



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100008/2023

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Final Hearing held in Glasgow on 6 June 2023 and conducted remotely using the Cloud Video Platform (CVP); parties' written closing submissions dated 13 and 20 June 2023 considered in chambers, without the attendance of parties, by private deliberation on 7 July 2023; and parties' further written representations dated 6 and 28 November 2023, considered in chambers, without the attendance of parties, by further private deliberation on 6 December 2023

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Employment Judge Ian McPherson

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Mrs Lynne Dill

In Person

Claimant

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Renfrewshire Leisure Limited (t/a OneRen)

**Respondents
Represented by:
Ms Kirstie Smith -
Trainee Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The reserved judgment of the Employment Tribunal, having heard the evidence led by both parties at the Final Hearing, and having then reserved judgment to be given later, and having resumed consideration of the case, and thereafter having, in private deliberation in chambers, considered the evidence led at the Final Hearing, and the written closing submissions and further written representations received from both parties, is as follows:

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- (1) The Tribunal finds and declares that the effective date of termination of the claimant's employment with the respondents was 18 October 2022.
- (2) The claimant's claim seeking a redundancy payment from the respondents being not well-founded, she having been paid a redundancy payment of

£9,878.87 by the respondents, on 20 October 2022, prior to her presenting her Tribunal claim, that part of her claim against the respondents is dismissed by the Tribunal, it not having previously been withdrawn by the claimant.

- 5 (3) In respect of the claimant's claim for unpaid notice pay and pension contributions, claim for accrued and unpaid holiday pay, and claim for unpaid wages and pension contributions, insofar as seeking payment from the respondents from 2 September 2022 up to 18 October 2022, the Tribunal requires further information from both parties, and the Tribunal accordingly continues consideration of the case, and directs that parties shall co-operate and jointly agree, within 14 days of issue of this Judgment, a calculation showing the final amount due to the claimant, and notify the Tribunal of the agreed sums and invite the Tribunal to incorporate them into a Judgment by Consent in terms of **Rule 64 of the Employment Tribunals Rules of Procedure 2013**.
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REASONS

Introduction

1. This case called before me as an Employment Judge sitting alone at 10:00am on the morning of Tuesday, 6 June 2023, for what was then listed as a 3-hour Final Hearing to be conducted remotely using the Cloud Video Platform (CVP), previously intimated to both parties by the Tribunal, by Notice of Final Hearing dated 30 March 2023. It was listed for full disposal, including remedy, if appropriate.
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2. In the event, the Final Hearing before me did not conclude within the allocated 3-hours, but it lasted a full day, concluding at 4:20pm. The Tribunal did not hear oral closing submissions from both parties that afternoon, due to the lateness of the hour.
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3. In the interests of justice, it was considered best to give each party time to reflect on the evidence led, rather than proceed straight to oral closing submissions later that afternoon, so after evidence had closed, and with the

agreement of both parties, it was decided that they should instead each lodge their own written closing submissions with the Tribunal, by no later than 7 days for the respondents, with the claimant to reply with hers within no more than a further 7 days.

- 5 4. On 7 July 2023, I had private deliberation, in chambers, when I read both parties' written closing submissions dated 13 and 20 June. However, I did not have time that day to review the whole evidence, draft findings in fact, and apply the relevant law to those findings, nor to proceed to draft my Judgment and Reasons, which I had hoped to be able to do, within the Tribunal
10 administration's target of Judgment within 28 days of that in chambers Hearing.
5. Unfortunately, due to a combination of factors thereafter, including other judicial business, and annual leave, I was then unable to further consider the case, and conclude drafting this Judgment until fairly recently. On 27 October
15 2023, the respondents' solicitor wrote to the Tribunal seeking an update on issue of the Judgment.
6. An update was provided to both parties by the Tribunal, by letter dated 30 October 2023, stating that I was aiming to complete and issue to both parties my finalised Judgment before going away on annual leave commencing 13
20 November 2023. Further information was requested from both parties, within 7 days, on sums to be paid to the claimant by the respondents after close of the Final Hearing, as referred to in the respondents' written closing submissions of 13 June 2023.
7. In the event, I was then off work, on sick leave, for 2 weeks, from 6 November
25 2023. By letter dated 8 November 2023, both parties were updated again by the Tribunal that I was absent from the office and would not be in a position to provide my Judgment by 13 November 2023 as previously anticipated, but they would be contacted again on my return to the office.
8. Having returned to the office, week commencing 20 November 2023, I was
30 allocated additional writing time to finalise this Judgment. On 27 November

2023, both parties were again updated by the Tribunal. Having received the respondents' further written representation of 6 November 2023, in reply to the Tribunal's letter of 30 October 2023, as regards sums paid to the claimant after close of the Final Hearing, the claimant was asked to respond as soon as possible, and within 7 days at latest, to allow me to finalise this written Judgment and Reasons.

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9. She did so, on 28 November 2023, and I had further private deliberation, in chambers, on 6 December 2023, when I finalised this Judgment. In doing so, I again sincerely apologise to both parties, further to the Tribunal's letter of 30 October 2023, for the consequential delay in issue of this Judgment, and for any anxiety that may have been caused to either party, by the further delay, occasioned by my more recent sickness absence from the office.
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Background

10. The ET1 claim form in this case was presented by the claimant, acting on her own behalf, to the Tribunal on 3 January 2023, suing "**OneRen**", following ACAS early conciliation between 8 and 12 December 2022.
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11. The claimant stated in her claim form that she was making a claim for a redundancy payment, and she further stated that she was owed notice pay and holiday pay, all said to be arising from termination of her employment on 4 September 2022. In the event of success with her claim, she sought an award of compensation only from the respondents.
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12. In section 8.2 of her ET1 claim form, the claimant set out the background and details of her claim, adding additional information, at section 15, that she believed that "***I was discriminated for having a baby as I had already cost them too much money***". Her ET1 claim form did not explain why she had inserted 4 September 2022 as the end date of her employment with the respondents.
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13. Although she had not ticked, at section 8.1, that she was making a claim for having discriminated against on the grounds of pregnancy or maternity, her

claim form was accepted by the Tribunal administration, as including that type of claim, and the Tribunal's internal administrative, jurisdictional code ("**MAT**") was used to reflect that jurisdiction, as well as those for redundancy pay ("**RPT**"), breach of contract / failure to pay notice pay ("**BOC**"), and failure to pay holiday pay ("**WTR(AL)**").

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14. Her claim was served on the respondents by the Tribunal, on 5 January 2023, requiring an ET3 response by 2 February 2023. The claim was defended, by ET3 response, lodged on behalf of the respondents, by Ms Rebekah Page, solicitor with Work Nest Law, Aberdeen, on 2 February 2023. The defence stated that the claimant's employment had terminated on 2 September 2022 due to voluntary redundancy, and that she had received payment of an enhanced redundancy pay upon termination. It was denied that the claimant had been the subject of pregnancy discrimination, and it was further stated that she had been paid all sums due to her.
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15. Thereafter, there was sundry procedure before the Tribunal, including two separate telephone conference call Case Management Preliminary Hearings, the first before Employment Judge Rory McPherson, on 2 March 2023, and the second before Employment Judge Buzzard on 29 March 2023.
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16. At the former, the claimant withdrew her discrimination claim against the respondents, which was dismissed by written Judgment by Employment Judge Rory McPherson dated 7 March 2023, and at the latter, this CVP Final Hearing was assigned. Employment Judge Buzzard ordered parties to exchange documents by no later than 28 April 2023, and he directed the respondents' representative to be responsible for putting together a Hearing Bundle to be provided to the claimant by no later than 12 May 2023.
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Issues for the Tribunal

17. Employment Judge Buzzard, in his PH Note and Orders sent to both parties by the Tribunal, on 30 March 2023, at paragraphs (4) to (7), set out the claimant's complaints, and issues for determination at this Final Hearing, as follows:
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Complaints and Issues

(4) *The claimant makes the following claims:*

(a) *A claim for unpaid notice pay and pension contributions;*

(b) *A claim for accrued and unpaid holiday pay; and*

5 (c) *A claim for unpaid wages and (pension) contributions.*

(5) ***Pension contributions and Pay in lieu of notice claim***

(a) *The claimant's employment terminated by reason of voluntary redundancy.*

10 (b) *The respondent states that the date of termination of the claimant's employment was confirmed to the claimant in a letter sent to her on 5 September 2022. The claimant denies that she received that letter. Whether that letter was sent by the respondent on 5 September 2022 is a key factual dispute between the parties.*

15 (c) *The respondent states that the claimant was paid 4 weeks' pay in lieu of notice in the September payroll. The claimant's position is that at this time she believed this was her normal salary, as she had not been notified that her employment had terminated.*

20 (d) *The claimant claims that she was not notified of the date that her employment would terminate until 17 October 2022.*

25 (e) *There is no dispute that sometime after 17 October 2022 the respondent identified that it had, in error, calculated the claimant's notice entitlement to be 4 weeks, rather than 9 weeks. The parties are in agreement that the claimant was entitled to 9 weeks' notice. At this point the claimant was sent a further payment in lieu of 5 weeks' notice.*

(f) *The claimant claims that she is entitled to payment in lieu of 4 more weeks' notice. This is on the basis that she has only had 5 weeks' pay in lieu of notice.*

5 (g) *The claimant also seeks compensation for pension contributions for her notice period. The parties were uncertain of the amount of such contributions, but believed it may be 3.1% of the claimant's pay. If possible, the parties will agree the amount of the respondent's contributions to the claimant's pension in advance of the final hearing. The claimant*
10 *understands that she would be entitled to claim only for the respondent's contributions, her own contributions would have been deducted from her pay in any notice period.*

(6) **Accrued Holiday Pay claim**

15 (a) *The claimant claims that she is owed payment for accrued untaken holiday. There are two basis for this claim:*

i. *That employment continued to 17 October 2022, and accordingly she would have continued to accrue holiday up to that date; and*

20 ii. *That the respondent made an error in calculating her annual leave up to 5 September 2022. The claimant will say that she was informed that up to 17 July 2022 she had accrued 8 days' leave. The claimant will say she did not take any leave after she was given this information. The claimant will say that she would have accrued*
25 *around 3 more days' holiday after 17 July 2022 up to 5 September 2022, making a total of around 11 days accrued holiday. The claimant will say that she was only paid for 10 days' accrued holiday.*

(b) *To determine these claims the following factual disputes will need to be determined:*

i. *Did the claimant take any leave after she was told she would have 8 days leave accrued by 17 July 2022;*

5 ii. *When did the claimant's employment terminate (which is the same issue as for the notice pay claim);*

iii. *How many more days' leave were accrued from 17 July 2022 to the date of termination of her employment; and*

10 iv. *How many days pay in lieu of accrued holiday were paid to the claimant.*

(7) **Unpaid Wages and pension contributions Claim**

15 (a) *This claim relates to the wages and pension contributions the claimant will say she should have received up to 17 October 2022. The respondent's position is that the claimant's employment ended by no later than 5 September 2022, so no further pay or pension contributions entitlement accrued after that date.*

20 (b) *There is no dispute that the claimant was paid 4 weeks' worth of pay in that period. The claimant will say that this was normal pay, the respondent will say that this was pay in lieu of notice paid after the termination of the claimant's employment.*

(c) *Whether this part of the claimant's claim has any merit will become clear when the date of termination of the claimant's employment is determined.*

25 **Final Hearing before this Tribunal**

18. When the case called before me, on Tuesday, 6 June 2023, the claimant was in attendance, representing herself, while the respondents were represented by Ms Kirstie Smith, trainee solicitor with Work Nest Law, Glasgow, Ms Page

having left that firm in the interim. Ms Smith informed me that she had a Ms Stacey Martindale to lead as the only witness for the respondents. The claimant was the only witness to be led on her behalf.

