EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr J Thelwell	**v**	**Kelgray Products Limited**

Heard at: Birmingham **On**: 12/13 July & 15 September 2021

Before: Employment Judge Broughton

Representatives:
For Claimant: Mr W Clayton, solicitor
Respondent: Mr D Soanes, solicitor

JUDGMENT

The claimant was dismissed by reason of redundancy and his dismissal was fair in all the circumstances.

His claim for breach of contract succeeds and he is entitled to damages to be assessed at a remedy hearing if not agreed within 28 days

REASONS

THE FACTS

1. The claimant was employed by the respondent on 6 April 1992 and had been their UK Sales Manager for the last 14 years.

2. Following the government announcing lockdown measures due to the coronavirus pandemic, the respondent feared future cashflow issues, notwithstanding their healthy finances at the time.

3. The respondent wrote to all employees on 27 March 2020 asking them to formally agree to being put on furlough, if required, and also asking them to agree to a contractual change regarding lay off and short time working. The respondent said this was because they wanted to be able to preserve jobs if the government support ended.

4. On 28 March the claimant responded asking for more detail as to how this would affect his remuneration. Then, on 31 March, the claimant emailed the respondent referring to the proposal to put him on furlough.

5. He said that he was likely to be the most significantly affected employee. By this he meant that, because he earnt the most, he would lose the most although, of course, those on lower pay may well have suffered more..

6. The claimant also said that he believed the outlook was positive and asked to be allowed to support the business instead of being furloughed.

7. In subsequent phone calls the claimant offered to work a 4 day week and believed he had agreed the terms of a temporary contractual variation to this effect.

8. However, in a meeting on 1 April 2020, the respondent explained to the claimant that they still wanted to put him on furlough.

9. It is worth noting at this stage that a number of other employees, including family members of the owners, were placed on furlough, whilst others continued to work, sometimes on reduced hours.

10. The respondent asserted that it was necessary for employees to formally agree to being furloughed and that they believed the alternative would be redundancies. Indeed, the language used at one point seemed to suggest that if the contract variation issue could not be resolved they would “need to move straight to permanent job losses”.

11. The respondent further confirmed that if the claimant agreed to the proposed contractual variation around furlough, lay off and short time working they would enhance his furlough pay by removing the government cap and allowing him to retain his car. This was a very significant enhancement as the claimant was the highest paid employee.

12. The respondent agreed to put a revised offer to the claimant in writing which was done later that day. The amended offer was that the claimant would be placed on furlough from 1 April 2020 with a top up to 80% of his basic pay plus his car allowance of £700 per month. This was, however, subject to the respondent reserving the right to introduce short time working or a temporary layoff when the government furlough scheme ended.

13. On 2 April, the claimant purported to agree the terms of the letter but only subject to his hand-written amendments, qualifying the short time working clause and rejecting the lay-off provision.

14. The respondent replied expressing disappointment that the claimant declined the contractual variations and enhanced furlough pay and stated

that they felt they had no option but to commence a formal redundancy consultation with him.

15. The claimant was placed on what was called furlough leave but, as he hadn't agreed to this, it was effectively garden leave and he was to be paid full pay during the redundancy consultation.

16. On Friday 3 April, in a further letter from the claimant, he stated that he did not believe that there was any immediate need or justification to introduce the variations and said that he would be willing to cooperate with requests to implement reductions to hours and pay once government support ended.

17. The claimant said that his understanding at the meeting had been that he would be dismissed if did not agree to the variations, showing, in his mind at least, the pre-judged nature of the proposed redundancy process.

18. The respondent felt that they had "little option but to pursue consultation… and possible but not definite redundancy". Nonetheless, they extended the deadline to reconsider the enhanced furlough offer with the original contractual variation stating that if the claimant did not agree they would issue his consultation letter on the Monday afternoon.

19. On 6 April, the claimant responded reiterating his offer to cooperate with temporary reductions to hours and pay.

20. On 7 April, the respondent withdrew the enhanced furlough offer and sent a new proposed furlough agreement on government capped terms with the claimant's proposed temporary short time working terms and no lay off provision. It was stated that furlough was a means of avoiding redundancy that had been accepted by others and remained open to the claimant.

21. On 8 April, the claimant and his wife confirmed that had been signed off with stress related sickness until 15 April.

