Reserved Judgment

Case Numbers: 2201802/2018 and others

EMPLOYMENT TRIBUNALS

BETWEEN

Claimants	**and**	**Respondents**
Miss C Huggins & others		**Croma Vigilant (Scotland) Ltd**

JUDGMENT AND ORDER OF THE EMPLOYMENT TRIBUNAL

SITTING AT: London Central **ON: 3-5 March 2021**

BEFORE: Employment Judge A M Snelson

On hearing Mr J Mann, trade union representative, on behalf of Miss C Huggins, Mr N Touati, Mr C Babalola, Mr S Sanu, Mr I Da Silva and Mr Y N'Guessan, Claimants, Mr J Hitchens of counsel on behalf of Mr O Emuemukoro, Claimant, Mr P Powlesland of counsel on behalf of Mr S Alaughe, Claimant, and Mr R Chaudhry, solicitor, on behalf of the Respondents;

And on reading the written representations of the parties;

The Tribunal determines that:

(1) The Respondents' contention that it was not practicable to comply with the reinstatement order made in favour of the Claimants on 8 November 2019 is not well-founded.

(2) The Respondents are ordered to pay to the Claimant, **Miss C Huggins**:
   (a) compensation for wrongful dismissal of £668.69
   (b) compensation for unfair dismissal in the forms of
      (i) a basic award of £1,416.96;
      (ii) a compensatory award of £14,802.64; and
      (iii) an additional award of £9,446.40.

   The recoupment provisions apply. The statutory particulars are:
   Monetary Award (MA): £26,334.69
   Prescribed Element (PE): £11,694.08
   Period of PE: 01.01.18 to 31.12.19
   Difference MA/PE: £14,640.61.

(3) The Respondents are ordered to pay to the Claimant, **Mr N Touati**:
- (a) compensation for wrongful dismissal of £1,235
- (b) compensation for unfair dismissal in the forms of
  - (i) a basic award of £7,335,
  - (ii) a compensatory award of 25,436.46 and
  - (iii) an additional award of £19,560.

The recoupment provisions apply. The statutory particulars are:
MA: £53,566.46
PE: £24,492.42
Period of PE01/01/18 to 31.12.18
Difference MA/PE: £29,074.04.

(4) The Respondents are ordered to pay to the Claimant, **Mr C Babalola**:
- (a) compensation for wrongful dismissal of £1,010.65
- (b) compensation for unfair dismissal in the forms of
  - (i) a basic award of £5,134.50,
  - (ii) a compensatory award of £24,437.39, and
  - (iii) an additional award of £19,560.

The recoupment provisions apply. The statutory particulars are:
MA: £50,142.54
PE: £23,360.56
Period of PE: 01/01/18 to 31.03.19
Difference MA/PE: £26,781.98.

(5) The Respondents are ordered to pay to the Claimant, **Mr S Sanu**:
- (a) compensation for wrongful dismissal of £216.10
- (b) compensation for unfair dismissal in the forms of
  - (i) a basic award of £978,
  - (ii) a compensatory award of £13,615.49, and
  - (iii) an additional award of £19,560.

The recoupment provisions do not apply.

(6) The Respondents are ordered to pay to the Claimant, **Mr I Da Silva**:
- (a) compensation for wrongful dismissal of £907.89
- (b) compensation for unfair dismissal in the forms of
  - (i) a basic award of £4,609.58,
  - (ii) a compensatory award of £13,992.68 and
  - (iii) an additional award of £17,598.40.

The recoupment provisions do not apply.

(7) The Respondents are ordered to pay to the Claimant, **Mr Y N'Guessan**:
- (a) compensation for wrongful dismissal of £790.80
- (b) compensation for unfair dismissal in the forms of
  - (i) a basic award of £2,200,
  - (ii) a compensatory award of £500, and
  - (iii) an additional award of £22,005.

The recoupment provisions do not apply.

(8) The Respondents are ordered to pay to the Claimant, **Mr O Emuemukoro**: compensation for unfair dismissal in the forms of

(i) a basic award of £2,934,
(ii) a compensatory award of £500, and
(iii) an additional award of £19,560.

The recoupment provisions do not apply.

(9) The Respondents are ordered to pay to the Claimant, **Mr S Alaughe**: compensation for unfair dismissal in the forms of

(i) a basic award of £3,667.50,
(ii) a compensatory award of £5,328.31, and
(iii) an additional award of £19,560.

The recoupment provisions do not apply.

(10) The Respondents' application for the claim of Mr Alaughe to be struck out is refused.

(11) Save as stated above all remedy claims brought by the Claimants are dismissed.

(12) The Tribunal makes no order on the various applications for costs and preparation time orders but grants permission to the affected parties to apply, no later than 28 days from the date of promulgation of this judgment and order, for a separate hearing to consider them. If no such application is made within the stipulated time, the costs/preparation time applications will be treated as withdrawn and they will not be entertained further.

REASONS

Introduction

1. The eight Claimants, whose names and case numbers are given in the Appendix to these reasons, are security officers. They worked for CIS Security Ltd until a TUPE transfer to CE Security Ltd in 2015 and a further TUPE transfer to the Respondents in August 2017. Their engagements were terminated on 28 December 2017 on the stated ground that they had not produced necessary documentation to prove their entitlement to work in their roles.

2. By their claim forms, the Claimants brought claims for unfair dismissal, wrongful dismissal (notice pay) and holiday pay. (Certain additional claims were pleaded but none was pursued.) All claims were resisted.

3. The claims of all Claimants other than Mr N'Guessan (case no.

2204683/2018) came before me on 4 November 2019 for final hearing, with five days allocated. On the first day I struck out the responses to all claims and upheld the complaints of unfair and wrongful dismissal. I then adjourned the hearing to day four to allow time for the representatives to prepare to deal with the resulting remedy claims, in which I permitted the Respondents to participate. Following evidence and argument on days four and five I made reinstatement orders in favour of all Claimants, gave a ruling on a point of law concerning the applicability of 'ACAS uplifts' under the Trade Union & Labour Relations (Consolidation) Act 1992 ('the 1992 Act'), s207A(2) to 'back pay' recovered pursuant to re-employment orders, and gave directions for the preparation of a later hearing to deal with the holiday pay claims (if any), any consequential matters arising out of the reinstatement orders and any costs application that might be pursued (mutual applications having been mooted).

4. Subsequently Mr N'Guessan's claims for unfair and wrongful dismissal were upheld, a reinstatement order was made his favour and his case was consolidated with the other seven.

5. It is an agreed fact that the orders for reinstatement were not complied with. Accordingly, in the remedy proceedings, the core issue was whether or not it had been 'practicable' for them to comply. I will call that 'the practicability issue'.

6. The unfortunate case management history between November 2019 and now is documented in the intervening orders. In fairness to the parties and their representatives, the delay is not wholly down to their failure to co-operate and/or comply with orders: one date was lost owing to the lockdown in March 2020 and another (in October 2020) was postponed because I was absent from work on sick leave.