19. The Tribunal had been provided by Ms Smith on 2 June 2023 with an
5 electronic, PDF Bundle of Documents, comprising 33 documents, extending
across 91 pages, as per an Inventory of Productions, to which, at the start of
this Final Hearing, she sought to be allowed to add an additional one-page
document. It was a screen shot from the respondents' personnel system, with
contact information and address for the claimant, which she had emailed to
10 the Tribunal, and copied to the claimant, at 9:48am. She apologised saying it
had only come to her attention that morning.
20. By email sent to the Tribunal, at 9:28am that morning, and copied to the
claimant, Ms Smith had forwarded two legal case law authorities that the
respondents intended to rely upon in submissions, being (a) **East Kent
15 Hospitals University NHS Foundation Trust v Mrs P Levy [2018]
UKEAT0232/17/LA**, and (b) **Newcastle upon Tyne Hospitals NHS
Foundation Trust (Appellant) v Haywood (Respondent) [2018] UKSC 22**.
21. Ms Smith advised the Tribunal that she wished to rely upon paragraph 33 in
Her Honour Judge Eady's EAT judgment in **Levy**, and paragraphs 21, 39 and
20 40, in Lady Hale's judgment from the UK Supreme Court in **Haywood**. Having
only been sent to her that morning, the claimant, quite understandably, stated
that she had not yet had an opportunity to look at those two judgments.
22. As preliminary matter, at the start of this Final Hearing, I raised the proper
identity of the respondents. The ET1 claim form, and the ACAS early
25 conciliation certificate, had all referred to the respondent as "**OneRen**", as did
the ET3 response, although in the paper apart, it had stated that it was a
charitable trust.
23. Having perused documents in the Bundle provided to the Tribunal, I sought
clarification, as a result of which it was later agreed with both parties (when
30 proceedings resumed at 11:30am, after an adjournment) that the proper

identity and designation of the respondents on the Tribunal's file should be amended to show ***Renfrewshire Leisure Limited trading as OneRen.***

24. Given that the claimant was appearing as an unrepresented party litigant, and various matters required to be clarified as regards the sums being sought by the claimant, and the respondents' position about what had been paid, and what might still be due to the claimant, I suggested to Ms Smith that it might be best for the respondents to give their evidence first, and for the claimant to thereafter respond with her evidence, rather than hear from the claimant first, and respondents thereafter.
25. Ms Smith helpfully indicated that she was prepared for both situations, and the claimant commented that she was not very good with the Tribunal process, and she did not know what to do, so she would like to hear what the respondents had to say first, and cross examine their witness, before giving her own evidence to the Tribunal.
26. I referred to the Tribunal's overriding objective to deal with the case fairly and justly, in terms of **Rule 2 of the Employment Tribunal Rules of Procedure 2013**, including trying to ensure that both parties are on an equal footing, and so we all agreed to the running order of respondents first, and thereafter the claimant in reply.
27. The claimant had never been ordered by the Tribunal at any earlier stage to provide a detailed schedule of loss explaining what sums she sought from the respondents, and how she had calculated them.
28. At the start of this Final Hearing, when I asked the claimant what sum she believed she was still owed by the respondents, she indicated that it was around **£2,500** for one month's wages, plus other amounts for notice pay, and annual leave, but she had not calculated those, as there was a dispute as to what was the effective date of termination of her employment with the respondents.

29. It was only in her written closing submissions, intimated on 20 June 2023, that she detailed the sums which she avers were owed to her, totalling **£12,631.25** in total.

30. When I asked Ms Smith to clarify the respondents' position, at the start of this Final Hearing, she stated various figures, for several different matters, and they were confirmed in writing, in the course of this Final Hearing, after an adjournment that I granted, at about 10:55am.

31. Having heard Ms Smith's oral submission, and without sight of the written counter-schedule, not then sent to her, the claimant stated that she was confused by the respondents' figures, given orally by Ms Smith, and that she did not understand them. Ms. Smith stated that there would be no payroll witness led from the respondents to explain matters, and that Ms Martindale would be the only witness for the respondents.

32. In those circumstances, I adjourned proceedings to allow the respondents' representative to take instructions and clarify what sums (if any) the respondents were agreeing to pay to the claimant, and whether there was any scope for a **Rule 64** consent judgment in this case.

33. By email to the Tribunal, and copied to the claimant, at 11:33am, Ms Smith intimated a "**counter schedule of loss**" for the respondents, as an Excel spreadsheet, entitled "**contractual monies schedule**", with data across 7 columns, showing monies to be paid to the claimant, dependent upon whether the termination date was 6 September 2022, or 17 October 2022, as follows:

[Note by the Judge: the content of column 7 (calculations) has been reproduced in this Judgment by identifying the relevant entries as notes A to E against the sums shown in the dated columns].

Annual Salary (gross)	35,123
Weekly rate of pay (gross)	673.60
Daily rate of pay (gross)	134.72

	Employer pension contribution (%)		19.3
	Holiday entitlement 2022 extra day due to jubilee		38
	Notice entitlement (weeks)		9
	Termination date	6th September 2022	17th October 2022
5	PILON (wages)	6062.39	6062.39 [note A]
	PILON (pension)	1170.04	1170.04 [note B]
	PILON (holidays)	883.61	883.61 [note C]
	Unpaid wages	269.44 plus	3906.88 [note D]
	Unpaid pension	52.00	754.03
10	Unpaid holiday (days)		4.37
	Unpaid holidays (value)		589.08
	Unpaid holiday (Year 2022)	Days	Sum
	Accrual (based on 2 Sept termination)	24.78	25
	Carry out from prev year	51.00	51
15	Used	61	61
	Outstanding	14.78	15 2020.80
	Paid (based on 2 Sept termination)	10.31	10 1347.2
			[note E]
	Due (based on 2 Sept termination)	4.48	5 673.60
20	Calculation		

Note A :

4 weeks paid at 2529.60 (gross) in Sept 2022 payroll (p91 bundle) and 5 weeks paid £3,162 (gross) (bundle p84)

Note B:

6062.39/100 x 19.3

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Note C:

38/52.1429 x 9 x 134.72 (daily rate)

Note D:

(1) 6th Sept - 2 days being Saturday 3rd September and Tuesday 6th September.

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(2) 17th Oct - 29 days at full pay x 134.72

Note E:

£1,264.80 paid as per payslip dated 14/09/2022 payslip (bundle 91)

34.

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When the Hearing resumed after that adjournment, Ms Smith stated that her counter-schedule clarified the sums she had mentioned earlier, and the basis for the respondents' calculations. The claimant stated that she had not had the chance to look at it and understand the respondents' breakdown. Both parties agreed that the main disputed issue for the Tribunal to determine was the claimant's termination of employment date, and that the Tribunal should crack on and hear evidence, rather than relist the case for another date.

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35. The Tribunal thereafter heard sworn evidence from the respondents' witness, Ms Stacey Martindale, strategic HR manager. She was examined in chief by Ms Smith, from about 11:45am, until just before 12:35pm, when she then was cross examined by the claimant, being briefly re-examined by Ms Smith from around 1:15pm, until her evidence closed at 1:20pm, when the Tribunal adjourned for a one-hour lunch break.

36. During the course of Ms Martindale's cross-examination evidence, there were some video and / or audio difficulties with the CVP platform but with

perseverance, and disconnection and reconnection, those minor difficulties were addressed.

37. Further, during the lunch adjournment, the claimant emailed to the Tribunal, and copied to Ms Smith, at 14:06pm, her extract bank statement from the Bank of Scotland showing payments received from the respondents, as follows:

- 28 March 2023 £416.48
- 11 October 2022 £310.83
- 13 September 2022 £1,831.44
- 16 August 2022 £1,831.43

38. The detail shown in that bank statement does not identify the payer, only a description (“**PO7FW**”) and type of transaction (“**BGC**”), with date and amount paid in, but both parties were agreed in informing me that these 4 payments were made by bank giro credit via Renfrewshire Council finance department, as the respondents’ payroll provider.

39. A separate extract bank statement provided by the claimant, shows “**RENFREWSHIRE COUNC**” under description, “**FPI**” as type of transaction (understood to mean faster payment inwards), and 2 payments made to the claimant, as follows:

- 9 March 2023 £2,092.28
- 20 October 2022 £9,878.87

40. Finally, Ms Smith emailed to the Tribunal, and copied to the claimant, at 14:15pm, a further document for the respondents, entitled “**Proof of Payments**”, showing sums sent to the claimant by standard BACS transactions for payment on pay days, and those paid via manual payments on other dates. This document shows a reconciliation of amounts paid and amounts received by the claimant into her bank account.

41. When the Hearing resumed, at about 2:20pm, after the lunch adjournment, all of these additional documents were, after discussion and clarification, by agreement of the Tribunal, added to those before it for determination of the issues in this case, and taken as additions to the Hearing Bundle.

5 42. Thereafter, starting at around 2:55pm, the claimant's evidence in chief, elicited by structured and focussed questions asked of her by the Judge, as agreed by both parties, given she was not represented, was taken, followed by Ms Smith's cross-examination of her between 3:45 pm, and 4:10pm, when her evidence was concluded.

10 Findings in Fact

43. I have taken into account the available information from both parties, as provided to the Tribunal, in the ET1 claim form, ET3 response, and documents produced in the Hearing Bundle, the latter including the terms of the respondents' correspondence with the claimant.

15 44. With one notable exception, where the claimant denied having received the respondents' letter of 5 September 2022 from Stacey Martindale, as produced at page 58 of the Bundle, there was no dispute between the parties at this Final Hearing that the correspondence included in the Bundle was a true copy of that correspondence between the parties, as per the terms
20 shown in those copy productions, many of which have been reproduced, as regards material parts, in my findings in fact.

45. On the basis of the sworn evidence heard from both parties before this Tribunal at this CVP Final Hearing, and the various documents provided to the Tribunal in the Hearing Bundle, and additional documents produced to
25 the Tribunal during the Hearing, the Tribunal has made the following findings in fact:

46. Renfrewshire Leisure Limited, the respondents, are a limited company, and a charitable trust in Renfrewshire, providing culture, leisure and sports opportunities in the local area. They employ around 420 employees.

