of his claim for commission. A formal grievance meeting took place on the 25 February 2020. The grievance was chaired by Neil Logan, Chief Executive officer and Scott Leiper, chairman, was also in attendance . The claimant was accompanied at that meeting.

39. During the course of that grievance hearing :

39.1. Mr Logan looked at the five items on the claim for Commission and queried the two which were without bid pricing forms (the disputed opportunities). The claimant confirmed that JJ had authorised these and the bid pricing forms were subsequently created at JJ's request. However, he was prepared to remove these from his claim and they were not in the disputed Commission;

[In the course of giving evidence Mr Logan agreed that the claimant had said during the course of the hearing that bid pricing forms had been created for the disputed opportunities]

39.2. Mr Logan did not ask the claimant for copies of the bid pricing forms, did not query the absence of bid pricing forms at the point of sale, did not indicate that the signing of a deal without a bid pricing form was

a breach of procedure, did not indicate that any claim for commission without a bid pricing form signed at the time of proposal was invalid;

39.3. Mr Logan did not question how the claimant was pursuing his claim for commission for Q3 without the two deals for which had no bid pricing forms – the disputed opportunities.

40. By email dated 2 March 2020 Mr Logan provided the claimant with the outcome of his grievance (p134). It was not accepted that the respondent was required to pay the requested commission. Extracts read as follows

Justification. For Commission to be paid for Q3 sales orders performance a cumulative SGP of £848,250 requires to be achieved. Following a review of the finalised commission claim, which includes the agreed corrected SGP figures for opportunities OPP 002533 and OPP 00003238 and removed opportunities OPP-002959 and OPP-003100, the cumulative SGP within the Q3 commission claim was £844,886. Consequently, the commission claim did not achieve the Q3 SGP target

whilst only £2500 is due under the terms of the Commission agreement , Incremental agreed that an additional payment of £30,000 be made on a discretionary basis . As this is a discretionary payment, it is not contractual and therefore delay of payment cannot be considered as unlawful deduction of wages.

Delayed payment..

...

Decision

... it is not accepted that Incremental withheld Q3 commission payment unnecessarily.

Justification

James submitted his Q3 Commission claim w/b 30th December 2019 in line with the requirements of the commission scheme . This initial claim comprised several inaccuracies which were not fully resolved until after January payroll date.

The SGP claimed for opportunities OPP 002533 and OPP 003238 was incorrect . This SGP was challenged as part of the normal commission claim review process and James was asked to provide evidence to support his claimed SGP. James was unable to provide the evidence and as a result a significant delay was incurred as Incremental's finance function were then forced to fully calculate the SGP rather than simply verifying the figure. This took almost three weeks before an accurate SGP was calculated by the finance function. This figure was presented to James and he agreed that this figure was accurate

Further delay resulted as opportunities OPP 002959 and OPP 003100 were also challenged as once again the SGP claimed appeared inaccurate. Upon this challenge James was unable to provide any evidence to support of the SGP claimed and subsequently acknowledged on the 30th January 2020 that no bid pricing form had been completed and consequently no evidence was available to support the claimed SGP. As a result of this James removed both these

opportunities from his Q3 Commission claim on 30th January via an email communication with Jamie Wark.

Section 1.4 of the Commission agreement makes it clear that it is mandatory that order value, gross margin, revenue forecast and close dates for all opportunities are consistently and accurately recorded throughout the sales process. Of the six opportunities included in the commission claim 4 were challenged and subsequently shown to be either invalid or inaccurate which was ultimately resulted in significant delay to any payment. As such, the root cause for delayed payment is deemed to have been the submission of a commission claim which was inaccurate

41. By email dated 3 March 2020 the claimants indicated his wish to appeal the grievance decision.

42. By email dated 4 March 2020 the claimant resigned from his employment giving four weeks' notice (p138).

43. By email dated 4 March 2020 (p139) the claimant wrote to JJ in the following terms:

As per our agreement prior to Christmas and follow up conversation in early Feb , here is the BPF for the [Company B] Audit

