Case Number: 6018773/2025

EMPLOYMENT TRIBUNALS

Claimant: Claire Roberts

Respondent: Chesterfield Borough Council

Heard at: Nottingham ET (by CVP) **On:** 31 July 2026

Before: Employment Judge Ost (sitting alone)

Representation
Claimant: Mr Alex Shellum (Counsel)
Respondent: Mr Julian Milford KC (Counsel)

RESERVED JUDGMENT

After consideration of the evidence provided and hearing from the parties the judgment of the Tribunal is as follows:

1. The complaint of unauthorised deduction from wages is well founded and succeeds.

2. The Respondent made unauthorised deductions from the Claimant's wages in breach of section 13 of the Employment Rights Act 1996 in the gross sum of £1,737.11. The Respondent must pay the total sum of £1,737.11 to the Claimant.

REASONS

Introduction

3. The Respondent is the local government authority for the borough of Chesterfield. The Claimant is employed by the Respondent under multiple different contracts. The claim is about whether the Claimant has been paid the correct wages for the some of the hours of work she has undertaken for the Respondent under these contracts. The central issue is the construction of the contractual entitlement to pay for those hours under the relevant contract(s) of employment.

4. The Claimant commenced early conciliation on 11 March 2025 ("Day A") and the early conciliation certificate was issued on 22 April 2025 ("Day B").

5. On 20 May 2025 the Claimant presented a claim form ET1 in which she brought a complaint of unauthorised deductions from wages (also known as unlawful deductions from wages) under section 13 of the Employment Rights Act 1996. Within that claim form the Claimant referred to being employed under two contracts, stating that she is "*employed on two separate contracts of employment. One contract is for 18.5 hours with Neighbourhoods as a Housing Officer, and the other is a secondment contract with the Enforcement Office for the Community Safety Partnership Team, this contract is also for 18.5 hours*."

6. The Respondent submitted a response form dated 28 January 2026 in which it indicated that it resisted the complaint.

7. A preliminary hearing took place before Employment Judge Price on 29 January 2026. At that hearing the claim was amended by consent to include deductions allegedly made to the Claimant's pay from October 2023 until October 2025.

8. The parties cooperated in the preparation of a bundle of 523 pages.

The hearing

9. This was a public hearing in which all parties attended by CVP. The Claimant attended and was represented by Mr Shellum of Counsel. The Respondent was represented by Mr Milford of Counsel and Ms Newman (Solicitor) and Mrs O'Neil, a Director of the Respondent also attended.

10. Mr Shellum and Mr Milford helpfully provided their respective written submissions/skeleton argument, for which the Tribunal expresses its thanks.

11. The parties also helpfully provided an agreed bundle of authorities which included:

Kennedy v Hereford & Worcester County Council [1985] 11 WLUK 162 (IT)

Lewis v Surrey County Council [1988] AC 323

Group 4 Nightspeed v Gilbert [1997] IRLR 398

Investors Compensation Scheme Ltd v West Bromwich Building Society [1998] 1 WLR 896

Pervez v MacQuarie Bank [2011] IRLR 284

Arnold v Britton [2015] AC 1619

Royal Mail Group Ltd v Communications Workers Union [2017] EWHC 2548 (QB)

Wood v Capita Insurance Services Ltd [2017] AC 1173

Academia de Studii Economice din Bucureşti v Organismul Intermediar pentru Programul Operaţional Capital Uman – Ministerul Educaţiei Naţionale [2021] ICR 1293

Uber BV and ors v Aslam and ors [2021] ICR 657

MRC v Atholl House Productions Ltd [2022] ICR 1059

Tesco Stores Ltd v USDAW [2024] UKSC 28, [2024] IRLR 998

12. The Tribunal received witness evidence from the following witness for the Claimant:

    12.1. The Claimant herself.

13. The Tribunal received witness evidence from the following witness for the Respondent:

    13.1. Rachel O'Neil – the Respondent's Director responsible for Digital, HR and Customer Services;

14. Each witness provided a prepared witness statement. The Tribunal read those statements in advance. Each of the witnesses attended in person to give evidence under oath and made themselves available for cross examination. Each of those witnesses were cross examined by the other party and the Tribunal also had the opportunity to ask questions.

15. The Tribunal checked whether any participants could foresee any barriers to their full participation so that it could consider whether any reasonable adjustments were appropriate. Mr Shellum explained that the Claimant has ADHD and, as a result, some questions may present difficulties which require some assistance, and, she may need additional breaks. The Respondent did not object to these adjustments. These adjustments were in line with the guidance within the Equal Treatment Bench Book and the Tribunal considered them to be in accordance with the overriding objective in rule 3 of the Employment Tribunal Procedure Rules 2024, in particular by putting the parties on an equal footing. On this basis these adjustments were implemented. The Tribunal asked the Claimant would indicate if she was struggling with a question or if she needed a break.

