



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs H Harper (1)  
Mrs A Edwards(2)  
Ms S Deaville(3)

**Respondent:** Stoke on Trent City Council

**Heard at:** Birmingham Employment Tribunal via CVP  
**On:** 26, 27 and 28 April 2023

**Before:** Employment Judge Noons

## Representation

**Claimant:** Mr D Patel Counsel  
**Respondent:** Ms S Harty Counsel

**JUDGMENT** having been sent to the parties and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

# REASONS

## Introduction

1. Mrs Harper and Mrs Edwards issued a joint ET1 on 11 January 2022, case numbers 1300721/2022 and 1300722/2022 respectively. Mrs Harper and Mrs Edwards are bringing claims of breach of contract. Ms Deaville issued her ET1 on 13 January 2022, case number 1300773/2022 in which she brings claims for breach of contract and in the alternative unlawful deduction from wages and also for a failure to provide a written statement of a change to employment particulars.. These claims were consolidated by Employment Judge Perry on

19 August 2022. Whilst the claims had been listed for a case management hearing on 26 August 2022 the parties respective representatives agreed directions to ensure the case was ready for hearing and therefore at their request the case management hearing was vacated.

2. There had been a case management hearing on 7 April 2022 in respect of Ms Deaville's claim which did set a list of issues in relation to her claim but unfortunately no such list was every produced or agreed for the claims of Mrs Harper and Mrs Edwards. On that basis at the outset of the hearing I took time with the parties to identify and confirm the issues I had to determine.

### **The Agreed Issues**

3. The parties agreed the following list of issues:

#### **Breach of Contract – in relation to all Claimants:**

4. What were the terms and conditions of employment that applied to the claimants in relation to annual pay increments for the period 1 September 2018 until their employment ended on 31 August 2021.
5. Was there a breach of their terms and conditions?
6. If there was breach did any of the claimants affirm the contract by their actions?
7. If the breach was a breach of the School Teachers' Pay and Conditions Document (SPTCD) what pay would the claimants have been entitled to, specifically would this have been based on notional spine points or calculated in some other way?

#### **Unlawful Deduction from Wages – in relation to Ms Deaville only**

8. Were the wages paid to Ms Deaville throughout her employment with the respondent less than the wages she should have been paid?
9. Was any deduction required or authorised by statute?
10. Was any deduction required or authorised by a written term?
11. If not how much is the claimant owed?

#### **Failure to provide a written statement of change to terms and conditions**

12. In relation to all of the claimants:

13. Was there a failure to provide annual pay statements?

14. Does any such failure constitute a failure to provide written statement of change to terms and conditions?

15. In relation to Ms Deaville:

16. The respondent accepts that it failed to provide her with an updated written statement of terms and conditions when her role changed to Key Stage 1 Lead in September 2018.

17. In relation to Mrs Edwards:

18. Was there a failure to provide her with a written statement when her hours of work changed to 22.5 hours a week on 1 September 2018?

19. Does any such failure constitute a failure to provide written statement of change to terms and conditions?

20. I agreed with the parties that I would consider the issue of liability (including if I found for the claimants the basis of how damages for breach of contract should be calculated) first before dealing with the issue of remedy if appropriate and this is therefore a decision on liability only.

### **Findings of Fact**

21. I had an agreed hearing bundle which ran to 1277 pages, there was a supplemental bundle which had a further 97 pages but was sequentially paginated (up to page 1374) and then I was provided with one further document during the course of the first day of hearing which was paginated as pages 1375 and 1376. I also asked the parties to provide a calculation schedule to me by 10 am on the morning of the third day of the hearing to show exactly what each claimant was paid in each year and how that compared to the pay policy the respondent said it had applied.

22. I heard witness evidence from each of the claimants and I was provided in the bundle with a statement from a Ms Amy Beech. Mr Patel did not call Ms Beech and accepted that as she was not available for cross examination I should only attach what weight I saw fit to her statement. Given she was not available to give her evidence under oath nor to be challenged on this evidence I have not attached any weight to her statement.

23. On behalf of the respondent I heard witness evidence from Ms Winwood who at all material times was employed by the respondent as a School Business Manager/ head of Support Services and worked at the St Paul's Church of England School which is the school that all three claimants worked at.

24. I have made my findings of fact on the basis of the material before me taking into account contemporaneous documents where they exist and the conduct of those concerned at the time. I have resolved such conflicts of evidence as arose on the balance of probabilities. I have taken into account my assessment of the credibility of witnesses and the consistency of their evidence with the surrounding facts. I have not made findings about every matter raised in evidence but only those matters which I found to be relevant to my determination of the issues.