44. Attached to that email was the Bid Pricing Form (BPF) for Company B in relation to the disputed opportunity OPP- 3100, which was disclosed by the claimant on the 1st morning of the hearing (AD 4). An investigation by the respondent's computer records during the course of the hearing showed that that BPF had been created in February 2020. Only the front Summary sheet had been completed. It contains the following:

Manpower	Effort	Cost to Increment RATE AT COST	Total Cost	Sell Out RATES	Total T&M	T&M %GM
Principal Dynamics Consultant	5.00	£480.00	£2,400.00	£950.00	£4,750.00	49.47%
Senior Application Architect	5.00	£425.00	£2,125.00	£950.00	£4,750.00	55.26%
	10.00		£4,525.00		£9,500.00	52.37%

45. By email dated 5 March 2020 JJ responding in the following terms:

Sorry just getting to this now yes approve

46. By email dated 5 March 2020 (p142) the claimant wrote to JJ in the following terms:

Here is the [Company A} BPF from the initial work we did.
This form is as agreed back in October. Can you check and confirm

47. By email dated 6 March 2020 JJ replied:

Yes all OK

48. Attached to the claimant's email was the Bid Pricing Form (BPF) (AD1) for company A, in relation to the disputed opportunity OPP – 2959, which was disclosed by the claimant on the first day of the hearing. An investigation showed that the Bid Pricing Form had been first created in February 2020. Only the front Summary sheet had been completed. It contains the following:

Manpower	Effort	Cost to Increment RATE AT COST	Total Cost	Sell Out RATES	Total T&M	T&M %GM
Senior Dynamics Architect	5.00	£475.00	£2,375.00	£950.00	£4750.00	50.00%
Principal Dynamics Consultant	5.00	£480.00	£2,400.00	£950.00	£4,750.00	49.47%
	10.00		£4,775.00		£9,500.00	49.74%

49. JJ has not been called to give evidence. The respondent did not investigate with JJ the reason why she approved these two deals (OPP- 002959 and OPP- 003100) without having completed BPFs at the time the proposal was made to the clients and the sale agreed.

50. A grievance appeal hearing was held on 10 March 2020. Mr. Scott Leiper conducted the appeal hearing. The claimant was accompanied. At that hearing the claimant explained that OPP 002959 and OPP 003100 should be included in the calculation of his cumulative SGP for Q3; although he had asked for these two claims to be removed from the commission claim he still wished the £9000 SGP to be included in the SGP total , thereby meaning that he had achieved his Q3 target.

[On this the tribunal accepts the evidence of the claimant, as supported by the documentary evidence.]

51. By email dated 16 March 2020 Mr Leiper provided his decision, extracts from which read as follows:

Bid pricing forms

Although the signed business development Commission scheme FY 20 does not explicitly mention bid pricing forms, it is a standard practise in the business to use these forms as a key artefact in the Commission claim. Bid pricing forms are a tool used by the sales team, finance team, business unit directors and others throughout the sales process. There is no explicit owner of the form you mentioned it was your understanding that the sold gross margin for opportunity OPP - 002959 and OPP - 003100 would still be attributed to your cumulative sold gross margin tally despite withdrawing your claim for them. This is a misunderstanding on your part: there is no wording in the Commission scheme document nor a precedent for this. Additionally, there was no exceptional agreement made between yourself and the finance team to allow you to include the sold gross margin on these deals within your cumulative tally.

Although close, you did not meet your quarterly quota

52. In preparation for this hearing the respondent reviewed the SGM as stated in the claimant's Bid Pricing Forms and produced their own Bid Pricing Form for each of the disputed opportunities – AD3 and AD4.
53. In relation to AD3 – Company A – the respondent's bid pricing form notes that 20 days work was provided for a cost to the client of 10 days. This reflects the terms of the proposal (see paragraph 28 above) which provided for 20 days work with a 50% discount. The respondent assesses the GM as -0.53%.
54. In relation to AD4 – Company B – the respondent looked at the time sheets for the number of days actually worked on the sold opportunity of 10 days. It counted 20 days and therefore included in its Bid Pricing Form 20 days work for a sale to the client of 10 days. The respondent assesses the GM as 4.74%.

