EMPLOYMENT TRIBUNALS

Claimants: Ms C Davis (1)
Mr C Payne (2)

Respondent: Cooke Painter Ltd

REASONS
following a request from the Claimants after promulgation of the Judgment on 3 December 2021

The Hearing

1. The Respondent is a private limited company trading as a firm of solicitors in the Bristol area. The first Claimant (Ms Davis) and the second Claimant (Mr Payne) are solicitors who were both employed in that capacity by the Respondent from 19 April 2010 to 31 July 2020. They each submitted claims of unfair dismissal, unlawful deduction of wages in respect of unpaid bonus and overtime, and also sought compensation under s.38 Employment Act 2002 for the Respondent's failure to provide terms and conditions of employment to them during their employment as required by s.1 Employment Rights Act 1996 ("the Act"). The Respondent submits that both Ms Davis and Mr Payne were fairly dismissed for some other substantial reason and that it had paid all monies due to them to the date of the termination of their employments.

2. The Tribunal was provided with an Agreed Bundle of Documents (**Exhibit R1**). The Tribunal received evidence on behalf of the Respondent from Ms S Henderson, a Director and Mr A Stone, the Respondent's Managing Director at the relevant time who gave their evidence-in-chief by written statements (**Exhibits R2 and R3** respectively). The Tribunal received oral evidence from each of the Claimants, who gave their evidence-in-chief by way of written statements (**Exhibits C2** and **C3 respectively**). The Claimants also provided a chronology (**Exhibit C1**) and Ms Ismail, the representative, provided the Tribunal with written submissions (**Exhibit C4**).

Findings of Fact

3. The Tribunal made the following findings of fact after considering all the evidence, oral and documentary, submitted to it during the course of the hearing and the submissions it received from the parties' representatives. At the commencement of the hearing the Claimants withdrew their claims that they were entitled to a pro-rata payment of bonus for the financial year in which they were dismissed.

4. The Claimants commenced employment with the Respondent when the firm in which they were employed ran into financial difficulties as a result of which the Respondent took over its business at the West Town Lane office at which the Claimants and others were working at that time. The Claimants had not been provided with a statement of terms and conditions of employment or a contract of employment and continued working for the Respondent under the arrangement which was agreed between them and Mr Stone in April 2010 under which their remuneration was linked to the gross income and profit achieved by the office taken over by the Respondent.

5. The Respondent's acquisition and the Claimants contribution to its business proved successful and in October 2012 Mr Stone and the Claimants agreed a new arrangement to fully integrate them into the Respondent's business. Under this arrangement Ms Davis and Mr Payne both worked four days a week with Ms Davis receiving a salary of £32,000 per annum and Mr Payne £40,000 per annum. The Respondent also contracted to pay them an annual bonus in addition to their salaries. This bonus was to be calculated at the end of each financial year and provided a bonus payment equal to 25% of the total fees which each of them generated in that financial year in excess of three times their salaries less any agreed write-offs made against their total fees.

6. The terms were confirmed to the Claimants in a letter sent to them by Mr Stone on 12 October 2012 which states, inter alia, as follows:

> "*I have carried out the same calculation this year as I did last year. The information is given below. Our thoughts that it is time to integrate you both properly within the firm and pay you a normal salary. We would be willing to pay Chris 40,000 pounds per annum, and Claire 32,000 pounds per annum for four days each week. As is the case with other fee earners, we would be happy to have a bonus scheme whereby you receive 25% of fees in excess of three times your salary (less any write-offs). The write-offs would be against the fees rather than against the bonus. The arrangement would be backdated to the beginning of our trading year which was 1st of May.*"

The Claimants accepted those terms and were paid in accordance with them, that is, with the Respondent paying their basic salaries monthly and making a bonus payment to them calculated at the end of each financial year in accordance with the agreed terms.

7. In June 2014 Mr Stone agreed with the Claimants that they would undertake a job share. Ms Davis' then commenced working a three day week from Monday to Wednesday with her salary reduced to £24,000 per annum and her holiday entitlement reduced to reflect her new working week.