7. The matter came before me on 3 March this year in the form of a 'remote' hearing (by CVP) with three days allocated to determine the outstanding claims for remedies for unfair and wrongful dismissal, any residual holiday pay claims and the outstanding costs/preparation time issues. On the afternoon of day two I gave a ruling in favour of the Claimants on the practicability issue. By day three it was clear that it would be necessary to receive closing arguments in writing. With that in mind, and in the hope of assisting the parties by narrowing the scope of the closing submissions, I proposed that, in the remaining time, I should determine three particular 'variables' on which any assessment of compensation would, at least in part, depend, namely (a) the proper approach to calculating average pay for the purposes of compensating loss of earnings; (b) whether to grant an ACAS uplift and, if so, the appropriate percentage increase in each case; and (c) the level of any 'additional award'. The representatives agreed and, following brief submissions, I gave adjudications on all three points, with brief oral reasons. By agreement, I then adjourned, having given directions for delivery of written submissions.

8. The submissions were duly delivered. Those of Mr Mann were prepared with great care and diligence and were most helpful.

9. These reasons cover the rulings given during the hearing and the reserved

issues, namely the assessment of compensation, the holiday pay claims (if any) and the costs/preparation time applications. They should be read with the judgment and reasons resulting from the November 2019 hearing and subsequent case management orders.

The Statutory Framework

Reinstatement and compensation

10. By the Employment Rights Act 1996 ('the 1996 Act') s113 the two re-employment options are listed: reinstatement and re-engagement, in that order.

By s114(1), a reinstatement order is defined as an order "that the employer shall treat the complainant in all respects as if he had not been dismissed."

11. Dealing with the choice of re-employment orders, s116(1) includes:

> **… the tribunal shall first consider whether to make an order for reinstatement and in so doing shall take into account –**
>
> **(a) whether the complainant wishes to be reinstated,**
> **(b) whether it is practicable for the employer to comply with an order for reinstatement, and**
> **(c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his reinstatement.**

12. By s117 it is provided, so far as material, as follows.

> **(3) Subject to … , if an order under section 113 is made but the complainant is not reinstated or re-engaged in accordance with the order, the tribunal shall make—**
>
> **(a) an award of compensation for unfair dismissal (calculated in accordance with sections 118 to 126), and**
> **(b) except where this paragraph does not apply, an additional award of compensation of an amount not less than twenty-six nor more than fifty-two weeks' pay,**
>
> **to be paid by the employer to the employee.**
>
> **(4) Subsection (3)(b) does not apply where—**
>
> **(a) the employer satisfies the tribunal that it was not practicable to comply with the order …**
>
> **…**
> **(7) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the tribunal shall not take that fact into account in determining for the purposes of subsection (4)(a) whether it was practicable to comply with the order for reinstatement or re-engagement unless the employer shows that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement.**

13. The concept of a 'week's pay' under the 1996 Act is defined and governed by ss220-229. Where income fluctuates according to hours worked, the figure is to be ascertained by taking average earnings over a period of 12 weeks ending with the 'calculation date' which, for present purposes, is the date on which notice,

if duly given, would have expired (see s222 and s226(3) and (6)).

14. A basic award is calculated by taking the applicable 'week's pay' and applying a multiplier reckoned by reference to the employee's age and complete years of service (s119).

15. A 'week's pay' is capped (s227). At the time to which these proceedings relate, the maximum figure stood at £489.

16. A compensatory award seeks to compensate the unfairly dismissed employee for the loss of his or her employment. The sum awarded is to be "such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer" (s123(1)).

17. In 'ordinary' unfair dismissal cases, the compensatory award is capped under s124 at a specified sum (£80,541 at the date of the Claimants' dismissals) or a week's pay multiplied by 52, whichever is the lower (subsection (1)). The section further provides:

> **(4) Where—**
>
> **(a) a compensatory award is an award under paragraph (a) of subsection (3) of section 117, and**
> **(b) an additional award falls to be made under paragraph (b) of that subsection,**
>
> **the limit imposed by this section on the compensatory award may be exceeded to the extent necessary to enable the aggregate of the compensatory and additional awards fully to reflect the amount specified as payable under section 114(2)(a) or section 115(2)(d).**

Sums payable under ss114(2)(a) or 115(2)(d) are in effect the back pay which employers are ordered to pay on reinstatement or re-engagement.

18. I drew attention to the interplay between s117(3) and s124(4). Quite simply, the effect of these provisions is that, where the employer fails to reinstate, the normal limit on the *compensatory* award is extended to so many weeks' pay as corresponds with the period of back pay which, had the employer complied, would have been payable under the reinstatement order, less the additional award.[1] To this sum must be added the basic and additional awards.

[1] I may not have explained this as clearly as I might have at the hearing on 6 February 2020. I was at pains to stress a point not hitherto understood: that if the reinstatement order was not complied with, the claim for two years' (or 104 weeks') back pay would disappear and be replaced by the right to claim a compensatory award, which was subject to a cap. What I may not have conveyed with sufficient clarity was that, if the additional award was less than a year's pay (the maximum additional award), the cap on the compensatory award (ordinarily 52 weeks' pay) would be extended correspondingly. So, for example, had additional awards of 26 weeks' pay been made, the compensatory awards would have been capped at 78, rather than 52, weeks' pay.

The ACAS uplift

19. The Trade Union & Labour Relations Act 1992 ('the 1992 Act'), s207A provides, so far as material, as follows:

> **(2) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—**
>
> **(a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,**
> **(b) the employer has failed to comply with that Code in relation to that matter, and**
> **(c) that failure was unreasonable,**
>
> **the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%.**

20. It is common ground that the relevant Code of Practice here is the ACAS Code of Practice on disciplinary and grievance procedures (2009). Para 1 states:

> **This Code is designed to help employers, employees and their representatives deal with disciplinary and grievance situations in the workplace.**
>
> - **Disciplinary situations include misconduct and/or poor performance. If employers have a separate capability procedure they may prefer to address performance issues under this procedure. If so, however, the basic principles of fairness set out in this Code should be followed, albeit that they may need to be adapted.**
>
> - **Grievances are concerns, problems or complaints that employees raise with their• employers.**
>
> **The Code does not apply to redundancy dismissals or the non renewal of fixed term contracts on their expiry.**

21. In *Lund v St Edmund's School*, Keith J, giving judgment in the EAT on 8 May 2013, said this (para 12):

> **If the employee faces a complaint which may lead to disciplinary action (whether because of his misconduct or his poor performance), the Code applies to the disciplinary procedure under which the complaint is to be investigated and adjudicated upon. Of course, the outcome of the disciplinary procedure may not result in the employee's dismissal at all. Or it may result in his dismissal which on analysis turns out not to be a dismissal for his misconduct or poor performance but a dismissal for something else. The important thing is that it is not the ultimate outcome of the process which determines whether the Code applies. It is the initiation of the process which matters. The Code applies where disciplinary proceedings are, or ought to be, invoked against an employee.**

22. In *Hussain v Jury's Inns Group Ltd* UKEAT/0283/15/JOJ, Laing J (as she then was), sitting in the EAT, expressed on 3 February 2016 the *obiter* view (para 47) that the Code of Practice did apply to dismissals for 'some other substantial reason', but explicitly declined to decide the point, it being unnecessary to do so.