The Law

55. Section 13 of the Employment Rights Act 1996 states:

“(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.

(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.

56. The Court of Appeal in **Delaney v Staples (t/a de Montfort Recruitment) 1991 ICR 331** held that the non-payment of wages which are properly payable is a deduction. The issue is whether the worker received less than the amount properly payable to him or her. In deciding that issue the tribunal must decide, on the ordinary principles of common law and contract, the total amount of wages that was properly payable to the worker on the relevant occasion. The question is whether the claimant is contractually entitled to the wages not paid.

57. In determining what wages were properly payable within the meaning section 13(3), the Tribunal should consider all the relevant terms of the contract of employment.

58. There is a general presumption that the parties to a contract intended to create a workable agreement. If, therefore, it is necessary to imply a term in order to give business efficacy to the contract and make it workable, the courts will be prepared to do so — **Reigate v Union Manufacturing Co (Ramsbottom) Ltd 1918 1 KB 592, CA**. The test is whether the term is *necessary*, not simply reasonable or desirable. In **Marks and Spencer plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd and anor 2016 AC 742, SC** it was explained that: 'A term is to be implied only if it is necessary to make the contract work, and this it may be if (i) it is so obvious that it goes without saying (and the parties, although they did not, ex hypothesi, apply their minds to the point, would have rounded on the notional officious bystander to say, and with one voice, "Oh, of course") and/or (ii) it is necessary to give the contract business efficacy. The concept of necessity must not be watered down. Necessity is not established by showing that the contract would be improved by the addition. The fairness or equity of a suggested implied term is an essential but not a sufficient precondition for inclusion. And if there is an express term in the contract which is inconsistent with the proposed implied term, the latter cannot, by definition, meet these tests, since the parties have demonstrated that it is not their agreement.'

59. Terms may be implied into employment contracts if they are regularly (but not necessarily universally) adopted in a particular trade or industry, in a particular locality or by a particular employer.

60. The traditional requirement for the implication of terms under this head is that the custom in question must be reasonable, notorious and certain. **Sagar v H Ridehalgh and Son Ltd 1931 1 Ch 310, CA.** This means that the custom must be fair and not arbitrary or capricious; that it must be generally established and well known; and that it must be clear cut.
61. The tribunal has considered and where appropriate applied the authorities referred to in submissions.

Determination of the Issues

62. This includes, where appropriate, any additional findings of fact not expressly contained within the findings above but made in the same manner after considering all the evidence.
63. The Respondent asserts that a commission payment would only be properly payable to the claimant if
- 63.1. his Q3 cumulative SGP target of £848,250 was met; and
 - 63.2. all opportunities claimed were above 25% margin and were accompanied by supporting evidence specifically:
 - 63.2.1. evidence of a commercial cover such as a contract or Purchase Order ; and
 - 63.2.2. evidence of the SGP, that is, the Bid Pricing Form.
64. The first question is whether it is a requirement of the FY20 Scheme that a Bid Pricing Form be supplied as evidence of the SGP for each opportunity claimed.
65. The terms of the scheme are contained in the document FY20 at pages 71-75. Section 1.4 sets out the payment conditions (see paragraph 16 above). It is not stated as an express payment condition that a Bid Pricing Form must be supplied as evidence of the SGP. There is no specific reference in the document FY20 to the Bid Pricing Form. The scheme makes it clear that there must be evidence of the SGP, referring to the respondent's CRM and stating "for the avoidance of doubt, commission amounts can only be earned on the basis of the agreed SGP profile recorded in CRM."
66. The FY20 scheme does not expressly provide that the only correct way to populate the CRM is from a Bid Pricing Form. There is no satisfactory evidence to support the assertion that this was the standard operating policy. The tribunal rejects the evidence of the respondent's witnesses on this point, bearing in mind in particular that:
- 66.1. There is no satisfactory supporting documentary evidence;