8. Ms Davis was paid her agreed salary plus bonus calculated as agreed in 2012 for every financial year from 1 May 2012 until 30 April 2019. The Respondent carried out two salary reviews in respect of her salary in this period but no change was made to the bonus arrangements agreed with the Claimants by Mr Stone on behalf of the Respondent in 2012.Mr Payne was also paid bonuses calculated in accordance with these agreed terms when earned by him.

9. A Director of the Respondent, Mr Porter, held an appraisal meeting with the Claimants in April 2015. During this meeting, amongst other matters, he discussed the potential benefit of a written contract of employment with the Claimants and subsequently he sent a precedent contract to them for their consideration. Ms Davis accepts that she and Mr Payne were given the opportunity to complete a contract of employment at this time. She explained that she chose not to do so because she considered the terms of her employment with the Respondent were clear and these arrangements were working well. She responded to an enquiry from Mr Porter on 4 August 2015 by email in which she stated as follows:

> *"I am prepared to continue with the current arrangement and have no requirement for a written contract along the lines of the precedent you have provided."*

This was also Mr Payne's position.

10. The matter of a contract of employment was raised again by another Director (Mr Darr) with Ms Davis in an appraisal meeting he held with her in April 2016. Mr Darr has not provided evidence to the Tribunal about this meeting. Ms Davis' recollection, which the Tribunal accepts, is that Mr Darr indicated that the Respondent was considering using written contracts of employment and that she made it clear to Mr Darr that she would not be prepared to accept restrictive covenants in any contract of employment the Respondent offered to her. However, Mr Darr did not pursue the matter any further after the appraisal meeting. The parties were content for the Claimants' employments to continue without the formality of completing contracts of employment notwithstanding statutory requirements.

11. On 24 June 2019 Mr Stone sent an email to Ms Davis which stated, inter alia, as follows:

> "*As you are aware, Cooke Painter have operated a discretionary bonus scheme for some years now. It is currently based on a target of 3 x each individual fee earners' salary with 25% of everything over that amount being paid to the fee earner.*
>
> *Like everything in life, bills always go up and never seem to come down and as a result the financial pressures on the company are increasing. As a result it has been necessary to review the bonus scheme. First, we want to make it clear, the discretionary scheme will remain in place but to sustain the scheme into the future, the current targets no longer reflect the level of required income.*

> *Reluctantly, it has therefore been necessary to make some changes, first there will be an increase of fee-earner targets to 3.25 x salary, effective for your new bonus which started 1 May 2019.*"

The email also set out details of how the bills paid total would be reduced by write-offs, referral fees and GDPR breaches. He also confirmed that the Respondent was increasing Ms Davis' hourly rate. Mr Stone sent an email in the same terms to Mr Payne.

12. Ms Davis sent an email in reply to Mr Stone on 1 July 2019. This stated, inter alia, as follows:

> "*As for your email on changes going forward with the bonus scheme. I don't accept what you say, and will come back to you on this*".

13. The Tribunal find that Ms Davis and Mr Payne are correct in stating that until Mr Stone's email to them of 24 June 2019 the Respondent had never suggested that the bonus element of their remuneration was discretionary. The bonus entitlement which they had negotiated with Mr Stone in 2012 was an integral part of the contractual financial arrangements which were made at the time to provide an agreed salary for Ms Davis and Mr Payne and confirmed a contractual entitlement to an annual bonus and how that was to be calculated in each financial year. It was an express term of their contracts of employment.

14. The Respondent commenced redundancy consultation relating to the decision to close its West Town Lane office on 31 July 2019. The result of this consultation was that the Claimants received a 2% increase in their salaries with effect from 1 September 2019, and at the end of that month Ms Davis moved to the Respondent's office at Gilda Parade and Mr Payne to its Sandy Park Road office.

