EMPLOYMENT TRIBUNALS

Claimant: Mr R Latchman

Respondent: Department for Work and Pensions

Heard at: Birmingham Employment Tribunal (by Video Hearing)

On: 11 September 2023

Before: Employment Judge M Butler
Ms W Ellis
Dr G Hammersley

Representation
Claimant: Mr O Isaacs (of Counsel)
Respondent: Mr R Ryan (of Counsel)

The respondent requested written reasons of this decision by email on 12 September 2023. These are those written reasons. At the time of writing this judgment, I had received the information required for recoupment purposes. I have therefore inserted this below.

REMEDY JUDGMENT

The unanimous decision of the tribunal is:

1. It is ordered that the claimant be re-engaged pursuant to s.115 of the Employment Rights Act 1996 ('ERA').

2. Any compensation paid to the claimant is subject to a 30% deduction for contributory fault.

3. As determined at the hearing, he terms on which the claimant will be re-engaged are as follows:

    a. The identity of the employer: The Department of Works and Pensions (s.115(2)(a) ERA).
    b. The nature of employment: At grade Administrative Officer (AO) National, at the respondent's Birmingham or Dudley office (s.115(2)(b) ERA).
    c. Remuneration: at an annual gross figure of £18,478 (claimant's pay at time of dismissal) plus any uplifts, to take account any annual increases to pay and any other uplifts that would have been applied to the claimant

had he not been unfairly dismissed (s.115(2)(c) ERA).

d. Amount payable to the claimant for the period between date of termination and date of re-engagement (s.115(2)(d) ERA):
    i. The net sum from: gross pay of £102,283.20, plus any uplifts to the pay during the affected period, minus 30% for contributory fault.
    ii. 4 weeks' pay at current AO rate that claimant would have been entitled to had he not been dismissed, minus 30% for contributory fault.
    iii. The respondent will be responsible for grossing up the figure for the purpose of making any necessary deductions (tax, pension contributions etc).
e. The claimant be reinstated to the Alpha Pension Scheme as if he had not been dismissed. The respondent shall make whatever employer contributions are necessary to give effect to this order (s.115(2)(e) ERA).
f. This order must be complied with by 06 October 2023 (s.115(2)(f) ERA). Should the respondent comply with this order by an earlier date, then the figure at para 3(d)(ii) should be reduced accordingly.

4. In advance of completing these written reasons, the respondent had provided the necessary financial information for the purposes of the recoupment regulations, as directed. I have included these below. This information also enables me to include the precise figures for the remedy award:

    a. In paragraph 3(d)(i) above, the net sum to be paid to the claimant is £66,633.16.
    b. In paragraph 3(d)(ii) above, the net sum to be paid to the claimant is £1,057.48 (although this must be reduced or increased if the claimant's re-engagement date changed)
    c. The respondent must calculate and pay the claimant an interest payment using 8% per annum, on the figure of £67.690.64 minus the amount recouped.

5. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 (as amended) apply to this award (see annex for further details). For the purposes of completing this information, I have used the interest payment figure of £1,617.16, which is the amount that would be awarded if no recoupment took place (ie interest based on a monetary award of £67,690.64). For the purposes of those Regulations:

    a. The monetary award is: £69,307.80.

    b. The prescribed element is: £67,690.64.

    c. The prescribed period is: 01 March 2018 to 06 October 2023

    d. The monetary award exceeds the prescribed element by: £1,617.16 (although this solely relates to interest, and will need to be adjusted once recoupment has taken place, with no interest paid on the figure equivalent to that recouped).

REASONS

Introduction

6. This remedy hearing follows a liability judgment that was handed down on 19 August 2021. The claimant was found to have been unfairly dismissed in that judgment. The claimant had indicated that he was seeking reinstatement or reengagement following his unfair dismissal. Remedy was stayed in this case pending an appeal to the Employment Appeal Tribunal.

7. During the period between the liability judgment being handed down and this hearing taking place, one of the panel members that had heard this case had retired. Regional Employment Judge Findlay substituted him under Regulation (3) of the ET (Constitutional and Rules of Procedure) regulations and under Rule 57. This meant that Dr Hammersley replaced Mr Talbot.