25. Mrs Harper started working for St Paul's Church of England School (the School) on 1 January 2008. Her contract of employment provides as follows:

***"2 Terms and Conditions of Appointment***

*Unless otherwise stated in this document or in subsequent changes to it, the general terms and conditions of your employment are those contained in the STPCD.*

*In addition the City Council has reached various local agreements with the recognised trade unions. These are set out in various documents available from Human Resources Services, Stoke on Trent City Council.*

***3 Pay***

*You will be paid on the School Teachers Main Pay Spine for teachers at Point 1 (currently £20,133 per annum).*

*Any changes to your salary, including national awards, will be notified to you in either your pay statement or by letter."*

26. Mrs Edwards started working at the School on 23 January 2017. Her contract of employment provides as follows:

***"Terms and Conditions of Appointment***

*Unless otherwise stated in this document or in subsequent changes to it, the general terms and conditions of your employment are those contained in the STPCD.*

*In addition the City Council has reached various local agreements with the recognised trade unions. These are set out in various documents available from Human Resources Services, Stoke on Trent City Council.*

**Pay**

*You will be paid on the School Teachers Main Pay Range at Point 4 (£28,207 per annum) FTE pro rata i.e. £16,924.20 per annum.*

*Any changes to your salary, including national awards, will be notified to you in either your pay statement or by letter.”*

27. Ms Deaville started working at the school on 1 September 2016. Her contract of employment provides as follows:

**“Terms and Conditions of Appointment**

*Unless otherwise stated in this document or in subsequent changes to it, the general terms and conditions of your employment are those contained in the STPCD.*

*In addition the City Council has reached various local agreements with the recognized trade unions. These are set out in various documents available from Human resources Services, Stoke on Trent City Council.*

**Pay**

*You will be paid on the School Teachers Main Pay Range at Point 1 (£22,244 per annum).*

*Any changes to your salary, including national awards, will be notified to you in either your pay statement or by letter.”*

28. It is agreed by the parties that prior to 1 September 2013 the STPCD contained pay spine points upon which teachers pay had to be determined. From 1 September 2013 the STPCD removed these contractual spine points and instead detailed a pay range with a minima and a maxima specified and it provided greater flexibilities for individual schools to determine how to reward

performance through pay progression. All of the claims are only concerned with the period post 1 September 2018.

29. I have only been provided with extracts of the STPCD I was not taken to any complete copy in the bundle. The following extracts of the STPCD are from the 2018 version but the parties agree that in all material respect the terms are the same in the other relevant years other than in 2020 when an appendix (Annex 3 Advisory pay point structure for the main pay range and upper pay range) was added. I have reproduced below the relevant sections of the STPCD.

30. The STPCD 2018 provides:

### **“Section 1 Introductory**

*Note: this introductory section does not form part of either the statute (the school teachers pay and conditions document in section two of this publication) or the statutory guidance (in Section 3 of this publication).*

### **Introduction**

*1 Since 2003 this publication has provided the framework for teachers pay in England and Wales, comprising the school teachers’ pay and conditions document (the Document) and statutory guidance. The Document (Section 2) and the statutory guidance (Section 3) should be read together to provide a complete picture of pay and conditions for teachers in England and Wales.*

*2 The statutory requirements for teachers pay and conditions for maintained schools in England and Wales are set out in the Document and schools and local authorities (LAs) **must** (emphasis added) abide by these. The Education Act 2002 gives the Secretary of State power to issue guidance on pay and conditions matters, to which those concerned **must** (emphasis added) have regard. LAs and governing bodies are required to have regard to the statutory guidance, and in respect of guidance on any procedural matters a court or tribunal may take any failure to do so into account in any proceedings. Broadly speaking this means that any party not following this guidance would need to have good reason not to do so and would need to be able to justify any departure from it.*

*3...*

*4 the Document and statutory guidance were subject to consultation with the teacher unions, employers and other relevant interested parties as part of the usual statutory consultation process.*

## **Section 2 – School Teachers’ pay and conditions Document 2018**

*This Document contains provisions relating to the statutory conditions of employment of school teachers in England and Wales and has been prepared by the Secretary of State for education in anticipation of an order being made under section 122 of the Act that order refers to this Document and directs that its provision have effect in accordance with it pursuant to section 124(3) of the Act. The Order will be the school teachers pay and conditions order 2018.*

*This document relates to teachers employed by a local authority or by a governing body of foundation....in the provision of primary ... education ...*

*When the order comes into force on 5th of October 2018 this Document will replace the 2017 Document given effect by the school teachers pay and conditions order 2017.*

*The provisions of section two of this document have retrospective effect from first September 2018 as provided for in the order”.*

31. All of the relevant annual SPTCD contain the same provision but relating to the subsequent years, that is to say each SPTCD explicitly replaces the previous SPTCD.

### **“Part one pay general**

#### *September 2018 pay award*

*In response to the recommendations in the STRBs 28th report from 1 September 2018:*

- i a 3.5% uplift has been applied to the statutory minima and maxima of the main pay range and of the unqualified teachers pay range*
- ii a 2% uplift to the statutory minima and maxima of the upper pay range and the leading practitioner pay range and all allowances across all pay ranges*
- iii a 1.5% uplift to the leadership pay ranges (including head teachers group)*

*Except for teachers and leaders on the minimum of their respective ranges or group ranges, schools **must** (emphasis added) determine - in accordance with their own pay policy - how to take account of the uplift to the national framework in making individual pay progression decisions.*

*All pay uplifts will be back dated to 1 September 2018”.*

32. All of the relevant annual SPTCD contain the same provision but with different percentage uplifts.

### ***“1 Entitlement to salary and allowances***

*1.1 subject to paragraphs 29 to 36 (all of which relate to safeguarding and are not relevant to these claims), 38 and 39, a qualified or unqualified teacher in full time services entitled to remuneration consisting of a salary determined under parts 2 or 3 and any allowances payable under parts 4 and 5*

