# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs D Lingard

**Respondent:** Leading Learners Multi Academy Trust

**Heard at:** Manchester **On:** 18 September 2023 (adjourned) 8 November 2023 21 November 2023 (in Chambers)

**Before:** Employment Judge Feeney
Ms J K Williamson
Dr H Vahramian

**REPRESENTATION:**

**Claimant:** Ms L Gould, Counsel
**Respondent:** Mr S Gorton, KC

# RESERVED JUDGMENT ON REMEDY

The unanimous judgment of the Tribunal is that: the claimant is awarded:

1. In respect of unfair dismissal:

   (a) A basic award of £13,172.50;

   (b) A compensatory award of £156,830.43 subject to the statutory cap.

2. Damages for wrongful dismissal of £20,801.43 subject to grossing up.

3. The breach of contract claim in respect of counselling fails and is dismissed

# REASONS

## Introduction

1. This was a remedy hearing which had been adjourned from 18 September 2023 to 8 November 2023. The parties had undertaken certain work in the interim, in particular a table setting out what they did and did not agree on financially.

2. The claimant had succeeded with her unfair dismissal claim but not her disability case. It had been appealed to the Employment Appeal Tribunal, who upheld our decision, the Court of Appeal refused permission for the claimant to appeal any further.

3. The parties asked us to make findings on the principal points in the case following which they were confident they could agree the exact figures.

## The Issues

4. The issues for the Tribunal to decide were as follows:

   (1) Whether the claimant's losses ought to be limited based on her entitlement to contractual sick pay only;

   (2) Whether the claimant had unreasonably failed to mitigate her losses (the respondent ultimately did not pursue this);

   (3) Whether any reduction ought to be made on a **Polkey** basis;

   (4) Whether any reduction ought to be made for contributory conduct; and

   (5) Whether there should be an ACAS uplift.

5. There were a number of arithmetical matters raised, in particular in relation to the claimant's pension and what pay the calculation should be based on. The claimant argued the net monthly pay should be £3,919.11 (weekly £904.41), and the respondent's figures were £3,442.19 monthly (weekly £794.35). More detail will be given below.

## Submissions

Claimant's Submissions

*Re: Contractual Sick Pay*

6. The claimant's case is that:

   (1) But for the respondent's treatment of her which led to her resignation and successful claim for constructive unfair dismissal she would not have suffered the ill health which caused her to be absent from work and continue at that time to be too ill to work.

(2) Further or in the alternative, as the respondent's treatment caused or significantly contributed to the claimant's ill health, had she remained employed but still undertaken the continuous period of sickness absence it would have been a reasonable adjustment for the respondent to have paid her full pay while she remained on sick leave while supporting her return to work.

(3) Had the respondent not failed (or failed to act in a supportive manner) during the claimant's absence, her ill health absence would not have continued for as long as it did or would not have amounted to potential grounds for the respondent to fairly dismiss her.

7. The claimant therefore contends she ought to be awarded her full loss of earnings for the period sought.

*Polkey Contributory Fault*

8. The claimant contends there is no reasonable basis for making a reduction in her compensation based on pre-dismissal or Polkey arguments. In particular, insofar as the respondent relies on alleged (or putative) forgery of signatures in appraisals, this has already been determined by the Tribunal. Insofar as the respondent relies on improper conduct in the process for signing off on the appraisals, that is another bite at the same cherry but in any event that is a weak argument. The Tribunal should determine on the balance of probabilities that the claimant committed the conduct for which she was criticised; that it was culpable or blameworthy conduct and that it caused or contributed to her dismissal. The claimant submitted that it was not possible to meet these tests. The claimant submitted that it was implausible to suggest that had the respondent continued to investigate the appraisals matter it would have been able to fairly dismiss the claimant as a result of this and it would not have resulted in a fair dismissal on the grounds of conduct or otherwise. This must be the case given the Tribunal's findings in relation to the forgery allegation at paragraphs 161-163 of the Judgment.

9. In addition, no action had been taken against Rebecca Kenyon who had failed to complete an appraisal.

*Pay Figures*

10. The claimant relies on her wage slips from 2016 to 2017. She has deducted tax and national insurance from her gross pay figures but not her standard and additional voluntary pension contributions which was a benefit she would have continued to receive if she had remained in employment. The basic award appears to be agreed.