15. During this consultation the Claimants met with Mr Stone on 6 August. At this meeting they made it clear to him that they did not accept that their bonus arrangements were discretionary or that the Respondent could unilaterally change the multiplier used in the calculation of their bonus payments from 3 to 3.25.

16. There is no dispute between the parties that at a staff meeting held on 17 December 2019 Ms Davis, supported by Mr Payne, made further representations objecting to the change which had been made to their bonus arrangements for the 2019 / 2020 financial year. Mr Stone confirmed to the Tribunal that, after receiving those representations, "the ball was very much in his court" to ensure that the Respondent responded fully to their representations. The Claimants had made it clear that they did not accept that their bonus arrangements were discretionary or that the Respondent could change them unilaterally during the course of the 2019 / 2020 financial year by changing the multiplier from 3 to 3.2. Mr Stone accepted that he did not respond to those representations as he should have done.

17. Ms Henderson took over general oversight of HR matters for the Respondent from November 2019. She found an unsatisfactory, and disorganised, position particularly with personnel records, a number of different contracts of employment and a number of employees, including the Claimants, who did not have written contracts of employment. She began taking external HR advice from January onwards to address these issues.

18. Mr Stone's evidence has confirmed that following Ms Davis' email of 1 July and the meeting held with Ms Davis and Mr Payne on 6 August he had made no response to the representations which they had made to him that they were not prepared to accept that the Respondent could unilaterally change the terms of their bonus arrangement for the ongoing financial year. They made further representations at the staff meeting in December and in view of a further failure to respond by Mr Stone Ms Davis chased him in further email correspondence on 3 February and 4 March 2020 to which he also failed to reply.

19. Mr Payne had pursued a separate enquiry of Ms Henderson in early 2020. He enquired of her whether he would be entitled to be paid a pro-rata bonus if his employment came to an end during that financial year. After taking external advice Ms Henderson informed Mr Payne that the Respondent was under no contractual obligation to make such a payment to him. Her email to him stated, inter alia:

> "*You would not receive any bonus provision if your employment should terminate on a date which is not the end of the bonus year, this being 30 April in your case.*"

20. The position by 4 March 2020 was that the Claimants were continuing to work for the Respondent on the basis that they were contractually entitled to a bonus payment at the end of the financial year (30 April 2020) which should be calculated by reference to 3 not 3.25 of their salaries and had still not received any response from either Mr Stone or Ms Henderson as to the representations which had been made by them since August 2019.

21. Miss Henderson finally responded to the Claimants by an email sent by her on 11 March. In this email Ms Henderson incorrectly stated that Ms Davis had not made any further representations to Mr Stone after her email of 1 July 2019 until February 2020. The Tribunal finds this a surprising assertion when Ms Henderson was present at the staff meeting in December 2019 when the Claimants made representations that they did not accept the changes that had been made to their bonus arrangements. Ms Henderson's email also stated as follows:

> "*We would therefore maintain that you have accepted the new term of the bonus arrangement which we have always advised is a discretionary scheme in any case.*"

This statement was incorrect. The Claimants had not accepted the new multiplier unilaterally introduced by the Respondent and there is no evidence before the Tribunal that the Respondent had ever advised the Claimants that their bonus schemes were discretionary until Mr Stone had referred to the Respondent operating a discretionary bonus scheme in his email of 24 June

2019 which they immediately challenged. Furthermore, Ms Henderson's understanding that the Claimants had refused to execute written contracts of employment offered to them by the Respondent was also incorrect. The correct position, on the evidence before the Tribunal, was that the parties had been content that no written contracts of employment were issued and completed by the Claimants.