*1.2 ...*

*1.3 a teacher employed on a part time basis is entitled to remuneration consisting of a salary and any allowances to which the teacher is entitled calculated in accordance with paragraphs 36.1, 40 and 41.*

*1.4...*

### ***2 Pay policy and grievance procedures***

*2.1 the relevant body **must** (emphasis added):*

- a) adopt a policy that sets out the basis on which it determines teachers pay and the date by which it will determine teachers annual pay reviews; and*
- b) establish procedures for addressing teachers grievances in relation to their pay in accordance with the ACAS code of practice.*

### ***3 Timing of salary determination and notification***

*3.1 subject to paragraph 3.3 the determination of the remuneration of a teacher must be made:*

- a) annually with effect from 1 September;*
- b) whenever a teacher takes up a new post ... On a date other than stated in the schools pay policy for annual salary determination with effect from the teacher taking up that post;*
- c) where a teacher becomes entitled to be paid on the upper pay range pursuant to paragraph 14; or*
- d) at any other time when a change falls to be made to a teacher's salary in any circumstances provided for in this document.*



3.2 when determining the remuneration of a teacher the relevant body **must** (emphasis added) have regard to its pay policy and to the teachers particular post within its staffing structure.

3.3 ...

3.4 when the relevant body has determined the remuneration of a teacher it **must** (Emphasis added) at the earliest opportunity - and in any event not later than one month after the determination - ensure that the teacher is notified in writing of that determination; of any payments or other financial benefits awarded....; where a copy of the school staffing structure and pay policy may be inspected; and

a)...

b) in a case where the teacher was appointed as a member of the leadership group or on the pay range for leading practitioners for a fixed period or under a fixed term contract of the date or where appropriate the circumstances the occurrence of which will bring the fixed period or fixed term contract to an end;

c) in a case where the teachers a classroom teacher ... of

i the teachers position within pay ranges set out in paragraphs 13 and 14;

ii ...;

iii ...

d)...

3.5 in this paragraph remuneration means salary plus any allowances but does not include any sums paid under paragraphs 25 and 26”.

33. Paragraphs 13 and 14 go on to set out the minimum and maximum pay ranges for teachers on the main pay range from 1 September 2018 and the Upper pay range from 1 September 2018.

34. The relevant minimum main pay range for 2018 was £23,720 the relevant maximum was £35,008. The relevant minimum on the upper pay range for 2018 was £36,646 and the relevant maximum was £39,406.

35. Paragraph 19 of the SPTCD goes on to provide:

**“19 Pay progression linked to performance**

19.1 the relevant body **must** (emphasis added) consider annually whether or not to increase the salary of teachers who have completed a year of employment since the previous annual pay determination and if so to what salary within the relevant range is set out in paragraphs 13,14,16 and 17.

19.2 the relevant body **must** (emphasis added) decide how pay progression will be determined, subject to the following:

- a) the decision whether or not to award pay progression **must** (Emphasis added) be related to the teachers performance as assessed through the schools or authorities appraisal arrangements in accordance with the 2012 regulations in England;
- b) a recommendation on pay **must** (emphasis added) be made in writing as part of the teachers appraisal report, and in making its decision the relevant body **must** (emphasis added) have regard to this recommendation;
- c) ...
- d) pay decisions **must** (emphasis added) be clearly attributable to the performance of the teacher in question;
- e) continued good performances defined by an individual schools pay policy should give a classroom... teacher an expectation of progression to the top of their respective pay range;
- f) a decision may be made not to award progression whether or not the teacher is subject to capability proceedings.

19.3 The relevant body **must** (emphasis added) set out clearly in the schools pay policy how pay progression will be determined in accordance with paragraph 19.2”.

36. The relevant body is defined within the document as the local authority or governing body of the school.

37. The guidance should be read in conjunction with any related paragraphs of the SPTCD. The guidance does not have contractual effect. The Guidance for Local Authorities, School Leaders, School teachers and Governing Bodies on Maintained Schools (the Guidance) provides:

“1....Local authorities and governing bodies must have regard to guidance issued by the Secretary of State about the procedure to be followed in applying the

*provisions of the Document. A court or tribunal may take any failure of an employer to do so into account in any proceedings...*

*2...*

*3...No payments or conditions of employment other than those provided for in the Document (the SPTCD) may be applied to teachers except for those conditions which are always determined locally and which do not conflict with the document -*

*4 All relevant bodies...**must** have a pay policy. This **should** be linked to the appraisal policy. Pay and appraisal policies should be reviewed annually and kept up to date to take account of any uplift to the national framework and any legal changes or changing in the staffing structure which have impacted on discretionary pay decisions. Teachers and representatives of recognised unions **should** always be consulted on formulating the policies and on any changes to them. Teachers **should** always have ready access to copies of the relevant bodies pay policy. (emphasis added).*

*5 When determining appropriate pay awards as set out in section 2 part 1 schools **must** (emphasis added) determine in accordance with their own pay policy how to take account of the uplift to the national framework in making individual pay progression decisions.*

*6...*

*7 The pay policy **should** set out how all pay decisions are made, either as part of a regular review or in other circumstances, with sufficient detail for an individual to appreciate what evidence and other factors will be taken into consideration when a pay decision is made. In particular, the pay policy **should** describe the information to be included on pay statements given to teachers as part of the regular review process, or when other pay decisions are taken and how additional information may be obtained by teachers. The pay policy **must** also set out the procedures that apply when a teacher seeks review of any decision made by the head teacher or relevant body that affects their pay. The pay hearings and appeals procedure performs the function of the grievance procedure on pay matters and therefore decisions should not be reopened under general grievance positions. Appeal decisions do not affect teachers' statutory employment rights. (Emphasis added)*

*...*

38. There was a whole school pay policy for 2017 created by the local authority and adopted by the school. This pay policy details a minimum and a maximum for each pay range. It does not reference any spine points for pay progression.

