EMPLOYMENT TRIBUNALS

Claimants:
1. Mr Barry Duffy
2. Mr Andrew Priestner
3. Mr Christopher Ashton
4. Mr James Astle
5. Mr Colin Birkett
6. Mr Liam Cahill

Respondent: Jones Lighting Limited

Heard at: Manchester Employment Tribunal **On:** 5 to 9 November 2023

Before: Employment Judge G Tobin (sitting alone)

REPRESENTATION:
First to fourth claimants: In person (first to fourth claimants)
Fifth and sixth claimants: Mr B Henry (counsel)
Respondent: Mr C McDevitt (counsel)

RESERVED JUDGMENT

The Judgment of the Tribunal is that:

1. All of the claimants were unfairly dismissed, in breach of s94 Employment Rights Act 1996.

2. The first four claimants were wrongfully dismissed, i.e. dismissed in breach of contract.

3. I order the respondent to pay to the respective claimants' compensation as follows:

   3.1 Mr Barry Duffy – £11,622.00

   3.2 Mr Andrew Priestner – £11,806.00

   3.3 Mr Christopher Ashton – £14,980.29

   3.4 Mr James Astle– £328.00

3.5 Mr Colin Birkett– £13,719.00

3.6 Mr Liam Cahill– £3,766.00

4. Matters now being concluded, proceedings are dismissed.

REASONS

Case Summary

1. The cases and proceedings were summarised following the hearing of Employment Judge Cookson on 14 December 2021 and Employment Judge Slater following the hearing of 9 to 13 January 2023. Proceedings were originally brought against Jones Lighting Limited (hereinafter referred to as "the respondent") and Altitude Services Limited ("Altitude") in respect of a contended transfer pursuant to the Transfer of Undertakings (Protection of Employment) Regulations and the claimants' ensuing dismissals. Following settlement of the claims against Altitude Services Limited proceedings were dismissed against that respondent.

2. Various claims were made in respect of non-payment of wages, unfair dismissal, notice pay (which is a breach of contract or wrongful dismissal claim) and accrued and unpaid holiday pay. As proceedings unfolded the wages claims were resolved.

3. In a lengthy Judgment following a hearing on 9-13 January 2023 Judge Slater determined that a TUPE transfer had not taken place between the respondent and Altitude. Accordingly, the claims for entitlement to statutory redundancy payments for Mr Duffy, Mr Priestner, Mr Astle and Mr Ashton where withdrawn because the claims for unfair dismissal and statutory redundancy pay were mutually exclusive.

4. Unfair dismissal was conceded by the respondent at the outset of this hearing. So, the outstanding matters or claims that were "live" were the following claims: remedy for unfair dismissal (for all claimants); and wrongful dismissal/notice pay for Mr Duffy, Mr Priestner, Mr Ashton and Mr Astle.

List of Issues

5. The list of issues to be resolved by the Employment Tribunal was agreed between the parties. This was further modified following discussion to:

1. Unfair dismissal (all claimants)

   1.1 The respondent accepts, following a decision at the preliminary hearing, that the respondent dismissed the claimants with effect from 31 December 2020. [The respondent further accepted at the outset of this hearing that the dismissals were unfair]

   ~~1.2 Has the respondent shown a potentially fair reason for dismissal under section 98 Employment Rights Act 1996 ("ERA")? The respondent relies on redundancy. NB: The respondent wishes to retract the concession made in~~

~~error on 27 January 2023. The respondent wishes to rely on redundancy as a potentially fair reason for dismissal, but no longer wishes to rely on "some other substantial reason" [pursuant to s98 ERA].~~

~~1.3 If so, did the respondent act reasonably in all the circumstances in treating that reason as a sufficient reason to dismiss the claimants?~~

1.4 The respondent accepts in the circumstances the dismissals will be found to be procedurally unfair.

2. Remedy for Unfair Dismissal

2.1 What basic award is payable to each claimant, if any?

2.2 If there is a compensatory award, how much should it be? The Tribunal will decide:

2.2.1 What financial losses has the dismissal caused the claimants?

2.2.2 Has each claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

2.2.3 If not, for what period of loss should each claimant be compensated?

2.2.4 Is there a chance that the claimants would have been fairly dismissed anyway if a fair procedure had been followed, for some other reason?

2.2.5 If so, should each claimant's compensation be reduced? By how much?

2.2.6 Does the statutory cap of 52 weeks' pay apply?

2.2.7 Is there some element of double recovery given the payments the claimants received under COT3 agreements with Altitude?

2.3 If any sums are to be offset, which sums and against which parties of any award?

3. [deleted]

4. Wrongful Dismissal/Notice Pay (Duffy, Priestner and Ashton)

5.1 The respondent accepts under the Norton Tool v Tewson [1972] principle, Mr Duffy, Mr Priestner and Mr Ashton will be entitled to pay for their respective notice periods, but the respondent believes that there should be no double recovery for any periods which overlap with 2.2 above.

The Law

6. In most successful unfair dismissal claims the remedy will be an award of monetary compensation which is usually made up of a basic award and a compensatory award: see s118(1)(a) and (b) Employment Rights Act 1996 ("ERA"). The basic award is designed to compensate the employee for the loss of his employment caused by the unfair dismissal by awarding him a sum almost exactly equivalent to a statutory redundancy payment. The compensatory award is intended to reflect the actual losses that the employee suffers as a consequence of being unfairly dismissed.

7. The decision of the Employment Appeal Tribunal ("EAT") in *Optimum Group Services v Muir [2013] IRLR 339* is authority that I should take into account sums paid under a Settlement Agreement by another party in deciding what losses have been sustained by the claimants for the purpose of the compensatory award assessment under s123 ERA. The award under s123 is intended to be compensatory in nature. The Tribunal should not award a sum which exceeds the loss actually suffered as to do so would conflict with the fundamental principle that the same loss cannot be recovered twice.

8. The respondent contends that I should also take into account settlement sums received when I look to the basic award.

9. In *Chelsea Football Club and Athletic Club Limited v Heath [1981] ICR 323 EAT* the Employment Appeal Tribunal ("EAT") said that whether or not a severance

payment made by CFC should be treated as extinguishing liability for a basic award was a "question of construction". If an employer stated clearly that a severance payment was intended to meet any possible liability for basic or compensatory awards that might have been made by a Tribunal then, provided the payment was large enough, it would have no further liability for the basic award. However, as the employer simply made a general payment, particularly one expressed as being "ex gratia" it ran the risk of the Tribunal treating that payment as if it did not refer to an unfair dismissal liability at all. In this case the EAT did set aside the Tribunal's award in respect of the basic award because CFC used the word "compensation" and that was taken to accept that the employer's intention was to compensate H for his rights arising from his dismissal.