16. The Tribunal observed the Claimant when she gave evidence, which lasted approximately 30 minutes. The Tribunal noted only one point towards the end of cross examination (after the Claimant was asked to clarify the meaning of an answer she had just given) when she made a reference to 'struggling to focus'. As a result, the Tribunal paused the cross examination and offered the Claimant the opportunity to have a short break. She responded that she was fine and preferred to continue. Mr Milford also confirmed that he had almost completed his cross examination in any event. On that basis the Tribunal was content to continue for the final couple of minutes.

17. No problems were observed with the technology used to facilitate the CVP hearing and none were reported by the participants.

18. Mr Milford raised a preliminary issue as to whether some of the claims actually fell within the pleaded case. Mr Shellum had been unaware of the Respondent taking that position and so the Tribunal allowed the parties a short break so that their respective counsel could discuss the issues.

19. After the break the parties confirmed that they agreed that the Claimant would need to apply for an amendment if she wanted to pursue deductions made from wages paid under a third contract for the role of Enforcement Officer which hadn't been expressly pleaded in the claim form ET1 (in contrast to the Housing Officer contract and the Community Safety Enforcement Officer contract which had been pleaded). The Claimant wished to make an application to amend her claim form to include hours worked under the third contract for the role of Enforcement Officer.

Application for Amendment

20. The Tribunal considered the Claimant's application for amendment in accordance with its power under rule 30 of the Employment Tribunal Procedure Rules 2024. The Tribunal heard representations from both Mr Shellum and Mr Milford.

21. For reasons which it explained orally at the hearing, the Tribunal refused the Claimant's application to amend.

22. The effect of that refusal was that the Claimant could not pursue deductions alleged against hours worked under the third contract for the role of Enforcement Officer which had not been pleaded. The parties indicated that the believed deductions which could not therefore be pursued were those listed in paragraphs 18-26 of the Claimant's witness statement.

The Issues

23. The issues to be decided by the Tribunal in order to determine the complaints of unfair dismissal were set out by Employment Judge Price in his case summary of the preliminary hearing of 29 January 2026 as follows:

List of Issues

1. Unauthorised deductions

1.1 Were the wages paid to the claimant between October 2023 and October 2025 less than the wages she should have been paid?

1.2 In particular

1.2.1 For the purposes of determining the Claimant's rate of pay for any hour worked, in a reference week's period and in excess of 37 hours, were the hours the Claimant worked under her two contracts of employment to be aggregated?

1.3 Was any deduction required or authorised by statute?

1.4 Was any deduction required or authorised by a written term of the contract?

1.5 Did the claimant have a copy of the contract or written notice of the contract term before the deduction was made?

1.6 Did the claimant agree in writing to the deduction before it was made?

1.7 How much is the claimant owed?

Submissions

24. Without prejudice to the detail of Mr Shellum's full written submissions on behalf of the Claimant and his oral elaboration at the hearing, in summary Mr Shellum submitted:

24.1. The wording of the relevant clause means what it says, a worker is entitled to the enhanced rates when they are required to work more than 37 hours per week.

24.2. The natural and ordinary meaning of the clause is that a worker is entitled to the enhanced rates when they are required to work more than 37 hours per week.

24.3. There are no other provisions within the contractual agreement which ties this requirement to work more than 37 hours per week to a unitary contract.

24.4. Other provisions of the Green Book support the Claimant's interpretation including part 3, Section 2, 2.3 and Part 3, Section 2, 2.4 referring to the principle of equal treatment for part-time workers expressed at Part 2, para 8.

24.5. The Secondment Policy states that secondees should not be disadvantaged because they are on secondment and all normal benefits continue to be received except to the extent varied by the Secondment Agreement.

24.6. The reference to meeting employees' 'work life balance needs' recognises that employee's ought to receive enhanced rates where they are expected to work more than 37 hours per week.

24.7. There was little if any evidence of the facts known or assumed by the partied at the time the document was executed. However, Mr Shellum emphasised that the Claimant is supported by her trade union in the proceedings.

24.8. The Respondent says that 43 workers currently work under concurrent contracts, so one would expect that Respondent to expressly address this issue if the 'more than 37 hours per week' requirement was tied to a single contract.

24.9. The Claimant's interpretation does not lack commercial sense as the Respondent asserts on the following broad bases:

24.9.1. Time worked above 37 hours per week would be paid according to the pay grade for the role in which the time in excess of 37 hours was worked.

24.9.2. Under zero hours contracts the worker is not under an obligation to accept the work and so they are not 'required' to work the hours.

24.9.3. The authority provided in **Lewis v Surrey County Council [1987] ICR 982** previously referenced by the Respondent relates to the basis for a statutory entitlement (or 'standing') to bring a statutory claim and provides little support for a contractual analysis of entitlement to pay.