39. There was a whole school pay policy for 2018 created by the local authority and adopted by the school. This pay policy details a minimum and a maximum for each pay range. It does not reference any spine points for pay progression.

40. This model whole school pay policy for 2018/2019 provides:

*“1 This policy has been drafted in consultation with recognised teaching trade unions and professional associations and representation from LCG support staff.*

*2 The authority has prepared this model whole school pay policy to illustrate the general areas which it believes should be governed in such a policy and also to recommend detailed points within those general areas. The document suggests ways in which discretion should be used. Where the model goes beyond the requirements of conditions of service, this is identified and the reasons are given.*

*3 Throughout this document the term relevant body refers to the school's full relevant body or an appropriate committee with delegated functions. Where decisions relating to an individual's pay could result in a potential appeal these should not be taken by the full relevant body as this could prejudice the appeal process.*

*Action:*

*T he whole school pay policy must be:  
drawn up in consultation with the staff of the school,  
formally adopted by the relevant body,  
made known to all staff.*

*Section A*

*2.0...the relevant body will honour the national pay awards in the setting of salaries.*

*2.1 the relevant body decision will be based upon:*

*b) the statutory requirements of the STPCD. A copy of the laets version may be found in the school office and is also on line at the DfE website.*

*...*

*e) the requirement that all pay progression decision for teaching staff must be linked to annual appraisal of performance.*

*4.0 Application of the School Pay Policy*

*4.1 the full relevant body delegates to the appropriate relevant body committee the power to apply the policies.*

...

4.3 the policy in the position of each member of staff including deputy and assistant head teachers will be assessed slash reviewed annually in the autumn term for implementation of first September and no later than 31st October each year...

4.4 The head teacher is required to make recommendations to the relevant body regarding the annual assessment of each teacher (taking into account the school's appraisal policy)...

### Section C

#### September 2018 Pay award

in line with the recommendations in the STRBs 28th report from 1 September 2018:

a 3.5% uplift has been applied to the minima and maxima pay points within the main pay scale.

A 2% uplift has been applied to the minima and maxima pay points within the upper pay scale.

7.2 whilst schools may wish to maintain a system of reference points within the pay ranges as a basis for determining rates of progression, **governing bodies have flexibility to choose the level of uplift for individual teachers.** (emphasis added).

Schools are advised not to apply different percentage uplifts within the same pay ranges

The relevant body has determined that this should be a range as follows:

3.5% uplift to the minimum and maximum of the main pain range and 2% uplift to the minimum and maximum of the upper pay range with other values to be determined by the school in accordance with locally set pay points.

...

### **Salary Progression and Performance management**

9.0 the relevant body has a statutory GT and the STP CD to review on an annual basis the salaries of all qualified teachers at one september.

9.1 individual staff salaries will be reviewed during the autumn term. There is no provision within this policy for salaries to be reduced.

*9.2 the pay review will be completed no later than 31st October and any increments will be back dated to 1st of September of the same year.*

*9.3 each teacher will be given a copy of her assessment as detailed in the annual salary review statement.*

*9.6 paper question will be based on the teacher achieving a successful performance appraisal review. If the relevant body has maintained a system of reference points within the pay range they may decide to award one or more increments for sustained high quality performance.... nb pay progression can be withheld without any requirement to initiate or consider capability proceedings”.*

41. Section J of the policy sets out a detailed appeals process to be followed. I have not been provided with a copy of the whole of the whole school policy document but looking at the index to the document it appears that the sections I have not had are not relevant to the issued to be determined.

42. The respondents did not call any of the governors to give evidence in relation to decisions made with regard to the school's pay policy and the amounts to be paid to the claimants. No explanation was given by the respondents as to why the governors could not attend to give this evidence nor was a witness statement produced for any governor. This is unfortunate as clearly the governors were central in the adoption of the school pay policy and how pay uplifts and progression pay was to be determined.