23. In *Holmes v Quinitec Ltd* UKEAT/0206/15, in a judgment given on 26 April

2016 Simler J (as she then was), sitting in the EAT, stated (para 15):

> **… properly construed the Code of Practice does not apply to internal procedures operated by an employer concerning an employee's alleged incapability to do the job arising from ill health or sickness absence and nothing more. It is limited to internal procedures relating to disciplinary situations that include misconduct or poor performance but may extend beyond that, and are likely to be concerned with the correction or punishment of culpable behaviour of some form or another.**

24. In *Phoenix House Ltd v Stockman* UKEAT/0264/15/DM, Mitting J, giving judgment in the EAT on 17 May 2016, respectfully disagreed with Laing J's "provisional view". He said this (para 21):

> **In my judgment, clear words in the Code are required to give effect to that sanction, [under s207A] otherwise an employer may well be at risk of what is in reality a punitive element of a basic and compensatory award in circumstances in which he has not been clearly forewarned by Parliament and by ACAS that that would be the effect of failing to heed the Code. The Code does not in terms apply to dismissals for some other substantial reason. Certain of its provisions, such as for example investigation, may not be of full effect in any event in such a dismissal. What is required when a dismissal on that ground is in contemplation is that the employer should fairly consider whether or not the relationship has deteriorated to such an extent that the employee holding the position that she does cannot be reincorporated into the workforce without unacceptable disruption. That is likely to involve, as here, a careful exploration by the decision maker … of the employee's state of mind and future intentions judged against the background of what has happened. Of course, it would be unfair, as it was found to be here to a marginal extent by the Tribunal, to take into account matters that were not fully vented between decision maker and employee at the time that the decision was to be made. Ordinary commonsense fairness requires that. Clearly, elements of the Code are capable of being, and should be, applied, for example giving the employee the opportunity to demonstrate that she can fit back into the workplace without undue disruption, but to go beyond that and impose a sanction because of a failure to comply with the letter of the ACAS Code, in my judgment, is not what Parliament had in mind when it enacted section 207A and when the Code was laid before it, as the 2009 and 2015 Codes both were.**

25. Since I have concluded (for reasons explained below) that the Tribunal has no jurisdiction to award any uplift, I could leave the matter there. But in case I am mistaken, I think it right to point out that any uplift, if applicable, must be added *before* any adjustment to give effect to the cap under s124 (whether or not the cap itself is adjusted under s117(4)). The cap, which stipulates (s124(1)) that the compensatory award "shall not exceed …", is the ultimate control on the quantum of the award (see s124(5)). The apparent submission to the contrary by Mr Hitchens is clearly wrong.

Evidence

26. I heard evidence from all of the Claimants bar Mr M'Guessan and, on behalf of the Respondents, Mr Rodney Askham, Mr Paul Brady and Mrs Eileen Little. The witnesses gave evidence by means of sparse witness statements, most of which conveyed very little information.

27. There was also documentary evidence, some incorporated more or less at random in the bundle, some thrown in loose at various points in the hearing or

thereafter. It is a long time since I have seen a case so poorly prepared.

Some Primary Findings

Steps taken to implement the reinstatement order

28. My order required the Respondents to reinstate the Claimants other than Mr N'Guessan by no later than 27 December 2019. The first outward sign of any activity aimed at giving effect to the order was a letter from Mr Chaudhry to the Claimants' representatives dated 24 December 2019 asking for their agreement to the deadline for reinstatement being extended to 31 January 2020. He laid emphasis on the steps that needed to be taken (issuing uniforms, vetting, consultation and training) and pointed out that it was a difficult time of year to get things done. He did not explain the delay in opening correspondence. He did stress that the Respondents remained "committed to reinstatement, as ordered by the Tribunal".

29. The Claimants did not agree to the proposed extension. Mr Mann said that he could see no problem with the Respondents putting the Claimants back on the payroll with effect from 27 December, especially as Mr Choudhry had accepted that they would be paid from that date.

30. On 27 December 2019 Mr Chaudhry wrote to the Claimants' representatives. His letter began as follows: "The Respondent confirms that all Claimants will be reinstated from today. All the Claimants will need to be vetted and details regarding this will be sent out shortly."

31. Despite this assurance, the Claimants were not put back on the payroll.

32. Some weeks later, the Respondents invited the Claimants to attend meetings on 28 January 2020 to discuss their reinstatement. Mr Mann advised those for whom he was acting not to attend. He took the view that the Respondents needed to implement the promised reinstatement before any useful dialogue could take place.

33. Mr Emuemukoro attended a meeting on 28 January 2020. The Respondents were represented by Mr Askham. Mr Emuemukoro expressed interest in a hostels-based role in Camden but said that he would not be willing to take up such a position until all outstanding elements of the reinstatement order had been implemented. In particular, he referred to the back pay to which he believed he was entitled. The meeting was inconclusive.

34. Mr Alaghe attended a separate meeting on 28 January 2020 at which, again, the company was represented by Mr Askham. He expressed an interest in a vacancy at St Pancras Square, but like Mr Emuemukoro was not interested in committing to anything until the question of back pay had been resolved.

35. On 31 January 2020, Mr Chaudhry wrote again to the Claimants' representatives. His letter included the following passages:

1. **The Respondent confirmed to all the Claimants' representatives that it had accepted that all the employees would be reinstated, or re-engaged, and that this would be from 27 December 2019.**
2. **The reinstatement has been difficult but the Respondent remains committed to complying with the tribunal's order. Existing employees are being consulted with and moved in order to make space for the incoming employees. This has delayed the physical implementation of reinstatement/re-engagement. Nonetheless all the employees were invited to meet with the Respondent on the 28 January 2020. Five employees refused to attend and the two employees that did meet refused to join work until the backpay had been paid. Further invitations are being sent to them so that they can resume work promptly. The issue of back pay whilst connected is divisible from reinstatement and the approach adopted by the Claimant's has been unhelpful.**
3. **The Respondent remains committed to paying the backpay however the calculation of the figure is complicated by the fact that the Claimants refused to return to work. Thus the sum for backpay is not fixed and remains in dispute. There remain gaps in the information provided by the Claimants regarding the sums earned over the two-year period.**
4. **The Respondent also submitted an application for reconsideration on the 9 December 2019 which has not yet been considered.**
5. **Costs remain in dispute between the parties.**

36. On 31 January 2020 Mr Askham wrote to the Claimants represented by Mr Mann, advising that the roles which they had previously held no longer existed, but drawing attention to enclosed information concerning currently vacant posts in which they might be interested. With that information was a note to the effect that the vacancies were "not infinite" and would be considered on a "first-come first-served basis". Mr Askham also stated that the question of back pay would be dealt with in due course and should not have "any implication" for employees resuming their employment with the company. (This somewhat obscure comment seems to have been intended to mean that the fact that back pay had yet to be calculated should be no obstacle to the Claimants being re-employed.) Replies were requested by 5 February 2020.