22. On 14 April 2020, the respondent chased a response to the statutory furlough offer by 16 April, confirming that, in the absence of communication or agreement they would be commencing a formal redundancy consultation at 2pm on 16 April.

23. On 15 April, the claimant confirmed that his GP had signed him off for 14 days and stated that he was not in a fit state to participate in the proposed consultation by zoom, reiterating, however, that he did agree to be furloughed in return for enhanced pay.

24. On 16 April, the medical certificate was provided.

25. On 17 April the claimant was referred to occupational health (OH)

26. On 23 April, the respondent wrote to the claimant stating that, as he had not accepted their furlough terms, they intended to proceed with the redundancy consultation process. A business case and calculation of redundancy pay was attached.

27. On 24 April, the OH report stated that the claimant was fit to return to work on 27 April 2020.

28. On 27 April, the claimant wrote to the respondent confirming that he intended to commence normal duties on 28 April and would attend the redundancy consultation meeting. The claimant disputed that there was no work for him due to the number of queries he said he had received in his absence and projects which needed moving forward. He referenced the withdrawal of enhanced furlough as "a somewhat petty and retaliatory response" given his 28 years' service.

29. On 29 April the respondent invited the claimant to a redundancy consultation meeting which took place on 30 April 2020.

30. There were discussions and disputes about the company rationale to furlough and / or make redundancies.

31. Whilst the claimant did not accept the respondent's position and it may well be that it was exaggerated, it was clear that there was a significant downturn in orders coming through, albeit that was partly explained by the claimant's absence. I accept that there were also genuine supply chain issues, potential restrictions on client visits, concerns about whether fulfilled orders would be paid for and general uncertainty about how bleak the future may be.

32. The ongoing dispute about the underlying reason for the claimant's redundancy was also aired again. The claimant believed that if he had accepted the contractual variations he would not have been at risk of redundancy. The respondent's position was that if the claimant had agreed to be furloughed, they would not have needed to consider redundancies at that stage.

33. To a degree, of course, both positions were understandable. The claimant was the first employee to be made redundant. I heard that all other employees had accepted the variation but, subsequently, some of those were still made redundant.

34. Equally, it was clear that if the claimant had accepted any of the furlough offers, he would not have been at risk of redundancy at that stage. Specifically, he was offered statutory furlough without requiring a lay off contractual amendment to his contract.

35. Moreover, the respondent had ceased online marketing, sensibly or otherwise, and proposed furlough, prior to the redundancy situation and so there was inevitably a drop off in sales activity.

36. In any event, the claimant seemingly believed there was going to be a further redundancy meeting but, in the interim, had asked further questions and received responses.

37. On 5 May the respondent wrote to him confirming his redundancy. He was dismissed with immediate effect, notwithstanding no payment in lieu provision in his contract.

38. The respondent stated that it intended to spread payments owed to him over 6 months for cashflow reasons, although there was no evidence to support this. It transpired that the respondent paid later redundancies in full during the same timeframe.

39. On 12 May the claimant appealed. On 18 May the claimant asked that someone other than Kim Nicole, an external advisor, conduct the appeal.

40. She admitted to having had some prior involvement in the matter. Specifically, she had reviewed the dismissal letter and, in particular, the notice pay issues. Nonetheless, the request for an alternative appeal officer was rejected.

41. On 21 May, the claimant attended the appeal hearing.

42. On 12 June, Kim Nicol sent the appeal outcome report, upholding the dismissal but confirming that the claimant was due further commission payments in relation to his notice period, although no such payments were made. It appeared that the respondent simply ignored or overruled her findings on this issue.

43. Those are the relevant facts.

44. The claimant had helpfully identified the issues of law which the tribunal had to decide and the relevant legal principles which I largely accept as follows:-

THE ISSUES

45. What was the reason for the dismissal? Was it for a reason falling within s.98 Employment Rights Act 1996 (ERA), namely

    a) that the employee was redundant, in that the requirements of the business for employees to carry out work of a particular kind had ceased or diminished or were expected to cease or diminish (ERA s.98(2)(c) and s.139(1) ERA); or

    b) some other substantial reason of a kind such as to justify the dismissal of a person holding the position which the employee held (ERA s.98(1)(b) ERA).