24.10. The Respondent's proposed interpretation seeks to impose an unwarranted gloss on the contractual wording providing the entitlement. If the intention had been to require work more than 37 hours per week under a single contract then the Local Agreement would have said so. The language used within the provision in question refers to the concept of 'hours worked'.

24.11. The Respondent's contention that a term ought to be implied into the contract to require more than 37 hours 'under or pursuant to single contract' as a result of custom and practice should fail: it should so fail on the basis that such a term would not be reasonable due to inequitable amount of additional work a part-time worker with two or more concurrent contracts could be required to work compared to a full time worker without receiving enhanced rates.

24.12. The Tribunal should view the situation through the lens of the modern purposive statutory interpretation laid down by the Supreme Court in **Uber BV and ors v Aslam and ors [2021] ICR 657, SC** because the contractual interpretation is being conducted under the statutory mechanism of section 13 ERA 1996.

24.13. Section 13 ERA 1996 provides a fundamental statutory protection for workers and the Respondent's interpretation which denies the Claimant the right to enhanced overtime rates offends the spirit of the Supreme Court's guidance in Uber so the Tribunal should reject that interpretation.

24.14. In oral submissions Mr Shellum submitted that the provision in question was the only source of overtime rates (i.e. the rate that applied when the Claimant was working more than her normal 18.5 hours in either role). There was no provision which said that overtime for hours 18.5 to 37 in one role would be paid at plain rate. The absence of information on the rate applicable for those overtime hours suggest that this cannot have been the parties'

intention. Therefore any overtime beyond 37 hours in across all contracts would attract the enhanced overtime rates of either time and a half or double time as set out.

24.15. If the Respondent's interpretation was correct then an employee could never be entitled to overtime unless they opted out of the 48 hour maximum working weekthey.

24.16. The numbers of workers affected by this to cause any issues or complexity for the Respondent is very low, approximately 0.4%.

25. In summary, Mr Milford for the Respondent submitted:

25.1. The Respondent paid the Claimant at 'plain time' for the additional hours she worked in her Community Safety Enforcement Officer role.

25.2. It did so because she did not ever work more than 37 hours per week in the Community Safety Enforcement Officer contract. This matched the Claimant's entitlement under the contract.

25.3. The Green Book provides that a part-time employee must work "*a full working week for full-time employees*" before overtime pay enhancement applies, and, the Local Agreements reflect the same principle by requiring part-time employees to work "*a full working week of 37 hours*" before receiving enhanced overtime pay.

25.4. A full working week must mean a full working week in respect of any particular contract which incorporates the Green Book and Local Agreements.

25.5. There is nothing in the Green Book or the local agreements to suggest that when determining what is a full working week an employee's different contracts should be aggregated.

25.6. Any other approach would produce 'bizarre and unworkable consequences'. Examples cited were:

25.6.1. Where an employee worked for the Respondent under two different contracts with different pay rates working 20 hours in each, they would be entitled to enhanced overtime pay but it would be impossible to say which role the enhanced rates should be applied to.

25.6.2. An employee who had one full-time role of 37 hours but also had a variable hours job would on the Claimant's interpretation be entitled to enhanced overtime for every single hour worked on the variable hours job which cannot be right and the Claimant has never claimed she should be paid any and all variable hours at an enhanced rate.

25.7. Terms of a collective agreement may become binding between employer and employee via incorporation into the individual contract of employment, where they are apt for incorporation

25.8. The task of construing a collective agreement is the same as construing any other documents, applying the usual objective and contextual approach to contractual interpretation by ascertaining the meaning which the document would convey to a reasonable person having all the background knowledge reasonably available to the parties in the situation they were in at the time of entering the contract.

25.9. The proposition that words should be given their ordinary and natural meaning does not require judges to attributed to the parties an intention that they could not have had. If detailed analysis [An intention to provide consistent treatment between part-time workers and full-time workers regarding the hours worked and rates paid cannot be an intention that the parties could not have had because equality of treatment is a principle which the Respondent espouses. This is not to allow that part-time equality principle to bleed into contractual interpretation but rather to identify that equality between part-time workers and full-time workers does not amount to something which the parties 'could not have intended'.

25.10. The exercise of interpretation involves an iterative process by which each suggested interpretation is checked against the provision of the contract and its commercial consequences.

25.11. There is no 'magic' in the meaning of a secondment.

25.12. As a matter of contractual language and industrial sense/commercial consequences, aggregation of hours under different contracts is not permissible.

25.13. The contracts under which the Claimant worked must be treated separately when determining whether she had worked a "*full working week of 37 hours*". Under her secondment arrangements the Claimant had two part-time contracts; each was a separate legal agreement and each incorporated within it the terms of the Local Agreements in force at the time and the Green Book.

25.14. The Respondent says that the obvious and natural way in which to approach references to working hours in the relevant parts of the Local Agreements in force at the time and the Green Book is as references to the hours under each particular contract; not references to total hours which an employee might have worked under multiple contracts.