43. Along with the template whole school pay policy for 2018 there was a briefing note to governors the relevant point sets out *“as was the case last year STPCD does not specify pay points within the minima and maxima. It is for schools to determine how they translate the uplift to the national ranges in relation to their pay decisions for individual teachers ensuring that they are consistent with the provisions of the schools pay policy.*

*Schools are not obliged to but are not prohibited from setting their own pay points within the pay ranges in their policies if they judge it appropriate to their needs.*

*There are two different model versions of the whole school pay policy which governors need to consider and determine which is most appropriate for the needs of the school”.*

44. Option 1 retained pay scale reference points.
45. Option 2 “*applies the mandatory uplifts to the minimum and maximum of the pay ranges but leaves the school free to determine how to apply any uplift to staff that are not at the minimum of their pay range. If choosing this option **schools must** (emphasis added) determine how individual teachers pay determinations will be made... further consultation with the school trade unions may also be required*

*Adopting option 2:*

*minute decision*

*determine how individual pay determinations will be made within the pay range*

*Review school appraisal policy to ensure that it underpins pay decision making and consult on any changes with recognised trade unions*

*issue both to staff (no further trade union consultation required regarding the pay policy unless you do not participate in that trade union facilities agreement in which case you will need to consult with trade unions).”*

46. The respondent participated in the trade union facilities agreement and therefore there is no obligation to consult with the trade union in their adoption of the pay policy. They did not however consult with staff.
47. The respondent says that the option two whole school pay policies were adopted for 2018/19 for academic year 2019-2020 and for academic year 2020 to 2021. I have seen the minutes of the governing board 2018 at page 221 and these confirm that at the finance and personnel committee the pay policy was reviewed and option two was to be adopted. This decision was taken to the full board in December 2018 and adopted.
48. The claimants have suggested that they do not know if the governors’ meetings were quorate although they accept they have no basis for this suggestion other than they do not know how many governors were needed to make the meetings quorate.
49. It is somewhat surprising that the respondent did not provide the terms of reference for the governors committee and meetings, it would have been helpful had the respondents had they done so. However, Ms Winwood has given unequivocal evidence that the meetings were quorate. Her evidence is also consistent with the guidance that suggests a delegated committee of two to three governors. I found Ms Winwood to be a credible witness and I have no reason to doubt what she is saying. On this point I therefore find that the

governor meetings were quorate and as such they did adopt the model pay policy option two.

50. I have also seen the minutes for November 2019 where the option 2 pay policy was adopted. There are no minutes for 2020/21 but again Ms Winwood says it was adopted and quorate and again I accept the respondent's evidence on this point.
51. All three claimants accept that they were directed to the school's pay policy on a management system called "the School Bus". They accept that they received an email directing them to it. It may be that they did not read it in detail or fully appreciate what the policy was and what it meant in relation to pay but I do find that they were given access to it and saw it.
52. Ms Winwood also said that the policy was on the school's shared drive. None of the claimants recalled seeing it on there and explained that the shared drive was normally used for work and lesson planning. However, in this regard I prefer Ms Winwood's evidence. It is not that I think the claimant's have been untruthful but rather that as busy teachers they probably did not notice and had no reason to look for the school's pay policy. As the business manager Ms Winwood would have been aware of what was on the school's shared drive in relation to policies. Ms Winwood did send an email in response to one of the claimant's queries on pay saying she would reactivate the policy but Ms Winwood gave evidence that this was in relation to the management information system not the shared drive and I accept this evidence. In any event the respondent had complied with their obligation in bringing the policy to the attention of the claimants when it emailed them with the link to it.
53. The respondent says that for academic years 2018/19, 2019/20 and 2020/21 they gave each of the claimant's the statutory uplift and then a further £500 as a performance pay progression. For those years the respondent did not have set pay progression points.
54. There is no reference in the pay policy to the annual percentage uplift being applied to all teachers and then a further £500 pay progression for performance being applied. The respondent says that this is what they did each year. This, they say, was their pay policy and how they approached the uplift and also performance related pay progression.
55. However for the third claimant at least I have been given calculations from the respondent which show that this was not in fact what she was paid in 2018/2019. Her pay rise was more than the percentage uplift and £500. In 2019/20 and 2020/21 she was paid less than the percentage uplift and £500.



56. Whilst I accept Ms Winwood's evidence of her understanding of what was awarded this does not in fact seem to have been the case, at least for the third claimant. The figures I was provided by the claimants' representative for the first and second claimant also appear to show that they were not awarded pay increases in accordance with the respondent's stated policy. However, I did not have any calculations from the respondent for these individuals and therefore these will have to be provided ahead of any remedy hearing.
57. For brevity I have only referenced the 2018 SPTCD and guidance and whole pay policy but in all material terms it was the same in 2019 and 2020 other than in 2020 optional spine points were included but there was still no obligation on the respondents to adopt these spine points.
58. I have not been taken to any document post the SPTCD for 2013 and prior to 2018 showing that the claimants were contractually entitled to annual pay progression based on pay reference point. I have also not seen any school pay policy prior to 2017 nor any reference in any of the documents to a contractual pay policy prior to 2017.
59. At page 170 of the bundle there is an undated document which sets out pay scale comparison. This document does not set out any level of pay for each pay scale, nor does it show that the claimants were entitled to pay progression with particular spine points.
60. At page 171 and 172 there is guidance on how to move to the upper pay scale. A teacher must demonstrate a substantial and sustained contribution to the school which talks about one of the requirements to progress to the upper pay scale. Again there is nothing in this document which indicates what level of pay is to be paid for each pay scale.
61. At 173 to 175 there are documents from 2015-16 for the school with "points" in each band for teachers. However, there is nothing in this document which attributes a certain level of pay to each band. There is nothing in this document or any other document which incorporates this into the claimants' contracts of employment.
62. The respondents say that their pay policies are not contractual documents. I have not been taken to anything by the claimants to say that the pay policies were contractual documents. The SPTCD itself is a contractual document but that only refers to a school pay policy it does not have the effect of making that policy a contractual document.