47. **“OneRen”** is the trading name of the company. It is a company limited by guarantee, company number **SC490998**, and registered as a charity in Scotland under the Office of the Scottish Charity Regulator (“OSCR”) reference **SCO 33898**.
- 5 48. As an employer, the respondents’ payroll for employees is administered by the finance department of Renfrewshire Council, the local authority for the area.
49. The claimant was formerly employed by the respondents as spa manager at the Lagoon Leisure Centre, Paisley. Her employment with the respondents,
10 with normal working hours of 40 hours per week, started on 7 May 2013.
50. A copy of the respondents’ letter to the claimant dated 5 June 2013, with written statement of particulars of employment, as a temporary spa manager, from 7 May 2013, and subsequent letter dated 6 August 2013 of permanent employment as full time spa manager, from 29 July 2013, were produced to
15 the Tribunal at pages 36 to 39 of the Hearing Bundle.
51. According to the respondents, her employment was terminated by the respondents by way of voluntary redundancy (“VR”) on 2 September 2022, when the claimant accepted their offer of VR, and that date was confirmed to the claimant in a letter posted to her on 5 September 2022 by Ms Stacey
20 Martindale, the respondents’ strategic HR Manager.
52. The claimant claims otherwise, saying that her employment contract with the respondents continued until 18 October 2022, when Ms Martindale emailed her as detailed later in these findings in fact.
53. On 28 June 2022, the respondents invited the claimant to a meeting to
25 discuss operational issues, as they were unable to reopen the thermal spa suite due to the significant costs that would be required to recommission this suite.
54. At that date, the claimant was off work on a medically certificated absence. There was produced to the Tribunal, at page 86 of the Hearing Bundle, a copy

Med3 statement of fitness for work, from the claimant's GP, issued on 6 May 2022, certifying that, having assessed the claimant, on 3 May 2022, she was assessed as unfit to work for 56 days, because of stress at work.

55. There was also produced to the Tribunal, at page 87 of the Hearing Bundle,
5 a copy Med3 statement of fitness for work, from the claimant's GP, issued on
27 June 2022, certifying that, having assessed the claimant, on that date, she
was assessed as unfit to work for 56 days, because of stress at work.
56. The claimant submitted those Med 3 certificates to the respondents for the
purpose of reporting her sickness absence and obtaining occupational sick
10 pay ("OSP") from them during her absence, as part of her 4 weekly pay paid
by credit transfer to her bank, in August and September 2022.
57. At the meeting on 28 June 2022, the respondents considered that the
claimant's role would require a job evaluation as there was a diminished need
15 for her duties as spa manager, due to the proposed closure of the thermal
spa suite. The respondents closed the thermal spa suite, and eventually the
whole spa, in December 2022, due to operating costs.
58. The meeting, held in Johnstone town hall, was arranged by Stacey
Martindale, strategic HR manager with the respondent, and involved her and
Alan Cunningham, senior operations manager, meeting with the claimant.
- 20 59. Following the meeting, the claimant was offered an alternative role as a senior
therapist, which would require her to undertake further training to provide
treatments.
60. She was informed that her current salary as spa manager would be protected
25 for a period of 2 years, and also advised of other vacancies within the
respondents' business, including a social prescribing officer, and a learning
and development manager, although these posts were not thought to be
suitable alternative roles.

61. By way of alternative, the claimant was offered voluntary redundancy, which would include 15.6 weeks enhanced redundancy pay, pay in lieu of notice, as well as outstanding holiday pay.

5 62. There was produced to the Tribunal at pages 42 to 45 of the Hearing Bundle various emails between Stacey Martindale and the claimant between 24 June and 15 July 2022.

63. On 29 June 2022, at 09:33, the claimant was sent an email with a voluntary redundancy ("VR") statement from Stacey Martindale for the respondents, a copy of which was produced to the Tribunal at page 46 of the Hearing Bundle,
10 in the following terms, including a proposed leaving date of 17 July 2022:

Voluntary Redundancy Statement – produced on 29 June 2022

Name: Lynne Dill

Job Title: Spa Manager

Start Date: 7th May 2013

15 *Date of Birth/age: 41*

Salary: £32,975.00

Length of service: 9 years

Leaving date: 17th July 2022

Enhanced Redundancy Entitlement:

20 *No. of Weeks: 15.6 weeks*

Weekly Salary £634.13

Total Redundancy Pay £9892.42 tax free

Notice Entitlement and Annual Leave:

Weeks Notice to be paid: 4 weeks £2,536.52 subject to NI and tax

Annual leave to be paid: 8 days

64. On 15 August 2022, the claimant emailed Ms Martindale, at 11:11, as per copy produced at page 63 of the Hearing Bundle, in the following terms:

“Good day Stacey,

5 *I have been waiting for quite a while for correspondence with regards to my previous email and questions.*

Its concerning and disappointing that no one has been able to answer any of my questions/concerns or even have the professionalism to follow up with finding out the process "if they didn't know the answers" and responding within a timely manner. However, I should not be surprised after the "no
10 *response" when my father died.*

With the lack of uncertainty, information and trust I have; I see no other options than to take redundancy.

If you could confirm the pay amount again and we can look at me finishing up
15 *with OneRen.*

Kind regards,

Lynne Dill”

65. The claimant's email of 15 August 2022 identified no leaving date. In reply, at 17:42, on 15 August 2022, Ms Martindale emailed the claimant, as per copy
20 produced at page 63 of the Hearing Bundle, in the following terms:

“Hi Lynne,

Thanks for getting in touch and I am really sorry for not coming back sooner but in your previous email you suggested you were going to be taking some legal advice and would have come back to me. I am able to support your
25 *request for redundancy, how do you want to take this forward? I have attached a copy of the figures shared previously. Once I know what the leave date is*

going to be I can re work the annual leave. The redundancy payment won't change.

Kind regards

Stacey”

5 66. Ms Martindale’s email reply of 15 August 2022 identified no proposed
termination date for the claimant leaving the respondents’ employment on VR.
The figures shared previously were those sent by Ms Martindale to the
claimant on 29 June 2022, as detailed earlier in these findings in fact. That
VR statement (at page 46 over the Hearing Bundle) gave a leaving date of 17
10 July 2022.

67. On 16 August 2022, the claimant received a payment of **£1,831.43** into her
bank account, as per the extract copy of her bank statement produced to the
Tribunal as an additional document. This was her regular 4-weekly pay from
the respondents.

15 68. On 1 September 2022, Ms Martindale emailed the claimant again, at 5:29am,
as per copy produced at page 63 of the Hearing Bundle, in the following terms:

“Hi Lynne,

*I am conscious it has been a few weeks since your last email. Can you provide
me with an update on whether you would like me to process your request for
20 VR and therefore process you as a leaver or alternatively, if you would like to
remain in employment Mark Tokeley and I would like to arrange a face to face
meeting with you to discuss your absence and the potential of an OH
appointment.*

Kind regards

25 *Stacey”*

69. Ms Martindale’s email reply of 1 September 2022 identified no proposed
termination date for the claimant leaving the respondents’ employment on VR.
In reply, on 2 September 2022, the claimant emailed Ms Martindale, at 16:58,

as per copy produced at page 50 of the Hearing Bundle, as also reproduced at pages 53 and 63, in the following terms:

"Hi Stacey,

Apologies, I thought I had said in my last email that I would like to proceed with the VR.

I can confirm I am accepting the offer.

Regards,

Lynne"

70. The claimant's email of 2 September 2022 identified no leaving date. On 5 September 2022, Ms Martindale emailed the claimant in reply, at 5:31am, as per copy produced at pages 59 / 60, and reproduced at pages 62 / 63 of the Hearing Bundle, in the following terms:

"Hi Lynne,

Thanks for getting in touch and confirming, I will start the leavers process this week.

Be in touch soon.

Kind regards

Stacey"

71. Ms Martindale's email reply of 5 September 2022 identified no proposed termination date for the claimant leaving the respondents' employment on VR, but confirmed she would start the leavers process that week. While Ms Martindale's email on 5 September 2022, at 5:31am, had stated "**Be in touch soon**", there was no further email communication between her and the claimant until 17 October 2022.

72. There was produced to the Tribunal, at page 58 of the Hearing Bundle, the terms of a copy letter dated 5 September 2022 from Ms Martindale to the claimant, in the following terms:

“Private & Confidential

5 *Lynne Dill*

Sent by e-mail

Dear Lynne

Thank you for your e-mail dated 2 September 2022 requesting to take voluntary redundancy from [sic] role your as Spa Manager. I can confirm this request has been accepted and you will be processed as a leave [sic] from the 2nd September 2022.

As previously shared with you here is a breakdown on your enhanced financial package and final payment:

- *10 days annual leave*
- 15 • *4 weeks notice period*
- *£9865.44 tax free payment*

Please let me know if you have any further questions and I wish you all the very best for the future.

Yours sincerely

20 *Stacey Martindale*

Strategic HR Manager.”

73. Although stated to be “**sent by e-mail**”, Ms Martindale’s evidence to the Tribunal, at this Final Hearing, was that she had personally typed up and posted this letter to the claimant’s then home address, as shown on the respondents’ personnel system contact information, by 2nd class post, not

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recorded or tracked delivery, on Monday, 5 September 2022. It was not provided to the claimant in any e-mail sent to her on 5 September 2022 by Ms Martindale. She sent the claimant a soft copy, by e-mail, on 18 October 2022, when responding to an e-mail from the claimant sent the previous day.

5 74. The claimant saw the letter of 5 September 2022 for the first time when Ms Martindale replied, on 18 October 2022, to her e-mail of 17 October 2022, both copy emails being produced to the Tribunal at page 62 of the Hearing Bundle, and in the terms reproduced later in these findings in fact.

10 75. There was produced to the Tribunal, at page 88 of the Hearing Bundle, a copy Med3 statement of fitness for work, from the claimant's GP, issued on 7 September 2022, certifying that, having assessed the claimant, on 5 September 2022, she was assessed as unfit to work for 56 days, because of stress at work.

15 76. In her evidence to the Tribunal, the claimant stated that she submitted that Med 3 certificate (and an earlier one, from 21 August 2022, which was not included in the Hearing Bundle), to the respondents for the purpose of reporting her sickness absence, and obtaining occupational sick pay from them during her absence, as part of her 4 weekly pay paid by credit transfer to her bank.

20 77. The claimant further stated that she was sure she had handed in that 21 August 2022 sicknote to the centre manager, as had she not done so she would not have been paid by the respondents, as she was in her August and September 2022 pays.

25 78. Ms Martindale, in her evidence to the Tribunal, stated that she had checked with the claimant's line managers, and they had confirmed that this Med3 certificate had not been received, and that nothing had been received from the claimant after her e-mail of 15 August 2022 until her e-mail of 17 October 2022.