22. By this time the Respondent had decided that it wished to amend its employees' contracts of employment to reduce their contractual sick pay entitlement. Ms Henderson proposed to do so by offering an enhancement to holiday pay entitlement to secure agreement to these changes. The Respondent wanted these new terms to be effective from 1 April 2020 and on 11 March 2020 Ms Henderson sent an email to all the Respondent's employees attaching a document in which she explained the Respondent's proposed changes to existing sickness and holiday provisions and sought comments from the Respondent's employees to the proposed changes by 20 March. On 26 March, having considered comments received from employees as to the proposed changes from holiday and sickness provisions, Ms Henderson sent a further email to all the respondent's employees confirming that the proposed changes to holiday and sickness entitlement would go forward from 1 April 2020 and attaching a new contract of employment for immediate consideration by the employees.

23. The correspondence informed the Respondent's employees that the Respondent wanted them to confirm by no later than noon on 31 March 2020 they were prepared to agree to the terms of the proposed new contract of employment that had been sent to them. Employees were advised that they could confirm their acceptance of the contracts by email and that the contracts would be issued electronically to them by the Respondent and that the new contracts of employment would be effective from 1 April 2020. The Claimants had been sent the information in respect of the changes to sickness and holiday provisions and the new contracts of employment at the same time as the other employees. Ms Henderson had not discussed these matters, or the disputed bonus arrangements, with the Claimants at any time either before or after her e mail of 11 March 2020.

24. The Respondent's correspondence overlapped with the UK Government's decision to impose a lockdown with effect from 23 March 2020 to combat the COVID pandemic. On 24 March 2020, Mr Stone, notified all the Respondent's employees, including the Claimants, that the current position meant that the Respondent would not be able to pay any overtime going forward and that employees were not to work any overtime going forward and if they did so would not be remunerated for it.

25. Ms Davis responded to Ms Henderson's email of 26 March on the morning of 31 March. She explained that she objected to a number of terms in the proposed contract of employment. She makes clear her concern at the lack of consultation on those new terms and that she considers the timescale given to her to consider them is unreasonable particularly because it gave her no opportunity to take independent legal advice about what was being proposed. Ms Davis requested a period of consultation. Mr Payne's correspondence with Ms Henderson was in the same terms.

26. There was a further exchange of emails between Ms Davis and Ms Henderson on 31 March. In this correspondence Ms Henderson made it clear that Ms Davis either had to accept what was being offered by the Respondent, that is, the change to the sickness and holiday provisions and the terms of the contract of employment sent to all employees on 26 March or reject it. She made clear that there was no basis on which there could be discussions, or negotiation, of the proposed terms. The Claimants were not prepared to agree all the proposed terms although they would have accepted changes to sick pay and holiday entitlement initially proposed by the Respondent.

27. On 1 April Ms Henderson sent emails to Ms Davis and Mr Payne in the same terms. The Respondent gave them written notice of the termination of their employment and informed them that they were being dismissed for some other substantial reason. This was stated to be a necessity to harmonise terms and conditions of employment across its workforce, ensuring fairness to all, and to better reflect modern working practices and that this included but was not limited to increasing holiday entitlement but decreasing sick leave entitlement.

28. The Claimants were further informed they were entitled to ten weeks' notice and that their effective dates of termination would be 11 June 2020. They were also informed that they would be able to continue their employment with the Respondent if they accepted the terms set out in the new contracts of employment that had been offered to them by signing one of the copies of the contract of employment sent to each them by 11 June 2020 to enable that new contract to come into effect on expiry of their notice on 11 June 2020. Ms Henderson made it clear that if they were not prepared to take that step then their employment would come to an end on 11 June 2020.

29. The Claimants sought legal advice. The correspondence that followed is within the Agreed Bundle. The Tribunal does not need to refer to the detail of that correspondence. It summarises the position as set out by those advising the Claimants. It was stated that the Claimants were prepared to accept proposed changes to holiday and sick pay entitlement. Their solicitors also set out their concerns and objections to terms of the new contract. These included changes to the bonus scheme, the terms of remuneration of benefits and, most significantly, post-termination restrictions to which they had been asked to agree. Their advisers submitted the proposed contract duly amended for the Respondent's agreement. The amendments were immediately rejected by the Respondent.