10. In *Pomphrey of Sittingbourne Limited v Reed EAT 457/1994*, PS paid R 12 weeks' salary where there had been no obligation to make a payment in lieu of notice, and P argued that that money ought to be offset against the basic award. The EAT rejected this. P could not change its mind and subsequently appropriate a payment to the basic award.

11. In *Boorman v Allmakes Limited [1995] ICR 842* the employer made a payment to include the employee's statutory redundancy entitlement. The Employment Tribunal found that dismissal was not on the basis of redundancy and proceeded to make a basic award. The Court of Appeal rejected A's argument that the ex-gratia payment included a payment referable either to a basic award or as a redundancy payment. A payment expressed to be ex-gratia and to incorporate a statutory redundancy entitlement could not be reinterpreted as incorporating a payment to which the employee would only be entitled to had he been unfairly dismissed.

12. In respect of wrongful dismissal, damages payable following a breach of contract have one basic purpose – to put the claimant (i.e. the innocent party) into a position he would have been had both parties to the contract performed their obligations according to that contract. Damages are generally limited to the period between the dismissal and the point at which the contract could lawfully have been brought to an end by the employer – i.e. the proper notice period in this instance. Damages are subject to the duty to mitigate one's losses.

The evidence

13. At the outset of the hearing, I was presented with an agreed joint hearing bundle of 569 pages. During the course of the hearing the bundle grew significantly to 623 pages. Most though not all of the late documentation was provided by the claimants, but it is difficult to criticise the claimants because, so far as I understand, the respondent has disregarded the case preparation orders and had only provided a finalised hearing bundle around a week or 10 days before the hearing. Mr McDevitt, in particular, adopted a constructive approach regarding the late admission of documentation and evidence and I was content to ensure that he had sufficient time to read and consider the documents and evidence produced late.

14. I also had a number of other documents which included Mr Henry's opening skeleton argument, a copy of the case of *Optimum Group Services* and extracts from Butterworths Employment Law. These documents were helpful, and I numbered them C1 onwards. By the end of the hearing the additional documents presented by

the claimants' side ran to C11 which included the late production of witness statements from Mr Astle.

15. So far as witness evidence, the respondent produced a witness statement of Mr John Francis (who signed and dated his statement at the hearing). The legally represented claimants had provided statements as follows: Mr Birkett (signed and dated 26 October 2023) and Mr Cahill (from 30 October 2023). Mr Astle provided a statement (signed and dated 9 January although handed in on 8 January 2023), a further statement entitled "How I could have stayed at Jones Lighting following the loss of the AGMA contract" (which he signed and dated at the hearing) and a statement in respect of "Job application history post unfair dismissal" (signed and dated on 8 January 2023 which included some appendices). Mr Duffy, Mr Priestner and Mr Ashton did not produce witness statements. When they came to give evidence they confirmed extracts, as appropriate, from their Claim Forms and from their last produced Schedules of Loss.

16. Again, I express my appreciation to the professional representatives for their constructive and sensible approach to dealing with evidence from unrepresented parties without the assistance of witness statements.

17. All witnesses confirmed their witness statements or Claim Form/Schedule of Loss either under oath or by way of affirmation. I permitted supplemental questions from the professional representatives and all witnesses were cross examined and also answered questions from me. The professional representatives asked some supplemental questions, although I was keen to allow a degree of flexibility for unrepresented parties to convey their accounts in full.

18. At the outset of the hearing, I advised the parties clearly that they needed to bring to my attention, either as pre-reading or during the course of their evidence, any documents which they think are relevant to the matters to be decided at the hearing. I said, as a matter of course, Tribunals/Judges do not read the through the whole hearing bundle per se, so if any party thought that there were documents that were relevant and important, then they needed to bring this to my attention either through their witness statements or by raising it with me during the hearing.

19. Insofar as it may be relevant, I placed particular reliance upon any contemporaneous document as this is likely to give a clearer sequence of events because such documents are written at the time. Witness statements are, of course, important but these are written sometime after events and memories do fade; the statements may be written with a degree of reinterpretation of the facts in question. That said, the provision of witness evidence is always better that no statement.

20. Save as to where I state otherwise, the losses address arose from those claimed in the most up to date schedules of loss.

Findings of Fact

21. I adopted the findings of fact of Employment Judge Slater:

> 19. The respondent is a company which undertakes the maintenance and installation of street lighting and associated street furniture. It operates an independent connection

provider. It installs and connects new street furniture to the existing district network operator's cable network.

20. All the claimants worked for the respondent until 31 December 2020. The respondent says [it] told the claimants at the time that their employment with Jones came to an end because there was a TUPE transfer of a service to another contractor, Altitude, and the claimants were assigned to that service. The respondent had lost a contract with the Association of Greater Manchester Authorities (AGMA) following a retendering exercise and Altitude was successful in being appointed as first provider in the tendering exercise.

21. The respondent had depots at various places, including Warrington and Leyland… the respondent operated the Leyland depot before it first won the AGMA contract… Mr Duffy and Mr Ashton worked at the Leyland depot from dates before the respondent won the AGMA contract.

…

23. … The respondent recruited more employees when they were awarded the contract to be able to service [the AGMA] contract.

24. Electricity North West owns the cable network in Greater Manchester and Lancashire. Scottish Power owns it in Merseyside and North Wales. Northern Power Grid owns it in Yorkshire. There was some crossover on borders between regions, for example Barnoldswick which was managed from Leyland although the cable network is from Northern Power Grid, dating back to when the town was in Yorkshire.

25. The kit for each provider was different, although the type of work done for each provider was the same. The respondent kept the kit for Electricity North West at Leyland, the kit for Scottish Power at Warrington and the kit for Northern Power Grid in Huddersfield. Work done under the AGMA contract on the Electricity North West network was done from the Leyland depot since the kit was kept there.

26. About 90% of the work under the AGMA contract was on the Electricity North West network, with up to 8% on the Scottish Power network and the remaining small percentage on other independent provider networks. The claimants did work which was allocated to them. At least some of them, including Mr Duffy, did not know about the AGMA contract until they were told it had been lost and did not know when the work they were doing was done under that contract. The claimants during their employment with Jones worked on various contracts, including but not limited to the AGMA contract.