37. On 5 February 2020 there was an email exchange in which Mr Askham told Mr Emuemukoro that he was reinstated but not working as he had refused to work until the "other issues" had been resolved. He added, "We can't do much more until I can actually have you physically in work."

38. However, also on 5 February 2020, the solicitor acting for Mr Emuemukoro wrote to Mr Burgess, Mr Chaudhry's colleague, stating:

> **I have emailed you a number of times this week making clear my client's position regarding remedy and the impossibility of providing a set figure for backpay when my client has not yet been reinstated.**

39. Another exchange of emails took place on 5 February 2020, this time involving Mr Chaudhry and Mr Mann. Mr Mann's message included this:

> **You have waited until the day before we are back in Court to ask for further details [relating to backpay calculations] when you have had since November to do this. You also refer to a return to work … "as soon as possible" when you know the reason the Claimants declined the offer of meetings last week was that they had not yet been reinstated. This despite the fact that I received an email from you on 27**

December 2019 in which you stated that they would all be reinstated on that day.

Mr Chaudhry's reply reaffirmed the Respondents' stated commitment to returning the employees to the workplace as soon as possible but then claimed that approach was impeding that end, apparently on the ground that his calculations for the purposes of remedy (including backpay) were inaccurate and out of date. Mr Choudhry did not engage with Mr Mann's point that reinstatement was the first step.

40. On 6 February 2020 the case came before me for a one-day hearing to determine all outstanding remedies issues. Since I was assured that the parties had a good prospect of resolving matters privately, I allowed them time for negotiation and was greatly disappointed to learn late in the afternoon that the discussions had not borne fruit. The hearing that day would in any event have been abortive because, apart from anything else, the Respondents had not prepared their evidence on the key issue of the practicability of reinstatement. The hearing was re-listed for 19 March but, as already mentioned, that date was lost owing to the Covid-19 lockdown.

41. Following the hearing on 6 February 2020 the correspondence on behalf of the Respondents was ever more clearly directed to the disagreement about the quality of the Claimants' disclosure of documents relating to mitigation and to the preparation of the bundle of documents for the hearing scheduled for 19 March. The Claimants were not put back on the payroll. Nor were they invited to take up any particular positions. Nor were they told that there was no position for them to take up. Nor did the Respondents engage with their argument that they should be returned to work pending resolution of the back pay claims.

The particular case of Mr N'Guessan

42. The claim of Mr N'Guessan initially proceeded separately. By a judgment given on 3 February 2020 I upheld his complaint of unfair dismissal by consent and made a reinstatement order in his favour, with a compliance date of 28 February. The claim was later consolidated with those of the other seven Claimants.

43. A meeting was held on 27 February 2020, attended by Mr Askham, Mr N'Guessan and Mr Mann. Mr Askham stated that Mr N'Guessan could not be returned to his original role because, although there were two such posts in existence, both were held by permanent replacements, of whom one had more than two years' continuous service and the other had nearly two years' service and in any event was away on leave and so could not be consulted. There was also discussion about a 'RSP' (believed to be Reactive Security Patrol) vacancy but Mr Askham said (without explanation) that placing Mr N'Guessan in such a role would amount to re-engagement rather than reinstatement and that he would need to be advised by Head Office. Mr Mann pressed for Mr N'guessan to be put back on the payroll from 28 February, but got no commitment from Mr Askham.

44. On 4 March 2020 Mr Askham wrote to Mr N'Guessan confirming the refusal to reinstate and adding that the RSP roles "would not amount to

reinstatement" and were "therefore not viable at this time." No step was taken to reinstate Mr N'Guessan thereafter.

Further Findings and Conclusions

Reinstatement and compensation – points of general application

45. I concluded that the Respondents had failed to discharge the burden upon them under the 1996 Act, s117(4)(a) of showing that it had not been practicable to comply with the Order for reinstatement. My reasons were these. First, the order was for reinstatement by 27 December 2019. The Respondents' application for the time for compliance to be extended was refused but, rightly, they did not treat their obligations as at an end once the deadline had passed. Nor did Mr Choudhry advance before me any argument to that effect. He would have had great difficulty doing so, faced with the inevitable riposte that if they found time tight, the Respondents had only themselves to blame given their failure to take any step to implement the order until three days before the compliance date.

46. Second, Mr Choudhry submitted that the Respondents had not had adequate managerial resources to implement what he called the (reinstatement) 'project' (strange nomenclature to apply to the business of complying with a legal order). The answer is that it was for them (a substantial organisation) to arrange their affairs in such a way as to be able to fulfil their obligations to the former employees whom they had wronged. If they needed to draft in assistance, they should have done so. I also note that throughout they had available to them the professional support services of Mr Choudhry and other members of his organisation.

47. Third, the Respondents' position on reinstatement was confused and contradictory. They swung from proclaiming their "commitment" to giving effect to the order to declaring that it was impossible to do so.

48. Fourth, their tardy and haphazard approach to implementing the order was eloquent of an increasingly evident purpose to frustrate it (although I stop short of finding that they had such a purpose from the outset).

49. Fifth, the evidence on which they relied was sparse and opaque.

50. Sixth, the Respondents' argument that the Claimants made it impracticable to reinstate had no traction. By 6 February 2020 if not earlier it was clear that the Claimants' position was that the question of back pay, the main focus of the Respondents' attention by that date, could not be resolved until they were returned to work. They (Mr Alaughe and Mr Emuemukoro included) were *not* resisting reinstatement: quite the reverse.

51. Seventh, the Respondents' behaviour after 6 February 2020 demonstrates very clearly that they had resolved by then to do nothing more that might lead to successful reinstatement of the Claimants and instead focus on preparing to fight the practicability point and the compensation claims. The ball was in their court. They chose to pretend that it was not.

52. Eighth, Mr Choudhry's argument that the (alleged) fact that they did not hold copies of the contracts of employment of the Claimants at the time of their TUPE transfers into the Respondents' employment somehow made reinstatement impracticable is hopeless. It seems to be accompanied by an admission that the Respondents failed to issue them on transfer with fresh terms no less favourable than they had enjoyed immediately prior to transfer and an attempt to pray this failure in aid as supporting their case on practicability. As noted above, this is not the first time that the Respondents' (apparent) failure to comply with their legal obligations is claimed as a point in their favour in this litigation. The submission is not only wrong-headed but also entirely irrelevant since, as I find, the absence of any prior contract (whether containing or not containing a mobility clause) was not, and was not seen by the Respondents as, any obstacle to reinstating any of the Claimants.

53. Ninth, the Claimants did not make reinstatement impracticable by making payment of back pay a precondition of returning to work. That was never the position of the Claimants represented by Mr Mann and by 6 February 2020 it was clear that neither Mr Emuemukoro nor Mr Alaughe was so contending. Correspondence on behalf of the former was emphatically to the contrary (see the narrative under 'Some Primary Findings' above). I regret to say that messages on behalf of the Respondents after 6 February 2020 seeking to attack the Claimants for somehow refusing to be reinstated were insincere and purely tactical.