- 66.2. The claimant populated the CRM with the SGP for the disputed opportunities from his understanding of the day rates for the type of consultancy work sold and the standard margins which applied. The respondent does not dispute that there were standard day rates with built in profit margins for this type of work. Their argument has been about the number of days actually worked for the number of days sold, not the profit margin for day rate work.
67. The respondent has produced no satisfactory evidence to support its assertion that no proposal should have been supplied to a client without a Bid Pricing Form having been first generated and approved. There is no documentary evidence, no written policy, stating this, no documentary evidence reminding employees of the importance of the Bid Pricing Form. The tribunal accepts the evidence of the claimant and finds that he was not informed of any such requirement. The tribunal rejects the evidence of the respondent's witnesses on this point. In doing so the tribunal notes in particular
- 67.1. There is no documentary evidence notifying and/or reminding employees that a bid pricing form had to be agreed by delivery, and/or sales and /or finance prior to a proposal and/or sale;
- 67.2. if no sale was valid without such prior approval of a bid pricing form, it is clear from the evidence that the claimant and JJ must have breached procedures when the claimant put forward and JJ authorised opportunities OPP 002959 and OPP 003100. It is not in dispute that the sales went ahead as contracted by the claimant;
- 67.3. there is no satisfactory evidence that this alleged breach of procedure by both the claimant and JJ was raised with either of them by the respondent at any time, and certainly not before the claimant left employment and commenced his claim;
- 67.4. during the course of the grievance and appeal hearings this specific issue was not raised with the claimant;
- 67.5. Jamie Wark in giving his evidence to the tribunal, asserted that the Bid Pricing Form had to be approved at the time of proposal/sale by delivery, sales and finance - that is, him. Jamie Wark did not, in his communication with the claimant about his claim for commission in or around January 2020, advise the claimant that he could not claim commission on the disputed opportunities because there was no signed Bid Pricing Form signed at the time of sale and/or because he and/or another representative from Finance had not approved the Bid Pricing Forms before the disputed opportunities were sold.
68. Having considered all the evidence the tribunal finds that it was not an express term of the contract that it was a requirement of the FY20 Scheme

that a Bid Pricing Form be supplied as evidence of the SGP for each opportunity claimed.

69. The tribunal has considered whether such a term should be implied into the contract under the business efficacy principle. The tribunal notes the principles of law and legal authorities cited above and in submissions and , in particular, the case of **Marks and Spencer plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd and anor 2016 AC 742, SC**. The tribunal has considered whether such a term is necessary to make the contract work, and, firstly, whether it is so obvious that it goes without saying (and the parties, although they did not, ex hypothesi, apply their minds to the point, would have rounded on the notional officious bystander to say, and with one voice, “Oh, of course”). It is clear that, in this case, there would be no such one voice. The tribunal accepts the evidence of the claimant and finds that he was never told that a signed completed Bid Pricing Form was required for every opportunity before the proposal was made and/or at the point of sale. It was his genuine belief and understanding that a bid price form was not necessary to calculate SGP for consultancy work sold at fixed day rates. There is no satisfactory evidence that either the claimant, or indeed any other employee employed in the same capacity, was either aware of and/or informed of such a requirement. The requirement for a Bid Pricing Form for every opportunity was only notified to the claimant after the termination of his employment. In the appeal outcome Mr Leiper described the bid pricing form as a “key artefact in the Commission claim”, as “a tool used by the sales team, finance team business unit directors and others throughout the sales process”. He did not advise the claimant that his claim was unsuccessful because there was no bid pricing form in place for the two disputed opportunities. He rejected the appeal because the claimant had withdrawn his claim for commission for those two opportunities.
70. The tribunal has considered whether the requirement for a Bid Pricing Form is necessary to give the contract business efficacy. The tribunal notes that the concept of necessity must not be watered down. Necessity is not established by showing that the contract would be improved by the addition. The tribunal has no doubt that the contract could be improved by such an addition. However, the tribunal is not satisfied that it is necessary to give business efficacy. The claimant was able to populate the CRM with the SGP without a signed bid pricing form for the type of work sold under the disputed opportunities. JJ was able to approve the terms of the disputed opportunities without a completed Bid Pricing form at the point of proposal/sale, but on the basis of profit margins discussed and agreed with the claimant at the time of the proposal and/or sale. Whereas the tribunal accepts the evidence of the respondent that the Bid Pricing Form was a key document in more complex sales, it does not accept that the Bid Pricing Form was a key or necessary document for every opportunity.
71. In all the circumstances the tribunal finds that the proposed term, that every sale should be supported by a bid pricing form, should not be implied into the contract under the business efficacy principle.