63. Moving on to deal with the complaints about failures to provide written particulars, in relation to failure to provide written particulars Mrs Harper's complaint is limited to non-receipt of her annual pay statement in academic year 2019/20.
64. Mrs Edwards also complains of non-receipt of her pay statement in 2019/20 and also a failure to provide an updated pay statement when her hours of work changed in 2018.
65. Ms Deaville complains in relation to failure to provide updated particulars when she moved to a key stage 1 lead – the respondent's accept this breach but she also complains that she did not receive her annual pay statements.
66. These pay statements have been produced by the respondent in the bundle. Ms Winwood said her usual practice was once the statements were produced to put them in individual's pigeonholes. So whilst she did not hand them personally to the claimants (or email them) she is as sure as she can be that she put them in their pigeonholes.
67. On this point whilst I accept Ms Winwood's evidence of her usual practice I also accept the claimants' evidence that they did not receive these annual pay statements. All of the claimants have been credible witnesses and have done their best to answer the questions put to them to best of their recollection and understanding. Mrs Winwood cannot say that any of the claimants actually received their annual pay statements.
68. All three of the claimants only realised that their pay was not increasing in line with national spine points towards end of 2020/beginning of 2021 and from the point they realised they queried this with the respondents, who explained how the pay had been calculated.
69. All of the claimant's employment came to an end in August 2021.
70. The additional document appendix D I was given during day one of the hearing I did not find to be of much relevance. It is a document created as part of a redundancy process for the respondent and it references teachers' names with levels next to them but the levels do not all correspond to the national pay points and in any event it does not show how much each level should be paid. A level is not the same as an entitlement to an amount of pay unless there is a contractual link to a set amount of pay for that level.
71. I have been referred to various appraisal documents but accept the claimants' evidence that they did not have face to face appraisals with their line manager

during the relevant years and that the respondent did not follow their own appraisal policy. Mrs Winwood for the respondent has only been able to say that the claimants' should have had appraisals not that the appraisals actually took place. I therefore accept the claimants' evidence that they did not have formal appraisals in accordance with the respondent's policy. However, that is not to say that their performance was not assessed (as evidenced by lesson observations and target setting etc).

72. In relation to Ms Deaville's unlawful deduction from wages claim as set out in her updated schedule of loss she claims the difference between what she was paid and what she says she should have been paid under national spine points.
73. In relation to all of the breach of contract claims the claimants claim the difference between what they were paid and what they say they would have been paid under national spine points. I was referred to the TES spine points which set out 6 teaching unions view of the spine points and also at the local government association spine points in various documents from page 1000 onwards.

### **Relevant Law**

74. I have to determine what the terms and conditions applied to the claimants in relation to pay. I have to consider what was incorporated into their contracts and in accordance with this whether there were any terms in other documents that were apt for incorporation and were intended by the parties to be incorporated.
75. I also have to consider if there was a breach of contract whether there was any implied acceptance of such a breach by conduct (*Abrahall v Nottingham City Council [2018] EWCA CIV 796*).
76. Although I am not concerned with remedy at this stage I do have to determine, if I find that there is a breach of contract, how any damages should be calculated. Ms Harty for the respondent has set out that it is not for me to rewrite a nebulous contract to create some notional position of what might have been and that it is not as simple as saying if there had been no breach of contract the claimants would have been on the national spine point.
77. She points to the fact that from 2013 onwards there was no national pay scale set under the SPTCD. She also points to the fact that the school had complete freedom under the SPTCD to adopt a pay policy which did away with pay points and that there is no default position in the SPTCD as to what happens if a school breaches the contract. She also points to the fact that for all the relevant years

the governors had taken a positive decision not to have pay reference points. It is also relevant that there is no obligation on the school to award any pay rise but rather the obligation is to consider whether one should be awarded.

78. Mr Patel for the claimants on the other hand says it is simple, had the respondent not breached the claimant's contracts they would have been awarded pay rises in accordance with notional national pay reference points as set out by the unions in the TES and the LGA. He says that the pay policy is a contractual document and that the adoption of the pay policy in 2018 (and subsequently) was a breach of contract because it does not comply with the SPTCD. He says I should therefore look back to the latest contractual document before the breach occurred and that this is the pay policy with spine points in. However, with respect to Mr Patel the last date that the SPTCD had obligatory pay points in was 2013. Their complaints relate from academic year 2018/2019. Mr Patel did not take me to any document from academic year 2017/2018 which he says is contractual and which he says entitled the claimants to a pay rise in accordance with national spine points. In fact I was not taken to any documents post 2013 by prior to 2018 which showed the claimants had a contractual entitlement to a specific level of pay progression.

79. Mr Patel also urges on me that the schools pay policy (not just the SPTCD) is contractual and that by changing their policy in 2018 without consultation this was in breach of the claimants' contracts as this was a unilateral change. Again, however, he did not point me to any document for 2017 which shows a contractual pay policy which entitled the claimants to a pay rise in accordance with national notional spine points.

80. In relation to the complaint of unlawful deduction from wages regarding Ms Deaville this is governed by Section 13 of the Employment Rights Act 1996. I first have to determine what Ms Deaville should have been paid, then if she has in fact been paid less than this and whether or not that deduction was authorised. If I find it was not authorised it will be an unlawful deduction from wages.