54. For all of these reasons, I was satisfied that the Respondents, who bore the burden of demonstrating that it was not practicable to comply with the reinstatement order (see the 1996 Act, s117(4)(a)), had failed to discharge it. Accordingly, the Claimants were entitled to awards of compensation in accordance with s117(3)(a) and (b).

55. My decisions on the three 'variables' (see para 7 above) and my reasons for those decisions, were as follows.

56. As to 'variable' (a) (relevant to awards under s117(3)(a) and (b)), the issue arose because, as is often the case, the Claimants' earnings were not entirely constant from one week to the next. The representatives differed on the question of the period over which average pay should be reckonned for the purpose of calculating loss of earnings as a weekly figure. Mr Choudhry submitted that the period of three months was 'standard' and should be applied here. Mr Powlesland contended that a longer period (he mentioned five months) would be fairer, serving to flatten out fluctuations. In my ruling I agreed with Mr Choudhry. Absent any special reason to take a different period, the three months up to dismissal would generally be representative and serve as a fair basis for the (necessarily rough and ready) calculation of loss of earnings flowing from the dismissal. I also pointed out that Mr Choudhry's approach was consistent with the statutory rules for calculating a 'week's pay' (for the purposes of, for example, calculating a basic award), which require an average to be calculated over 12 weeks (the 1996 Act, s222). On further reflection, it makes better sense to trim the three-month measure to 12 weeks and thereby avoid the risk of confusion resulting from two closely similar tests being applied in parallel. The practical difference caused by

this adjustment is likely to be negligible.

57. Turning to 'variable' (b) (relevant to the award under s117(3)(a) only), the representatives agreed that, given my decision on the practicability issue, my prior ruling that the ACAS uplift did not attach to 'back pay' was no longer in point and the applicability of the 1992 Act, s207A was a 'live' question. For the Claimants it was submitted that, on their pleaded cases, to which (the response forms having been struck out) there was no answer, the Respondents had dismissed them summarily and without a semblance of a fair procedure and that the only proper outcome was an enhancement of the compensatory award by the maximum percentage, 25%. For the Respondents, Mr Choudhry's sole submission was that, *because* the response forms had been struck out and the claims on liability had proceeded uncontested, the Tribunal had received no *evidence* on which it could base any proper decision on the ACAS uplift question. I wish I could say that this was the only bad point taken on either side. It is obviously wrong-headed. The Respondents cannot derive an advantage from their own spectacular failure, through their representative (not, I stress, Mr Choudhry or his immediate predecessor), to conduct their defence in a proper way. Given the strike-out, the Tribunal takes the Claimants' pleaded cases on liability, which are not vitiated by internal contradictions or undermined by inherent implausibility, at face value. In the circumstances, I was persuaded that the Claimants' submissions were to be preferred and that the uplifts of 25% must be applied to the compensatory awards of all of them.

58. In his written submissions following the hearing, Mr Choudhry raised for the first time the threshold question of whether the Tribunal has jurisdiction to apply the ACAS uplift at all in a case of a dismissal to avoid contravention of a statutory prohibition or for 'some other substantial reason'. He cited the *Stockton* case, mentioned above. He said that he had been 'tired' on day three of the hearing before me and that this explained his failure to draw relevant authority to my attention. I have as yet no explanation for the failure of both counsel to do so.

59. The new point made it necessary for me to invite further submissions from the parties, by means of a letter from the Tribunal of 25 May. Those acting for the Claimants chose not to add to their prior submissions (which had not touched on the applicability of the ACAS Code of Practice). In a brief document dated 10 June, Mr Chaudhry expanded somewhat on his earlier submissions. The messages from the other representatives were all received by the Tribunal by 18 June but another administrative delay followed before they were passed to me on 15 July.

60. I am in no doubt that my purported decision to award ACAS uplifts was in error. The Claimants were dismissed for 'some other substantial reason', namely their stated inability to demonstrate their right to work. There was no question of a 'conduct' ground, on the surface or beneath it. These were not *Lund* cases, in which a question meriting disciplinary investigation arose. The *Hussain* case contained only an *obiter* reflection. The decision in *Stockman* (which is in harmony with that in *Holmes*) is directly in point and binding on me. I have no discretion to award an ACAS uplift. Since I have given no judgment on the point (just an oral ruling), I do not consider reconsideration to be appropriate. I simply substitute (by

way of the above judgment) a corrected outcome.

61. As to 'variable' (c) (concerned, self-evidently, with the award under s117(3)(b) only), I concluded that the proper additional award in the case of Mr N'Guessan was 45 weeks' pay and in the cases of the other Claimants, 40 weeks' pay. The latter awards are located a little above the mid-point of the available range. I had regard to a number of factors. In the first place I was mindful that reinstatement is the primary remedy for unfair dismissal (despite being rarely granted). The legislation places an onus on the employer to implement an order or show that it was not practicable to do so. The Respondents were at fault in failing to discharge that burden, in circumstances explained in my reasons above on the practicability issue. They were very late in engaging with the reinstatement order. There were possible solutions which were not followed up. Ultimately, it was their inaction at a time when it was clear that the Claimants were not making payment of back pay a precondition of engagement, that caused the favourable opportunity to be lost. On the other hand, it would not be fair to classify this as a case at the worst end of the spectrum. Contrary to the submissions on behalf of the Claimants, I accept that the Respondents did engage with the consequences of the reinstatement order and did attempt, until they let the initiative slip, to find a workable solution to it. I also accept that the Claimants' initially uncooperative line may have made such a solution somewhat harder to achieve than it needed to be. Balancing these considerations together, I am satisfied that additional awards of 40 weeks' pay meet the justice of the cases of the seven Claimants other than Mr N'Guessan.

62. The factors just discussed apply equally to Mr N'Guessan's case. Here, however, a higher additional award is warranted. As noted in my factual findings above, Mr N'Guessan was told, sincerely as I find, that he could not be reinstated because his role had been filled by a replacement. But that was no answer to the reinstatement order, given that the Respondents did not say, let alone establish on evidence, that it had not been practicable to arrange for the necessary work to be performed without hiring a permanent replacement (see s117(7)). In other words, the Respondents simply got the law wrong and missed a straightforward opportunity to implement the order. They had legal advice at their disposal throughout. In the circumstances, the award needs to be closer to the top of the bracket. Doing my best, I place it at 45 weeks' pay.

63. Subject only to the adjustment of the statutory cap under s124, the s117(3)(a) award is a conventional compensatory award, to be approached in accordance with s123 and the familiar case-law thereon. Assessment depends on a number of factors, which will be discussed in detail below in relation to each Claimant in turn. In summary, these, so far as here relevant, are: (a) the correct figures in respect of loss of earnings (already discussed); (b) the correct figures for loss of employer's pension contributions (where applicable); (c) the appropriate period over which compensation for pecuniary loss is to be awarded; (d) the proper award for loss of statutory rights.