79. A copy of the claimant's employee attendance record 2022, produced to the Tribunal at pages 66 to 73 of the Hearing Bundle shows, at page 69, her medically certificated absence for 56 days as per a "**MC dated 6/5**". As recorded earlier in these findings, there was produced to the Tribunal, at page 5 86 of the Hearing Bundle, a copy Med3 statement of fitness for work, from the claimant's GP, issued on 6 May 2022.
80. On the attendance record, at page 66, the last recorded medical certificate absence is 5 July 2022. As the claimant's pay from May to September 2022, as shown in the copy pay records produced at page 83 of the Hearing Bundle 10 shows, absence adjustments were made to her four weekly pay and she was paid occupational sick pay ("OSP"). On the balance of probability, the Tribunal finds that the respondents must have received and acted upon the claimant's medical certificates from her GP.
81. There was evidence produced to the Tribunal, at page 76 of the Hearing 15 Bundle, that by e-mail from Ms Martindale to the MBX-OneRen-hr team, sent on 8 September 2022, at 15:07, she had asked that team to process Lynne Dill as a leaver from 2 September 2022, and to make the following payments to her, as follows: 10 days annual leave; voluntary redundancy payment of £9,685.44 tax free; and notice period of 4 weeks £2,529.60.
- 20 82. Various payments to the claimant where thereafter processed, by Renfrewshire Council payroll team, from 8 September 2022 onwards.
83. In her evidence to the Tribunal, Ms Martindale explained that these payments were dealt with by that payroll team at arm's length from the respondents, and so she could not assist the Tribunal any further, if asked about any of the 25 payments shown in documents in the Hearing Bundle, to explain when and why they were made to the claimant, and that she could not speculate on what had happened.
84. On 13 September 2022, the claimant received a payment of **£1,831.44** into her bank account, as per the extract copy of her bank statement produced to

the Tribunal as an additional document. The claimant believed that this payment was her regular 4-weekly pay from the respondents.

- 5 85. There was produced to the Tribunal, at page 90 of the Hearing Bundle, a copy payslip for the claimant, dated 14 September 2022, showing net pay of **£1,831.44**, including occupational sick pay.
86. Further, there was also produced to the Tribunal, at page 91 of the Hearing Bundle, another copy payslip for the claimant, also dated 14 September 2022, but showing net pay of **£0.00**, after total payments of **£15,105.33**, less total deductions in the same amount.
- 10 87. The payments in that further payslip are shown as including basic pay, non taxable redundancy of **£9,865.44**, pay in lieu of holidays of **£1,264.80**, and pay in lieu of notice taxable of **£2,529.60**.
- 15 88. There was also produced to the Tribunal, at pages 78 and 79 of the Hearing Bundle, various emails sent on 13 September 2022 under the subject heading of the claimant's name, employee number, and "**termination (redundancy)**" with an effective date of 2 September 2022.
- 20 89. Further, there was also produced to the Tribunal, at pages 55 to 57 of the Hearing Bundle, copy of a P45 form (employee leaving work) issued to the claimant, by Renfrewshire Council, dated 7 October 2022, giving 2 September 2022 as her leaving date.
- 25 90. Ms Martindale advised the Tribunal, in her evidence at this Final Hearing, that she had had no involvement in issue of the claimant's P45. She was insistent that no further sums were due to the claimant after termination of her employment on 2 September 2022, except to be paid any sum arising from the trade union and Renfrewshire Council agreement, in November 2022, to give a pay award backdated to 1 April 2022.
91. On 11 October 2022, the claimant received a payment of **£310.83** into her bank account, as per the extract copy of her bank statement produced to the Tribunal as an additional document.

92. In her evidence to this Tribunal, the claimant stated that this sum was just paid into her bank account, but she was not sent any copy payslip to show what it was, or how it had been calculated.

93. There was produced to the Tribunal, at page 89 of the Hearing Bundle, a copy
5 payslip for the claimant, dated 12 October 2022, showing net pay of **£310.83**, for pay in lieu of holidays, and pensionable arrears.

94. On 17 October 2022, the claimant emailed Ms Martindale, at 11:09, as per copy produced at page 59, and reproduced at page 62, of the Hearing Bundle, referring back to her email to her of 5 September 2022, in the following terms:

10 *“Good day Stacey,*

Just circling back on the below email. Can you tell me how long this process takes? When should I expect correspondence?

Regards,

Lynne Dill”

15 95. The claimant's e-mail of 17 October 2022 makes no reference to her having received any earlier correspondence from the respondents. There is no reference to her having received the letter of 5 September 2022 from Ms Martindale, the P45 issued on 7 October 2022 or the payment into her bank account on 11 October 2022 in the sum of **£310.83**, as referred to in earlier
20 findings in fact.

96. On 18 October 2022, Ms Martindale emailed the claimant in reply, at 10:16am, as per copy produced at page 59, and reproduced again at page 62, of the Hearing Bundle, in the following terms:

“Hi Lynne,

25 *Thanks for getting in touch and I am sorry for the delay. We have got in touch with payroll and they seem to have paid your 10 annual leave but not the other payments. I have been assured that the remaining payments of your 4 weeks' notice and VR will be paid this week into your bank account.*

Here is a copy of the letter documenting the payments.

Many thanks

Stacey”

5 97. Attached to that email of 18 October 2022 from Ms Martindale was a copy letter dated 5 September 2022 from Ms Martindale to the claimant, as per the terms reproduced earlier in these findings in fact.

98. The claimant replied to Ms Martindale, by email sent at 00:15 on 19 October 2022, as per copy produced at page 59, and reproduced again at page 62, of the Hearing Bundle, in the following terms:

10 *“Hi Stacey,*

I'm assuming there has been a mistake with dates and maybe the entire process.

I believe you stated that you would start the process and get back to me.

15 *Until this point my salary should be paid as normal. Once a date has been issued with the payment amount and annual leave confirmed, the 4 weeks notice period should start at that point.*

I do not believe sending me a letter today that has the 2nd of September is legal or sufficient notice.

20 *Please recalculate the dates based on a future (not past) date. Then issue a 4 weeks notice from then.*

Kind regards

Lynne Dill”

25 99. On 19 October 2022, Ms Martindale emailed the claimant in reply, at 04:49, as per copy produced at pages 61/62 of the Hearing Bundle, in the following terms:

“Hi Lynne,

Thanks for your email, the letter that was sent yesterday to you in email was previously posted to you. I sent a copy by email yesterday because from reading your email you had not received this letter? I instructed the HR team to contact payroll on the 8th September to make your final payment in the next available pay run, which is the payroll you have just received, processing the leave date of the 2 September 2022.

You will have noticed that your accrued annual leave has already been paid but not the other payments, which is why when you emailed me to let me know, I investigated the matter. The full final payment should have been made in this pay run, which is what I had instructed. The payroll team have confirmed they are making a special payment this week to resolve the matter.

*I can only apologise **[sic]** that the full payment was not made and for any inconvenienced **[sic]** caused.*

Kind regards

Stacey”

100. The claimant replied to Ms Martindale, by email sent at 19:25 on 19 October 2022, as per copy produced at page 61 of the Hearing Bundle, in the following terms:

“Hi Stacey,

I have not received any letter by post.

Due to the fact this whole process has been a shambles and I don't completely trust this has happened without proof. I am going to need evidence of this; postal tracking receipt of this scanned to me for my records.

Yesterday was the first-time hearing anything since your last email.

You have previously stated once you had a leaving date you would calculate annual leave owed and be in touch.

When I confirmed I would take VR, you did not confirm what my leaving date was, just you would start the process and get back to me.

I should never assume however I did assume maybe you were processing all the spa staff at the one time so we would all have the same leaving date as you hadn't emailed me.

The mean [sic] of notice: To give prior warning.

This was never done by you or payroll. Therefore, I am still employed with OneRen until you "get InTouch soon" and give me my notice. Yes?

Without notice a leaving date and breakdown amount I.e. Holiday pay owed etc.

How do you expect someone to prepare their future financial and career plans? I have found out I no longer am employed "after the fact"!!

How does one explain to unemployment department that they have been unemployed for over a month but was unaware until now?

If resolving this is above your pay grade and all you can do is apologise for the inconvenience. Please provide the details of someone in government who can better understand and resolve this in a timely manner.

Kind regards,

Lynne Dill"

20 101. On 20 October 2022, the claimant received a payment of **£9,878.87** from Renfrewshire Council into her bank account, as per the extract copy of her bank statement produced to the Tribunal as an additional document.

102. In her evidence to this Tribunal, the claimant stated that this sum was just paid into her bank account, but she was not sent any copy payslip to show what it was, or how it had been calculated.

25 103. By e-mail sent to the claimant at 10:32 on 21 October 2022, from Alan Nixon, team leader (payroll) at customer and business services, Renfrewshire

Council, the claimant was advised that a payment was to be made into her bank account at 15:00 that day.

104. The subject heading of that e-mail was “**redundancy payment and other information re previous salary overpayments.**” Mr Nixon’s e-mail to the claimant did not identify what amount was to be paid to the claimant’s bank account.
105. Attached to Mr Nixon’s e-mail to the claimant was a letter from Gillian McLean, payroll services manager, Renfrewshire Council, to the claimant, with the subject heading “**net over payment of salary**”. That letter confirmed that there were historical overpayments of salary outstanding at the claimant’s leaving date, and it confirmed that the total sum overpaid of **£1560.19** net would be deducted from the payment received on 21 October 2022.
106. There was produced to the Tribunal, at pages 82 and 83 of the Hearing Bundle, an Excel spreadsheet referring to the net overpaid sum of **£1560.19**. It also shows the payroll payments made to the claimant, from 8 March 2018 to 12 October 2022, including the following:

Pay Date	Basic Pay	Absence Adjustment	Occupational Sick Pay	Pay in lieu of Holidays and Notice	Gross Paid	Net Paid
22/06/22	£2,529.60	-£2,529.60	£2,529.60		£2,529.60	£1,831.43
20/07/22	£2,529.60	-£2,529.60	£2,529.60		£2,529.60	£1,831.43
17/08/22	£2,529.60	-£2,529.60	£2,529.60		£2,529.60	£1,831.43
14/09/22	£2,529.60	-£2,529.60	£2,529.60		£2,529.60	£1,831.44
12/10/22				£1,138.32		£310.83

107. On 26 October 2022, and further to her email to her on 19 October 2022, the claimant again emailed Ms Martindale in the following terms, as shown in the copy e-mail of that date, sent at 19:33, under the subject heading of “**Access Request**”, copy produced to the Tribunal at page 47 of the Hearing Bundle,
5 namely:

“Hi Stacey,

Circling back on the previous email.

Can you provide me with evidence of the 4 weeks' notice being mailed to me. (letter allegedly generated on the 5th of Sept) Receipt tracking and sent date.