11. In addition to the points made above, the claimant has set out separate submissions on the pension loss calculation which may or may not be in play depending on how much the claimant is awarded initially for compensation in light of the cap on unfair dismissal awards.

12. In addition, there is a claim for the cost of counselling which the claimant says was a contractual right, was pleaded and the respondent failed to provide her with counselling and accordingly she paid for it herself.

*ACAS Uplift*

13. The claimant contends that the respondent acted in breach of paragraphs 33 and 34 of the ACAS Code of Practice as they did not arrange a formal meeting without unreasonable delay after the grievance had been received. In particular, it sought to impose a condition that the claimant attend an appointment with a psychologist before arranging a grievance meeting.

14. Note: the claimant claims the counselling as a breach of contract in order to bring the claim under the £25,000 cap and not the compensatory award cap for unfair dismissal.

*Notice Pay*

15. The claimant seeks notice pay under her breach of contract provisions, again because then it would be counted under the £25,000 jurisdictional limit of the Tribunal rather than the unfair dismissal limit on the basis that the claimant would not have been able to resign until 23 March 2017 in accordance with her contract, and if she had provided the minimum notice of three months she would have remained in employment until 31 August 2017.

16. In the summer term the claimant would have been required to serve a minimum notice period of four months if she had provided her notice by 30 April 2017 and therefore her notice period losses cover 23 March 2017 until 31 August 2017. Note: the notice pay was pleaded separately.

Respondent's Submissions

*Appraisals*

17. The respondent submits that:

(1) The claimant's compensatory award should be reduced on the basis that the respondent would have been able to fairly dismiss the claimant for her failure to follow a proper procedure in relation to appraisals, in particular the failure in 2015 to conduct Mr McKenna's appraisal; the alleged misrepresentation of Janet Shorrock's signature; and the signing on behalf of Diane Atkin, Helen Kline and Rebecca Kenyon. The respondent would have discovered these matters had they carried on investigating had the claimant not resigned. On the basis of **Boston Deep Sea Fishing v Ansell**,1888 Ch D the respondent is entitled to rely on post dismissal matters that were discovered after dismissal which had occurred before dismissal.

(2) In addition, it would not be just and equitable for the claimant to receive compensation on the basis of the same matter.

*The Claimant's Capability*

18. The respondent submitted that the claimant would have been dismissed in any event. The claimant was struggling in her newly promoted role as Head Teacher from 1 September 2016, and it is likely her employment would have ended soon in

any event. The claimant was failing (the Brown review) and failing to lead. She was not medically fit for work until at least December 2017 and would have moved to half pay on 5 May 2017 and no pay on 7 November 2017. The relationship was effectively over as of the 1 December 2016 meeting and would have been likely to have been terminated within a short period on a lawful basis.

*Claimant would have resigned anyway*

19. The respondent relied on the claimant's GP notes.

*Polkey*

20. On the basis of the above arguments, the respondent said that the claimant should not receive any compensation on a Polkey basis.

*ACAS Breach*

21. There was no ACAS breach.

*Grossing Up*

22. If the claimant's claim comes below the cap, it is not permissible to gross it up to breach the statutory cap.

23. Pension arguments – to be addressed if necessary after awards have been calculate

**The Bundle**

24. There was an agreed bundle and in between the adjourned hearing and the hearing on 8 November further documents were added.

**Witnesses**

25. We heard from the claimant (Mrs Deborah Lingard) and for the respondent from Yvonne Brown (the Chief Executive of the respondent organisation).

**Evidence**

26. Mrs Brown's evidence for the respondent was that as she had qualified as an Ofsted inspector and carried out five full inspections. She had therefore some experience in respect of what Ofsted would have deemed significant. She explained how at the time school was judged. There were five areas:

- leadership and management;
- behaviour and safety;
- quality of teaching;
- achievement of pupils;
- effectiveness of early years provision.

27. "Leadership and management" was a limiting judgment which meant if it was judged as "requires improvement" the overall effectiveness to the school would also be "requires improvement" except in exceptional circumstances. If it was "inadequate" then the overall effectiveness could be no higher than "inadequate".

28. Mrs Brown referred us to the school inspection handbook paragraphs 159-165 (pages 127 and 128) as evidence that on an inspection a Head Teacher would need to provide anonymised information about performance management, appraisal and salary progression for the last three years. The information would be cross-checked by the inspector during the interviews with senior leaders and teachers. The Head Teacher also had to rate each teacher as "outstanding, good, requires improvement or inadequate" for the inspectors, and this would be cross referenced to understanding how the school used appraisal and performance management to improve teaching and to support the quality of teaching judgment. Any concerns would be followed up with further interviews and further scrutiny of documentation.