64. As to pension contributions, Mr Mann, relying on the Respondents' documents, has identified the minimum rates of contributions payable at different times in relation to each of the affected Claimants, thereby arriving at the modest

sums claimed. Mr Choudhry does not appear to challenge his methodology.

65. As to the period over which compensation is to be awarded, it is necessary to have regard to the period covered by payments in lieu of notice and any further award of compensation for wrongful dismissal made on the basis that the payments of August 2019 were insufficient to satisfy the Claimants' notice entitlements. In effect, therefore, the part of the compensatory award for loss of earnings and pension contributions must run from the end of the (notional) notice period of each Claimant (such periods being of different duration). And the duration of this element of compensation must in each case take account of the period of loss already compensated by notice pay.

66. On a separate matter, it was argued that the compensatory awards should include holiday pay elements on the basis that compensation for loss of earnings does not, of itself, compensate the receiver for the loss of paid leave. There is no basis for this. Paid leave is an inherent benefit of employment which is compensated by reference to the income foregone. It is not in the nature of a 'fringe benefit' (such as pension contributions or a travel allowance), for which compensation as a separate head of loss is appropriate.

67. Mr Choudhry concedes that the proper award for loss of statutory rights is £500. I agree.

68. So much for the compensatory award. It is not necessary to say anything here about the additional awards or the basic awards.

69. Turning to the question of wrongful dismissal compensation, I have noted the points carefully made by Mr Mann concerning the payments purportedly in lieu of notice made to the six Claimants he represents. In particular, he explains why, he says, the Respondents' notice pay figures were wrong (they treated it as taxable in its entirety, rather than factoring in the tax-free allowances). Unfortunately, Mr Choudhry does not respond on these matters. In the circumstances, I have accepted Mr Mann's calculations of the sums payable in respect of notice. The sums to be set off, representing the part-payments made by the Respondents in August 2019, appear not to be in dispute. (I agree with Mr Mann that these payments should be set off against the notice pay claims, not the unfair dismissal compensation.) Counsel raise no claim in respect of notice pay on behalf of Mr Emuemukoro or Mr Alaughe.

70. As I have mentioned, the claim forms appear to include conventional claims for compensation for annual leave entitlement outstanding on dismissal. As I understand it, no such claim is now pursued. Mr Emuemukoro's schedule of loss appeared to articulate one but he gave no evidence in support of it and in cross-examination he appeared to have in mind a claim of a different character (and one not pursued on his behalf by Mr Hitchens).

71. Finally, the Claimants claim interest. The Tribunal has no power to grant interest on compensation awarded under the 1996 Act. Rather, interest is recoverable on judgments, from the date of judgment. And Mr Hitchens's argument seeking interest on 'backpay' under my judgment of November 2019 is

doubly fallacious. As I have already pointed out, the right to recover those monies fell away on the Respondents' failing to comply with the reinstatement order, being replaced with the right to an additional award.

Compensation – the individual Claimants

Ms Huggins

72. Ms Huggins impressed me as a conspicuously straightforward witness. I acquit her entirely of any attempt to mislead me. I accept her evidence that she was unsuccessful in seeking fresh employment in the security industry, and that she eventually found work as a carer. The Respondents fail to demonstrate any failure to mitigate by Ms Huggins. She acted reasonably in looking initially for a job in the security industry. Her chances were limited by the fact that she wished to work part-time, as she had during her time with the Respondents. Moreover, following her unfair dismissal she had to contend with many difficulties, including problems with her son (she is a single parent) and losing her home. These factors can only have served to further restrict her options.

73. The wrongful dismissal claim succeeds in the sum of £668.69. I accept Mr Mann's figure (£1,398.96 (6 x £233.16) less credit for a part-payment of £730.27).

74. The basic award is agreed at £1,416.96.

75. Turning to the compensatory award, I find, accepting Mr Mann's figures and methodology, that Ms Huggins suffered loss of earnings between January 2018 and December 2019 over 7 weeks at £233.16[2], 52 weeks at £241.80 and 39 weeks at £250.64.[3] The losses were mitigated by payments from Payroll Village and Smart Payroll totalling £6,170, leaving a loss of earnings total of £17,810.68. Employer's pension contributions lost totalled 317.74. With £500 for loss of statutory rights, the overall total comes to £18,628.45. But the compensatory award is limited by the cap, which restricts it to £14,802.64 (104 weeks' (net) loss at £233.16 p.w. less the additional award of £9,446.40).

76. The additional award of £9,446.40 is calculated as 40 weeks' (gross) pay at £236.16 p.w.

77. The total of the four elements mentioned is £26,334.69.

78. Recoupment is dealt with in my judgment above.

Mr Touati

79. I agree with Mr Mann that the payslips in the bundle substantiate the stated weekly hours over the last three months. That gives weekly earnings at dismissal of £644.47 (gross) and £559.75 (net). The corresponding figures for the year from April 2018 are £674 and £584.95.

[2] The first 6 weeks of loss are covered by the breach of contract (wrongful dismissal) award.
[3] I was given no figures for the losses sustained after December 2019, but that does not affect anything, given that (as will be explained) the statutory cap applies.

80. Mr Touati did not secure fresh employment until May 2019. I reject the suggestion that he has concealed income. I find that he lived on state benefits during his period of unemployment. But I do find that he fails to prove monetary loss flowing from the dismissal beyond the end of 2018. In the absence of evidence demonstrating efforts to find a new job, I accept the Respondents' submission that he has failed to mitigate his loss from that point on, and that it would not be just and equitable (see the 1996 Act, s123(1)) to extend the period of compensation beyond it.

81. Mr Touati's wrongful dismissal claim succeeds. He was entitled to £5,597.50 (10 x £559.75) and must give credit for £4,362.50 already paid. The balance is £1,235.00.

82. The basic award is £7,335.00 (£489 x 10 x 1.5).

83. For loss of earnings under the compensatory award, I award three weeks' (net) pay at £559.75 and 39 weeks' (net) pay at £584.95, a total of £24,492.30. Adopting Mr Mann's methodology but restricting my award to the calendar year 2018, I also allow £444.04 in respect of loss of employer's pension contributions. To this must be added £500 for loss of statutory rights. The total compensatory award is therefore £25,436.46.

84. The statutory cap on the compensatory award does not apply.

85. The additional award is £19,560 (£489 x 40).

86. The total of the four elements mentioned is £53,566.46.

87. Recoupment is dealt with in my judgment above.

Mr Babalola

88. I find, based on the payslips, that Mr Babalola's average weekly hours at the date of dismissal were 59, as the Respondents contended (the Claimant's calculation appeared to ignore my ruling on computation of average hours). That gave gross and net weekly pay (adopting Mr Mann's methodology) of £592.95 and £518.60 respectively. The corresponding figures for the year from April 2018 were £610.65 and £534.10 respectively.