72. The next question is whether a term, that all opportunities claimed must be accompanied by a Bid Pricing Form approved at the point a proposal is issued, should be implied on the grounds of custom and practice. As stated above, the tribunal does not accept the respondent's evidence that there was widespread knowledge of the requirement for a Bid Pricing Form for every opportunity. There is no satisfactory evidence to support the assertion that across the sales team, across the business, it was known that approved Bid Pricing Forms were required for each opportunity proposed to a customer. The tribunal has accepted the evidence of the claimant that he was unaware of any such requirement. The evidence of the respondent's witnesses is unsupported by any satisfactory evidence. It is not reflected in the documentary evidence. The tribunal finds that there was no practice of bid pricing forms being required for each and every opportunity claimed for under the Scheme. The proposed implied term was not notorious or certain.
73. In all these circumstances the tribunal finds that the failure to have approved and signed bid pricing forms at the point of sale did not prevent the claimant from including the two disputed opportunities in his claim for Q3 commission.
74. The next question is whether the claimant did comply with the terms of the FY20 scheme. The claimant did record all his opportunities, including the two disputed opportunities, on the respondent's CRM system, in accordance with the requirement of the FY20 commission scheme.
75. The respondent challenges the inclusion of the two disputed opportunities on the grounds that:
- 75.1. The claimant did not have the appropriate approval for the opportunities at point of sale;
- 75.2. JJ did not have sufficient sole authority to authorise the opportunities at the point of proposal sale;
- 75.3. Retrospective approval of Bid Pricing Forms is not permitted within the Respondent's consistently applied and universally known sales practices;
- 75.4. The claimant withdrew his claim for commission for the disputed opportunities;
- 75.5. In reality, the SGP for each of the disputed opportunities was less than 25% and therefore did not qualify.
76. The tribunal has considered each point. Firstly, the tribunal accepts the evidence of the claimant and finds that he did have the appropriate approval for each of the two disputed opportunities at the point of sale. JJ provided the authority on the basis of the SGP discussed between them prior to the

sales. The tribunal rejects the assertion that JJ acted outside her delegated authority. There is no satisfactory evidence to support the assertion that each opportunity required the approval of Sales and Finance, as well as JJ, at the time of proposal/point of sale. The tribunal refers to its findings above. The documentary evidence in the agreed bundle is clear: JJ did in March 2020 confirm to the claimant that she approved the Bid Pricing Forms as a true reflection of the deals as agreed at the time. The respondent did not tell the claimant during the course of his employment and/or the grievance and appeal hearings that JJ did not have sufficient authority. JJ has not been called to give evidence.