29. The particular school that the claimant worked at became a teaching school in 2012 and had been judged "outstanding". An important factor in the Leading Learners Trust is being able to sponsor three additional primary schools in Bradford that all required improvement, and this was the beginning of the Multi Academy Trust ("MAT") of which Mrs Brown became the Head. If it had lost its "outstanding" judgment it would have had its teaching status removed and would not have been allowed to become a MAT. In additional, there is a statutory duty to carry out appraisals for teachers on an annual basis based on regulation 7(3) of the Education (School Teachers' Appraisal) (England) Regulations 2012 (bundle page 114). All pay progression for teachers has been based on performance since 2012.

30. It appeared that different people would be responsible within the school for assessing teachers under the appraisal process, and the Head Teacher would report back to the governors in respect of who had qualified for pay progression. The school had a pay committee who made decisions considering the Head Teacher's recommendations. Overall appraisals should have been completed by 31 October each year. The pay committee meeting was held in early December with the Head Teacher providing the names of individual teachers who had achieved their appraisal objectives throughout that year and were therefore eligible for pay progression. The committee would not see the appraisals. Staff at the appraisal usually knew objectives would be set and there would be two mid year reviews – usually one in the middle of the spring term and one in the middle of the summer term. These would be brief meetings just to check everything was on track. When the claimant resigned in March 2017 the appraisal system was being investigated and was not concluded when the claimant resigned. The interviews in that process were referred to in the original hearing and in this hearing.

31. The teachers' appraisals at issue were Mick McKenna, Caroline Gould, Diane Atkin, Janet Shorrock, Julia Buck and Rebecca Kenyon, as highlighted in Mrs Brown's statement although in submissions Quine, Atkin, Kenyon and Gore were referred to.

32. Mrs Brown was cross examined closely about her responsibility for overseeing the claimant particularly in 2015 before the claimant was appointed as head of Tyldesley. She denied that ensuring the appraisals were done was her

responsibility as it is something that she assumed would be done as a matter of course. She advised that when it was discovered that Julia Bucks appraisal had not been completed no action was taken against MS Kenyon as she was leaving in March.

33. The claimant's evidence was that Mrs Brown had advised her not to carry out an appraisal with Michael McKenna as he was undergoing some serious personal issues. Mrs Brown denied this. The claimant had not said this in her original witness statement. In our view this does not mean that the claimant's evidence is discredited. This was not as significant at the original hearing where the issue was the forging of signatures. We find this was a misunderstanding. We accept that Mrs Brown probably said something about Mr McKenna but it was unlikely (in the context of appraisals being required even where Mr McKenna was at the top of his pay grade) that she would have said for the claimant to omit it entirely. They were discussing a performance improvement plan for Mr McKenna; Mrs Brown stated she will have said this in relation to this however Mr Mckenna was put on a support plan in 2015. Therefore it is clear there was some discussion which was misinterpreted. It was not. However, Mr McKenna had been promoted into a new role by October/November 2016 so the claimant had no responsibility for him at that point (to one of the schools in Bradford).

34. The claimant had responsibilities for supervising teachers before she became the Head Teacher and she would generally meet with the appraisee, discuss their targets, make handwritten notes during the meeting and after the meeting would type her notes into a pro forma staff document, sending the document to the appraisee either by email or putting it in their pigeonhole. The member of staff would then read the appraisal, sign it and return a copy to her which she would then copy for the purpose of the office and return a copy to the appraisee. The claimant pointed out she had no access to any of her documents once she was signed off sick and therefore was unable to bring evidence of how she had conducted appraisals before she was made Head Teacher.

35. In October 2016 the claimant made a decision that the process was too lengthy, and she changed her method of documenting the process. Instead of making handwritten notes to be used as a guide to complete the formal end of year appraisal document, she typed up the document in the presence of the appraisee during a face to face appraisal meeting, and that would then be sent to the appraisee for review and signing. As the claimant's laptop remained in the office as she was signed off sick, that was the last she saw of the documents.