89. Mr Babalola secured fresh employment in March 2018 with another security company, but was dismissed after a number of months on suspicion of having given false information on joining about the duration of his employment with the Respondents. It is not clear precisely how this came about, but I am satisfied that he committed no misconduct and in particular did not overstate the duration of his employment with the Respondents. Apart from anything else, he had no possible reason to do so: he was with them for over seven years. He was then unemployed before securing a new role in security at the start of April 2019, at which point (as he agreed in evidence) he ceased to suffer any money losses. I am quite satisfied that no question arises of any failure to mitigate.

90. Mr Babalola's wrongful dismissal claim succeeds. He was entitled to a payment of £3,630.20 (7 x £518.60) and gives credit for the part payment received of £2,619.55. The award is for £1,010.65.

91. The basic award is a matter of arithmetic: I calculate it as £5,134.50 (£489, the (capped) week's pay figure, x 7 x 1.5).

92. Turning to the compensatory award, Mr Babalola is entitled to recover loss of earnings of six weeks' (net) pay at £518.60, from the end of the notice period to the end of March 2018 (£3,111.60) and 52 weeks' (net) pay at £534.10 (£27,773.20), a total of £30,884.80. From this must be deducted the earnings from what proved to be the temporary role commencing in March 2018, together with some minor receipts from Ebrit Resource noted in the bank account schedules, namely £7,524.24. To the running total of £23,360.56 must then be added in respect of lost employer's pension contributions at 1% and, from April 2018, 2%, the sums of £62.39 and £514.44 respectively, a total of £576.83. Finally, I award for loss of statutory rights the sum of £500, giving an overall total of 24,437.39.

93. The statutory cap on the compensatory award does not apply.

94. The additional award is £19,560 (£489 x 40).

95. The total of the four elements mentioned is £50,142.54.

96. Recoupment is dealt with in my judgment above.

Mr Sanu

97. I agree with Mr Mann that the payslips in the bundle substantiate his calculation of average hours over the last three months. I accept his calculations of gross and net weekly pay at dismissal (£612.78 and £534.46 respectively). The corresponding figures for the year from April 2018 are £638.32 and £556.23.

98. I find that Mr Sanu performed some occasional security work under a zero hours contract during the first six months of 2018. He fails to provide disclosure of the income received. I accept that his earnings over this period were very modest and certainly did not exceed £5,000 net. Since he has not supplied evidence to enable me to do better, I treat him as having earned that sum in the first six months of 2018. I accept his evidence that he secured a permanent security role at the beginning of July 2018. His net earnings for July to December 2018 were £9,456.34, a weekly average of £363.69. In my judgment, he is entitled to be compensated for monetary loss to the end of December 2918. In the absence of evidence to explain why he was not able to extinguish his losses by that date, I decline to extend the period of compensable loss beyond that point.

99. Mr Sanu's wrongful dismissal claim succeeds in the sum of £216.10. I accept Mr Mann's calculation, which gives credit for a part-payment by the Respondents.

100. The basic award is £978 (£489 x 2).

101. I award for loss of earnings £534.46 per week for January to March (11 weeks, allowing for the notice period separately compensated) and £556.23 for April to December (39 weeks). That gives a total of £27,572.03. From that must be deducted the £14,456.54 earned, or assumed to have been earned, in mitigation, leaving a total of £13,115.49. There is no award in respect of pension contributions as Mr Sanu was contracted out of the Respondents' scheme. I add £500 for loss of statutory rights. Accordingly, the total compensatory award is £13,615.49.

102. The statutory cap on the compensatory award does not apply.

103. The additional award is £19,560 (£489 x 40).

104. The total of the four elements mentioned is £34,369.59.

105. The recoupment provisions do not apply.

Mr Da Silva

106. I agree with Mr Mann that the payslips in the bundle substantiate the stated weekly hours over the last three months. That gives weekly earnings at dismissal of £439.96 (gross) and £393.84 (net). The corresponding figures for the year from April 2018 are £453.02 and £405.25.

107. It seems to me that, on a fair reading of the documents, Mr Da Silva's work as a driver with Green Tomato brought the period in which he suffered a loss of earnings to an end. That activity began at the end of September 2018. Up to that point, Mr Da Silva lived on his savings and benefited from support from his family. In my judgment, the Respondents fail to show any failure to mitigate prior to his taking on the Green Tomato work, but he fails to demonstrate any continuing loss thereafter.

108. Mr Da Silva's wrongful dismissal claim succeeds. He is entitled to £2,756.88 (7 x £393.84) and must give credit for £1,848.99 already paid. The balance is £907.89.

109. The basic award is £4,609.58 (£439 x 7 x 1.5).

110. For loss of earnings under the compensatory award, I award six weeks' (net) pay at £393.84 and 27 weeks' (net) pay at £405.25, a total of £13,304.79. Adopting Mr Mann's methodology but restricting my award to the period up to the end of September 2018, I also allow £187.93 in respect of loss of employer's pension contributions. To this must be added £500 for loss of statutory rights. The total compensatory award is therefore £13,992.68.

111. The statutory cap on the compensatory award does not apply.

112. The additional award is £17,598.40 (£439.96 x 40).

113. The total of the four elements mentioned is £37,108.15.

114. The recoupment provisions do not apply.

Mr N'Guessan

115. Mr N'Guessan did not give evidence. Mr Mann did not make any application for the hearing to be adjourned to enable him to do so. Rather, he elected to proceed on the strength of what purports to be Mr N'Guessan's witness statement, appreciating that it would carry limited weight given that its author had not made himself available to defend its contents. I say "what purports to be" because the statement is not even signed.

116. Again, I agree with Mr Mann that the documents in the bundle, which emanate from the Respondents, substantiate his calculation of average hours and earnings at the date of dismissal. They give gross and net weekly figures of £520.06 and 460.28 respectively. I also agree with Mr Mann's figures for the year commencing in April 2019. But they do not greatly avail Mr N'Guessan.

117. The difficulty for Mr N'Guessan is that he has supplied no evidence to explain the discrepancy between his witness statement, para 5, which states that he lived on savings, an overdraft and eventually Universal Credit until starting a job with Interserve in April 2019, and his bank records, which reveal substantial earnings, apparently from security work, throughout 2018. I am sorry to say that I can place no reliance on his evidence (in so far as an unsigned statement is evidence at all) and he fails to establish any monetary loss save for that recoverable under his wrongful dismissal claim.

118. Mr N'Guessan's wrongful dismissal claim succeeds. Accepting Mr Mann's figures, I award the sum of £790.80.

119. The basic award is £2,200 (£489 x 3 x 1.5).

120. For the reasons stated above, the compensatory award will include no element of compensation for money loss. No loss of earnings is established. The same goes for employer's pension contributions. I have no means of knowing if Mr N'Guessan enjoyed such benefits in his new employment which commenced very soon after his dismissal by the Respondents. The compensatory award is accordingly limited to £500 in respect of loss of statutory rights.