30. There were further discussions with the Claimants, which involved Mr Stone and another Director. These resulted in an extension of the notice period to 31 July. However, the documents before the Tribunal indicate that from the Respondent's point of view these discussions were initiated to minimise financial exposure or improve the Respondent's financial position. The Respondent was not prepared to discuss amendments to any of the terms in the proposed contract of employment. This intransigence meant that there was no opportunity for constructive consideration of the proposed amendments suggested by the Claimants and the reasons they had been made.

31. The main reason for the extension of notice was to enable the Claimants to continue to work for the Respondent which the Respondent accepts that the Claimants did with due diligence and professionalism. On 20 May Mr Stone informed the Respondent's employees that the Respondent's bonus scheme for 2021 could not be implemented in view of the impact of lockdown and the COVID pandemic. Ms Davis was paid a bonus for the financial year ending 31 March 2020. This bonus payment was calculated on a multiplier of 3.25 of salary, not 3. Ms Davis continued to maintain that the latter multiplier was an express term of her contract. Mr Payne was not entitled to a bonus for that financial year. These are the findings of fact made by the Tribunal.

Conclusions

32. There is no legal requirement for an employment contract to be in writing. Section 1 of the Employment Rights Act 1996 requires employers to give employees written particulars of a number of their main terms of employment. A statement of those particulars is not a contract of employment but it is persuasive evidence of terms agreed between employer and employee and could be held to represent the employee's contractual terms in the absence of any evidence to the contrary. Conversely, a contract of employment may contain the relevant particulars required under section 1.

33. The terms of a contract of employment can be express, implied, statutory or incorporated by conduct of the parties. An express term may be oral or written. If a contract is wholly oral it will be a question of fact to establish what its terms are and it is for the Tribunal or court to decide what those terms were if there is a dispute. Two of the disputes in these proceedings concern whether the Claimants had the benefit of a contractual bonus entitlement for the financial year 2019/20 and were entitled to be paid for overtime worked by them in that year, or in the following year.

34. The Respondent's financial year ran from 1 May to 30 April throughout the Claimants' employment. The bonus arrangements were set out in a three paragraph letter from Mr Stone to the Claimants dated 12 October 2012. This arrangement operated with no disagreement between the parties until the financial year 2019/20. The way in which the bonus arrangements were implemented establishes that it was an annual bonus scheme and that the bonus entitlement was calculated at the end of each financial year by reference to the total of the Claimants' fees of that year less write-offs and was then paid to them in the course of the next financial year. This was an annual bonus payment that could only be calculated at the end of the relevant financial year. The Respondent was correct in informing Mr Payne that he would not be entitled to any payment of a pro-rata bonus if he left his employment during the course of a financial year. The Tribunal commended the Claimants for withdrawing their claims for pro-rata bonuses because there was no evidence to support such a contractual term.

35. The bonus agreement between the parties set out in Mr Stone's letter of 12 October was an express term of the Claimants' contracts of employment with the Respondent. It was implemented with effect from 1 May 2012. It was a term that could not be changed unilaterally by the Respondent without due notice being given and by changing that term unilaterally in the course of a financial year the Respondent acted in breach of an express term of the

Claimants' contracts of employment. The change unilaterally imposed by the Respondent was to change the relevant multiplier from 3 to 3.25 of salary as the threshold for the calculation of bonus due to the Claimants.

36. The findings of fact set out above confirm that after this unilateral change was notified to the Claimants by Mr Stone on 24 June 2019 they objected to it on a number of occasions. Mr Stone acknowledged those objections and indicated he was taking steps to consider them. He then took no further action. Ms Henderson's response to these objections in her email of 11 March 2020 was based on incorrect assertions and ignorance of how the issue of potential written contracts of employment for the Claimants had been previously discussed and dealt with by the parties.