27. The respondent was successful in retaining the AGMA in a retendering exercise in 2016. The 2016 contract was for a two year term but could be extended for up to a further two years. The contract was extended initially to 31 March 2019 and then to 31 March 2020. Due to the pandemic the contract was extended until 31 December 2020 without retendering. An invitation to tender was made with a return date of 24 August 2020 to carry out services after 31 December 2020.

…

34. Only two LV jointers were included on the list [of possible employees affected by the TUPE transfer]… The percentage of the work of each of the four claimants on this list has been spent on AGMA work as at that time [i.e. 27 July 2020] [was] as follows:
   - Mr Duffy – 67%
   - Mr Ashton – 76%
   - Mr Birkett – 66%
   - Mr Astle – 63%

…

36. There was work which was done from the Leyland depot other than just the work under the AGMA contract. There were more employees based at the Leyland site than employees engaged at one time on work under the AGMA contract…

…

38. On or around 20 November 2020 the respondent was informed that they had not been successful in their tender to be appointed first provider for Lots 1 and 2. Altitude was successful in their bid to be first provider for Lot 1, which was the majority of the work (the Electricity North West work). Lot 2 (the Scottish Power work) was awarded to a Nottingham based contractor, McCann's… McCann's did not take on this work and it was done instead by Altitude…

39. Before the respondent lost the contract, the work under the AGMA contract amounted to approximately 40% of the respondent's turnover. Between the date when the respondent became aware that it had not been successful in tendering for Lots 1 and 2 and 26 November 2020, the directors of the respondent (including Mr Francis) discussed amongst themselves which employees they wanted to retain in the business. If there were notes of these discussions (which would seem likely) they have not been disclosed in these proceedings.
[The notes of discussion in respect of these discussions have not been provided for me either].

40. On 25 November 2020, David Jones, the Managing Director of the respondent, wrote to all Leyland colleagues regarding the AGMA contract, although we cannot tell from the letter (there being no covering email included in the bundle with this document) whether the letter was sent to everyone working at Leyland or to a subset of these employees. He informed them that they had been unsuccessful in their bid for the two main contracts…

42. On 1 December 2020 Altitude replied [to Jones] saying they did not believe TUPE applied…

43. On 4 December 2020 the respondent wrote again to Altitude informing them… there was an organised grouping of 13 employees constituting an economic entity wholly or principally assigned to this activity, and the activities that Altitude would be carrying out were fundamentally the same so TUPE applied…

44. The list of 12 employees… included the six claimants and six other employees… The number dropped from 13 to 12 because an administrative employee left… There were more than these 12 employees based at the Leyland depot – [Mr Birkett] thought there were about 20-25 employees based there at the time.

45. At some time between the employee list being produced in July 2020 and 4 December 2020, Mr Priestner and Mr Cahill and possibly some other employees were added to the list of those employees.

46. In the period from the date the respondent was informed that they had not been successful in their bid until the letter of 4 December 2020, the respondent removed from the July list some employees who they wanted to retain in the respondent's business and who agreed to stay with the respondent. Some employees (including at least Mr Priestner and Mr Cahill) were added to the list…

47. … What is clear… is that the respondent arrived at what it asserted to be the organised grouping of employees which [Mr Francis] described as the "AGMA team", after the respondent learned it had lost the contract rather than before.

…

49. … The respondent chose who, from those working at the Leyland depot, they wanted to keep in their business and identified the remaining employees as being the AGMA team which they asserted would transfer to Altitude by operation of TUPE.

> [Judge Slater identifies a skill set marking to have made "no sense", particularly for the case of Mr McDougall, who worked with Mr Astle].
>
> 52. The claimants and six other employees (together making up the 12 listed on page 859 of the employee liability information sheet) were informed at a meeting on 9 December 2020, or by a telephone call, that the respondent had lost the AGMA contract to Altitude who would take this on from 1 January 2021. The respondent told them that they believed that TUPE applied and that colleagues should expect to be employed by Altitude from 1 January 2021 and their employment with the respondent would end on 31 December 2020. Letters to these employees were sent the same day confirming what had been said. The employees were described as those assigned to the AGMA Electricity North West contract.
>
> 58. In a meeting with staff representatives on 18 December 2020, the respondent told them that the claimants and six other employees should attend Altitude's premises on the first working day in the New Year. The respondent recommended that if they were turned away they should seek legal advice and speak to ACAS.
>
> 59. The claimants attended Altitude's premises on 4 January 2021 but were turned away, being told that Altitude did not believe TUPE applied.
>
> 60. Mr Duffy and Mr Ashton were employed by Altitude within a short period without Altitude accepting that there had been a TUPE transfer, so no employment prior to their start date with Altitude was treated as continuous employment.
>
> 65. The Warrington and Leyland depots are more than 25 miles apart… The respondent still has a Leyland depot, but this is now used for storage and has an office based there which is reduced in capacity.

22. The parties are agreed that the claimants' employment with the respondent ceased on 31 December 2020.

23. The claimants were not paid any redundancy payments, statutory or otherwise.

24. LV [low voltage] Jointers worked on cabling and were more upskilled than Jointers. Mr Francis accepted that generally LV Jointers were paid more than electricians.

<u>Mr Duffy</u>

25. Mr Duffy joined the respondent on 7 November 2011 as an electrical jointer. From October to December 2020, when not on leave, he worked 100% of his time on AGMA contract work from the Leyland depot.

26. On 4 January 2021 Mr Duffy had a discussion with managers at Altitude, as a result of which he was sent an offer of employment that afternoon for employment beginning on 18 January 2021 as an LV jointer. The contract was dated 5 January 2021 and he signed it on his first day of work which was 18 January 2021.

27. Mr Duffy did the same type of work in the same geographical area for the first few months with Altitude as he had done for the respondent. He worked in teams with people who had been employed by, or worked for, the respondent. After a few months, Altitude sent Mr Duffy on jobs in Cumbria as well as other work. This was because he was the jointer who lives closest to Cumbria. When doing work in

Cumbria, he works with other people from Altitude who had not previously worked for the respondent.

Mr Priestner

28. Mr Priestner joined the respondent on 13 May 2020 as a cable jointer. He worked initially from Warrington, predominantly on Scottish Power faults work. He was furloughed for a period in 2020. When Mr Priestner returned to work in August 2020 he went to work at the Leyland depot. There was no documents presented to evidence a permanent change to his normal place of work. In October to December 2020, Mr Priestner worked 100% of his time on AGMA contract work.