25.15. Furthermore Part 2 para 2.6(a) of the Green Book does not refer to a week of 37 hours; it refers to the concept of a "*full working week*" It states that enhanced overtime applies to employees who work "*additional hours beyond their working week*", and that a part-time

employee must have worked "*a full working week for full-time employees*" to receive enhancements.

25.16. The overtime provisions of the Local Agreements state that they are intended to reflect paragraph 2.6(a) of Part 3, para 2 of the Green Book (save for hours worked on Sundays and bank holidays).

25.17. There is no indication that the reference to "37 hours" in the Local Agreements is intended to connote something different from the concept if a "full working week" in the Green Book. The use of 37 hours just reflects that 37 hours is a full working week for a local authority outside London.

25.18. The Claimant's interpretation would lead to odd consequences particularly for a collective agreement which would be at odds with industrial common sense. Examples include:

25.18.1. Under the Claimant's interpretation, an employee working for the Respondent under two different contracts with different pay rates whose aggregate hours exceeded 37 hours would be entitled to enhanced overtime pay every week but it would be impossible to say under which contract and therefore at what rate the enhanced overtime rates should be applied, especially if the hours worked were the employee's standard hours. The Respondent says this makes no sense.

25.18.2. An employee could have one full-time role of 37 hours but also have a variable hours job. Twelve of those who the Respondent has identified in evidence are in this situation. On the Claimant's interpretation such a worker would be entitled to enhanced overtime for any time worked on the variable hours job which would be a massive disincentive to the Respondent hiring an existing employee for a variable hour post and cannot have been the Respondent's intention.

25.18.3. The Claimant was such an employee, and she never claimed she should be paid any and all variable hours for the Enhancement Office variable hours role should be paid at an enhanced rate.

25.18.4. The Green book has only one provision addressing the complexities where an employee has more than one contract which it describes as "*technical issues*" concerning the allocation of non-consolidated payments prorate across contracts.

25.18.5. Mr Milford said there were problems with Mr Shellum's suggestion that overtime could be identified by means of identifying a standard job and an additional job.

25.18.6. Mr Milford said that in relation to overtime rates then an individual gets paid plain rate unless another rate is specified.

25.18.7. Mr Milford disputed that the Respondent's interpretation would be in breach of regulation 5(4) of the Part Time Worker Regulations; the comparison under those Regulations would be a 'contract by contract' comparison.

25.18.8. The **Uber case (above)** has nothing to say to the task of contractual interpretation; it is concerned only with statutory interpretation. This was confirmed in the **HMRC v Atholl House Productions** Ltd [2022] ICR 1059.

25.18.9. Mr Milford also clarified that that he was not pursuing an implied term argument.

26. The Tribunal considered all of the evidence provided, the authorities provided and the full written and oral submissions made on behalf of the parties before reaching its decision.

The Relevant Facts

27. The relevant facts are as follows in the paragraphs below. Most of the facts relating to the case were agreed. They are stated in this section to facilitate the explanation of the decision. Where the Tribunal had to resolve a conflict of evidence, it did so on the balance of probabilities and it has indicted how it resolved that conflict at the relevant point. Otherwise, the facts found are based upon evidence that was consistent between the parties or evidence from one party which was unchallenged by the other party.

The Claimant's contracts

28. At the material times for the purposes of this claim, the Claimant was employed by the Respondent in three different capacities under three separate contracts as follows:

28.1. As a Housing Officer on a permanent contract for 18.5 hours per week (the "Housing Officer contract")

28.2. As a Community Safety Enforcement Officer on a temporary 'secondment' contract for 18.5 hours a week (the "Community Safety Enforcement Officer contract")

28.3. As an Enforcement Officer on a variable hours contract in the Respondent's Licensing team (the "Enforcement Officer contract")

29. The Claimant has a permanent role as a Housing Officer, to which she was assimilated on 1 April 2022. It is a Band 5 role, reporting to the Council's Housing Manager. Her contractual terms were set out in a letter of 15 August 2022. The Housing Officer contract of 15 August 2022 provided so far as is relevant:

*"**Hours of Work***

Your normal working week is one of 37 hours from Monday to Friday. These hours will be worked at the direction of your line manager and in accordance with the needs of the service."

30. This Housing Officer contract also provided:

*"**Conditions of Service***

During your employment with the council your terms and conditions are in accordance with collective agreements negotiated by:

a) the National Joint Council for Local Government Services, as set out in the Scheme of Conditions of Service (commonly known as the Green Book);

b) the East Midlands Regional Local Government Employers; and

c) Chesterfield Borough Council with trade unions recognised by the council in respect of local agreements.

In the event that there is a conflict or inconsistency relating to these agreements, those collective agreements negotiated at a local level between Chesterfield Borough Council and Trade Unions recognised by the Council take precedence and prevail."