10 *You stated my redundancy notice would start on the 2nd Sept. Regardless of whether you did inform me by post on or after the 5th Sept (Which I have no evidence [sic] of). Does that count as 4 weeks' notice? Can you backdate notice?*

15 *I'm sure if the document was created on the 5th of Sept, you would be able to show me proof of this. I.e screenshot of file if you can show me a delivery receipt?”*

108. On 8 December 2022, the claimant notified ACAS for the purposes of early conciliation before instituting proceedings in the Employment Tribunal.

20 109. On 12 December 2022, ACAS issued to the claimant an early conciliation certificate confirming that she had complied with Section 18A of the Employment Tribunals Act 1996. A copy of this ACAS certificate was produced to the Tribunal at page 3 of the Hearing Bundle.

25 110. On 3 January 2023, the claimant presented her ET1 claim form to the Employment Tribunal, a copy of which was produced to the Tribunal at pages 4 to 15 of the Hearing Bundle.

111. In her additional information, at section 15 of her ET1 claim form, copy produced to the Tribunal at page 15 of the Hearing Bundle, the claimant stated as follows:

“The emails state my confusion, state my concerns regarding feeling pushed out the door prior to deciding to offer redundancy. They show the offer change and no proper consultation or response to questions. the chain shows everything was done until this point on email, until they sent a letter. I did ask for evidence i.e. a delivery receipt or proof when the document was created to support the date it was sent to me. I was ignored with all requests from HR department head, Finance head and the CEO of OneRen. There is a concern with the company ethics and code of conduct throughout the process which should be investigated.”

- 5
- 10 112. No Word Office properties screenshot, or delivery receipt, was provided by the respondents to the claimant, nor included in the Hearing Bundle for this Tribunal, despite that section 15 of the ET1 claim form, and the claimant's earlier email of 26 October 2022, reproduced earlier in these findings.
- 15 113. The respondents defended the claim by an ET3 response form, with paper apart, dated 2 February 2023, as produced to the Tribunal at pages 16 to 26 of the Hearing Bundle.
114. On 9 March 2023, the claimant received a payment of **£2,092.28** from Renfrewshire Council into her bank account, as per the extract copy of her bank statement produced to the Tribunal as an additional document.
- 20 115. From the copy payslip showing PILON and manual advance recovery paid to the claimant (stated to be paid 10 March 2023), copy produced to the Tribunal at page 84 of the Hearing Bundle, there was net pay of **£0.00**, as the gross payment of taxable PILON at **£3,162** was offset by deductions for tax and NI, as also manual advance recovery of **£2,092.28**.
- 25 116. In her evidence to this Tribunal, the claimant stated that this sum was just paid into her bank account, but she was not sent any copy payslip to show what it was, or how it had been calculated.

117. On 28 March 2023, the claimant received a further payment of **£416.48** into her bank account, as per the extract copy of her bank statement produced to the Tribunal as an additional document.
118. In her evidence to this Tribunal, the claimant stated that this further sum was just paid into her bank account, but she was not sent any copy payslip to show what it was, or how it had been calculated.
119. Following the close of this Final Hearing, the respondents paid further sums to the claimant, on 4 and 11 July 2023, in respect of sums admitted by them as due to her up to 2 September 2022.
120. Further to the Tribunal's letter of 30 October 2023 to both parties, seeking clarification of what further payments had been made by the respondents to the claimant, after close of the Final Hearing, further written representations were received from Ms Smith, on behalf of the respondents, on 6 November 2023.
121. In her e-mail to the Tribunal on that date, she included the text of an e-mail that she had sent to the claimant on 6 July 2023 in the following terms:

“Dill -v- OneRen

I write to confirm that the Respondent has advised that on Tuesday the following payments were paid using the bank details provided by you:

£883.61 (gross) in respect of the holiday pay due on the 9-week PILON period;

£673.60 (gross) in respect of the five days of outstanding leave due up until 2 September 2022;

£370.80 (gross) in respect of back pay on the 9-week PILON period; and

£82.40 (gross) in respect of back pay on the holiday pay due on the 9-week PILON period.

Please can you confirm that you have received these payments.

You'll also be aware that it is the Respondent's position that £1,1704.04 [sic] (gross) is owed to you in respect of pension contributions on the 9 week PILON. The Respondent proposes to make this payment into your bank

5 *account as opposed to it being paid into your pension fund. This is on the basis that the pension provider will not accept payments in respect of PILON into the fund.*

Please can you confirm if you are content to accept that payment of £1,1704.04 [sic] (gross) is in full and final settlement of pension due on your PILON, and that no further benefit will be added to your pension as a result
10 *of this payment being made.*

I would be grateful if you could confirm your position as soon as possible, and by 5pm tomorrow 7th July 2023 at the latest.”

122. Insofar as Ms Smith's email to the claimant referred to “**£1,1704.04**”, it seems to me that was obviously a typographical error, and it should have said
15 **£1,170.04**. Ms Smith's e-mail of 6 November 2023 includes the text of the claimant's email reply to her of 7 July 2023, acknowledging her receipt of a payment of **£1,565.07** sent on 4th July by Renfrewshire Council, and confirming that she could accept the pension payment directly.

123. As the four gross payments specified by Ms Smith in her email of 6 July 2023
20 to the claimant total **£2,010.41**, the Tribunal assumes (in the absence of any supporting documentation having been provided to the Tribunal), that the payment of **£1,565.07** received by the claimant represents a net sum from that gross total amount.

124. Further to the Tribunal's follow-up letter of 27 November 2023, the claimant
25 emailed the Tribunal, with copy to Ms Smith for the respondents, on 28 November 2023, to confirm that she received the payment of **£1,170.04** on 11 July 2023.

Tribunal's assessment of the evidence led at the Final Hearing

125. In considering the case before the Tribunal, I have had to carefully assess the evidence heard from Ms Martindale for the respondents, then the claimant, as the only two witnesses heard by the Tribunal, and to consider the many documents produced to the Tribunal in the Bundle and assorted additional documents lodged and spoken to in evidence at this Final Hearing, which evidence and my assessment I now set out in the following paragraphs.
126. The Tribunal heard evidence first from Ms Martindale for the respondents. She is the respondents' strategic HR manager, and responsible for the people function within the organisation. There are 4 HR staff in the team including herself. She has been in post for over 2 years, and explained that she had been involved in a support role to the voluntary redundancy process involving the claimant.
127. Ms Martindale was able to speak to matters where she was directly involved, namely the meeting with the claimant on 28 June 2022, and subsequent e-mail exchanges with her, as produced in the many documents in the Hearing Bundle. She was credible and reliable in that regard, but she was unable to assist meaningfully in explaining what sums had been paid to the claimant and when, and for what purpose, or to speak to the various payroll documents in the Bundle.
128. Her primary position was that the claimant's employment with the respondents came to an end on 2 September 2022, which failing on 6 September 2022, after the claimant's receipt of her letter dated 5 September 2022.
129. The claimant came across to this Tribunal as a nervous witness, not just due to the formality of the public Hearing conducted by CVP video conferencing, but, more noticeably, she did not give the impression that she was fully conversant with all aspects of her claim before the Tribunal. What was crystal clear, however, in is that she was critical of the respondents, having described the ***"whole process has been a shambles"***, in her email of 19 October 2022

to Ms Martindale, and raised matters about their ethics, suggesting they should be investigated, as part of her ET1 claim form.

5 130. Overall, while I was satisfied that the claimant was doing her best to give the Tribunal a full recollection of events, as best she could remember them, and as she saw things, through her own lens, as to how and when her employment with the respondents had ended, and what monies she felt she was still owed by them, she did not come across to the Tribunal as a confident witness. She was insistent however that she had never received Ms Martindale's posted letter of 5 September 2022, until a soft copy was attached
10 to the email of 18 October 2022 from Ms Martindale, and the Tribunal accepted that evidence.

15 131. In her evidence to the Tribunal, at this Final Hearing, the claimant stated that she was not away from home, and she was "**100% sure**" that she had not received this letter, saying that she only became aware of it when an e-mail was sent to her by Ms Martindale on 18 October 2022, at 10:16am. She readily accepted that that was her home address at that time, she got other mail at that address, and she had not moved into her current home address until 2 November 2022. In these circumstances, I accepted her evidence that she never received the posted letter of 5 September 2022.

20 132. In her ET1 claim form, at section 5.1, the claimant had stated that her employment had ended on 4 September 2022. When, in her evidence in chief, I asked her why she had inserted that date, the claimant stated that she did not know, as the respondents had told her it ended on 2 September 2022, and maybe she had put in the wrong date, because she is dyslexic, and can
25 type the wrong thing. This perhaps explains the discrepancy, but neither party sought to rely upon the 4 September 2022 date.

30 133. For her part, the claimant stated to me that her employment ended on 18 October 2022, looking at the exchange of emails. While reliance on that date is inconsistent with the 4 September 2022 date given by her in her ET1 claim form, 18 October 2022 is the date that the claimant now relies upon.

134. There was a conflict between her evidence and the respondents' evidence, as led from Ms Martindale, in relation to whether or not Ms Martindale had posted a letter to the claimant on 5 September 2022, and whether or not the claimant had received any such letter of that date, at or around that time, which the claimant denied ever having received, but which Ms Martindale was equally confident that she had posted it to the claimant.
135. It is of note that, when their ET3 response was lodged, on 2 February 2023, and as shown at page 25 of the Hearing Bundle, paragraph 11 thereof reads: ***“On 2 September 2022 the Claimant sought voluntary redundancy and gave notice of her termination. The Claimant [sic] employment was terminated with immediate effect.”*** No mention is made there of the letter of 5 September 2022, despite the fact it had been brought to the claimant's attention in the email of 18 October 2022 from Ms Martindale.
136. On balance of probability, and because of her subsequent acts from 8 September 2022 instructing HR and payroll to process the claimant as a leaver from 2 September 2022, I am prepared to accept that Ms Martindale wrote to the claimant on 5 September 2022, and posted her letter to the claimant's home address, but it is bewildering that she did not e-mail her that letter on that date given that she had emailed her earlier on that same day, saying she would be back in touch. It is likewise bewildering that it is not mentioned in the respondents' ET3 response.
137. It is also of note, in my view, that the respondents, throughout the course of these Tribunal proceedings, from their ET3 response on 2 February 2023 onwards, have consistently asserted, as their primary position, that the claimant's employment ended on 2 September 2022, and payroll actions all relate to that being the operative and effective date of termination of employment, including in the P45 issued to the claimant.
138. The respondents' secondary position defence to the claim involves the respondents assuming the claimant's receipt of that letter of 5 September 2022 and her reading it on 6 September 2022.