Mr Ashton

29. Mr Ashton began working for the respondent on 26 October 2009 as an apprentice electrician, then as a fully qualified electrician and live cable jointer. He worked from the Leyland depot, starting before the respondent had commenced the AGMA contract. He worked on contracts for other clients as well as AGMA work (for example Cheshire East, Cumbria and Shropshire). He worked exclusively on the AGMA contract work in the period October to December 2020.

30. Mr Ashton went to work for Altitude as a cable jointer starting on 11 January 2021. He had provided his CV to Altitude before he attended their premises on 4 January 2021. He was offered work after 4 January 2021. He worked on the contract for Cheshire East (Ringway Jacob) rather than on AGMA work for Altitude.

Mr Astle

31. Mr Astle began working for the respondent as an apprentice electrician on 18 April 2017. Although Mr Astle was not aware of this, I accept that the respondent's reason for recruiting an apprentice was as part of its compliance with commitments to social values, which included a commitment to promote employment, which formed part of the framework award criteria.

32. Mr Astle went out with a qualified electrician (Mr McDougall) on any jobs which Mr McDougall was doing. Mr Francis suggested that Mr Astle had gone out with other employees at other times, but Mr Astle's evidence had not been challenged that he was always with Mr McDougall. As an apprentice electrician, Mr Astle would need to be working with a qualified electrician. I find that, whenever both were working, Mr Astle worked with Mr McDougall. At other times, he spent time sweeping and tidying up the yard at the Leyland depot, i.e. he worked exclusively with Mr McDougall.

33. When working with Mr McDougall, Mr Astle would use Mr McDougall's iPad to record his time. When working in the yard, because he did not have his own iPad, he would tell a supervisor what he was doing and rely on the supervisor to complete the timesheet records.

34. I accept Mr Astle's evidence that, despite time records showing that he worked 100% on AGMA contract work in October to December 2020, there were some days in that period when he was sweeping and tidying up the yard rather than

being out on contract work. Mr Astle understood that Mr McDougall was never told that he would be transferred (under TUPE) to Altitude. No-one told Mr Astle why he would be transferred but Mr McDougall was not being transferred, pursuant to TUPE.

35. On the basis of Mr Francis' evidence, I find that Mr McDougall was not included in the group which the respondent asserted was to be transferred to Altitude because the respondent wished to retain him.

36. Mr Astle has not completed his apprenticeship by the time of his dismissal.

Mr Birkett

37. Mr Birkett joined the respondent in April 2014 as a Street Lighting Manager following a TUPE transfer. His continuous employment began on 1 January 2000. He began working for the respondent from its Widnes depot. When this closed in late 2019, he moved to work from Leyland.

38. When Mr Birkett joined the respondent, he was manager of the Street Lighting Team. In August 2016 he took on the role of Health and Safety Manager. From November 2019, following a restructure, Mr Birkett was transferred to the Leyland site to oversee and run the streetlighting department from the Leyland depot, initially alongside another manager who was subsequently promoted. I accept that Mr Birkett retained his health and safety responsibilities alongside his supervisory role.

39. From November 2019, Mr Birkett remained managing the streetlighting department, working from the Leyland site. I accept Mr Birkett's evidence (which is not contradicted by any documentary evidence) that he was not described as Contract Manager of the AGMA contract, although managing that contract came within his responsibilities from November 2019 as supervisor of the streetlighting team at the Leyland site. He managed all the employees at the Leyland site, which he estimated to be 20-25 in December 2020 and not just the 12 employees who the respondent asserts to be the AGMA team. Mr Birkett was working exclusively on the AGMA contract after July 2020 until the contract expiry on 31 December 2020.

Mr Cahill

40. Mr Cahill joined the respondent on 13 May 2013 as a cable jointer. This was connecting streetlighting appliances to the electricity network. Before 2020, he was based in Warrington, doing work on the Scottish Power network. In early 2020, Mr Cahill moved to Leyland to do Electricity North West work. After the move, he worked exclusively on the AGMA contract work.

41. I accept the unchallenged evidence in Mr Cahill's supplementary witness statement that he was led to believe that the assignment to Leyland was temporary. I have not been shown any documentary evidence that there was a permanent move.

Determination

42. The compensatory award is made pursuant to section 123 ERA. The Tribunal can award such amounts as I consider to be just and equitable having regard to the loss sustained and claimed by the claimants.

<u>The *Polkey* argument</u>

43. This is identified in 2.2.4 and 2.2.5 of the list of issues. It derives from the House of Lords decision in *Polkey v AE Dayton Services Ltd [1987] IRLR 503*. Where claimants succeed in unfair dismissal, their compensatory awards can be reduced to reflect the likelihood that they would have been fairly dismissed in any event. My analysis of the *Polkey* situation is as follows.

44. The claimants contend that there should be no deductions for any *Polkey* award. The respondent suffered a loss of turnover following the loss of the AGMA contract. Employment Judge Slater put this at 40% (paragraph 39). Mr Francis said in evidence this was 30%. The contract for Scottish Power work in Merseyside and North Wales was not affected by the AGMA contract and I note that nobody was made redundant after the loss of the AGMA contract from the Warrington depot, or indeed from any other depot. Employment Judge Slater was very clear in her assessment that only 3 individuals were directly assigned to the AGMA contract (see paragraph 126) and these were Mr Duffy, Mr Ashton and Mr Astle. Given that I accept a redundancy situation may have arisen, it is not inevitable that these 3 identified claimants would have been made redundant.

45. For the reasons stated below, I determine that the 3 other claimants, Mr Priestner, Mr Birkett and Mr Cahill, were not likely to be made redundant, not least because Mr Priestner and Mr Cahill were LV Jointers with accreditation to work with Scottish Power and the respondent sought to recruit early in the New Year, on 11 January 2021 according to the Linked-In advert [see hearing bundle page 487] . Whether or not these employees had accreditation to work on the contracts recruited for, such accreditation could have be arranged without significant difficulty.