31. As such, the National Joint Council for Local Government Services, as set out in the Scheme of Conditions of Service (the "Green Book") and the Respondents own local collective agreements were incorporated into the Claimant's contract. Where there was any conflict between the various collective agreements, then Respondent's own local agreements took precedence.

32. On 9 February 2023, following interview, the Claimant was offered and accepted a variable hours contract as an Enforcement Officer, within the Respondent's licensing team, in addition to her role as Housing Officer. This is a Band 7 role, reporting to the Respondent's Head of Community Safety and Regulatory Services.

33. The Enforcement Officer contract provided:

"Hours of work

You are contracted to work variable hours at the direction of your line manager and in accordance with the needs of the Service and you may be required to work evenings, weekends, and Bank Holidays."

34. The Enforcement Officer contract contained the same 'Conditions of Service' paragraphs quoted at paragraph [31] above.

35. Initially, the Claimant typically' worked one night a week in this role. She did not ask for or receive overtime pay for work in this role.

36. In June 2023, the Claimant successfully applied for a new part-time fixed-term post of Community Safety Enforcement Officer, also at Band 7. At her own request, she did so under arrangements that treated the Community Safety Enforcement Officer role as a part-time secondment from her substantive full-time role as Housing Officer (which meant that the full-time Band 5 role remained available to her at the end of the secondment).

37. The Claimant was issued with terms and conditions for the Community Safety Enforcement Officer role on 25 September 2023. The Community Safety Enforcement Officer contract was for a fixed term, starting on 16 October 2023 and terminating on 31 March 2025. The Community Safety Enforcement Officer contract said, in so far as is relevant:

> ***"Hours of work***
>
> *Your normal working week is one of 18 hours and 30 minutes from Monday to Friday. You will also be required to work one evening/late shift one Saturday every four weeks. These hours will be worked at the direction of your line manager and in accordance with the needs of the Service and may require you to work evenings, weekends, and Bank Holidays."*

38. Again, the Community Safety Enforcement Officer contract contained the same 'Conditions of Service' paragraphs quoted at paragraph [31] above.

39. The Claimant's hours of work in her Housing Officer role were reduced to 18 hours 30 minutes per week for the duration of the secondment by letter dated 3 October 2023. Aside from the adjustment in hours (and the consequent adjustment in pay), this letter stated: "*all other terms and conditions contained within your substantive contract remain unchanged*".

40. The Claimant's secondment was subsequently extended on two occasions, until a final date of 31 March 2026. On each occasion, the corresponding reduction in her Housing Officer hours was also extended (with any extension being on the express basis that all of the Claimant's other terms would remain unchanged).

Provisions of the applicable collective agreements

41. The relevant local collective agreements entered into by the Respondent itself which were live at the material times to the complaint so as to apply to the Claimant's terms were:

    41.1. For the period up to but not including 1 September 2025 - the agreement of August 2008 (the "2008 Agreement"); and

    41.2. For the period from 1 September 2025 onwards - the agreement of September 2025 (the "2025 Agreement")

(together, “the Local Agreements”).

42. The Local Agreements were each incorporated into the Claimant contract of Employment during the respective periods specified above.

43. The relevant terms of each Local Agreement are materially identical. The 2008 Agreement states:

> *“4.1 With effect from 1st April 2007 employees in receipt of basic pay in or below pay band 7, who are required to work beyond 37 hours for the week in question, are entitled to receive enhancements in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 Para 2 (Annex 4) of the NJC National Conditions (see Appendix 5 (page 20) of this agreement). However, in relation to hours worked on Sundays and public holidays a local agreement has been reached which allows an employee may agree with his/her manager that, instead of double time, plain time plus time in lieu may be taken.*
>
> *4.2 Therefore for the sake of clarity the following conditions will apply from 1 April 2007: Employees in receipt of basic pay in or below band 7, who are required to work beyond 37 hours for the week in question, are entitlement to receive enhancements on the following basis:*
>
> - *time and a half for the hours worked from Monday to Saturday, and*
> - *either double time for the hours worked on Sundays and Public and Extra statutory holidays or plain time plus time in lieu, as agreed with the manager.*
>
> *(As per paragraph 2.6(a) (Additional Hours) of Part 3 Para 2 (Annex 4) of the NJC National Conditions, part-time employees are entitled to this enhancement only at times and in circumstances in which full-time employees in the establishment would qualify. This means that a full working week of 37 hours shall be worked by a part-time employee before overtime rates will be paid)."*

44. The provisions regulating the application of overtime rates to part-time workers within the Local Agreements which were incorporated into the Claimant’s various contracts were intended to reflect provisions at Part 3 para 2 in the Green Book.