139. Having made a finding that I accept Ms Martindale's letter was posted to the claimant on 5 September 2022, I have to consider whether the claimant received that letter and, if so, when.
140. On the available evidence, I accept the claimant's statement that she did not receive the letter of 5 September 2022 on or around that date, nor until Ms Martindale emailed it to her on 18 October 2022.
141. Having regard to all the circumstances, there is no proof of receipt of that letter via the Royal Mail provided by the respondents, despite the claimant's call, in her e- October 2022 to Ms Martindale and others, under the subject heading of "**Access Request**", as reproduced to the Tribunal at page 47 of the Hearing Bundle, and as referred to earlier in these findings in fact.
142. Further in her e-mail of 19 October 2022 at 04:49, as reproduced to the Tribunal at pages 61 and 62 of the Hearing Bundle, Ms Martindale, having read the claimant's e-mail of 17 October 2022 (at page 62), acknowledges the possibility that the claimant may not have received her letter of 5 September 2022.
143. I have noted the respondents' written submission, at paragraph 35, that, as of 6 September 2022, the day after that letter of 5 September 2022 was posted, the claimant would have had a reasonable opportunity to read Ms Martindale's letter. That, of course, assumes that the claimant received that letter, and I am not satisfied on the available evidence that that is the case.

Parties' Written Closing Submissions

144. Ms Smith, the respondents' representative, intimated her written submission for the respondents by email to the Glasgow Tribunal on 13 June 2023, with copy to the claimant, along with a separate email attaching two additional case law authorities, relied upon by her, in addition to the two provided previously on 6 June 2023.
145. The additional authorities relied upon are the Supreme Court in **Societe Generale, London Branch v Geys [2013] IRLR 122**, and the Employment

Appeal Tribunal in **Mitie Security (London) Ltd v Ibrahim [2010] UKEAT/0067/10.**

146. Thereafter, the claimant intimated her written statement in response to the respondents' written submissions, by email to the Glasgow Tribunal on 20 June 2023, with copy to Ms Smith for the respondents.
147. Rather than seek to summarise parties' respective points, I have decided, in the circumstances of this case, that it is better to reproduce them in full, and I refer to the **Appendix to this Judgment** for that purpose.
148. At point 5 of her written submission, the claimant refers to a typing error in paragraph 30 of Ms Smith's submission for the respondents, about the claimant's then home address.
149. My notes of the evidence given at the Final Hearing, and consistent with the address given in the additional document lodged by the respondents, being the personnel system contact information, is that the claimant's home address there is **62a**, and that is the address to which Ms Martindale said she posted the letter.
150. In these circumstances, Ms Smith's submission at her paragraph 30, in saying **6a**, is an unfortunate typographical error.

Relevant Law

151. While the Tribunal received written closing submissions from each of Ms Smith for the respondents, and the claimant in reply on her own behalf, neither party addressed the statutory basis of the claims being brought before the Tribunal.
152. I considering this case, I have taken the statutory basis of the claims as being a claim for failure to pay redundancy pay, in terms of a reference to the Tribunal under **Section 163 of the Employment Rights Act 1996**; a claim for unlawful deduction from wages, brought as a complaint under **Section 23 of the Employment Rights Act 1996**, which would include a claim for holiday

pay, having regard to the definition of “**wages**” in **Section 27**, which failing a complaint under **Regulation 30 of the Working Time Regulations 1998** as regards entitlement to holiday pay; and a contract claim seeking damages for breach of contract in terms of the **Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994**.

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153. I have considered the case law authorities cited by Ms Smith for the respondents, in her written submissions at paragraphs 23, 24, 27 and 34, referring to the judgments in **Geys, Ibrahim, Levy** and **Haywood**, and I recognise that the facts and circumstances of the individual cases in those reported judgments are not the same as the facts and circumstances of the present case.

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154. Nonetheless, I do not quarrel with the broad proposition advanced by Ms Smith that notice of termination of employment is not effective until it is actually given and effectively communicated with an ascertainable date on which the contract is to cease, or at least the communication must contain facts from which the termination date can be ascertained or inferred. I discuss this further in the next section of these Reasons, under Discussion and Deliberation.

15

Discussion and Deliberation

20 155. This case principally concerns the claimant’s claim for unpaid notice pay and pension contributions, claim for accrued and unpaid holiday pay, and claim for unpaid wages and pension contributions, all as per the issues identified by Employment Judge Buzzard. At this Final Hearing, the case was listed for full disposal, including remedy if appropriate.

25 156. Central to judicial determination of those matters is to find and declare the effective date of termination of the claimant’s employment with the respondents. Before dealing with that matter, however, it is first necessary to deal with the claimant’s claim for a redundancy payment.

157. In her ET1 claim form, at section 8.1, the claimant stated, on 3 January 2023, that she was claiming for a redundancy payment, and, at section 9.2, she further stated that she was claiming for a maximum of 12 weeks redundancy. She did not pursue that part of her claim at this Final Hearing.
- 5 158. In fact, as per this Tribunal's findings in fact, the claimant had been paid a sum of £9,878.87 by Renfrewshire Council on 20 October 2022. While the copy payslip, dated 14 September 2022 (copy produced at page 91 of the Hearing Bundle) shows a redundancy payment of £9,865.44, the respondents' additional "**Proof of payments**" document, produced at the
10 Final Hearing, shows the claimant was to be paid £9,878.87 via manual payment on 21 October 2022.
159. It is understood this sum represents the redundancy payment paid by the respondents. As the claimant's bank statement only shows Renfrewshire Council as payer, and that sum paid, it is not clear to the Tribunal how the
15 claimant was to be aware that that payment was her redundancy payment from the respondents, but what is clear is that she has received an enhanced redundancy payment from the respondents, over and above her statutory entitlement.
160. In these circumstances, the claimant's claim seeking a redundancy payment
20 from the respondents being not well-founded, she having been paid a redundancy payment by the respondents, prior to her presenting her Tribunal claim, that part of her claim against the respondents is dismissed by the Tribunal, it not having previously been withdrawn by the claimant in terms of **Rule 51**.
- 25 161. Turning then to the principal disputed issue, the Tribunal requires to consider whether the effective date of termination of the claimant's employment with the respondents was 2 September 2022 when she accepted their offer of voluntary redundancy, as put forward by the respondents, which failing 6
30 September 2022, being the date they assert that she had reasonable opportunity to read Ms Martindale's letter of 5 September 2022, or 18 October

2022, as the claimant now suggests, notwithstanding that in her ET1 claim form she had stated that her employment ended on 4 September 2022.

162. There is no evidence before the Tribunal to support 4 September 2022 being the effective date of termination, so, having regard to the claimant's explanation why she put that date in her ET1 claim form, I have discounted that date from my further consideration, as the claimant's position at this Hearing is that her employment ended on 18 October 2022. Further, neither party has sought to have 4 September 2022 determined as the termination date.
163. 2 September 2022 is the date consistently given by the respondents, and it is also the date used by the payroll team to pay various sums to the claimant. While not conclusive, it is also the date given in the P45 issued to the claimant.
164. Having carefully considered the available evidence in regard to the various possible positions presented by parties, I cannot accept the respondents' first position that the claimant's acceptance of VR on 2 September 2022 means that is the effective date of termination of employment.
165. I am of that view because the VR statement issued to the claimant on 29 June 2022 had a leaving date of 17 July 2022, and no further, alternative leaving date was identified in Ms Martindale's e-mail to the claimant on 2 September 2022. In accepting VR on 1 September 2022, the claimant did not have any identified leaving date from the respondents, nor did she suggest a leaving date. No date was identified, and I do not accept that it is possible to infer from that exchange of emails on 1 and 2 September 2022 that there was an agreed date of termination on 2 September 2022.
166. The respondents' second position involves the claimant receiving the respondents' letter of 5 September 2022 from Ms Martindale and reading it on 6 September 2022. While, on balance, I can accept that Ms Martindale wrote this letter on that date and posted it to the claimant, I am not satisfied that the claimant received it, let alone read it.

167. The third position, which is that presented by the claimant, is that she did not receive the letter of 5 September 2022, and that her employment did not end until 18 October 2022.
168. That later date is consistent with the claimant's e-mail to the respondents on 17 October 2022, at page 59 of the Hearing Bundle. It seems to me that her e-mail of 17 October 2022 is more consistent with her not having received that letter of 5 September 2022 and her asking Ms Martindale how long the process takes, and when should she expect correspondence.
169. The claimant's e-mail of 19 October 2022, at page 59 of the Hearing Bundle, following her receipt of Ms Martindale's e-mail the previous day, enclosing copy of the letter of 5 September 2022, states that she did not believe sending her that letter that had 2 September was legal or sufficient notice.
170. While, on the available evidence, during the period between 1 September 2022, and 18 October 2022, the respondents issued the claimant with a P45 on 7 October 2022, showing 2 September 2022 as a leaving date, issue of a P45 is not notice of termination of employment, given by an employer to an employee during an ongoing employment relationship.
171. A P45 is formal notification after the end of an employment relationship to HM Revenue and Customs giving details of the employee's leaving date and for the employee to hand on to any new employer, when starting any new employment.
172. The fact that the claimant received a payment of **£310.83** into her bank account on 11 October 2022, as a payment after her last 4 weekly salary paid on 13 September 2022, is an agreed fact, but it does not assist in showing that 2 September 2022 was the effective date of termination of her employment with the respondents.
173. In all the circumstances, I have decided that the effective date of termination of the claimant's employment with the respondents was 18 October 2022, and not either of 2 or 6 September 2022.

Further information required, and future procedure

174. In respect of the claimant's claim for unpaid notice pay and pension contributions, claim for accrued and unpaid holiday pay, and claim for unpaid wages and pension contributions, insofar as seeking payment from the respondents from 2 September 2022 up to 18 October 2022, the Tribunal requires further information from both parties.
175. The Tribunal accordingly continues consideration of the case, and directs that parties shall co-operate and jointly agree, within 14 days of issue of this Judgment, a calculation showing the final amount due to the claimant, and notify the Tribunal of the agreed sums and invite the Tribunal to incorporate them into a Judgment by Consent in terms of **Rule 64 of the Employment Tribunals Rules of Procedure 2013**.
176. In the interests of justice, I consider that this is the appropriate and proportionate next step in procedure, rather than me proceeding to give judgment now for a specific sum at this stage. The claimant only quantified her claim in her own written submissions on 20 June 2023, but the respondents have paid further sums to her on 4 and 11 July 2023, after close of the Final Hearing, in respect of sums admitted by them as due to her up to 2 September 2022.
177. Given the difficulties the claimant had in understanding the data provided by Ms Smith in the respondents' counter schedule reproduced earlier in these Reasons at paragraph 33, and what the claimant has put forward in her own written submissions, in her table of total sum claimed of **£12,631.25**, I want to be assured there is no possibility of any double payment to the claimant, given the various payments already made to her, and that the sum to be awarded by the Tribunal is the correct sum now outstanding to her.
178. By way of example, the VR statement showed **£634.13** as the then weekly salary, but the counter schedule, and paragraph 4 of the respondents' written submissions, now show that the gross weekly pay (after the pay award) is

£673.60. The sum of **£883.61** has, as I understand it, been paid by the respondents, on 4 July 2023, and so falls away.