46. As Employment Judge Slater's determination was based on Mr Francis' earlier evidence, I prefer to rely upon his evidence to this hearing and he said that as there was a 30% reduction in the turnover of the respondent, this is likely to be more accurate because this hearing dealt with the issue more directly and Mr Francis has had the opportunity with the passage of time to reflect on the exact amount of losses. A reduction of turnover does not inevitably mean a commensurate reduction in the workforce. However, the Polkey reduction is an exercise in speculation, and although somewhat crude, given that I accept Mr Francis' assertion that the head count needed to come down and the respondent had demonstrated some effort to unload staff to Altitude, I can see of no fairer way to evaluate this hypothesis. I make a determination that there was a 30% chance in being made redundant in any event for those 3 claimants identified by Judge Slater.

47. The fact that Mr Henry points to no redundancies being made is not outweighed by the reduction in the overall workforce following the respondent's attempt to offload these employees on Altitude.

48. As to when the redundancies may have occurred, there were possible disputes about the pools of potentially affected employees and any selection criteria, particularly as evident in the contentions of the claimants that they would not necessarily have been made redundant. There was also a question of suitable alternative employment, particularly as the respondent advertised for staff in January

2021. The respondent chose not to consult on redundancies prior to the dismissals. I believe that once the claimants had been turned away from Altitude's premises the respondent could or should have undertaken a redundancy consultation exercise. They had consulted in respect of TUPE so quite clearly the reason for a possible redundancy process was clear and apparent. The respondent would, no doubt, have needed to obtain professional advice on how to proceed further and they would need to have identified a relevant pool of affected employees, develop a redundancy criterion, consult about this, consult about suitable alternative employment and then made their decision. I determine that this would have taken approximately one month.

49. There was some formal of consultation about the TUPE transfer between the respondent and the claimants because Mr Birkett and Mr Cahill were appointed as employee representatives and on 7 December 2020 the respondent reiterated its position that there was a TUPE transfer and that the employees should report to Altitude after that date. TUPE consultation does not equate to redundancy consultation and the respondent had the opportunity to consult with the claimants about a possible redundancy as an alternative. However, they chose not to do so.

50. Following this then I determine Mr Duffy, Mr Ashton and Mr Astle were likely to be the employees affected by redundancy, so they faced a 30% chance of being dismissed fairly after 1 month.

<u>The possible deduction of settlement money received from another party from the basic awards</u>

51. All claimants initially brought claims for unfair dismissal against both the respondent and Altitude. They settled their claims against Altitude by way of an ACAS COT3 Settlement Agreement. Altitude took no further part in these proceedings. The payments made pursuant to the Altitude Settlement Agreements were made without admission of any liability by Altitude nor did each payment reference the basis upon which the payments were made, other than withdrawing proceedings against Altitude.

52. Perhaps unsurprisingly the claimants that were represented by their trade union were paid significantly more than those who were not. The payments made were as follows:

Mr Duffy - £1,000
Mr Priestner - £500
Mr Ashton - £1,251.50
Mr Astle - £5,000
Mr Birkett - £20,000
Mr Cahill - £8,000

53. The respondent contends that, in addition to taking into account the Altitude settlement for the compensatory awards, I should take into account the settlement sums received from Altitude when I make a basic award.

54. The basic award does not compensate actual loss suffered and it must be calculated in accordance with a formula set out in s119 ERA, subject only to the provision in ss120-122 ERA – which do not apply to these circumstances.

55. I refuse to reduce any award under section 119 ERA by setting off payments made by another party under a settlement agreement. I make this determination because the wording of s122 ERA is clear. Had the intention of Parliament been different and if such an award ought to have been made on a just and equitable basis, then that would have been provided for in s122 ERA.

56. Mr McDevitt has argued that I should be mindful of the principle of *double recovery*, and that even if I make such a deduction the claimants would not lose out because they would get an equivalent to the basic award only part-paid by another source.

57. The principle of recovery from the basic award was not even argued in *Optimum Group Services* by the respondent. In its attempt to avoid supposedly over-compensating the claimants, the respondent seeks to obtain a financial benefit of paying less compensation for unfairly dismissing the claimant by appropriating a payment for a purpose for which it was never intended.

58. I am mindful that the purpose of the basic award is to compensate loss of employment. It is the respondent that put the claimants in this position by unfairly dismissing them, so they ought to accept the consequences of their actions and compensate the claimants accordingly. Any less would undermine the purpose of unfair dismissal in the public's perception. Taking into account payments from other sources would allow errant respondents the opportunity to avoid the consequences of their own behaviour and that is something I am not prepared to countenance.

59. I am not at all disturbed by the claimants achieving a supposed or possible "double recovery" according to the respondent, because that is not how I perceive it. The payment made through the Altitude COT3 were not expressed in any way to be in settlement of a basic award. Had they been so, then according to *Heath* and *Pomphrey* above then the respondent would have had a stronger argument that the amounts should be taken into account when calculating the basis award. That said, the respondent was not part of that agreement, and the amounts were not paid by the respondent. In the circumstances of the basic award, I see little or no justification for the respondent taking the benefit of an agreement for which they had no input or made no contribution.

<u>Working for Altitude as mitigating losses</u>

60. Mr McDevitt contends that Mr Astle, Mr Birkett and Mr Cahill could have got work on a self-employed basis with Altitude fairly quickly. I reject this proposition. Although many of the respondent ex-employees went to work for Altitude on a self-employed basis, I do not think it is reasonable to expect these ex-employees to work for Altitude because they turned up for work with Altitude on 4 January 2021, Altitude denied that there was a TUPE contract and sent him away. Whilst I accept that there was work to be done on the AGMA contract and Altitude recruited different employees and/or workers on different terms, Altitude had effectively slammed the door in their faces. I am surprised that the respondent argued that it would be reasonable for an employee of the respondent to work for Altitude in such circumstances, and this argument does them little credit. The fact that some employees were able to accept Altitude's new terms (perhaps through gritted teeth)

does those employees some credit, or perhaps it more reflects the economic reality of hardworking people needing to pay their bills. Anyway, I determine that any reluctance to have anything to do with Altitude is not a failure to mitigate his losses.

<u>Mr Duffy</u>

61. Mr Duffy produced a scant Schedule of Loss. He did not have the benefit of professional representation. Mr Duffy restarted employment on 18 January 2021, so he was out of work for only a short period of time. He did not receive any Jobseeker's Allowance.