77. The tribunal does not accept that a bid pricing form was a necessary requirement at the point of sale. It does accept that the SGP had to be calculated and be accurate before the proposal was made to the customer and the sale completed. The respondent made it well known that opportunities must be profitable and that there was a minimum 25% SGP for any opportunity to attract commission under the scheme. The SGP had to be approved at the point of proposal and/or sale because the commission scheme was based on the SGP agreed at that time, not on the calculation of the actual SGP after the event, when all the work was done. The tribunal would therefore agree that retrospective approval of the SGP was not permitted within the respondent's practices. The fact that JJ provided retrospective approval to the bid pricing forms created in February 2020 does not exclude the disputed opportunities from the claimant's claim for submission. The emails are clear that JJ approved these bid pricing forms as an accurate reflection of what was approved by her at the relevant time, that is, at the point of proposal/sale.

78. As to whether the claimant withdrew his claim for commission for the disputed opportunities, the tribunal accepts the evidence of the claimant and finds that he explained to Mr Wark that he was just withdrawing his claim for the money commission – that he was not withdrawing the SGP for those two disputed opportunities from the Q3 cumulative commission claim. The tribunal accepts the evidence of the respondent's witnesses that this was not allowed. However, this was not explained to the claimant by Mr Wark. The tribunal would agree that it is not clear how the claimant thought that withdrawing the money claim would help his position and/or speed things up. The tribunal accepts that the claimant did not make his position clear at the time of grievance hearing. However, he made it crystal clear by the appeal hearing that he was not withdrawing his claim for commission, including the SGP for the two disputed opportunities. Mr Leiper did not address that point. The fact that the claimant waived his right to the small amount of money commission did not prevent him from pursuing the claim for Q3, if he was still entitled to it, having complied with all the appropriate terms.

79. By the time of the appeal hearing the respondent was aware that the claimant was including the SGP from the disputed opportunities in his claim for commission. It was aware that JJ had authorised those opportunities and

that bid pricing forms were subsequently created at JJ's request. Mr Leiper was able at that stage to investigate whether the claimant was entitled to the commission as claimed but failed to do so. He did not carry out any investigation with JJ as to the validity of her approval at the point of sale or the accuracy of her retrospective approval of the bid pricing forms in March 2020. He did not carry out any investigation of the accuracy of the SGP as claimed.

80. The tribunal notes the outcome of the grievance hearing in which Mr Logan observed:

The SGP claimed for opportunities OPP 002533 and OPP 003238 was incorrect . This SGP was challenged as part of the normal commission claim review process and James was asked to provide evidence to support his claimed SGP.

81. The tribunal notes what is described as the "normal review process" at the claim for commission stage. Mr Leiper did not conduct such a process at the appeal stage, once the claimant's position had been made clear.

82. As acknowledged by the respondent in submissions, in evidence before the tribunal Mr Leiper stated that if the claimant had produced valid Bid Pricing Forms which had been validly approved by JJ, he would have had no hesitation in recommending payment.

83. The tribunal finds that the claimant has produced valid Bid Pricing Forms which have been validly approved by JJ. The respondent has not provided any satisfactory evidence to support its assertion that JJ was either lying or mistaken as to the terms on which she agreed these two opportunities. The respondent has not provided any satisfactory evidence to support its assertion that JJ acted outside the scope of her delegated authority in approving these two opportunities.

84. In these circumstances the tribunal finds that the following opportunities could legitimately be counted towards the claimant's quarterly and Cumulative SGP:

84.1. OPP-002959 with a SGP of £4,500

84.2. OPP-003100 with a SGP of £4,500

The Sold Gross Profit of £9,000 should be included within the Claimant's Cumulative SGP target for Q3.

85. This gives the claimant a total SGP of £853,886 comprising:

85.1. £844,886, as conceded by the respondent, plus

85.2. £ 9,000

This exceeds the Q3 target of £848,250.

86. The claimant is entitled to his commission as claimed. He complied with each of the conditions for payment.
87. The revised list of Issues, agreed by the respondent, calculates the amount of commission due as £46,470. The respondent has raised no objection to the amount as calculated by the claimant.
88. The sum of £46,470 was properly payable to the claimant as wages under the terms of his contract of employment.
89. The failure to pay that amount of commission to the claimant was an unlawful deduction from wages.