81. As far as the claim for written particulars is concerned this is governed by section 1 and section 4 of the Employment Rights Act 1996 which entitle employees to be provided with a statement of particulars setting out amongst other things the scale, rate of remuneration or the method of calculating remuneration and an updated statement which their remuneration changes.

### **Application of the law to the Facts**

82. The starting point is what is expressly incorporated into the claimant's contracts, this is the SPTCD as updated each year. I have referenced above the 2018 SPTCD but the subsequent ones contained the same terms albeit with difference uplifts other than 2020 which contained notional pay reference points.
83. A new updated version of the SPTCD is incorporated annually in the claimants' contracts of employment. Once that is incorporated the previous SPTCD falls away and is no longer incorporated into the contract going forwards. This is exactly what the start of section two of the SPTCD says.
84. The claimants do not seek to suggest otherwise, this is important because it goes to what have they lost if the respondent has in fact breached their contracts. There is no suggestion by the claimants that the 2018, 2019 and 2020 SPTCD were not validly incorporated into their contract.
85. So what does the SPTCD contractually oblige the respondent's to do?
86. At 2.1 it must have a pay policy which sets out the basis on which it determines teachers pay, I find that the respondents did have a pay policy but it did not set out the basis on which it determines teachers pay. This is in breach of contract. This links to 19.3 of the SPTCD where the relevant body must set out clearly in the school pay policy how pay progression will be determined. There is nothing in the schools pay policy setting out how pay progression will be determined. This is a breach of contract.
87. At 3.2 it must have regard to that pay policy when determining teacher pay, the respondent's evidence is it did have regard to pay policy and the claimants have not sought to suggest otherwise. The claimants' point is the policy was deficient. I therefore find that the respondent did not breach the claimant's contracts in this regard. I also find that the pay policy itself does not have contractual effect and was not incorporated into the claimants' contracts. There is nothing in the SPTCD which makes the pay policy a contractual document and I have not been taken to any other document which shows it is contractual. I do not find that the terms of the policy were such as to apt for incorporation nor is their incorporation necessary for the employment contracts to work.
88. At 3.4 once it has determined pay it must at the earliest opportunity (and no later than one month after the event) ensure the teacher is notified in writing of the determination and where a copy of the schools pay policy may be inspected. Annual pay statements were issued, there is a dispute of fact on the 2019 ones on balance I accept that the respondent did produce these statements but also that the claimants did not receive them.

89. The respondent did nothing to double check that they had been received and it is credible not were received. However, I do find that the claimants were told where the school's pay policy was and were directed to it to read it. I therefore find in 2019 a breach of contract in that the respondent did not ensure all claimants received their annual pay statement. I also find that Ms Deaville did not receive any of her annual statements. Again the respondent has not been able to show she did receive the statements.
90. At 19.1 it must consider on an annual basis whether or not to increase the salary of a teacher who has completed another year of service since the last determination, I note there is no obligation to increase the pay. I find that the respondent did consider, on an annual basis, whether or not to increase pay and in fact in relation to all the claimants it did increase pay.
91. At 19.2 a) the decision whether or not to award pay progression must be related to the teacher's performance as assessed through the schools appraisal arrangements. No set figure is set out as to what this must be even in the event of expectational or outstanding performance. The respondent's evidence is that performance was taken into account and that all the claimants were good performers. This is borne out by the pay rises they received. I find that the pay rise did relate to performance. However this was not assessed in accordance with the schools appraisal arrangements. This is therefore a breach of contract.
92. At 19.2 b) the recommendation must be made in writing as part of the teacher's appraisal report and the relevant body must take this recommendation into account when making its decision. This was not done, I have not seen anything in writing setting out the recommendation. This was a breach of contract.
93. Going on to the Guidance I find that this was not incorporated into the claimants' contracts and as such is guidance and not a contractual term. However the respondent's pay policy is deficient in relation to the Guidance as well as the SPTCD and I have taken this into account.
94. In summary the respondent breached 2.1, partially breached 3.4, 19.2 a, 19.2b and 19.3 of the SPTCD.
95. Moving on to the question of how any loss should be calculated, the SPTCD provides that the governors have a discretion whether or not to award a pay rise based on performance. There is nothing in the SPTCD which obliges the school to award a pay rise and there is no default position in relation to what should be paid if there is a breach of the SPTCD.