62. The unfair dismissal basic award should be £7,263.00, which was agreed by the respondent.

63. So far as his unfair dismissal compensatory award, the loss of statutory rights was also agreed at £400.

64. Mr Duffy did not identify his notice pay on his Schedule of Loss, but it was quite clear from his Claim Form that he intended to pursue this complaint, because he identified his claim for notice pay separately. So, I am willing to make a payment in this regard. Mr Duffy had 9 full years' service, so he was entitled to 9 weeks' notice pay, under s86 ERA. Where an employee has been unfairly dismissed without notice, and who had taken up fresh employment during what would have been his notice period, he was entitled to receive a sum equivalent to notice pay as part of his unfair dismissal compensation without giving credit for the monies he earned from the new employment: see *Norton Tool Co Ltd v Tewson 1972 ICR 501 NIRC* and *Voith Turbo Ltd v Stowe 2005 ICR 543 EAT*.

65. There is a significant chance, which I put at 30%, that Mr Duffy would have been made redundant in any event, after 1 month. His 9-week notice period would have then commenced. I note the generic contract of employment in the hearing bundle has a payment in lieu of notice ("PILON") provision. If an employer relies upon a PILON provision, then such payment is paid promptly without waiting to see if the employee has mitigated his losses. However, I am not persuaded that the respondent would have immediately or summarily dismissed Mr Duffy because redundancies presume termination on notice, and I have not been given copy of a signed contract for Mr Duffy showing a PILON provision applicable for this claim. Mr Francis said in evidence that redundancies were rare for the respondent, the last one being in 2019, and there was no evidence of such arrangements to offset notice payments operating. So, as Mr Duffy obtained another job within his notice period, I award him compensation for his notice at 9 weeks x £551.00 (net) = £4,959.00. The respondent is responsible for the tax payable to HM Revenue & Customs and will need to give Mr Duffy a wage slip or some other documentary corroboration to confirm that the tax in excess of the figure I have awarded has been paid to the HMRC. Although Mr Duffy is entitled to recover his notice pay under both unfair dismissal compensation and wrongful dismissal (breach of contract), he is not entitled to double recover, i.e. be paid for the same losses twice.

66. Mr Duffy's compensation is therefore:

		£	£	£
Basic award	-		7,263.00	

Compensatory award			
- Loss of statutory rights	400.00		
- Net notice pay/wrongful dismissal	4,959.00		
Less Altitude's settlement[1]	(1,000.00)		
		4,359.00	
Total			11,622.00

Mr Priestner

67. Mr Priestley produced a more detailed schedule of loss together with a brief remedy statement.

68. Mr Priestner was employed 7 years and claimed a basic award of £5,649 which the respondent agreed.

69. In respect of the compensatory award, the respondent agreed a figure of £400 for loss of statutory rights.

70. Mr Priestner is entitled to 7-weeks' notice pay following the principles set out above in the same way as with Mr Duffy's case. This is 7 x £551.00 (net weekly wage) = £3,857.00. Again the respondent is responsible for the tax on this award and will need to provide Mr Priestly with a payslip and/or letter to confirm the tax paid to HMRC.

71. The possible Polkey deduction does not apply to Mr Priestner because Judge Slater specifically excluded it at paragraph 124 of her judgment. Nevertheless, Mr Priestner started a new job on a self-employed basis after 6-week unemployment. He continued with this self-employment for approximately 46 weeks to around the anniversary of his dismissal.

72. Mr Priestner claims loss of annual leave entitlement in his new role. He claims 5.6 weeks at £551 net. Mr Priestner does not claim loss of earning and he has not provided me with details of his self-employment wages. Therefore, I cannot assess the totality of this loss. Holiday pay often rolled up with a new hourly or week wage rate, where this is not, if the claimant is a worker and therefore entitled to the benefit then the claim rests against the new employer/principal under the Working Time Regulations. If he is not a *worker,* then he is not entitled to be paid annual leave. I am not going to award compensation for this claimed loss.

73. In respect of his loss of benefit, Mr Priestner claims loss of life insurance, i.e. death in service benefit. He has not obtained a separate insurance policy and if he did, I would be inclined to compensate him for this cost as he may be able to demonstrate a direct financial loss attributable to his dismissal. However, his claims this as a loss he enjoyed previously but did not replace. He said, which I believe, his new self-employment did not give him this benefit. However, I am unable to assess his renumeration package because he has not given me the details. I believe Mr Priestner is cherry picking his losses without giving me the opportunity to assess how worse off or better off he was. Therefore, under the circumstances, I am not going to compensate him for this loss.

[1] Pursuant to *Optimum Group Services PLC v Muir [2013] IRLR 339*

74. Loss of pension is a separate head of loss and I treat this differently from loss of benefits. It is valued in a way similar to loss of earning. Mr Priestner lost his employer contributions to his pension scheme. He valued this at £200 per month (which is less than the 8% employer contribution identified by Mr Birkett) and the respondent has not produced any counter schedule of loss or documentary evidence to dispute this figure. Mr Priestly claims 12 months losses. The period of compensation for 12 months appears reasonable and in order to me as this coincides with his period of unemployment and his self-employment. 12 months losses for this head of loss appears both reasonable and proportionate. I award compensation at 12 moths x £200.00 = £2,400.

75. I award Mr Priestner compensation as follows:

		£	£	£
Basic award	-		5,649.00	
Compensatory award				
- Loss of statutory rights		400.00		
- Net notice pay/wrongful dismissal		3,857.00		
- Loss of pension		2,400.00		
- Less Altitude's settlement[2]		(500.00)		
			6,157.00	
Total				11,806.00

Mr Ashton

76. Mr Ashton also provided a brief schedule of loss.

77. His basic award was agreed at £9,770.79.

78. So far as the compensatory award, as with the other cases I award £400 loss of statutory rights.

79. Mr Ashton was employed for a little over 11 full years, so he is entitled to 11-weeks' notice pay following the principles set out above. This is 11 x £551.00 (net weekly wage) = £6,061.00. As the award is made net, the respondent is responsible for the tax and will need to provide Mr Ashton with a payslip and/or letter to confirm the tax paid to HMRC.

80. Mr Ashton started a new job on a self-employed with Altitude after 1-week unemployment and he claims no loss of earnings or pension loss.

81. Mr Ashton claims loss of annual leave entitlement in his new role in a manner similar to Mr Priestner and for the same reasons I reject this aspect of his claim.

82. Mr Ashton claims interest on his award and there is no provision for this at this stage. He also claims compensation for stress and there is no remedy or compensation available for injury to feeling/personal injury for unfair dismissal.