36. The claimant stated that the handwritten notes were simply draft notes used to assist when she completed the formal document whereby she wrote the name of the teacher or initialled them as a note to herself that the contents had been discussed and agreed with the appraisee so that she could type it up and send it to the appraisee for signature. This was confirmed by Diane Atkin and Rebecca Kenyon at the Tribunal.

37. In respect of Caroline Gould (who provided a witness statement, although she did not attend the final hearing), in her questionnaire answer she did not say whether she did not have an appraisal in 2016 or whether she did. The claimant gave evidence that she did carry out her appraisal at 11.00am on Friday 21 October which

is supported by a diary entry for that day which refers to various individuals she met in order to carry out their appraisals. It has always been the claimant's evidence that she had been told by Karen Ardley (her External Performance Manager) not to carry out the appraisals until the completion of the review by Jonathan Brown. However, when she advised Yvonne Brown of this, Yvonne Brown told the claimant that they should be done and as there were only two days left of school before finishing for half-term she scheduled them for the remaining two days of school – 20 and 21 October 2016. Julie Buck said she did have an appraisal but not in September/October. However, Julie Buck was not within the claimant's appraisal group – she should have been appraised by Rebecca Kenyon and therefore it was not relevant to the claimant's performance whether or not she had an appraisal. It appeared she had one in February 2017.

38. Janet Shorrock was also asked in the questionnaire if she had had an appraisal in September or October **2016.** She confirmed she did and said it was done on screen, but she did not receive a paper copy and never signed one. The claimant's evidence was that she would have put a paper copy in the appraisee's pigeonhole. She knew that Rebecca Kenyon had taken hers – it was asked for by Yvonne Brown and never returned to her. She did not have access to her laptop for her to check what happened to Janet Shorrock's appraisal, but again her diary entry showed that she was seen at 3.00pm on Thursday 20 October.

39. Mrs Shorrock said she did not have an appraisal with the claimant in 2015 but the bundle showed appraisal documents containing her handwriting, demonstrating there was a process on 2 November 2015. The claimant believed that it had been typed up, reviewed and signed but that the notes in the bundle were not the final appraisal documents. The claimant drew our attention to the respondent's HR professional notes where Janet Shorrock says, "Deborah has been responsible for completing my appraisals for the last 2-3 years. I didn't get a paper copy, but I did see it on screen", which corroborated the claimant's version of events. The claimant (because she went off sick) could not then trace where any paper copy had gone to.

40. Diane Atkin confirmed that she did have an appraisal with the claimant in October 2016 and the claimant's diary notes showed an appointment for 10.30am on Thursday 20 October. The claimant again argued that this had been placed in Diane Atkin's pigeonhole, but she presumed it never made its way to Diane Atkin. In 2015 she did insert her initials on a draft handwritten appraisal note (which was confirmed in oral evidence) that had been reviewed and approved by Diane Atkin with the claimant in person before she went to type up the document.

41. Rebecca Kenyon confirmed that her appraisal was completed in relation to 2016. Helen Quine also confirmed that she did have an appraisal in 2014, she not having been asked to complete a questionnaire during the investigation.

42. The claimant was cross examined about two relevant matters: that she had suddenly come up with the argument that Mrs Brown had told her not to do Mr Mckenna's appraisal and in respect of her GPs notes.

43. In respect of Mr Mckenna she had not mentioned this at the first hearing. The issue then however had been forgery. She denied she had made it up to get out of the fact this appraisal had not been completed. In submissions it was pointed out

that she and Mr McKenna had both said that a meeting to discuss an appraisal had been agreed but then Mr Mckenna had cancelled and it had not been rearranged. It was following this that the claimant had the conversation with Mrs Brown about not pursuing it.

44. In respect of her GPs notes the claimant was referred to comments which are recorded in the original decision. On 21 November she mentioned an exit strategy and hoping to stay for another 12 months but subsequent to that she had a meeting with the school and her trade union where she flatly rejected settling the claim and leaving and indeed in effect 'sacked' her TU representative for pursuing this issue. She was at this point aiming to go back in January. Later in January and February she was recorded as hoping to resolve the situation through a settlement. The claimant said this was how she felt speaking to the doctor, but it was out of context and did not represent the whole picture.

**The Law**

45. In respect of awarding the claimant's remedy, we have agreement on the basic award and therefore we have to consider the compensatory award on normal principles. Overall, there are factual findings to be made on the balance of probabilities. As always in a remedy hearing looking to the future, it is an exercise of knowledgeable speculation.