If the reason for dismissal was (a) or (b), was the dismissal fair or unfair having regard to whether in the circumstances (including the size and administrative resources of the employer's undertaking) the respondent acted fairly or unfairly in treating that reason as a sufficient reason to dismiss and equity and the substantial merits of the case (s.98(4) ERA)

46. If the claimant was unfairly dismissed,

    a) what remedy is he entitled to having regard to s.118 and s.123 ERA?

    b) should there be a reduction in any award having regard to the principles in *Polkey v AE Dayton*?

47. Following the immediate termination of the claimant's contract without notice on 5 May 2020, is the claimant entitled to claim damages for breach of contract consisting of the commission he would have earned during his 3 month notice period had he been allowed to work it.

LEGAL PRINCIPLES

The reason for dismissal

48. The reason for dismissal was in dispute.

49. In order to determine the reason, the tribunal has to look into the mental processes of the employer. The grounds for the employer's action is "a set of facts known to the employer, or beliefs held by him, which cause him to dismiss…" *Abernethy v Mott Hay & Anderson* [1974] IRLR 213.

Redundancy

50. The question for the tribunal is not whether there has been a diminution in the work to be done. It is the different question of whether there has been a diminution in the number of employees required to do the work: *Safeway Stores v Burrell* [1997] ICR 523.

51. The question of the existence of a redundancy situation is one of fact, unaffected by what may or may not have been the employer's motivation.

52. Where there are allegations that a redundancy was being used cynically to get rid of an employee, that is to be dealt with by concentration on whether the redundancy was the real reason for dismissal and/or whether the dismissal was unfair.

53. Even if the statutory definition of redundancy is satisfied, I must still ask

    a. was that redundancy the reason or principal reason for the dismissal and (2)

b. if so, was the dismissal fair?

Berkeley Catering Ltd v Jackson UKEAT/0074/20 (27 November 2020, unreported at paras 20 and 22.

54. As a result, if a reorganisation which technically creates a redundancy situation has been manufactured to remove someone, it is possible to say that the dismissal is unfair.

Consultation

55. Fair consultation involves giving the employee consulted a fair and proper opportunity to understand fully the matters about which they are being consulted, and to express their views, with those views properly and genuinely considered.

56. It will be a question of fact and degree for the tribunal to consider whether consultation with the individual was so inadequate as to render the dismissal unfair.

57. A lack of consultation in any particular respect will not automatically lead to that result. The overall picture must be viewed by the tribunal up to the date of termination to ascertain whether the employer has or has not acted reasonably in dismissing the employee on the grounds of redundancy*. Mugford v Midland Bank [1997] ICR 399,*

The process

58. The applicable principles where the issue is whether an employer has selected a correct pool of candidates for redundancy are that

"It is not the function of the [Employment] Tribunal to decide whether they would have thought it fairer to act in some other way: the question is whether the dismissal lay within the range of conduct which a reasonable employer could have adopted" (per Browne-Wilkinson J in Williams v Compair Maxam Limited [1982] IRLR 83);

"The reasonable response test is applicable to the selection of the pool from which the redundancies were to be drawn" (per Judge Reid QC in Hendy Banks City Print Limited v Fairbrother and Others (UKEAT/0691/04/TM)

"There is no legal requirement that a pool should be limited to employees doing the same or similar work. The question of how the pool should be defined is primarily a matter for the employer to determine. It would be difficult for the employee to challenge it where the employer has genuinely applied his mind [to] the problem" (per Mummery J in Taymech v Ryan EAT/663/94).

59. The Employment Tribunal is entitled to consider with care the reasoning of the employer to determine if he has “genuinely applied” his mind to the issue of who should be in the pool for consideration for redundancy.

60. Even if the employer has genuinely applied his mind to the issue of who should be in the pool for consideration for redundancy, then it will be difficult, but not impossible, for an employee to challenge it.

61. The choice of selection criteria is subject to the band of reasonable responses test.

62. The guidance in *Williams v Compair Maxam* [1982] IRLR 83, suggests the employer to establish criteria for selection which so far as possible do not depend solely upon the opinion of the person making the selection but can be objectively checked against such things as attendance record, efficiency at the job, experience, or length of service.

63. The requirements of selection, consultation and seeking alternative employment in a redundancy case are to be treated as being in issue in almost every redundancy unfair dismissal case.