8. In determining remedy in this case, the tribunal was assisted by an evidence file that ran to 423 electronic pages. Within this bundle was the claimant's witness statement (although an updated one was presented which stood as the claimant's evidence) and a statement of Mr Robert Birch on behalf of the respondent.

9. The tribunal carefully read the liability judgment in this case, alongside other documentary evidence before hearing the evidence.

10. We were thankful for the approach adopted by both Counsel in this case, as it greatly assisted the tribunal.

Law

11. The skeleton arguments presented on behalf of both the claimant and the respondent set out the relevant law that the tribunal was to consider at this hearing. The focus being initially on re-employment of the claimant, either by way of re-instatement or re-engagement.

12. The remedy of re-instatement and/or re-engagement are provided for by sections 112-116 of the Employment Rights Act 1996. With section 115 being the provision relating specifically to re-engagement.

13. Section 115 of the Employment Rights Act 1996 provides that:

    (1) An order for re-engagement is an order, on such terms as the tribunal may decide, that the complainant be engaged by the employer, or by a successor of the employer or by an associated employer, in employment comparable to that from which he was dismissed or other suitable employment.

    (2) On making an order for re-engagement the tribunal shall specify the terms on which re-engagement is to take place, including—

        (a) the identity of the employer,

        (b) the nature of the employment,

        (c) the remuneration for the employment,

        (d) any amount payable by the employer in respect of any benefit

which the complainant might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of re-engagement,

(e) any rights and privileges (including seniority and pension rights) which must be restored to the employee, and

(f) the date by which the order must be complied with.

(3) In calculating for the purposes of subsection (2)(d) any amount payable by the employer, the tribunal shall take into account, so as to reduce the employer's liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of re-engagement by way of—

(a) wages in lieu of notice or ex gratia payments paid by the employer, or

(b) remuneration paid in respect of employment with another employer,

and such other benefits as the tribunal thinks appropriate in the circumstances.

14. Whilst s.116 of the Employment Rights Act 1996 provides the powers the tribunals has in respect of the choice of order and its terms. It provides:

(1) In exercising its discretion under section 113 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.

(2) If the tribunal decides not to make an order for reinstatement it shall then consider whether to make an order for re-engagement and, if so, on what terms.

(3) In so doing the tribunal shall take into account—

(a) any wish expressed by the complainant as to the nature of the order to be made,

(b) whether it is practicable for the employer (or a successor or an associated employer) to comply with an order for re-engagement, and

(c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his re-engagement and (if so) on what terms.

(4) Except in a case where the tribunal takes into account contributory fault under subsection (3)(c) it shall, if it orders re-engagement, do so on terms which are, so far as is reasonably practicable, as favourable as an order for reinstatement.

(5) 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 (1)(b) or (3)(b), whether it is practicable to comply with an order for reinstatement or re-engagement.

(6) Subsection (5) does not apply where the employer shows—

(a) that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement, or

(b) that—

(i) he engaged the replacement after the lapse of a reasonable period, without having heard from the dismissed employee that he wished to be reinstated or re-engaged, and

(ii) when the employer engaged the replacement it was no longer reasonable for him to arrange for the dismissed employee's work to be done except by a permanent replacement.

15. Both representatives highlighted relevant legal principles/case law that the tribunal ought to consider in making its decision.

16. Mr Isaacs, on behalf of the claimant, identified several principles that the tribunal should consider:

a. That when considering whether re-employment is practicable, the tribunal should adopt a broad common sense view of the question. And should consider whether, having regard to the industrial relations realities, it is capable of being put into effect with success. [per Stephenson LJ in **Coleman and Stephenson v Magnet Joinery (1974) IRLR 343**].

b. When considering whether re-employment is practicable, and whether trust and confidence has been broken so as to act to a barrier to such a remedy, he identified that the critical question is whether the employer had a genuine, and rational belief that the employee had engaged in conduct which had broken the relationship of trust and confidence between the employer and employee. [**Kelly v PGA European Tour** [2021] EWCA Civ 559].

c. That in deciding whether it is practicable to make an order for re-engagement, the Tribunal is not tasked with making a final determination on practicability. It only need make a provisional assessment until an enforcement hearing. Indeed, the Tribunal can make an order for re-employment to test the employer's claims on practicability and whether they are justified [see **Timex Corporation v Thompson** [1981] IRLR 522].

d. Contributory conduct is relevant as to whether it is "just" to make an order. There is no reason in principle why a tribunal should not make a re-employment order even where there is a large degree of contributory conduct, provided it forms a reasonable view that the circumstances warrant it. In **Automatic Cooling Engineers Ltd v Scott** EAT 545/81, for example, the EAT upheld a re-engagement order in a case where contribution had been assessed at 75 per cent.