[2] Pursuant to *Optimum Group Services PLC v Muir [2013] IRLR 339*

83. I calculate Mr Ashton compensation as:

	£	£	£
Basic award -		9,770.79	
Compensatory award			
- Loss of statutory rights	400.00		
- Net notice pay/wrongful dismissal	6,061.00		
- Less Altitude's settlement[3]	(1,251.50)		
		5,209.50	
Total			14,980.29

Mr Astle

84. Mr Astle produced a revised Schedule of Loss during the hearing and 3 statement dealing with his dismissal and ensuing financial losses. He did not have the benefit of professional representation.

85. Mr Astle claimed a basic award of £328.00 which I accept.

86. In respect of his compensatory award, I give £400 for loss of earnings in line with his colleagues.

87. Mr Astle's contract provided for 1-weeks' notice for every full years' service up to 12 years. Therefore, he was entitled to 2-weeks' notice at the time of his dismissal: 2 x £328.00 = £656.00

88. Following his dismissal by the respondent, Mr Astle said that he found it very difficult to find a full-time job as an apprentice electrician. He said that he has only 2 terms of college left to complete, and potential employers were not interested in hiring apprentice electricians so near to the end of their apprenticeship. He said that he worked 7 months for Frost & Farrell on a self-employed basis between 21 January 2022 and 31 August 2022. This work started over 1-year after his dismissal.

89. Mr McDevitt referred to correspondence from the respondent from October 2019 which demonstrated a lack of application from Mr Astle to his apprenticeship portfolio and his NVQ qualification. This culminated in a formal written warning in January 2020. Mr Astle's college tutor observed on 14 December 2020 that Mr Astle has not caught up with his college year by the time of his impending dismissal and he recommended a "break in learning" so that his apprenticeship would not run out of time. Mr McDevitt contended that the if Mr Astle's experienced difficulties in transferring his apprenticeship, then it was entirely due to his own making. Furthermore, his lack of application was reflected in his rather paltry or tardy efforts in looking for work.

90. In a statement detailing his job applications Mr Astle identified 4 job applications in the year before commencing work with Frost & Farrell. This was an application on 11 January 20221 for Amery; an application for E ON UK on 24 February 2021, an application on 4 March 2021 and a further application for E ON UK 16 June 2021.

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[3] Pursuant to *Optimum Group Services PLC v Muir [2013] IRLR 339*

91. I am not satisfied that Mr Astle has mitigated his losses. His efforts to find alternative work is insufficient and therefore not acceptable. I thought carefull about not awarding Mr Astle any compensation in respect of his claim for loss of earnings, but I assessed that this would be disproportionate. I accept that it might be harder to get work as an apprentice nearing the end of his apprenticeship, so I assess that, with a reasonable amount of effort, Mr Astle should have obtained alternative work within say, 12 weeks, i.e. around 3 months. I recognise that this is an arbitrary date, based on my perception of the job market, but this assessment is fair in the circumstances. For this loss, I award 12 weeks x £328.00 weekly wage = 3,936.00. From this figure I need to deduct 30% to reflect the *Polkey* deduction identified above applicable to Mr Astle. Therefore the figure is reduced to £2,755.20

92. Mr Astle compensation is therefore:

	£	£	£
Basic award -		328.00	
Compensatory award			
- Loss of statutory rights	400.00		
- Net notice pay/wrongful dismissal	656.00		
- Loss of earnings	2,755.20		
Less Altitude's settlement[4]	(5,000.00)		
		zero	
Total			328.00

Mr Birkett

93. Mr Birkett was a supervisor and Health and Safety Manager for the respondent. According to Mr Birkett's evidence, which I accept, he was a Health and Safety Manager for the whole company, and he would need to travel to all sites, even as far as Bridlington on the North Yorkshire coast. I accept that he was the only supervisor with health and safety qualifications out of 8 or 9 supervisors across the company, and that Mr Birkett had Scottish Power accreditation and that the respondent had advertised for Scottish Power accredited LV Jointers in January 2021.

94. Mr Birkett produced a detail schedule of loss together with a detailed witness statement. His basic award is agreed at £13,719.00

95. So far as the compensatory award, loss of statutory rights is £400.

96. Mr Birkett was employed 20 years at the termination of his employment, so his statutory notice period is 12 weeks. Coincidently, Mr Birkett obtained another job with BT and started work 12 weeks after his dismissal, which is good mitigation in the circumstances. I pay his immediate loss of earnings in respect of his notice period (he cannot be compensated twice fort the same losses): 12 weeks x £510 (net pay) = £6,120.00.

97. Once he started work his shortfall in wages was £38.46 per week, equating to £2,000 less per annum on an annual salary of £38,740. Mr Birkett's job was working

[4] Pursuant to *Optimum Group Services PLC v Muir [2013] IRLR 339*

largely with young people in a socially useful context, and he enjoyed that job. Nevertheless, he was a man of 52 years of age with significant length of service with the respondent so he may not have been perceived on the job market as being particularly versatile or adaptable in the workplace. I accept that this is reasonable mitigation in the circumstances. Mr Birkett claims 40 weeks' losses (to the end of 2021) so I accept that this is reasonable mitigation as the losses do not run excessively. Therefore, his loss of earnings are: 40 weeks x £38.46 (shortfall in pay) = 1,538.40.

98. In a manner similar to Mr P{riestner, Mr Birkett claims Loss of life insurance and BUPA. Mr Birkett has not replaced that cover, so I am not satisfied that he has demonstrated a pecuniary loss. I appreciate that he may be aggrieved by missing out on these benefits but as he has not sought alternative cover, I do not compensate this loss.

99. At the respondent, Mr Birkett had a company car (a Toyota Avensis). He used this for personal use. He bought a replacement vehicle (a Vauxhall Astra) which is good mitigation. His new employer does not provide a company car. Ordinarily I would look to a P60 to assess the value of this company car because HMRC would provide an assessment of the value for tax purposes. Mr Birkett has not provided a copy of his P60 and Mr Henry instead relies upon the website of Nimble Fins Car Insurance (giving an average cost of running a car in the UK as £3,566 pa). After subtracting petrol and driving lessons this gives an annual assessment of £2,108. Mr McDevitt says that the claimant has not been able to provide proper documentation so I should regard him as not proving his case and disallow any claim in this regard. I do not and I reject Mr McDevitt's approach. There is a clear financial loss in this regard. I am confident that had Mr Birkett provided a copy of his P60 it would be higher than the amount he claimed, but I am willing to go on the lesser figures proffered.