64. There is an obligation on an employer to consider suitable alternative employment. Those duties can extend, in appropriate cases, to looking for alternative employment with a different employer in the same group of companies; considering whether to “bump” another employee to create a vacancy for the employee at risk of dismissal and consulting on or offering alternative employment even at a subordinate level and on worse terms and conditions. These categories are not closed, as everything depends on whether the employer acted reasonably in the circumstances.

65. In *Lionel Leventhal Ltd v North* UKEAT/0265/04 Bean J said that 'It can be unfair not to give consideration to alternative employment within a company for a redundant employee even in the absence of a vacancy'.

Some other substantial reason

66. If the employer seeks to rely upon the need to implement a reorganisation as constituting a substantial reason, he must demonstrate that it has discernible advantages to the business

67. Even if a substantial reason is established, the employer must act reasonably in treating as a sufficient reason for the dismissal. This includes adequately consulting the employee about what is proposed.

DECISION

Redundancy

68. I am satisfied that there was a genuine redundancy situation in this case.

69. The pandemic inevitably had a dramatic effect on the entire economy. I saw the evidence of the effect on the respondent's business.

70. The claimant may have been right that Covid also created opportunities. He may also have been right that it was a better business decision to continue marketing and allow him to try to generate sales but that is not a matter for me.

71. It was clear that the respondent was genuinely concerned about the potential damaging effects of the pandemic and that they were looking for ways to safeguard the business going forward.

72. They determined, shortly after the first lockdown commenced, that they didn't have any imminent need for a UK Sales Manager, the claimant's role and, indeed, several others.

73. The respondent had already ceased their online marketing and determined shortly thereafter that they did not need the claimant to perform his duties. They have not had a UK Sales Manager since and the claimant had not been replaced as at the date of the hearing.

74. As a result, it was clear that the respondent had a reduced requirement for employees to carry out work of a particular kind and this was not materially in dispute.

Reason for dismissal

75. The claimant contended, however, that, even if there was a genuine redundancy situation, that was not the real reason for his dismissal.

76. That is, of course, theoretically possible and, as previously mentioned, at one stage the respondent did appear to suggest that unless the claimant signed the proposed contract variation, they would move to dismissal. That comment, however, needs to be viewed in the context of the furlough offer as a whole.

77. In addition, the claimant alleged certain potential procedural flaws, to which I shall return.

78. There was also evidence which the claimant suggested pointed towards a conclusion that the whole situation was pre-judged and, further, that matters such as delaying paying his entitlements indicated some sort of spite, retaliation or vendetta.

79. Those were understandable contentions, which, the claimant said, potentially cast doubt on the real reason for dismissal.

80. However, I am satisfied that, rightly or wrongly, the respondent anticipated a massive drop off in trade.

81. The online marketing was switched off and the proposal to furlough the claimant pre-dated any disagreements about the precise terms of contractual variation. It is important to recall that furlough was brought in as an attempt to preserve jobs and avoid redundancies.

82. Moreover, I accept that the respondent wanted to retain the claimant and, if he had accepted any of the furlough offers, he would not have been dismissed, at least not at that stage. Furlough was clearly the respondent's preferred option and, generally, where furlough could not be agreed, there was likely to be a redundancy.

83. It is the case that the respondent, perhaps opportunistically, sought to include some contractual changes alongside the furlough offer. That said, all other employees accepted these variations, most without any additional consideration.

84. I acknowledge that the respondent may have anticipated some push back from the claimant, as had been the case in the past, but it is not unreasonable, on either side, to have healthy debates and negotiations.

85. The claimant sought clarity and the respondent provided it alongside an improved offer. Effectively, the respondent was willing to significantly enhance the claimant's furlough pay and benefits above the government cap in exchange for the contractual amendments.

86. Viewed in this way, there ensued, therefore, a reasonable negotiation between the parties. There was offer and counteroffer.

87. Whilst never express, and notwithstanding how the parties at times described it, there were effectively 2 issues in play at the same time:-

    a. The reduction in work, uncertain future and the respondent's desire to furlough the claimant and

    b. A negotiation about contract amendments in which the respondent was offering enhanced furlough pay and benefits in exchange for the variation

88. The claimant was, of course, entitled to refuse either or both, which he ultimately did. In the course of the negotiation, he sought all of the enhancements to his furlough pay but with only a very limited contractual amendment.

89. The respondent repeated their offer, but this was rejected. No further proposal was made by the claimant.

90. The respondent then withdrew the layoff provision which the claimant had rejected, but also withdrew the enhanced furlough offer, which they were entitled to do, even if it was, in part, born out of frustration.