46. The case law cited by the parties included (by the respondent) **Palmeri v Charles Stanley Limited [2021] High Court** which looked at when summary dismissal is justifiable and stated that the conduct which exemplifies a person had no intention of continuing to be bound by their contractual obligations must be "of grave and weighted character" and "seriously inconsistent – incompatible – with his duty as a manager in the business in which he was engaged (**Neary v Dean of Westminster [1999]**) or "of such grave and weighted character as to amount to a beach of the confidential relationship between employer and employee such as would render the employee unfit for continuance in the employer's employment" (**Ardron v Sussex Partnership NHS Foundation Trust [2009]**). The respondent relied on this to say that the claimant's actions in respect of the appraisals amounted to forgery and dishonesty and therefore came within these definitions and therefore summary dismissal would have been justified on learning of the full situation.

47. In addition, **Boston Deep Sea Fishing v Ansell** [establishes that subsequently revealed misconduct occurring before dismissal can be relied on to defeat a claim on remedy.

<u>Polkey</u>

48. In relation to **Polkey**, the respondent cited **Software 2000 Limited v Andrews [2007]** as follows:

(1) In assessing compensation, the task for the Tribunal is to assess the loss flowing from the dismissal using its common sense experience and a sense of justice. In a normal case that requires it to assess for how long the employee would have been employed but for the dismissal.

(2) If the employer seeks to contend that the employee would or might have ceased to be employed in any event had fair procedures been followed, or alternatively would not have continued in employment indefinitely, it is for him to adduce any relevant evidence on which he wishes to rely, however the Tribunal must have regard to all the evidence for making the assessment including any evidence from the employee himself.

(3) However, there will be circumstances where the nature of the evidence which the employee wishes to adduce or on which he seeks to rely is so unreliable that the Tribunal may take the view that the whole exercise of seeking to reconstruct what might have been is so riddled with uncertainty that no sensible prediction based on that evidence can properly be made.

(4) Whether that is the position is a matter of impression and judgment for the Tribunal but in reaching that decision the Tribunal must direct itself properly. It must recognise that it should have regard to any material and reliable evidence which might assist it in fixing just compensation. Even if there are limits to the extent to which it can confidently predict what might have been, and it must appreciate that a degree of uncertainty is inevitable for each of the exercises, the mere fact that an element of speculation is involved is not a reason for refusing to have regard to the evidence.

49. The claimant also relied on **Software 2000 v Andrews** in relation to the **Polkey** point, and added from that case:

"(6) The section 98A(2) and the Polkey exercise run in parallel and will often involve consideration of the same evidence but they must not be conflated. It follows that even if a Tribunal considers that some of the evidence or potential evidence to be too speculative to form any sensible view as to whether dismissal would have occurred on a balance of probabilities, it must nevertheless take into account any evidence on which it considers it can properly rely and from which it could in principle conclude that the employment may have come to an end when it did or alternatively would not have continued indefinitely.

(7) Having considered the evidence the Tribunal may determine:

(a) that if fair procedures had been complied with, the employer satisfied it (the onus being firmly on the employer) – that on the balance of probabilities the dismissal would have occurred when it did in any event. The dismissal is then fair by virtue of 98A(2);

(b) that there was a chance of dismissal but less than 50% in which case compensation should be reduced accordingly;

(c) that the employment would have continued but only for a limited fixed period. The evidence demonstrating that may be wholly unrelated to the circumstances related to dismissal itself as in the **O'Donoghue** case; or

(d) that employment would have continued indefinitely.

50. However, this last finding should be reached only where the evidence that it might have been terminated earlier is so scant that it can effectively be ignored.

51. In respect of contributory fault set out under section 123(6) of the Employment Rights Act 1996:

> "(6) Where the Tribunal finds the dismissal was to any extent caused or contributed to by any action of the complainant it shall reduce the amount of compensatory award by such proportion as it considers just and equitable having regard to that finding."

52. This was considered in **Hollier v Plysu Limited [1983]**:

> "Four general categories: first, when the employee was wholly to blame and the reduction could be 100%; second, when the employee was largely responsible and in that case (said the Judge) nobody would quarrel with a figure of 75%; third, there was a case in which both parties were equally to blame and that was obviously his view when he gave an opinion that the reduction should be 50%. The fourth category was the one into which the majority of the appeal Tribunal put this case, namely the case in which the employee is to a much lesser degree to blame."