37. This was not a discretionary scheme. There had been a unilateral change to an express term of their contracts. Ms Davis and Mr Payne had continued working for the Respondent 'under protest' as their representations had made clear to Mr Stone. They had not conceded their position that the multiplier should not be changed. The bonus calculation in financial year 2019/20 should have applied the multiplier of 3 not 3.25. Mr Payne was not entitled to a bonus as a result of the fees he earned during that financial year. He pursues no claim in respect of it. Ms Davis was entitled to a bonus and was paid part of the bonus due to her. It would have been increased by a sum of £2,060.57 if the correct multiplier to which she was contractually entitled had been used by the Respondent. Therefore, her claim for damages for breach of contract / unlawful deduction of wages for the Respondent's failure to pay the full bonus to which she was contractually entitled succeeds.

38. The position as to the claim that the Claimants were due overtime payments for work in excess of their contracted hours cannot succeed. This is because on the evidence before the Tribunal the Claimants were not contractually required to work overtime by the Respondent and the Respondent was not under any contractual obligation to provide overtime work for them. The Tribunal accepts that it was agreed between the parties that if their work required them to do so, then they could submit a claim for payment for additional hours that they had worked.

39. This informal arrangement continued successfully. This confirms that there was a collaborative work environment with the Claimants trusted to make their own decisions as to work required and then to submit the additional hours they had worked and if approved they were paid overtime. There was no evidence before the Tribunal as to how overtime payments were calculated.

40. On 24 March 2020 Mr Stone sent out notification to all employees that there could be no payments of overtime from that day forward. The note was straightforward it stated: "There is no overtime from today". The Respondent was not acting in breach of the Claimants' contracts in informing them of that decision and its immediate implementation. The only claim for unpaid overtime that could have succeeded would have been if the Claimants were claiming that they had worked overtime before 24 March 2020 but there was no evidence before the Tribunal to support such a claim, and they were not entitled to overtime worked during their notice periods.

41. Employment Tribunals have long recognised the right of employers to dismiss employees who were not prepared to accept business reorganizations and/or changes to their contracts of employment. The first issue for a Tribunal when considering a claim for unfair dismissal is to determine whether a Respondent has established that a Claimant was dismissed for a potentially fair reason falling within s.98(1) of the Act. The Respondent submits that it was seeking to harmonise terms and conditions of employment to support and protect its business and that this had become even more important in view of the COVID pandemic.

42. The Respondent does not have to establish that the steps it was proposing were essential or necessary to save its business. A sound, good business reason is sufficient. The Tribunal must not make its own assessment of the benefits such a step would provide to the Respondent. The Respondent need only show that there were potential benefits and that the change proposed was not being imposed for arbitrary reasons. Furthermore, the fact that an employee is contractually entitled to resist such proposed changes does not mean that his / her dismissal will be unfair.

43. The Tribunal is satisfied that after receiving external advice Ms Henderson was seeking to remedy a failing in the Respondent's HR procedures by introducing updated contracts of employment provided by the external adviser and including amended terms in respect of holiday and sickness entitlement for all its employees which complied with statutory requirements. These proposed changes were not arbitrary. Furthermore, the changes were proposed for all its employees. Therefore, the Tribunal is satisfied that there was a potentially fair reason for the Claimants' dismissals.

44. The position was that the parties had been content, notwithstanding statutory requirements, that their employment relationships continued without the benefit of written contracts of employment. The Respondent had not refused to provide either a statement of terms and conditions of employment or a written contract of employment to the Claimants but had also not required the Claimants to complete a contract of employment in circumstances in which the Claimants had made it clear that they preferred not to have written contracts of employment.

45. The Respondent had not engaged in discussion with the Claimants as to their representations in respect of the change to their bonus arrangements and was not prepared to enter into any discussion as to the terms of the new contracts of employment which were submitted to their employees on 26 March. The new contract of employment formalized the change which the Respondents had already made to the Claimants' bonus arrangements and introduced a number of restrictive covenants which had not previously been discussed with the Claimant and was not prepared to give the Claimants any time to take legal advice as to their position which was particularly necessary for the Claimants in view of the extensive restraints that this contract would have imposed on them if they subsequently left the Respondent's employment.