91. I do not accept that the respondent's ability to pay enhanced furlough is overly material. To do so would be similar to saying a company could never make redundancies unless they were financially necessary.

92. In all those circumstances, it cannot be said that the principal reason for the proposed redundancy was the claimant's refusal to accept the contract amendments.

93. The principal reason was that respondent did not believe that they had sufficient work for the claimant to do. They wanted to put him on furlough leave but the claimant was unwilling to accept this unless he received significant enhancements to the government scheme.

94. The respondent was only willing to pay the enhancements if the claimant also agreed to certain contractual variations. He largely refused those.

95. The proposal for redundancy was, therefore, almost inevitable, subject to consultation.

96. For the avoidance of doubt, I do not consider that the refusal of statutory furlough was the reason for the dismissal. Furlough leave and pay was introduced as a means of avoiding of redundancy and so, a failure to accept furlough simply reverted to the underlying redundancy position.

97. I also do not accept that the claimant's refusal of a new layoff provision in his contract was the principal reason for his dismissal, notwithstanding occasional out of context comments by the respondent may have suggested otherwise.

98. I accept that the context of those comments was the furlough offer(s) as a whole.

99. This finding is confirmed by the fact that, during consultation and negotiation with the claimant, the respondent offered statutory furlough leave without insisting on the lay off provision.

100. The claimant declined this. He seemingly would not accept any offer of work or leave that provided for less than 80% of his full pay and his car allowance. Indeed, he would only accept that with very limited contractual amendments.

101. That said, had that not been the case, the respondent would have struggled to demonstrate that the proposed contractual amendments, in

isolation, were for sound business reasons. The layoff provision was certainly not necessary as the respondent ultimately withdrew it.

Procedure and consultation

102. Having determined that there was a genuine redundancy situation, I then considered the process followed by the respondent.

103. Once the claimant had refused the various furlough offers, the respondent's options were limited.

104. However, it seems to me that, irrespective of how it was labelled, consultation must, effectively, have commenced at the stage that furlough was first proposed.

105. A number of other employees had accepted furlough offers and, of those that remained, none were directly comparable with the claimant. There was only one UK Sales Manager.

106. There was a dispute regarding the extent to which sales activity reduced, but it was clearly heavily impacted, albeit not, on the evidence, to the extent claimed by the respondent.

107. The remaining sales activity was picked up by Trevor Smith, part of the family who owned the respondent. He was unable, however, to fully rebut the claimant's claims about sales activity in April 2020.

108. It is true that online marketing was unwisely suspended before any consultation with the claimant but that was a decision on which the claimant was able to make representations and which could have been reversed.

109. There was discussion about possible part-time working and confirmation of the enhanced furlough offer which included agreeing the claimant's request regarding his car allowance, albeit subject to him agreeing the contract variations.

110. Moreover, whilst not labelled as such, following these initial exchanges, the first consultation meeting was effectively that of 1 April when there were discussions about the business, the furlough offer, including proposed contract amendments and the potential for redundancy if agreement could not be reached.

111. This resulted in a further offer from the claimant which was considered but rejected. Nonetheless the respondent did extend the deadline for accepting their offer, again suggesting their desire to retain the claimant.

112. When there was a further rejection, there was then an alternative offer from the respondent, removing the proposed layoff provision but reverting to capped furlough in accordance with the government scheme.

113. As mentioned, whilst not what the claimant wanted, the above does appear to indicate meaningful consultation.

114. Again, it was, perhaps, opportunistic to have retained the claimant's proposed temporary short time working provision alongside the capped furlough offer but this was not something to which the claimant objected.

115. The respondent then suspended consultation whilst the claimant was off sick although there were further exchanges in correspondence.

116. At the consultation meeting on 30 April 2020, it appeared that the claimant's queries and concerns were listened to and considered. To the extent that they could not be answered immediately, responses were supplied subsequently to the claimant's satisfaction.

117. Whilst the claimant believed there would be a further meeting, the respondent took the view that there was nothing further to discuss and issued the letter of dismissal.

118. The appeal officer was not completely independent and did not appear to have the power to overturn the original decision in any event. Even where she suggested that the claimant was due further commission payments this was ignored.

119. That said, she did appear to genuinely look into the points raised by the claimant. However, she also appeared to accept what she was told on behalf of the respondent with little further investigation to verify it.