45. At the outset of the Green Book under Part 1 ‘Principles’ it provides:

> *“1. The National Joint Council represents local authorities in England Wales and Northern Ireland and their employees other than those for whom there are alternative arrangements) and other authorities of equivalent status. …”*

46. In the next paragraph it provides so far as is relevant:

"2. The National Joint Council's guiding principles are to support and encourage:

(a) high quality services delivered by a well-trained, motivated workforce with security of employment. To this end local authorities are encouraged to provide training and development opportunities for their employees

(b) equal opportunities in employment; equality as a core principle which underpins both service delivery and employment relations; and both the removal of discrimination and promotion of positive action;

(c) a flexible approach to providing services to the community, which meets the needs of employees as well as employers

(d) …"

47. In Part 2 of the Green Book under 'Equalities' it provides:

"1. Equalities

1.1 Employees will be afforded equal opportunities in employment irrespective of disability, gender, race, religion, age, sexuality, marital status, parental status, caring responsibilities and h ours of work

1.2 Local authorities will ensure that discriminatory practices are identified and removed and non-discriminatory practices introduced in all areas of employment including recruitment, training and promotion.

1.3 The National Council has agreed an Equal Opportunities Guide which intended for use in all local authorities. The Guide is reproduced in Part 4.2 of this national agreement."

48. The Green Book further states at Part 3 para 2 as follows:

*"**Working arrangements***

2.1 The arrangement of the working week shall be determined by the authority in consultation with the recognised unions with a view to reaching agreement. The working week of individual employees

may vary from the standard of 37 hours (36 in London) provided that the individual's average over a predetermined period does not exceed the standard working week over the same period. ...

2.2 Local pay reviews will consider the issue of premium rates under the existing provisions of Part 3 of the National Agreement. In reaching local agreement concerning premium rates Paras 2.3 to 2.5 will apply. Where no local agreement concerning premium rates is reached Paras 2.6 and 2.7 will apply.

2.3 All employees required to work:

- *Beyond the full-time equivalent hours for the period in question*
- *On Saturday or Sunday*
- *At night*
- *Sleeping-in duty*
- *Public Holidays*
- *Shift work*
- *In the evening*
- *On free or rest days following recall to work*
- *On standby*
- *On split shifts or split duties*
- *On an irregular hours basis*
- *Managing evening lettings*

will have the arrangements for remuneration for these working patterns, clearly set out in their contracts of employment. This may be by way of an inclusive rate of pay; locally agreed premium payments, or, by such other method as shall be agreed by the local parties.

2.4 The pattern of any revised working arrangements and remuneration adopted by an authority should be clearly related to the continuous

improvement of council services. In determining any new working arrangements required to deliver improvements authorities will:

i. Seek to meet employees' work-life balance needs and agree new arrangements that reflect the Joint Guidance at Part 4.5.

ii. Conduct an Equality Impact Assessment consistent with the NJC model is set out in Part 4.11

iii. Ensure that part-time workers receive equal treatment in line with the provisions of Part 2, Para 8.

iv. Ensure that arrangements are consistent with Equal Pay legislation.

2.5 In seeking to ensure work-life balance and the needs of the service, working time arrangements should avoid:

- *Short notice changes to rostered or expected patterns of work*
- *Excessive hours in any particular week*
- *Unnecessarily long roster periods*

2.6 Employees, in receipt of basic pay at or below point 22 who are required to work (a) beyond the full-time equivalent hours for the week in question or (b) on Saturday or Sunday or (c) at night or (d) on public holidays or (e) sleeping in duty or (f) other non-standard working arrangements are entitled to compensation as set out in sub-paragraphs (a) to (f) below. As an alternative, an inclusive rate of pay to recognise these requirements may be negotiated locally in accordance with the arrangements for modifying Part 3 provisions.

(a) Additional Hours

Employees who are required to work additional hours beyond their working week are entitled to receive enhancements on the following basis:

Monday to Saturday	*Time and a half*
Sundays and Public and	
Extra Statutory holidays	*Double time (min 2 hours)*

(Part-time employees are entitled to these enhancements only at times and in circumstances in which full-time employees in the establishment would qualify. Otherwise a full working week for full-time employees shall be worked by a part-time employee before these enhancements apply)."

The Respondent's Secondment Policy

49. The Respondent's Secondment Policy contains the following provision within 'Section 1: General Guiding Principles':

"The secondee should not be disadvantaged because they are on secondment e.g. delaying an appraisal or failing to progress a grievance."

50. The Respondent's standard Secondment Agreement contains the following provision:

"While on secondment, the individual will remain an employee of the council at all times and will continue to be paid by the council and to receive all normal benefits as per their contract of employment except to the extent varied by this agreement".

51. Whilst working as a Housing Officer, a Community Safety Enforcement Officer and an Enforcement Officer, the Claimant received basic pay in or below band 7.