17. And Mr Ryan, on behalf of the respondent also identified the following relevant principles/case law (and relevant paragraphs from the relevant judgment):

a. The question of practicability in s.116(3)(b) is to be taken account of as at

the date when a re-employment order is being considered. This is the first stage of consideration (it is open to the employer to re-argue the question of practicability at the further remedy stage under s 117(4)) and is undertaken on a provisional basis only, as explained by Baroness Hale in **McBride v Strathclyde Police Joint Board [2013] IRLR 297**: "*At the stage when it is considering whether to make a reinstatement order, the tribunal's judgment on the practicability of the employer's compliance with the order is only a provisional determination. It is a prospective assessment of the practicability of compliance, and not a conclusive determination of practicability. This follows from the structure of the statutory scheme, which recognises that the employer may not comply with the order. In that event, s 117 provides for an award of compensation, and also the making of an additional award of compensation, unless the employer satisfies the tribunal that it was not practicable to comply with the order. Practicability of compliance is thus assessed at two separate stages - a provisional determination at the first stage and a conclusive determination, with the burden on the employer, at the second*."

b. That loss of trust and confidence may render re-instatement or re-engagement impracticable. For example, where there is a breakdown in trust between the parties and a genuine belief of misconduct by the employee on the part of the employer: see **Wood Group Heavy Industrial Turbines Ltd v Crossan [1998] IRLR 680** where Lord Johnston at para 10 (in the context of misconduct involving drugs and clocking offences) held: "*in this case it is not practical to order re-engagement against the background of the finding that the employer genuinely believed in the substance of the allegations . . . when allegations of this sort are made and are investigated against a genuine belief held by the employer, it is difficult to see how the essential bond of trust and confidence that must exist . . . can be satisfactorily repaired by re-engagement or upon re-engagement. We consider that the remedy of re-engagement has very limited scope and will only be practical in the rarest cases where there is a breakdown in confidence as between the employer and the employee.*"

c. In **ILEA v Gravett [1988] IRLR 497** the EAT accepted that a genuine belief in the guilt of an employee of misconduct, even if there were no reasonable grounds for it, was a factor that had to be weighed properly in deciding whether to order re-engagement: "*The tribunal ordered re-engagement and are criticised by the Appellant employer for what they submit is a wholly perverse decision upon all the facts of this case. It is a possible view of that decision, but we do not seek nor do we need to go that far. An essential finding in the present case was that the authority had a genuine belief in the guilt of the applicant. It is said with accuracy that this is the largest education authority in the country and that it has a vast area to cover and a vast variety of posts into which the applicant could be fitted. It is, however, a common factor in any of those posts that the applicant would have the care and handling of young children of both sexes. Bearing in mind the duty of care imposed upon the authority and the very real risks should they depart from the highest standard of care, we take the view that this tribunal failed adequately to give weight to those factors in the balancing exercise carried out in order to reach their decision on re-engagement.*"

Findings of fact

We make the following findings of fact on the balance of probabilities, having considered all the evidence before us. We have restricted our findings to those matters necessary

for us to determine the issue before us.

18. The claimant is currently fit for work.

19. The respondent is a large organisation and has a variety of sites in the Birmingham locality. This includes one in Birmingham and one in Dudley.

20. The claimant had misunderstood the sick leave policy that resulted in him not following it. And this was a reasonable misunderstanding by the claimant (see para 39 of liability judgment). Some blame rests with the claimant with this matter, and he accepts that.

21. Had the claimant made a request for leave to attend the trade union conference, then he would have been granted it (see liability judgment at para 90).

22. The allegation concerning the distribution of the email was not an act of gross misconduct. Rather it was a simple error made by the claimant in respect the distribution list. This was a one-off incident (see paragraph 91 of the liability judgment). Some blame rests with the claimant with this matter, and he accepts that.

23. The claimant did have some issues with individuals employed by the respondent when he worked there previously. Specifically, with Mr Cornfield (the subject of the email and a grievance raised by the claimant) and a Michelle Smith.