179. Ms Smith should comment on all four columns on the claimant's 5 row table, at point 1 of the claimant's written submission, reproduced in the Appendix.
- 5 The Tribunal proceeds on the basis that parties can agree the number of accrued holidays for the period from 2 September to 18 October 2022 and, if not, revert to the Tribunal.
180. If parties cannot agree the final amount due to the claimant, for the period from 2 September 2022 up to 18 October 2022, then they should clarify what
- 10 specific sums for what specific heads of claim are agreed as payable by the respondents to the claimant, and also clarify and specify the nature of any dispute between them as regards the sums claimed by the claimant, as per her table, all of which should be articulated in their further written submissions for the Tribunal.
- 15 181. Further, parties must indicate in those further written submissions whether they consider that the amount to be awarded by the Tribunal should be determined at a further Hearing, or by the Judge in the chambers, on consideration of the papers only.

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G. Ian McPherson

Employment Judge**7 December 2023**

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Date**Date sent to parties****13 December 2023**

APPENDIX

The following are full copies of both parties' written closing submissions to the Tribunal. Acting on his own initiative, under **Rule 50 of the Employment Tribunals Rules of Procedure 2013**, the Judge has redacted from the following the claimant's former address where it appears 4 times, to keep only the house number shown, to aid comprehension of the context in which it is quoted, but otherwise deleted the full postal address, to prevent its public disclosure in the public record of this Judgment to be published online.

SUBMISSIONS FOR THE RESPONDENT

1. The Claimant in this case brings three claims for recovery of sums due under her employment contract. The first is a claim for unpaid notice pay and pension contributions, the second is a claim for outstanding contractual holiday pay, and the third is a claim for unpaid wages and pension contributions.

Payment in lieu of notice and pension contributions

2. The Respondent shall first address the Claimant's payment in lieu of notice and pension contributions claim. The Claimant and the Respondent are both in agreement that the Claimant was entitled to nine weeks' notice pay.

3. The Claimant has failed to detail the sums which she avers are owed in respect of notice pay and pension contributions.

4. Nonetheless, the Respondent accepts that due to the absence of a payment in lieu of notice clause in the Claimant's contract of employment, pension contributions and outstanding holiday pay are due in respect of the Claimant's nine weeks' notice entitlement. The Respondent accepts that £1,170.04 (gross) is due to the Claimant in respect of pension contributions and £883.61

(gross) in respect of outstanding holiday pay. The Respondent's pension contribution calculation is [9 (weeks' notice) multiplied by 673.60 (a week's gross pay) divided by 100 multiplied by 19.3 (employer's pension contribution percentage)]. The Respondent's holiday pay calculation is 38 (days of holiday entitlement) divided by 52.1429 (weeks in the year) multiplied by 9 (weeks' notice) x 134.72 (a day's gross pay). The Respondent is in the process of making arrangements for payment to the Claimant of £2,053.65 (gross), representative of these sums that the Respondent accepts are due.

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5. Both parties accept that the Claimant was paid a sum of £2,529.60 (gross) representative of four weeks' wages in the September 2022 payroll, shown at production 32 on page 90 of the Final Hearing bundle. It is the Respondent's position that this was representative of four weeks' pay in lieu of notice based on the Claimant's employment terminating on 2 September 2022. Further, the Respondent avers that a payment of £3,162.00 (gross) representative of a five weeks' pay in lieu of notice was paid on 10 March 2023. This is evidenced at Production 27 on page 84 of the Final Hearing bundle and at the Respondent's second additional production to the Final Hearing Bundle. The Respondent's second additional production shows a manual faster payment of £2,092.28 (net) paid to the Claimant's account ending in 672 on 10 March 2023. This is consistent with the payment of £2,092.28 received by the Claimant on 9 March 2023, as shown in the Claimant's additional production to the Final Hearing Bundle.

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6. The Respondent invites the Tribunal to find that, on the balance of probabilities, it is more likely than not that a one-off payment to the value of the five weeks' pay made in March 2023, after the Claimant's employment terminated, is payment for the disparity in notice pay.

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7. The Respondent's employees were awarded a pay award backdated to April 2022 to which the Claimant was eligible. The Claimant's payment in lieu of notice as detailed above was paid based on the Claimant's salary pre-dating the pay award. The Respondent accepts that the Claimant is owed £370.80 (gross) in respect of the payment in lieu of notice being paid at the Claimant's

pay award higher rate of £16.84 per hour. This sum is calculated by deducting the sums already paid to the Claimant in respect of notice pay (£5,691.60 gross) from 9 weeks of notice pay calculated at the pay award higher rate (£6,062.39 gross). The Respondent is in the process of making arrangements for payment to the Claimant of £370.80 (gross), representative of these sums that the Respondent accepts are due.

8. The Respondent invites the Tribunal to accept its submission that the Claimant has been paid nine weeks' pay' in lieu of notice element and that no sums are due in respect of notice pay.

10 **Outstanding holiday pay**

9. The Claimant's contractual holiday pay claim consists of two elements. The first is that the Respondent erred in calculating her outstanding holiday entitlement up to 2 September 2022 and that she is owed one additional day of holiday pay, and the second is that she is owed outstanding holiday pay from 3 September 2022 until 18 October 2022 on the basis that date of termination of the Claimant's contract of employment was 18 October 2022. The Claimant has failed to detail the sums that she believes are owed in respect of outstanding holiday pay.

10. The Respondent avers that the Claimant was paid a sum of £1,264.80 (gross) representative of 10 days outstanding holiday pay based on a termination date of 2 September 2022. This payment is shown on production 33 on page 91 of the Final Hearing bundle. The Respondent's employees were awarded a pay award backdated to April 2022 to which the Claimant was eligible. The Claimant's holiday pay as shown on production 33 on page 91 of the Final Hearing bundle was paid based on the Claimant's salary pre-dating the pay award. The Respondent accepts that the Claimant is owed £82.40 (gross) in respect of the holiday pay being paid at the Claimant's pay award higher rate of £16.84 per hour. The Respondent is in the process of making arrangements for payment to the Claimant of £82.40 (gross), representative of this sums that the Respondent accepts are due.

11. The Respondent accepts that it omitted five public holidays from the Claimant's outstanding holiday pay calculated on a termination date of 2 September 2022. The Respondent acknowledges that there were five public holidays during the Claimant's period of sickness-related absence, as shown on production 19 on page 66 of the Final Hearing bundle. Due to the Claimant being unable to benefit from these holidays due to sickness absence, the Respondent accepts that the Claimant is owed £673.60 (gross) of holiday pay reflective of the five accrued but unused days of holiday entitlement. In addition to this, the Respondent accepts that the Claimant is owed an additional 0.5 day holiday as part of the pay award, equating to £67.36 (gross). The Respondent's holiday pay calculation is based on a gross daily rate of pay of £134.72. The Respondent is in the process of making arrangements for payment to the Claimant of £740.96 (gross), representative of the 5.5 days holiday that the Respondent accepts are due. The Respondent avers that no further sums are due in respect of outstanding holiday pay based on a termination date of 2 September 2022.
12. The Respondent submits that no holiday pay is due in relation to the period from 2 September 2022 to 19 October 2022 as it is the Respondent's position that the date of termination of the Claimant's contract of employment is 2 September 2022.

Unpaid wages and pension contributions

13. The Claimant's position is that her employment was terminated on 18 October 2022 and therefore that she is owed wages, pension contributions, and holiday pay for the period from 3 September 2022 until 18 October 2022. The Claimant has failed to detail the sums that she believes are owed in respect of unpaid wages, pension contributions, and holiday pay for this period. The Respondent's position is that the Claimant's employment terminated by no later than 6 September 2022 and therefore no further pay, pension contributions, or holiday entitlement accrued after that date.

14. To resolve this element of the Claimant's contractual monies claim, the key issue to be determined is the date of termination of the Claimant's contract of employment.

Date of termination

5 15. It is the Respondent's primary position that the date of termination of the Claimant's contract of employment is 2 September 2022, for the reasons that I will now explain.

16. The Tribunal has heard in evidence that before the Claimant's employment ended, she was involved in redundancy consultations for around three months beginning in June 2022. The Respondent would draw the Tribunal's attention to Ms Stacey Martindale's email to the Claimant dated 1 September 2022 (production 12 at the top of page 51 of the Final Hearing bundle), in which she asks the Claimant to confirm, I quote, "if you would me like to process your request for VR and therefore process you as a leaver". The Respondent would like to direct the Tribunal to production 12 at the bottom of page 50 of Final Hearing bundle. The email dated 2 September 2022 from the Claimant to Ms Martindale reads "apologies I thought I had said in my last email that I would like to proceed with VR. I can confirm I am accepting the offer".

17. The Tribunal heard in evidence that in response to the Claimant giving notice that she wished to accept voluntary redundancy, Ms Martindale commenced the leaver's process based on a termination date of 2 September 2022, the day that the Claimant notified the Respondent of her intentions to accept voluntary redundancy and bring her employment with the Respondent to an end.

18. In evidence, the Tribunal heard that in response to the Claimant's email dated 2 September 2022, Ms Martindale acknowledged the Claimant's acceptance of voluntary redundancy by email on 5 September 2022 (as shown at production 12, the second email from the bottom of page 50 of Final Hearing bundle). Ms Martindale also gave evidence that in response to the Claimant's accepting voluntary redundancy, she contacted Payroll for the payments to

5 be made. It is the Respondent's submission that this is also supported by an
email from Ms Martindale to the Respondent's internal Payroll department on
8 September 2022 (production 21 on page 76 of Final Hearing bundle) in
which Ms Martindale confirms that the Claimant should be processed as a
leaver based on a termination date of 2 September 2022. Ms Martindale also
10 spoke to a letter dated 5 September 2022 (production 15 at page 58 of Final
Hearing bundle) which Ms Martindale explained in evidence that she sent to
the Claimant's home address on 5 September 2022 confirming that she will
be processed as a leaver from the date she gave notice to the Respondent
that she was accepting voluntary redundancy, 2 September 2022.

19. It is for these reasons that the Respondent invites the Tribunal to find that the
date of termination of the Claimant's contract of employment was 2
September 2022, and subsequently that no sums are due in respect of wages,
pension contributions, or outstanding holiday pay, with the exception of the
15 five public holidays which the Respondent acknowledges are owed to the
Claimant.

20. Should the Tribunal not agree that the Claimant's acceptance of the
Respondent's offer of voluntary redundancy renders the termination date to
be 2 September 2022, it is the Respondent's submission that the Claimant's
20 employment terminated no later than 6 September 2022. The Respondent's
submission is based on the letter sent by Ms Martindale to the Claimant on 5
September 2022 (production 15 at page 58 of the Final Hearing bundle).

21. The Respondent will address the Tribunal in respect of two considerations
which the Respondent submits are key to rendering the Claimant's
25 termination date to be no later than 6 September 2022.

22. The first is whether the Respondent's letter dated 5 September 2022
(production 15 on page 58) constitutes clear and unambiguous notice that the
Respondent was exercising its right to bring the contract to an end. The
second is the key factual dispute as to whether the letter dated 5 September
30 2022 was sent by Ms Martindale and received by the Claimant. The

Respondent invites the Tribunal to find in favour of the Respondent in respect of both considerations.