52. Whilst working as a Housing Officer, a Community Safety Enforcement Officer and an Enforcement Officer, the Claimant sometimes worked more that 37 hours across all of the contracts. In particular, for the purposes of the pleaded claim for determination', the parties agree that the Claimant worked the following hours and she was paid at plain rate for them:

52.1. 3 hours on 16/01/2024 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at time and a half).

52.2. 7 hours on 23/03/2024 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at time and a half).

52.3. 4 hours on 30/03/2024 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at time and a half).

52.4. 2 hours on 30/03/2024 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at double time).

52.5. 5 hours on 24/04/2024 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at time and a half).

52.6. 6 hours on 25/04/2024 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at double time).

52.7. 5 hours on 08/06/2024 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at time and a half).

52.8. 5 hours on 15/06/2024 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at time and a half).

52.9. 5 hours on 29/06/2024 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at time and a half).

52.10. 10 hours on 06/07/2024 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at time and a half).

52.11. 2 hours on 06/07/2024 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at double time).

52.12. 10 hours on 13/07/2024 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at time and a half).

52.13. 2 hours on 13/07/2024 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at double time).

52.14. 9 hours on 20/07/2024 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at time and a half).

52.15. 3 hours on 20/07/2024 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional

Hours) of Part 3 then the hours should have been paid at double time).

52.16. 4 hours on 03/08/2024 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at time and a half).

52.17. 3 hours on 03/08/2024 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at double time).

52.18. 5 hours on 10/08/2024 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at time and a half).

52.19. 5 hours on 17/08/2024 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at time and a half).

52.20. 9 hours on 24/08/2024 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at time and a half).

52.21. 2 hours on 24/08/2024 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at double time).

52.22. 4 hours on 05/10/2024 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at time and a half).

52.23. 3 hours on 05/10/2024 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at double time).

52.24. 4 hours on 12/10/2024 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at time and a half).

52.25. 3 hours on 12/10/2024 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at double time).

52.26. 4 hours on 19/10/2024 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at time and a half).

52.27. 3 hours on 19/10/2024 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at double time).

52.28. 4 hours on 26/10/2024 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at time and a half).

52.29. 7 hours on 17/11/2024 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at double time).

52.30. 4 hours on 30/11/2024 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at time and a half).

52.31. 1 hour on 30/11/2024 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at double time).

52.32. 4 hours on 31/05/2025 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at time and a half).

52.33. 3 hours on 31/05/2025 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at double time).

52.34. 4 hours on 05/07/2025 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at time and a half).

52.35. 3 hours on 05/07/2025 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at double time).

52.36. 8.25 hours on 09/08/2025 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional

Hours) of Part 3 then the hours should have been paid at time and a half).

52.37. 6 hours on 23/08/2025 (whereas if she was entitled to enhanced overtime pay in accordance with paragraph 2.6(a) (Additional Hours) of Part 3 then the hours should have been paid at time and a half).

53. The parties agree that the Claimant was not paid on the basis of 'time and a half' or 'double time' for the periods specified above.

54. Within the Claimant's Schedule of Loss and her witness statement there appears to be duplicated reference to 5 hours worked on 10/08/2024 between 11am-4pm. Therefore, the Tribunal discounted the first entry.

The Law

Unauthorised deductions from wages

55. The test for the complaint of unauthorised deductions from wages in so far as is relevant is found in **s.13 Employment Rights Act 1996** ("ERA") which provides as follows:

> ***"13 Right not to suffer unauthorised deductions.***
>
> *(1) An employer shall not make a deduction from wages of a worker employed by him unless—*
>
> *(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or*
>
> *(b) the worker has previously signified in writing his agreement or consent to the making of the deduction."*
>
> *…*
>
> *(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.*
>
> *(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.*
>
> *…"*

56. Section 230(3) ERA gives the definition of "worker":

"*In this Act "worker" (except in the phrases "shop worker" and "betting worker") means an individual who has entered into or works under (or, where the employment has ceased, worked under)—*

(a) a contract of employment, or

(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

and any reference to a worker's contract shall be construed accordingly."

57. The definition of 'wages' is found in section 27 which provides in so far as is relevant, as follows:

(1) In this Part "wages", in relation to a worker, means any sums payable to the worker in connection with his employment, including—

(a) any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise,

… but excluding those payments within subsection (2).

…

(4) In this Part "gross amount", in relation to any wages payable to a worker, means the total amount of those wages before deductions of whatever nature.

58. For a payment to fall within the definition of wages properly payable, there must be some legal entitlement to the sum in question, as per **New Century Cleaning Co Ltd v Church [2002] IRLR 27, CA**.

59. Where there is a dispute as to what wages are "properly payable" under a contract, the Court of Appeal stated in **Delaney v Staples (t/a De Montfort Recruitment) [1991] IC 331, CA**, that a Tribunal has jurisdiction to resolve any issue necessary to determine whether a sum claimed under s.13 ERA 1996 is properly payable, including an issue as to the meaning of the contract of employment. This was more recently confirmed in **Agarwal v Cardiff University and anor 2018 EWCA Civ 2084, CA**.