24. The claimant still considers that the reason why the respondent dismissed him was because of his union activities.

25. Between 17 August 2017 and 01 March 2018, during the alleged misconduct issues and before he was dismissed, the claimant was working for the respondent, and continued to work alongside Mr Cornfield and everybody else without incident or any concerns. The claimant did not treat Mr Cornfield negatively during this period.

26. During this period there was no criticism raised about the claimant's working relationships or with how he was working with other people.

27. Both Mr Cornfield and Ms Smith are currently based at the Dudley site. Neither have any role at the Birmingham site.

28. The respondent currently operates a hybrid working option, which allows individuals to work away from the office. This is not a contractual right, but is an option offered to workers. The respondent reserves the right to rescind any such arrangement where there are concerns about the efficacy of work whilst working away from the office.

29. Mr Cornfield works within the Complex Case Worker team. He has a hybrid working pattern. He has to spend a minimum time of 40% of his working time in the office. His arrangement tends to be 2 days in the office for 3 weeks, followed by a period where he spends only 1 day in the office.

30. The claimant, before he was dismissed, was employed with the Child Support Agency part of the respondent. However, this team/role was closed in 2018. Most of the workers from the Child Support Agency transferred to the Child Maintenance Services team. This team operates in the Dudley branch only. As these were new roles, those that transferred across were provided with the necessary support in terms of training and upskilling. The respondent did not dismiss anybody for failing to pass the training.

31. The respondent is currently recruiting into the Child Maintenance Services team.

32. Mr Cornfield is not part of the Child Maintenance Services Team. There are many teams within the respondent, including the Child Maintenance Services Team where, if the claimant was part of that team, he would not have daily interaction with Mr Cornfield.

33. The respondent made nobody redundant due to the change in role.

34. There was a standard 12-week training period; however, the specific length of training would be dependent on the individual and the specific area that they were being assigned to.

35. The respondent considered that those individuals that were previously employed in the Child Support Agency were suitable for admin officer role with the Child Maintenance Services team if they were provided with adequate training.

36. Mr Birch did not consider the claimant's personnel file before giving evidence today. Nor did he review any of the claimant's previous appraisals. Mr Birch relied solely on information provided to him by the HR Business Partner. He did not know what enquiries they made in providing him with any of the information he received.

37. Mr Birch accepted that the training programme was not a barrier to the claimant returning to work for the respondent. And this is a finding we make.

38. Mr Birch did not speak to Mr Cornfield about the likely impact on him should Mr Latchman return to work.

39. Mr Birch did not speak to the claimant's then line manager about the annual leave incident, and whether there had been a breakdown of trust and confidence between the claimant and management.

40. On appeal, the annual leave incident was deemed not sufficient to justify termination.

41. Mr Birch, on behalf of the respondent, does not identify any individual within his statement where there has been a breakdown in their relationship with the claimant.

42. At its height, Mr Birch spoke to Emma Cornfield, who mentioned that managing the claimant may be difficult, in particular in keeping him focussed on the work he needs to do. However, Mr Birch accepted that this is not uncommon. That the respondent has difficult employees to manage. And there are people where it is a challenge to keep them focussed.

43. Mr Birch accepted that there was no evidence that the claimant had victimised a fellow employee. Nor that he did not treat others with courtesy or respect. And that there nothing to suggest something had happened that would have justified suspending the claimant. Mr Birch also accepted that there was no evidence that the claimant returning to work would have an adverse effect on the workforce. Given Mr Birch's candid acceptance of these matters, we make the findings that no evidence exists as none of them do exist.

44. It is possible that the employment relationship between the claimant and the respondent could be successful if he returned to work for the respondent. This was the evidence of Mr Birch.

<u>Closing Submissions</u>

45. The tribunal benefitted from written submissions that were prepared on behalf of both the claimant and the respondent, which were both supplemented by closing oral submissions.

Conclusions

46. Re-employment of an individual through re-instatement or re-engagement were the intended primary remedies for when an individual had been found to have been unfairly dismissed.

47. The respondent resists an order of re-engagement with submissions that the respondent's trust and confidence in the claimant has been damaged with genuine and significant concerns, such that any such order would not be capable of being carried into effect with success.