46. There has been no cogent explanation by the Respondent as to why

consultation with the Claimants' could not have been extended to properly address these issues before any final decision was made as to whether the Claimants' employments should be terminated. Notwithstanding the pressures placed on the Respondent's business, as on all others by the COVID pandemic, such a period of consultation would not have prejudiced the Respondent or resulted in any detriment to it and the Claimants would have been able to continue in their employment and in doing so continue to support the Respondent's business.

47. The Respondent's failure to follow a focused period of consultation with the Claimants which provided them with the opportunity to respond to the Claimants' previous representations as to their bonus arrangements and fully and properly examine issues such as, for example, restraints of trade which had been immediately, and reasonably, raised by the Claimants was a substantial procedural failure. The Tribunal finds that the Claimants' dismissals were unfair by reason of that failure.

48. The Tribunal has concluded, after stepping back and reviewing all the evidence before it in the round, that, even if the Respondent had entered into genuine and meaningful consultation the Claimants' employments would still have ended because their continuing expectations from their employment with the Respondent which included a continuing unaltered bonus arrangement, overtime payments, and no restraints of trade could not have been met although a probable benefit of a meaningful consultation period could have been that the parties recognized that their respective positions could not be reconciled resulting in a less contentious outcome.

49. The Claimants are entitled to be paid basic awards for their unfair dismissals. They are also entitled to be paid compensation for the period in which the Respondent should have conducted full and appropriate consultation with them before reaching any decision as to whether or not they should be dismissed. The Tribunal has concluded that in the circumstances of this case that period of consultation would have extended to a period of four weeks. Therefore, the Respondent will pay compensatory awards to the Claimants of four weeks' pay for their failure to fully and properly consult with the Claimants before reaching a decision to terminate their employment.

50. The final issue before the Tribunal was the claims under s.38 Employment Act 2002. The issue to be determined here in view of the Employment Tribunal's finding that the Claimants had made successful claims within the terms of the 2002 Act is whether at the time these proceedings commenced the Respondent was in breach of s.1 of the Act. If the Tribunal finds that it was then under s.38 of the 2002 Act it must award the Claimants a minimum of two weeks' pay or, if it considers it just and equitable in all the circumstances, increase that award to an amount equal to four weeks' pay calculated in accordance with ss.220-229 of the Act. Under ss.5 of the 2002 Act the Tribunal does not have to make such an award if it finds there are exceptional circumstances which would make an award unjust or inequitable.

51. The proposed contract of employment issued to the Claimants by the Respondent on 26 March 2020 included all the relevant terms required under s.1 of the Act and, furthermore, those terms were not in dispute. The

Claimants indicated they were prepared to accept the changes to holiday and sick pay entitlement and they had the benefit of a contractual yearly bonus arrangement calculated at the end of each financial year and on which due notice had been given for the financial year 2020 / 2021 of a higher multiplier. The Tribunal concludes that because the proposed contracts of employment included all relevant terms required under section 1 these claims cannot succeed.

52. Notwithstanding the statutory requirement, the parties agreed that the Claimants' employments could continue without provision by the Respondent of either a statement of terms and conditions of employment or completion of a written contract of employment. The Respondent raised the point but did not pursue it.

53. The Claimants were content that their terms of employment were well established. They did not require any written confirmation of them. The Tribunal are satisfied that, in these circumstances, even if it had been persuaded otherwise, it would have concluded that there were exceptional circumstances within ss.5 of the 2002 Act which would have made it unjust and inequitable to have made any award to the Claimants.

54. When the Tribunal had given its oral reasons and Judgment the Tribunal and the parties were able to agree the sums to be awarded to the Claimants. These are set out in the Judgment. Therefore no further Reasons are required to explain them.

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Employment Judge Craft

Date 25 August 2022

REASONS SENT TO THE PARTIES ON
30 August 2022 By Mr J McCormick

FOR THE TRIBUNAL OFFICE