**Tribunal's Findings and Conclusions**

**Appraisal Issue**

53. There are three matters that we need to address:

(1) Were these appraisals completed?

(2) Were they completed in the proper manner?

(3) If they were not completed in the proper manner, would this have resulted in the claimant being dismissed for gross misconduct?

54. We accept from the documentary and oral evidence (particularly of the claimant) that in fact the appraisals had been completed as far as they could be before half-term and before the claimant going off sick on 7 November, which was following the end of the half-term period, and that the claimant was in no position in 2016 then to ensure the appraisals were completed or to capture what happened to any printed copies that were put in pigeonholes.

55. The claimant did follow an improper procedure in that there were no copies of typed and signed appraisals in the records however the copies with the individuals' initials etc. were meant to be a record that the appraisal had been agreed but not actually signed by the appraisees, then that arguably is an improper procedure – it is certainly not a perfect procedure – and if those are intended to stand as the finalised appraisals then clearly a counsel of perfection would not apply as properly they should have been sent and signed by the individual person and returned. Of course the claimant was in no position to interrogate the files or her office to see if she could

find anything after the event. We find that the appraisals were undertaken and the noters in the bundle are a record of that but not completed properly in an administrative sense.

56. The only appraisal that was actually not completed was Mr Mckenna's in 2015. We have considered the evidence on this as the respondent pointed out in submissions at the original hearing the claimant and Mr Mckenna had agreed that there had been an attempt to arrange an appraisal but it had had to be cancelled by Mr Mckenna and it was never rearranged. Now the claimant was saying she had been told not to do an appraisal by YB due to his personal circumstances clearly the respondent submitted this was simply to get her 'off the hook'. The two positions are not irreconcilable – the claimant's evidence was the conversation with Mrs Brown took place after the failed appointment. We do accept the claimant's evidence on this we found her a credible witness. In any event we have found this was a misunderstanding but that this was the claimant's understanding after that conversation.

57. It is therefore correct that Mr McKenna's 2015 appraisal was not completed.

58. We have gone on to consider whether or not the claimant could have been fairly dismissed for that, and we find categorically that we do not accept that she could have been.

59. First of all, the improper procedure as it stands is very limited and could only consist of the claimant agreeing the appraisal with the appraisee and putting the person's initials down to evidence that it had been agreed. There was no suggestion or evidence that the contents of the appraisals were incorrect or fictitious, or they had not been agreed with the individuals. There was a record of the discussion and there had been agreement.

60. We do not accept that the claimant would have been fairly dismissed for this marginally improper conduct and/or failing to complete Mr Mckenna's appraisal. Considering it without the other background matters, in our view the school would have seen this as a performance /capability issue requiring counselling and support (rather than gross misconduct) in order to ensure that in future it was done in accordance with the school's (and Ofsted's) requirements. Had there been an inspection due, (the Ofsted inspection argument was speculative on the part of the respondent, since we did not hear from them that such an inspection was imminent,) it is no doubt that this paperwork ought to have been available and included and finalised in accordance with the best proper procedure in order to ensure that the Ofsted inspection went smoothly on the possible chance that Ofsted might have drilled down to the extent of looking at the actual paperwork.

61. Further in relation to Mr McKenna we are confident the school would have accepted her explanation and whilst doubting this is what Mrs Brown had said would have accepted this is what the claimant had genuinely understood at the time particularly as the timing did fit with Mr Mckenna's difficult personal circumstances.

62. On the basis that no-one at the academy would have wanted the school to fail the Ofsted inspection, we have no doubt that there would have been a rigorous inspection of the existing paperwork prior to the inspection taking place. Whilst we understand very little notice will be given a school with have an approximate idea of

when the next inspection is due. This would have been Yvonne Browns responsibility as overall head of the Academy. If the reason for the paperwork not being fully completed was the fact that the claimant had been off sick since 7 November, then that surely would have been a matter acceptable to Ofsted in any event.

63. In relation to matters in 2015 the claimant had not been headteacher then so that ultimately it was something Yvonne Brown should have either unearthed or checked.

64. Accordingly, our finding is that this is not a matter that the claimant would have been fairly dismissed for, especially in view of her long service and unblemished record.

Would the claimant have been dismissed anyway?