100. Mr Birkett quantified his employer's pension contribution at 8%. His immediate loss of pension was 8% of 12 weeks of his gross weekly wage of £745 = £715.20. He was not permitted to join his new employers pension scheme until the completion of his 6-months' probation. So, this shortfall is 8% of 26 weeks at £745 = £1,549.60. The claimant's ongoing loss of pension equated to £160 pa. Loss of pension are usually calculated in line with loss of earning. Save as for truly exceptional circumstances, we do not award lengthy ongoing loss of earnings/pension. There has to be some cut off point and this is often arbitrary. 1 years is usually fair. Mr Birkett has claimed 1 year loss of earnings so I will use that duration. This leaves 3 months pension shortfall: £160 divided by 12 x 3 = £40. So total pension loss is £715.20 + £1549.60 + £40 = 2,304.80

101. I award Mr Burkett compensation as follows:

	£	£	£
Basic award -		13,719.00	
Compensatory award			
- Loss of statutory rights	400.00		
- Net notice pay/wrongful dismissal	6,120.00		
- Loss/shortfall of earnings	1,538.40		
- Loss of car benefit	2,108.00		
- Loss of Pension	2,304.80		

Less Altitude's settlement[5]	(20,000.00)		
		Zero	
Total			13,719.00

Mr Cahill

102. Mr Cahill was employed as a LV Jointer and according to Judge Slater he was not part of any designated AGMA workforce at Leyland. His usual work was with Scottish Power in Merseyside and North Wales and he was normally part of the Warrington depot. According to Mr Cahill's evidence (which I accept) he had the most authorisations of the 17 LV Jointers across the company so he could work on most if not all of the contracts within travelling distance from his house. He had Scottish Power accreditation and given that the respondent advertised for staff for this contract (according to Mr Priestner's evidence, which I accept, and hearing bundle page 487) there was no chance of him being made redundant.

103. Mr Cahill's basic award is accepted at £3,766.

104. In respect of his compensatory award, I award £400 for loss of statutory rights.

105. Mr Cahill was employed for 7 years at the termination of his employment, so his statutory notice period is 7 weeks. I pay his notice period on a similar basis to Mr Duffy above: 7 weeks x £551 (net pay) = £3,857.00.

106. I accept that Mr Cahill was out of work for 4 weeks before registering as self-employed and he then worked through an agency. His initial loss of 4 weeks is covered for in his notice period and he cannot be doubly compensated for this.

107. Mr Cahill's said that his financial losses persisted throughout his self-employment. He continued as self-employed through agency work so his employment was quite precarious. However, Mr Cahill did not detail his loss of earning on his schedule of loss or present documentary corroboration to support his income. I accept that Mr Cahill kept his ear to the ground in terms of looking for other employment, but there is no documentary evidence to suggest he did any more. Mr Cahill gained employment in September 2023 which is 2 years 7 months after his dismissal from the respondent. Whilst, the onus is on the respondent to establish that the claimants have not mitigated their losses, Mr Cahill does need to establish his losses and Mr Cahill does not do this with the schedule of loss proffered and the lack of proper documentation. I suspect Mr Cahill has not quantified this properly because most or all of this loss would be extinguished by giving credit for the Altitude settlement.

108. Mr Cahil claims loss of annual leave entitlement in his new role in a manner similar to Mr Priestner above and for the same reasons I reject this aspect of his claim. I also reject the claim for death in service benefit because this no replacement cover was purchased to establish an actual financial loss.

[5] This extinguishes Mr Birkett's compensatory award, pursuant to *Optimum Group Services PLC v Muir [2013] IRLR 339*

109. I do award Mr Cahill 12 months loss of pension on the same basis for that of Mr Priestly above: 12 x £200 per month = £2,400.

110. Therefore, I award Mr Cahill compensation as follows:

	£	£	£
Basic award -		3,766.00	
Compensatory award			
- Loss of statutory rights	400.00		
- Net notice pay	3,857.00		
- Loss of Pension	2,400.00		
Less Altitude's settlement[6]	(8,000.00)		
		Zero	
Total			3,766.00

Employment Judge Tobin
Date: 19 February 2024

JUDGMENT SENT TO THE PARTIES ON
Date: 29 February

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FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions
All judgments and written 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.

[6] Pursuant to *Optimum Group Services PLC v Muir [2013] IRLR 339*

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: **2402953/2021 & 2405618/2021 & 2405917/2021 & 2405597/2021 & 2407228/2021 & 2407229/2021**

1. Mr Barry Duffy
2. Mr Andrew Priestner
3. Mr Christopher Ashton v Jones Lighting Limited
4. Mr James Astle
5. Mr Colin Birkett
6. Mr Liam Cahill

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: 29 February 2024

"the calculation day" is: 1 March 2024

"the stipulated rate of interest" is: **8%**

Mr P Guilfoyle
For the Employment Tribunal Office

INTEREST ON TRIBUNAL AWARDS

GUIDANCE NOTE

1. This guidance note should be read in conjunction with the booklet, 'The Judgment' which can be found on our website at
www.gov.uk/government/collections/employment-tribunal-forms

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment tribunal awards (excluding sums representing costs or expenses) if they remain wholly or partly unpaid more than 14 days after the date on which the Tribunal's judgment is recorded as having been sent to the parties, which is known as "the relevant decision day".

3. The date from which interest starts to accrue is the day immediately following the relevant decision day and is called "the calculation day". The dates of both the relevant decision day and the calculation day that apply in your case are recorded on the Notice attached to the judgment. If you have received a judgment and subsequently request reasons (see 'The Judgment' booklet) the date of the relevant judgment day will remain unchanged.

4. "Interest" means simple interest accruing from day to day on such part of the sum of money awarded by the tribunal for the time being remaining unpaid. Interest does not accrue on deductions such as Tax and/or National Insurance Contributions that are to be paid to the appropriate authorities. Neither does interest accrue on any sums which the Secretary of State has claimed in a recoupment notice (see 'The Judgment' booklet).

5. Where the sum awarded is varied upon a review of the judgment by the Employment Tribunal or upon appeal to the Employment Appeal Tribunal or a higher appellate court, then interest will accrue in the same way (from "the calculation day"), but on the award as varied by the higher court and not on the sum originally awarded by the Tribunal.

6. 'The Judgment' booklet explains how employment tribunal awards are enforced. The interest element of an award is enforced in the same way.