Further, and, in the alternative

90. Further, and in any event, the tribunal has considered the respondent's assertion that the SGP was wrongly calculated by the claimant and approved by JJ in the claimant's Bid Pricing Forms (AD1 and AD2). The respondent has sought to undertake that process during the course of the tribunal, producing for the first time its own Bid Pricing Forms and its calculation of the actual profit percentage of the disputed opportunities (AD3 and AD4). The respondent, in preparing its new Bid Pricing Forms, did not consult with JJ, and has not called JJ to give evidence, as to how the SGP which she approved at the time, was calculated. The evidence of JJ on this is key. The respondent is recalculating SGP on the basis of work actually done on the two disputed opportunities, not on the basis of the work and profit margin which was agreed by JJ at the time. The respondent is accusing JJ of breaching procedure, of agreeing loss-making deals without the appropriate authority. That is a serious allegation against a long serving employee which is not supported by the documentary evidence.
91. On balance the tribunal accepts the evidence of the claimant and finds that the SGP for the disputed opportunities was accurately set out in the Bid Pricing forms approved by JJ in March 2020. The key time for calculation of the SGP was at the point of sale, not after actual delivery of the work. Each of the disputed opportunities had an SGP in excess of 25%.
92. Turning to each opportunity, in relation to OPP- 002959 with Company A, the tribunal accepts the evidence of the claimant, in part supported by the evidence of Mr. Wark, that the additional number of days diagnostics work was taken into account in the calculation of the SGP for the larger opportunity with Company A under OPP -002533. The tribunal is not prepared to accept the evidence of the respondent that JJ, an employee with considerable experience, would agree and approve a contract which was break -even or loss-making without seeking appropriate approval.
93. In relation to OPP – 003100, the documentary evidence is consistent with the claimant's evidence that 10 days consultancy work were sold at the

appropriate day rates, from which the profit margin could be calculated. The respondent has chosen to examine time sheets to calculate the actual days worked. There is no satisfactory evidence to support the respondent's assertion that this opportunity was sold on the same basis as OPP- --2959 with Company A, that is, with discounted days' work agreed at the time. There is no satisfactory evidence to support the respondent's assertion that the delivery team estimated that 20 day's work was necessary for the task but only 10 days was sold to Company B. As stated above, the entitlement to commission arises on the SGP approved at the point of proposal/sale. The entitlement to commission is unaffected if further days are necessary to finish the agreed work, contrary to the original estimate from the delivery team. The claimant does not lose the entitlement to commission because the task could not be carried out in the time estimated by the delivery team, in the number of days actually sold to the client.

94. The claimant was entitled to the commission as set out at paragraphs 84 – 87 above.

Further, and in the alternative

95. If the tribunal is wrong on that, if OPP 002959 with company A was sold on the basis of the proposal document (see paragraph 29 above), and appropriate authority was not obtained to proceed with this loss-making enterprise, then the tribunal finds that the claimant could not rely on that opportunity for his commission claim.

96. However, the claimant could still rely on OPP- 3100, for the reasons stated above. In which case the Sold Gross Profit of £4,500 should be included within the Claimant's Cumulative SGP target for Q3.

97. This gives the claimant a total SGP of £849,386 comprising:

- 97.1. £844,886, as conceded by the respondent, plus
- 97.2. £ 4,500

This exceeds the Q3 target of £848,250.

98. The claimant is entitled to his commission as claimed. He complied with each of the conditions for payment. The sum of £46,470 was properly payable to the claimant as wages under the terms of his contract of employment.

99. The failure to pay that amount of commission to the claimant was an unlawful deduction from wages.

Employment Judge Porter

Date: 20 April 2021

RESERVED JUDGMENT SENT TO THE PARTIES ON
26 April 2021

FOR THE TRIBUNAL OFFICE



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: 4102336/20
Mr J Armstrong v Incremental Group Limited

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: 26 April 2021

"the calculation day" is: 27 April 2021

"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/collections/employment-tribunal-forms

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.