65. We did not hear a significant amount of argument on this point – whether she would have been dismissed for capability or sickness absence. The claimant was clearly struggling, and we found that she overreacted to the reviews organised by the Head Teacher and that had she continued to work with Jonathan Brown (an independent consultant who was broadly sympathetic to the claimant's position) the situation would have improved.

66. In addition, we find that had the school been more supportive during her absence the claimant would have been well enough to return to school. The meeting in December 2016 was harsh and undermined the claimant's confidence, although she had been looking forward to returning in January. In respect of her GPs notes these reflect to some extent her thinking at various points but it is not a reliable context

67. Then the situation with her grievance and the respondent insisting on her attending a psychologist's appointment before moving forward with her grievance followed by a meeting at her house where she had assumed (wrongly) that the matter would be resolved, were all matters that contributed to the claimant's absence continuing.

68. We are confident that if matters had been dealt with differently, in particular the December meeting the claimant would have been in a position to return to work. In addition, if the claimant had been sent to Occupational Health at an appropriate time measures may have been devised to enable the claimant to successfully return to work.

69. The Tribunal was also mindful of the undisputed fact that the claimant had given many years of excellent service to the school and had recently enjoyed sufficient confidence of Yvonne Brown and the governors to have been newly appointed as Head Teacher.

Conclusion on compensatory award

70. The claimant therefore in our view is entitled to full pay for the period up to when she would have retired. The claimant told us she was intended to stay until her 60th birthday in December on 6 December 2020. The period would begin either from 23 March 2017 when she retired or 31 August 2017 if her notice pay claim is

dealt with separately. If losses are begun on 2 September 2017 the total amount up to the claimant's retirement would be £156,830.43. The statutory cap will apply to this sum.

Basic Award

71. Basic Award has been agreed at £13,172.50.

Notice Pay

72. The claimant is entitled to pursue a notice pay claim under the contractual provisions of the Tribunal's jurisdiction and accordingly she may pursue this claim separately from her unfair dismissal compensation.

73. We accept that contractually the claimant would not have been able to give notice until the end of the second term (which we are advised was 30 April) and accordingly at that point she would have given four months' notice and that period would have ended on 31 August. The claimant puts this as £20801.43 but argues that as the statutory cap does not apply this sum should be grossed up. We agree that this amount should be grossed up, there was no authority quoted to suggest it was not legitimate. We have not been advised of a figure for this although obviously the Tribunal breach of contract jurisdiction has its own cap.

74. Accordingly, the claimant is awarded her notice pay on this basis.

Counselling

75. We accept the claimant's claim that she was entitled to counselling and that the school has been mistaken in not offering her this. We found in the original judgment that she had been offered this later in the process and not taken up the opportunity therefore we find ultimately there was no breach of contract.

Uplift

76. The claimant claims an ACAS uplift in respect of the compensatory award, however we find that dealing with the grievance was only delayed by ten days. Whilst this was mainly due to the fact that the claimant resigned, in view of the fact that the delay only lasted ten days we do not think this was a serious breach of the ACAS Code of Practice and therefore we do not find it just and equitable to award any uplift in these circumstances.

Findings on Calculations

*Net Pay*

77. We accept that the claimant's pay should reflect the tax advantages of paying in AVCs. We accept that the claimant would have carried on purchasing AVCs in order to bolster her pension and therefore that if these were removed from her pay this would artificially reduce it.

78. In relation to the pension contributions, we believe these should be a deduction as when the claimant is awarded compensation for her pension loss she

will gain the advantage of these contributions. However, as she has reached the statutory maximum for her compensatory award no sum under this heading would be due.

## Final Conclusion

79. In view of the fact that our findings on the compensatory award mean the claimant will reach the maximum losses, we have not considered the other points in issue regarding the claimant's pension entitlement and the issue on grossing up.

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Employment Judge Feeney

Date: 24 December 2023

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

5 January 2024

FOR THE TRIBUNAL OFFICE

**Notes**

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

**Recording and Transcription**

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

# NOTICE

## THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2401985/2017**

Name of case: **Mrs D Lingard** v **Leading Learners Multi Academy Trust**

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to proceedings to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day**, **the calculation day**, and **the stipulated rate of interest** in your case. They are as follows:

**the relevant decision day** in this case is: 5 January 2024

**the calculation day** in this case is: 6 January 2024

**the stipulated rate of interest** is: **8% per annum**.

For the Employment Tribunal Office