120. For example, the claimant never received a satisfactory explanation regarding how Trevor Smith had supposedly dealt with a significant number of sales enquiries in just 2 hours.

121. There was a significant drop off in sales activity and the respondent determined that they did not need a UK Sales Manager.

122. There were negotiations about furlough pay and contract amendments. Regrettably, after some movement on both sides, they both dug their heels in but there was no obligation on the respondent to offer enhanced furlough.

123. The claimant, understandably, did not want to accept a significant reduction in his pay but (in the absence of agreeing to vary his contract terms) in common with millions of others around the world, the alternative was, sadly, no job at all.

The pool and selection

124. The respondent probably did not fully apply their minds to whether there ought to be a pool for selection, but there were no other employees who could realistically be pooled with the claimant in his unique role. Moreover, they had all agreed to be furloughed if necessary.

125. To a degree, therefore, the claimant selected himself.

126. It was, rightly, not suggested that the claimant should have been pooled with the director Trevor Smith who picked up whatever sales activity remained.

127. It was the claimant's failure to accept either of the furlough offers that was the principal cause for him being selected for redundancy first. Sadly, others followed.

128. As a result, there was no need for objective selection.

Alternative employment

129. Again, there appeared to be little or no consideration of alternative employment but this was a small company with no vacancies coping in very difficult circumstances with a number of employees already furloughed and where further redundancies followed.

130. No suitable alternative roles were identified. Whilst the claimant could have done some of the lower level sales roles, he had made it clear that he was not willing to accept anything less than 80% of his full pay. As a result, even if there had been such vacancies, or "bumping" opportunities, there were none that would have been acceptable to him.

131. The respondent did fail to pay the claimant's full commission and delayed payment of his termination entitlements and there was no evidence to support the suggestion that this was due to cashflow difficulties.

132. The claimant may well have been right that this was simply an act of spite but, as it occurred after the event, it does not materially affect my decision in relation to the dismissal itself.

Conclusions

133. I remind myself that it is not for me to substitute my view of the fairness, or otherwise, of the dismissal.

134. Overall, therefore, there were a number of failings in the process followed which, cumulatively, came close to taking the respondent's actions outside the band of reasonable responses even for an employer of

their limited size and resources, utilising external HR support, but, in my judgment, they were not sufficient to render the dismissal unfair.

Polkey?

135. Even, if I were wrong on that, none of the identified failings had a material effect on the outcome. The respondent had a reduced need for a UK Sales Manager. The claimant refused the furlough offers made. There were no other realistic alternatives to redundancy before me.

136. The claimant confirmed that his position would not have changed, even had the respondent consulted further.

Commission / Breach of contract

137. It was common ground that there was no payment in lieu of notice provision in the claimant's contract.

138. His employment was terminated without notice in breach of contract.

139. There was no formal commission scheme but it was common ground that the claimant was entitled to commission on all sales made in the automated division during his employment.

140. It was unclear whether the claimant had received commission on all sales made prior to the end of April 2020, as some of these could have been significantly delayed and the respondent had failed to provide appropriate disclosure. That should be rectified within 14 days and any outstanding commission paid.

141. The claimant argued for average commission from the previous 12 months. The respondent contended that this would not take into account the unprecedented circumstances of 2020.

142. However, the respondent had, inexplicably, failed to provide appropriate disclosure of the sales made in the period of the claimant's notional notice period even when expressly requested by me.

143. All the respondent eventually provided was the completed sales figures and then they sought to exclude the largest sale as an exception but without the other relevant information.

144. In those circumstances, having given the respondent at least 2 opportunities to properly rebut the claimant's claims and them having failed to do so, I award the claimant the 3 months' average commission claimed.

145. The parties are encouraged to agree the outstanding commission amounts within 28 days, failing which a remedy hearing will be arranged before me as soon as possible thereafter.

146. If that hearing proceeds it may also be appropriate for me to consider whether there were any aggravating features to the breach and, if so, whether to impose a financial penalty and in what sum, in accordance with section 12A Employment Tribunals Act 1996.

147. The respondent should attend ready to address such matters. Specifically, I will be considering the failure to pay the commission, the failure to implement their own appeal outcome, the delayed termination payments and the disclosure failures as potentially aggravating factors.

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Employment Judge Broughton

Date: 5 October 2021