48. Mr Ryan identified 5 reasons why such an order was not practicable, at paragraph 16 of his skeleton argument. And we turn to each of these:

    a. possible adverse reaction of the rest of the workforce (Bateman v British Leyland UK Ltd [1974] IRLR 101); the judgment is now a matter of public record, so it would be difficult to avoid this.

       The respondent has not produced any evidence of this. Mr Birch, nor anybody else for the respondent, made any such enquiries. There was no evidence at the liability hearing that the claimant's relationships with others was affected by matters for which he was dismissed, save for that with Mr Cornfield. And this included during the period of investigation and decision making, during which the claimant was not suspended, and continued to work effectively as part of his team.

       With respect Mr Cornfield, he is now employed in a different role. He works to a hybrid arrangement, which limits his time in the office to at most 2 days per week. The claimant could likewise be employed on a hybrid arrangement. The working arrangements could easily be organised so that the claimant and Mr Cornfield never come into contact face to face if that is required.

       There is also the possibility of the claimant being placed at the Birmingham office, which would remove him from the office at which both Mr Cornfield and Emma Cornfield currently work.

    b. A 'poisoned' atmosphere in the workplace if the Claimant has to work with the persons involved in the dismissal process or who are aware of the circumstances of his previous dismissal. The atmosphere would be counter-productive; (Meridian Ltd v Gomersall [1977] IRLR 425, EAT; Enessy Co SA (t/a Tulchan Estate) v Minoprio and Minoprio [1978] IRLR 489, EAT (obiter));

       Similar to those observations above, there is simply no evidence of such a poisoned atmosphere. The claimant continued to work with those involved in the dismissal process during the investigation and whilst the matter was being determined.

    c. the Respondent has irretrievably lost trust and confidence in the Claimant given: (1) his poor judgment/inappropriate email and (2) he has not recognised his own wrongdoing.

       The issue of whether the claimant's conduct with respect the email broke trust and confidence between the respondent and the claimant was

already addressed at the liability hearing. With the evidence being found to support that it did not break that implied term and that the respondent did not have a genuine and rational belief that it had been, for the reasons explained at paragraph 91 of that judgment. And, our findings above are that the claimant has recognised some blame in this matter.

Further, the individual identified as possibly still being in conflict with the claimant, Mr Cornfield, has at no point, particularly in his grievance, identified that trust and confidence has been broken between him and the claimant.

There is simply no basis before this tribunal to support such a contention.

d. whilst a continuing belief by a line manager (or senior management) in the employee's guilt may not generally be sufficient to prevent an order (Boots Co plc v Lees-Collier), a continuing breakdown in trust and respect is likely to be enough (see para 11 above - Wood Group Heavy Industrial Turbines Ltd v Crossan)

This factor has been taken into account. Given that there was a belief in the claimant's guilt of misconduct in this case. However, the same observations as to the trust and confidence matter addressed above apply.

e. the question of the Respondent's own genuine belief is a relevant factor (albeit that is not the determining question).

And this as a factor has also been considered in reaching this decision.

49. This tribunal is tasked making a provisional determination as to whether it is practicable to make an order of re-engagement. And we find that it is.

50. There is simply no evidence that the alleged misconduct would render such an order impracticable. The respondent has not adduced evidence that convinces the tribunal otherwise.

51. At its height, the respondent submits that the conduct itself was such as to damage relationships within the respondent, with the workforce generally and with management. However, this is speculative at best. There is simply no evidence brought forward in that regard.

52. What we do have is evidence from Mr Birch, who was called to give evidence by the respondent. He gave evidence that:

a. between 17 August 2017 and 01 March 2018 (the date of dismissal) the claimant continued to work with the respondent with no issue and that there was nothing to suggest that the claimant's conduct had affected relationships within the workplace.
b. That the only person he had discussed the claimant's return with was Emma Cornfield, who at its height identified that the claimant's return to work could be difficult. But with no context.
c. That there is a system of hybrid working, that could be used to limit the claimant coming into contact with Mr Cornfield or Ms Emma Cornfield.
d. That the claimant has sites around the Birmingham area, which again could be used to limit the claimant coming into contact with Mr Cornfield or Ms Emma Cornfield.
e. That there are roles available with the respondent in the Child Maintenance Services team at the same level that the claimant had been employed. And to which the majority of the team that the claimant was in

had transferred successfully following a period of training.

f. That it is possible that the employment relationship between the claimant and the respondent could be successful if he returned to work for the respondent. Before explaining in re-examination that this would depend on if the claimant was committed to the role and the training programme, and if he puts down what happened to mistakes.