96. I am not persuaded by Mr Patel's argument that the school's pay policy prior to 2017 was incorporated into the claimants' contracts and that by changing it as they did the respondent's unilaterally breached the claimant's contracts. I have not seen the school's pay policy prior to 2017. The documents at pages 170 to 175 are clearly not the schools pay policy. I do not consider that any of them have contractual effect. They are not apt for incorporation nor was there any intent for them to be incorporated by the parties nor are they necessary for the employment contract.
97. If the claimants wish to rely on some prior contractual position which they say should be reverted to if there is a breach of contract it is for them to adduce evidence of the prior contractual position. I have not been taken to any document prior to 2018 which shows that the claimants had a contractual entitlement to an annual pay rise nor that they were contractually entitled to performance pay progression.
98. It is common ground that the SPTCD is contractual in nature but there is nothing in the guidance or the SPTCD which says the pay policy is contractual. It is the obligation to have one which sets out how pay will be determined that is the contractual obligation. Moreover without a pay policy to look at prior to 2017 I do not know what the terms were of that policy or whether it was contractual in nature. The respondent says it was not and that it was a pay policy in accordance with the SPTCD and the claimants have not pointed to anything which shows otherwise.
99. Mr Patel has said that the respondent's pay policy from 2018 onwards was a unilateral change to the claimant's contract of employment. However, there is nothing I have seen that says that any prior pay policy was contractually incorporated into an individual contract. I therefore do not find that the respondent's shift to a policy of applying the national uplift and a pay progression award of £500 each year was a breach of contract.
100. Dealing specifically with the documents at pages 170 to 175 it is quite clear that these documents are not contractual documents and are not apt for incorporation into the claimants' contract. None of them contain the level of detail needed to be apt for incorporation. I also heard no evidence that it was the intention from either party (or even the understanding of either party) that these documents had contractual status.
101. Put simply I have not been referred to any document which post 2013 and prior to 2018 contractually obliged the respondent to increase the claimants' salary in accordance with national pay reference points. The fact that they did so until 2017 does not mean they were contractually obliged to.

102. Moreover the SPTCD changes every year and what it incorporates into contracts changes every year. The breach of the SPTCD is procedural in that the policy and process was deficient but the claimants were still assessed and were still awarded a pay rise. The respondent's adopted a school policy through a valid process via the governors and whilst they did not consult with staff there was nothing to say they had to agree this with staff and in fact to be fair to the governors the guidance notes say no consultation was needed with the Trade unions.
103. The Option 2 option, moving away from pay points had been consulted on and agreed with the trade unions who represented all teachers and therefore even had the teachers been consulted the governors could still have adopted the policy they did under option 2.
104. I do not have the power in law to embark on some speculative exercise of how to construct a hypothetical contract had the respondent's not breached the SPTCD. My role is to determine what the claimants would have been paid had there been no breach of contract. The school under the SPTCD had absolute freedom whether or not to award a pay rise each year. If it awarded a pay progression increase it had to be linked to performance. I have to determine what loss, if any flows from the respondent's breach of contract and I find that the only loss will be if the claimants were not paid in accordance with the respondent's stated position of paying them the percentage uplift and the £500 each year.
105. The reason for this is that I do not find that damages for breach of contract should be calculated by reference to notional spine points.
106. Mr Patel has also not taken me to any contractual document showing what the schools pay policy was prior to the adoption of the option 2 model and the move away from spine points. Whilst it is common ground spine points were used up to academic year 2017/18, in order for me to find that this prior pay policy was somehow incorporated into the claimant's contracts of employment I would have to have seen this document and considered whether it was in fact incorporated. The documents at pages 170 to 175 are not the schools pay policy and as set out above I have found were not contractual in nature.
107. I do not agreed with Mr Patel's suggestion that the implementation of the whole school pay policy was a unilateral breach of contract. I have seen nothing (other than the SPTCD) prior to the implementation of the whole school pay policy that shows the claimants were contractually entitled to an annual increase in line with pay reference points. The SPTCD mandates that the



school must have a pay policy so logically for a school to have one cannot be a breach of contract.

108. The fact is that there is no document post the SPTCD for 2013 and prior to 2018 showing that the claimants were contractually entitled to annual pay progression based on pay reference point.
109. I do not find that the claimants have affirmed the breach of contract. As soon as they realised their pay was not calculated in accordance with notional national spine points they raised this issue with the respondent.
110. In relation to loss it is for the claimants to produce evidence of what they would have earned had there been no breach of contract. Whilst I have seen notional spine points I have not been taken to any document which shows me that prior to the adoption of the whole school pay policy in 2018 the claimants were contractually entitled to have their pay increased in accordance with spine points. After 2013 national spine points were no longer included as mandatory in the SPTCD.
111. I have also not seen any document specific to the respondent which references pay points or a contractual entitlement to annual increases on a pay reference point basis. Whilst I understand the claimants' primary submission is that £500 is too low for performance pay progression they have not been able to point me to any contractual document which sets out what performance pay progression should be. On that basis I do not find that to award £500 for pay progression was a breach of contract.
112. I therefore find that had the respondent not breached the SPTCD they would have adopted a clear pay policy that set out the application of the annual percentage uplift to all teachers and a £500 performance pay progression. To the extent that any of the claimants did not in fact receive this amount this is the damages for their breach of contract.
113. In relation to the unlawful deduction from wages claim for Ms Deaville – there seems to be some dispute as to whether she actually was paid in accordance with the respondent's policy of percentage uplift and £500 so I have to hear further submissions on this.
114. In relation to the failure to provide written particulars as accepted by the respondent they were in breach in relation to Ms Deaville and her appointment as a key stage 1 lead. I also find they were in breach in relation to Mrs Edwards change in hours in 2018.

115. I find that the failure to provide pay annual statements in 2019 was a breach of Section 4 of the ERA 1996 in relation to Section 1(1)(4)(a) ERA obligations in that the claimant's were not advised on the change to the rate of remuneration. I find that for the other years they did receive the statements.

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Employment Judge Noons

20 June 2023  
Date