23. It is accepted by the Respondent that notice was required to lawfully terminate the Claimant's contract of employment. The Supreme Court's Judgment in *Societe Generale, London Branch v Geys* [2013] IRLR 122 at paragraph 57 is authority for the principle that the other party must be notified in clear and unambiguous terms that the right to bring the contract to an end is being exercised.
24. Further, the Employment Appeal Tribunal case of *Mitie Security (London) Ltd v Ibrahim UKEAT/0067/10* paragraphs 10-11 neatly summarises the principles that notice is not effective until it is actually given and effectively communicated, with an ascertainable date on which the contract is to cease, or at the least, the communication must contain facts from which the termination date can be ascertained or inferred.
25. The Respondent invites the Tribunal to consider production 15 on page 58 of the Final Hearing bundle for this part of the Respondent's submissions. We have heard in evidence that this is the letter that Ms Martindale typed and thereafter posted to the Claimant's home address on 5 September 2022. As can be seen from the production, the letter states that the Claimant will be processed as a leaver on a specified date of 2 September 2022. Further, the letter contains a detailed breakdown of the payments the Claimant would receive as a result of the termination (including a tax-free payment, payment representative of notice period and outstanding holiday payment). Finally, the writer wished the Claimant well for the future.
26. It is for these reasons that the Respondent invites the Tribunal to find that the letter dated 5 September 2022 is an effective communication in which the Respondent issued clear and unambiguous notice that it was exercising its right to bring the Claimant's employment to an end.
27. The Respondent draws the Tribunal's attention to the Employment Appeal Tribunal case of *East Kent Hospitals University NHS Foundation Trust v Levy*

UKEAT/0232/17. Whilst the facts of this case are not identical to those of *Levy*, the Respondent respectfully directs the Tribunal's attention to paragraph 33, where the Employment Appeal Tribunal detailed that by adopting an objective test as to whether the letter in dispute constituted notice of resignation, the question for the Employment Tribunal was how would the disputed letter have been construed by the reasonable recipient? And what would have been the reasonable construction of the letter is, however, something to be determined in the light of the particular circumstances known to the reader of the letter at the time.

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10 28. Should the Tribunal, in this case, have any doubts as to whether the Respondent's letter is clear and unambiguous, the Respondent invites the Tribunal to take into account the particular circumstances that were known to the Claimant on 5 September 2022. Namely, that the Claimant had accepted the Respondent's offer of voluntary redundancy on 2 September 2022 and in
15 response via email on 5 September 2022 Ms Martindale acknowledged the Claimant's acceptance and confirmed that she would therefore be processed as a leaver. Given the particular circumstances of this case and what would have been known to the Claimant at the time of the letter, the Respondent invites the Tribunal to find that the Respondent's letter of 5 September 2022
20 is an unambiguous notice of termination of the Claimant's contract of employment.

25 29. Should the Tribunal accept the Respondent's submissions in respect of the content of the letter dated 5 September 2022 constituting notice of termination, the remaining consideration is the key factual dispute as to whether the letter was sent to the Claimant by Ms Martindale.

30 30. The Tribunal heard in evidence that on 5 September 2022 Ms Martindale first sent an email to the Claimant acknowledging the Claimant's email dated 2 September 2022 accepting voluntary redundancy (production 12 at page 50 of the Joint Hearing bundle). In evidence, Ms Martindale explained that she followed up her email with the letter (production 15 on page 58 of Final
30 Hearing bundle) that she typed and thereafter posted to the Claimant's home

address 6a [address redacted by Judge] as per the Respondent's personnel system (as shown on the Respondent's first additional production to the Joint Hearing bundle).

- 5 31. The Respondent avers that Ms Martindale's email to the Respondent's internal Payroll department on 8 September 2022 supports Ms Martindale's oral evidence that on 5 September 2022 she typed and posted the letter of the same date. The Respondent invites the Tribunal to find that Ms Martindale was credible and consistent in her oral evidence. Ms Martindale is an experienced HR professional with around 20 years' experience with no reason
10 to lie. Ms Martindale was honest and conceded that she did not post the letter recorded delivery or initially follow it up by email but was firm in her account that she posted the letter to the Claimant on 5 September 2022. The Respondent, therefore, invites the Tribunal to accept Ms Martindale's evidence that the letter was posted to the Claimant on 5 September 2022.
- 15 32. It is the Claimant's evidence that she never received the letter dated 5 September 2022 and that she never received notice until 18 October 2022 that her employment had been terminated.
- 20 33. The Respondent avers that the Claimant's oral evidence as to the date of termination is inconsistent with the Claimant's ET1 (as seen on page 7 of the Final Hearing Bundle) in which the Claimant contends, at the time she lodged her claim, that she believed that her employment had been terminated on 4 September 2022. The Claimant gave evidence that this is the date of termination given by the Respondent and the reason that she noted 4 September 2022. The Respondent invites the Tribunal to review the ET3
25 paper apart (production 4 on page 24 of the Final Hearing bundle) in which the Respondent, at the outset of proceedings, details its position that the date of termination of the Claimant's employment was 2 September 2022. The Respondent avers that it has been consistent from the outset as to the Claimant's date of termination; whilst the Claimant has been inconsistent in
30 her position.

34. It is the Respondent's submission that even taking the Claimant's evidence at its highest (that she did not read the letter), the determining factor in respect of when notice takes effect, is not whether the Claimant read the letter, but whether she had a reasonable opportunity to do so. The Respondent directs the Tribunal's attention to *Newcastle Upon Tyne Hospitals Foundation Trust v Haywood* [2018] UKSC 22, at paras 21 to 39-40 as authority on this point. In *Haywood* the Supreme Court set out that when a contract is silent on when notice takes effect, it is effective when the receipt has read the letter or had a reasonable opportunity to do so.
35. The Tribunal heard in evidence, that the Claimant accepts that she was living at 6a [address redacted by Judge], the address at which Ms Martindale said that posted the letter. The Claimant acknowledged in evidence that she was not on holiday on or around 5 September 2022. The Claimant also accepted in evidence that she was receiving other mail on or around 5 September 2022. Therefore, it is the Respondent's submission that as of 6 September 2022, the day after the letter was posted, the Claimant would have had a reasonable opportunity to read the letter and therefore the Claimant's employment terminated no later than 6 September 2022.
36. The Respondent accepts that the notice period runs from the day after that on which the notice was given. Therefore, if the Tribunal accepts that the date of termination of the Claimant's contract of employment was 6 September 2022, the Respondent acknowledges that the Claimant will be due 2 days of wages for the two days she would have been contracted to work between 4th and 6th September 2022, in addition to pension contributions and any accrued holiday pay for this period.

Claimant's Statement in Response to Respondents' Written Submission

1. In reply to the respondent's statement (number 3.) "The Claimant has failed to detail the sums which she avers are owed in respect of notice pay and pension contributions".
- I am claiming:

Owed	Reason	Working	Amount
Missed wages from 2 nd September- 18 th Oct	Contracted ended without notice	Missed wages from 2 nd September- 18 th Oct 134.72 Multiplied by 32 days	£4,311.04
9 Weeks' notice	Although the respondent states they have paid me in lieu. I was not informed and the payment in September was for	Weekly salary of £673.60 multiplied by 9 weeks	£6,062.40
Pension contributions	9 weeks' notice and for period between 2 nd September and 18 th Oct	9 weeks pension at £883.61 (as stated in the respondent's statement (4.) This is still outstanding as this payment is for the missed wage pension contribution	£883.61
9 days holiday	From the missed wage period and 9 weeks' notice	38 days per year divided by 12 = 3.16 days accrued per month 3 days from 2 nd Sept - 18 th oct, 7 days for the 9 weeks' notice.	£1,374.20

		Totaling 10 days at £134.72 per day multiplied by 10 £134.72	
		TOTAL	£12,631.25

2. In response to information stated in (4-5) I accept the payments as the pension contributions for the missed wage period, for the previous outstanding annual pay.

5 3. It is the respondent's position that MS Martindale informed me by a letter composed on 5th of September, that stated my termination date would commence on the 2nd of September.

10 During the last hearing I asked MS Martindale if it was normal procedure to have an employee contract would come to an end on the same day that they confirm that would take a redundancy package, as to which she replied, "every situation is different". Which shows me the lack of structure and consistency.

15 4. During the hearing MS Martindale stated she, "Used a second-class stamp from her purse, because that's all she had on her, and posted the letter by herself on the 5th September".

I would like to highlight the fact that after working as a manager within the respondent's company for 10 years and having the Human Resources (HR) assistants and administrator's assistants handle all the external mail, including the cost of postage.

20 I find it questionable that the head of HR who has three members of staff working below her "two of which are HR assistants", has changed this process, by printing and personally taking the letter to the post box and using her own personal stamp to send me a letter.

5. It has been declared in the submission from the respondent (30. Line 6) that the letter was “posted to the Claimant’s home address 6a [address redacted by Judge]”. However, my address at the time was 62a [address redacted by Judge].

5 I would like to highlight how easy it is for an error to occur whilst typing an address, and if this was done by the respondent, this may be just one of the many reasons why I did not receive the letter.

6. MS Martindale confirmed during the last hearing that she did not inform me that the notice period would be in lieu of notice. Therefore, is it not only right
10 that my contract would end after the notice period ended unless this was agreed during the consultation “that I never received”.

7. In an excel document provided at the last hearing. Titled “Ministries statement” (6B) it states my termination date was 6th September and not the 2nd of September. Showing more inconsistencies in the respondent’s processes.

15 **[Note by Tribunal:** there is no point (8) stated by the claimant.]

9. I did not at any point get the breakdown of what I was entitled to and when I asked/questioned the figures I had no response and had not one person contact me to help or explain.

10. I received my wages as normal until Oct. There was no indication that this
20 was in fact a payment for 4 weeks annual leave owed.

11. I have proven that I was still issuing my doctor’s sick notes to the respondents to cover the period that was in question, believing I was still employed.

12. Due to the fact, I was not contacted by the respondent to inform me of the date the employment would end. I was left with a mist period without wages
25 that could not be backdated by government support to support myself and 3 children. I emailed the respondent many times, thinking they had made a mistake and they would recalculate the dates. Which increased the time of being without any wages and government support.

13. During the redundancy process, it was stated MS Martindale, Mr. Mark Tokeley (operations manager), Mr. Alan Cunnenham (my direct manager) and Renfrewshire council (payroll) were all involved in dealing with my redundancy and termination and sickness process. The information provided shows a serious disconnect within the organization which led to a communication breakdown between all parties. This resulted in no one being able to provide a breakdown of what I was owed and when I should finish up.
14. My wage statements were never provided to me until the hearing and did not make any sense. They could not be explained by MS Martindale or MS Smith and I have to just trust that all is correct, when it has showing in the past that there have been mistakes.