121. The statutory cap on the compensatory award does not apply.

122. The additional award comes to £22,005 (45 x £489).

123. The total of the four elements mentioned is £25,495.80.

124. The recoupment provisions do not apply.

Mr Emuemukoro

125. Mr Emuemukoro impressed me as a quite exceptionally unreliable witness. I am quite unable to place any reliance on *any* of his evidence, save where it is substantiated in the documents. He told me that he had been unemployed since his dismissal by the Respondents and had made over 100 unsuccessful job applications. No documentary evidence was produced in support of this assertion (not for want of case management orders for disclosure). He produced some bank statements but even here the disclosure was exceedingly patchy, with numerous unexplained gaps. In cross-examination he admitted to holding a number of bank accounts for which no disclosure had been given. He had no remotely plausible explanation for the large payments into those accounts which he had admitted to. The Respondents prepared schedules in relation to two. The first (taken from a Barclays current account) showed payments in of over £34,000 for 2018 and over £33,000 for 2019. And this was incomplete information, since five of the 24 statements were missing. The second (taken from a Halifax account) showed payments in of over £23,000 between April 2018 and November 2019. His claim that his wife and others had supported him financially through his alleged period of unemployment was not verified by any documentary evidence. I simply disbelieve his evidence. It is not open to me to conjure up for Mr Emuemukoro a plausible narrative in place of what he has supplied and then construct an award of compensation on the strength of it. I can only work with the material put before me. I find that he fails entirely to establish on evidence *any* monetary loss beyond the end of his (notional) notice period (six weeks after the date of dismissal).

126. It is common ground that the Respondents have made a payment to the Claimant in respect of his notice entitlement. Unlike in the claims conducted by Mr Mann, there was no assertion on behalf of Mr Emuemukoro that the payment had been less than the law required.

127. The basic award is £2,934 (£489 x 6). The payslips show that Mr Emuemukoro was paid at the rate of £9.75 per hour. His figure for average weekly hours of 51.5 is not shown by the documents to be inflated and I accept it. That gives a gross weekly wage of £502.12. Accordingly, the cap on the week's pay applies.

128. For the reasons already stated, the compensatory award will be confined to the sum of £500 for injury to feelings.

129. The statutory cap on the compensatory award does not apply.

130. The additional award is in the sum of £19,560 (£489 x 40).

131. The total of the three heads of award is £22,994.

132. The recoupment provisions do not apply.

Mr Alaughe

133. Although it is not easily imagined, Mr Alaughe was, if anything, a less

credible witness than Mr Emuemukoro. Until a late stage in the proceedings, he had advanced the case that he had been very largely unemployed since his dismissal and had relied for financial support on his wife (see his solicitor's email to the Respondents' representative of 4 February 2020 timed at 14:30 and his first witness statement). Unfortunately for him, the Respondents learned in March 2020 that he had in fact been employed by another security company since 17 April 2017 and had been appointed by it to a permanent position in or about March 2018. On affirmation before me he insisted that the failure to mention the new job and present a remedy claim which took it into account was an "oversight". I reject that palpably false evidence.

134. As in the case of Mr Emuemukoro, there was no claim before me for wrongful dismissal.

135. The basic award is £3,667.50 (£489 x 7.5).

136. I turn to compensation for monetary loss. Mr Powlesland put Mr Alaughe's average weekly pay at the time of dismissal at £752.29 gross and £534 net. Those figures are based on the payslips and I accept them. I also assume (although Mr Powlesland did not so argue) an increase in the hourly rate from 9.75 to 10.20 in April 2018 (there was evidence that the Respondents were moving all their security staff to the 'London Living Wage' by that date). That translates to weekly rates of £787.01 gross and £558.65 net. Accordingly, lost income for 2018 amounts to eight weeks' net pay (allowing for the notice period) at £534 and 39 weeks' net pay at £558.65. That is a total of £26,059.35. Against this must be set the income from the new security job. The payslips in the bundle show that Mr Alaughe was already working in this role in January 2018. In the calendar year 2018 his net income from it came to £18,285.91. In addition he earned £2,945.13 (net, I assume) from bank work with 'NHS Professional.' Accordingly, total mitigation over the year came to £21,231.04. That leaves net loss of earnings of £4,828.31.

137. I see no warrant for any award in relation to pension contributions. The new job is pensionable and the contributions are no doubt comparable.

138. I also see no warrant for extending the period of compensation for monetary loss beyond one year. I can see no reason why Mr Alaughe should not have managed to extinguish his losses completely by the end of that period, if he did not do so.

139. Loss of statutory rights attracts an award of £500.

140. Accordingly, the total compensatory award is £5,328.31.

141. The statutory cap on the compensatory award does not apply.

142. The additional award is in the sum of £19,560 (£489 x 40).

143. The total of the three heads of award is £28,555.81.

144. The recoupment provisions do not apply.

145. Mr Choudhry submitted that Mr Alaughe's claim should be struck out on the ground of his unreasonable conduct in pursuing a grossly and deliberately inflated remedy claim. Having got to the end of the case (apart from the costs issues), I decline to take that course. Although I do not at all underestimate the seriousness of Mr Alaughe's conduct, he has succeeded in his claim and is, in my view, entitled to a judgment and a remedy. It would not be in keeping with the overriding objective to strike out his remedy claims at this stage. Mr Chaudhry's alternative claim for costs is considered next.

Costs and preparation time orders

146. Costs and preparation time orders are exceptional. I was presented with: (a) a claim by Mr Mann for a preparation time order; (b) a claim by the Respondents for costs against Mr Alaughe (pursued as an alternative to a striking-out application); (c) a claim by the Respondents for a wasted costs order against Mr Mann; and (d) a claim by Mr Emuemukoro for costs against the Respondents.

147. Despite having given careful directions as to how any such applications should be presented, I am satisfied that they are not capable of being properly understood and safely adjudicated upon without a hearing. In particular, the applications variously fail to explain: (a) under what provision they are brought; (b) the act(s) or omission(s) or default(s) (whose? when? consisting of what?) relied upon; (c) the extra cost or preparation time allegedly incurred. No schedule of costs has been produced.

148. In the circumstances, I am driven to the measure set out in my judgment and order, para (12) above. If the parties are determined to pursue their applications (some in particular seem to merit very careful reconsideration), I will list a telephone hearing to set up a one-day 'remote' hearing and give yet more directions.

Outcome

149. For the reasons stated, the Claimants' remedy claims succeed to the extent stated in my judgment and order, paras (1)-(9). In relation to the outstanding preparation time, costs and wasted costs applications, para (12) applies.

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EMPLOYMENT JUDGE
29/07/2021

Judgment entered in the Register and copies sent to the parties on : 30/07/2021

For Office of the Tribunals

APPENDIX

LIST OF CLAIMANTS AND CASE NUMBERS

2201802/2018	Miss C Huggins
2204576/2018	Mr N Touati
2204668/2018	Mr C Babalola
2204648/2018	Mr S Sanu
2204688/2018	Mr I Da Silva
2204683/2018	Mr Y N'Guessan
2204435/2018	Mr O Emuemukoro
4104481/2018	Mr S Alaughe