53. This tribunal concludes, that based on all the evidence before it, that an order of re-engagement would be practicable. The tribunal does consider that the claimant contributed to his dismissal to the extent of 30%, but that this does not render such an order impracticable.

54. The claimant's continued belief that his treatment was due to his trade union activities is not surprising. This is not uncommon, even following a tribunal judgment deciding otherwise. And this is especially given the context of the conduct that led to the claimant being unfairly dismissed. It is often difficult to separate out the conduct from the context. Continuing to hold these views, given that the claimant held this belief during the period 17 August 2017 and 01 March 2018 without it affecting his working practices and relationships in the workplace (save for with Mr Cornfield), does not render such an order impracticable.

55. This tribunal's decision is to order re-engagement of the claimant by the respondent.

56. The terms on which the claimant will be re-engaged are as follows:

    a. The identity of the employer: The Department of Works and Pensions (s.115(2)(a) ERA).

    b. The nature of employment: At grade Administrative Officer (AO) National, at the respondent's Birmingham or Dudley office (s.115(2)(b) ERA).

    c. Remuneration: at an annual gross figure of £18,478 (claimant's pay at time of dismissal) plus any uplifts, to take account any annual increases to pay and any other uplifts that would have been applied to the claimant had he not been unfairly dismissed (s.115(2)(c) ERA).

    d. Amount payable to the claimant for the period between date of termination and date of re-engagement (s.115(2)(d) ERA):
        i. The net sum of: £102,283.20, plus any uplifts to the pay during the affected period, minus 30% for contributory fault.
        ii. 4 weeks pay at current AO rate that claimant would have been entitled to had he not been dismissed, minus 30% for contributory fault.
        iii. The respondent will be responsible for grossing up the figure for the purpose of making any necessary deductions (tax, pension contributions etc).

    e. The claimant be reinstated to the Alpha Pension Scheme as if he had not been dismissed. The respondent shall make whatever employer contributions are necessary to give effect to this order (s.115(2)(e) ERA).

57. This order must be complied with by 06 October 2023 (s.115(2)(f) ERA). Should the respondent comply with this order by an earlier date, then the figure at para 3(d)(ii) should be reduced accordingly.

58. These figures have been updated in paragraphs 4-5 above, following information provided by the respondent in respect of uplifts and following the deduction of statutory deductions.

59. I have also clarified that contained in paragraph 3(d)(i), to ensure that it is read correctly.

60. The relevant information for recoupment has also been added to these written reasons.

Employment Judge **Mark Butler**

Date: 07 December 2023

ANNEX RECOUPMENT

Recoupment of Jobseeker's Allowance, income-related Employment and Support Allowance, Universal Credit and Income Support

The Tribunal has awarded compensation to the Claimant but not all of it should be paid immediately. This is because the Department for Work and Pensions (DWP) has the right to recover (recoup) any Jobseeker's Allowance, income-related Employment and Support Allowance, Universal Credit or Income Support which it paid to the Claimant after dismissal. This will be done by way of a Recoupment Notice which will be sent to the Respondent usually within 21 days after the Tribunal's judgment is sent to the parties.

The Tribunal's judgment states the total monetary award made to the Claimant and an amount called the prescribed element. Only the prescribed element is affected by the Recoupment Notice and that part of the Tribunal's award should not be paid until the Recoupment Notice has been received.

The difference between the monetary award and the prescribed element is payable by the Respondent to the claimant immediately.

When the DWP sends the Recoupment Notice, the Respondent must pay the amount specified in the Notice by the Department. This amount can never be more than the prescribed element of any monetary award. If the amount is less than the prescribed element, the Respondent must pay the balance to the Claimant. If the Department informs the Respondent that it does not intend to issue a Recoupment Notice, the Respondent must immediately pay the whole of the prescribed element to the claimant.

The Claimant will receive a copy of the Recoupment Notice from the DWP. If the Claimant disputes the amount in the Recoupment Notice, the Claimant must inform the DWP in writing within 21 days. The Tribunal has no power to resolve such disputes, which must be resolved directly between the Claimant and the DWP.