60. The Tribunal's approach to contractual interpretation is the same as that adopted by the civil courts in contractual actions, per **Greg May (Carpet Fitters and Contractors) Ltd v Dring [1990] ICR 188, EAT**.

61. In the House of Lords case **Investors Compensation Scheme Ltd v West Bromwich Building Society [1998] 1 WLR 896**, 912-913, Lord Hoffman gave a celebrated judgment in which he reformulated the modern principles of contractual interpretation. It is worth setting out those principles in full:

“The principles may be summarised as follows.

(1) Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.

(2) The background was famously referred to by Lord Wilberforce as the "matrix of fact," but this phrase is, if anything, an understated description of what the background may include. Subject to the requirement that it should have been reasonably available to the parties and to the exception to be mentioned next, it includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man.

(3) The law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent. They are admissible only in an action for rectification. The law makes this distinction for reasons of practical policy and, in this respect only, legal interpretation differs from the way we would interpret utterances in ordinary life. The boundaries of this exception are in some respects unclear. But this is not the occasion on which to explore them.

(4) The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax: see Mannai Investments Co. Ltd. v. Eagle Star Life Assurance Co. Ltd. [1997] A.C. 749.

(5) The "rule" that words should be given their "natural and ordinary meaning" reflects the commonsense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had. Lord Diplock made this point more vigorously when he said in Antaios Compania Naviera S.A. v. Salen Rederierna A.B. [1985] A.C. 191, 201:

> *"if detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business commonsense, it must be made to yield to business commonsense."*

62. In **Arnold v Britton and ors [2015] AC 1619**, SC, Lord Neuberger summarised the general principles to be applied to the interpretation of

express contractual terms (approved in the context of the interpretation of pay terms in **Campbell v British Airways plc EATS 0015/17**):

> *"When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean" to quote Lord Hoffmann in* ***Chartbrook Ltd and anor v Persimmon Homes Ltd and anor 2009 1 AC 1101, HL****. And it does so by focusing on the meaning of the relevant words... in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the [contractual agreement], (iii) the overall purpose of the clause and the [agreement], (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions."*

63. In **Royal Mail Group Ltd v Communications Workers Union [2017] EWHC 2548 (QB)** Supperstone J applied to the interpretation of a collective agreement the standard principles applicable to constructing contractual documents set out in IRC. However, he also quoted, apparently accepting that it was relevant, the following passage in **Public Service Association and Professional Officers Association Amalgamated Union of New South Wales v Secretary of the Treasury [2014] 87 NSWLR 41** which suggests that a "sensible industrial outcome" may be given particular weight in the interpretation of collective agreements:

> *"As Kirby J put it, the construction should be one which contributes to a sensible industrial outcome, provided, as discussed below (and earlier in relation to the extrapolation of principle), such an interpretation may reasonably be available from the language used in the provision (that is, from the text of an award).*

<u>The analysis – application of facts to law to determine the issues</u>

64. In relation to the list of issues the parties agree that:

64.1. the Claimant was paid at plain rate for all of the hours she worked under the Housing Officer contract and Community Safety Enforcement Officer contract;

64.2. if there was a deduction then it was not required or authorised by statute;

64.3. if there was a deduction then it was not required or authorised by a written term of the contract;

64.4. the Claimant did not have a copy of the contract or written notice of the contract term before the deduction was made; and

64.5. the Claimant did not agree in writing to any deduction before it was made.

65. The remaining liability issue to be determined is:

> 1.2.1 For the purposes of determining the Claimant's rate of pay for any hour worked, in a reference week's period and in excess of 37 hours, were the hours the Claimant worked under her two contracts of employment to be aggregated?

66. The instant case concerns what wages were "properly payable" to the Claimant. Given that there is a dispute as to what wages are "properly payable" under the contract, the Tribunal has jurisdiction to resolve any issue necessary to determine whether a sum claimed under s.13 ERA 1996 is properly payable, including an issue as to the meaning of the contract of employment as per **Delaney** and **Agarwal (both above)**.

67. The relevant issue for determination concerns the interpretation of the terms of the Local Agreements (as applicable to the date of the hours worked) and the Green Book, which were incorporated into the Claimant's contracts so as to determine what wages were properly payable for the specified hours.

68. The Tribunal sought to determine *"what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean"* in accordance with the principles provided in **Investors Compensation Scheme (above)** and according to the categories described in **Arnold (above).**

(i) *the natural and ordinary meaning of the clause,*

69. The provision at the centre of the case is:

> *"Employees in receipt of basic pay in or below band 7, who are required to work beyond 37 hours for the week in question, are entitlement to receive enhancements on the following basis:*
>
> - *time and a half for the hours worked from Monday to Saturday, and*
> - *either double time for the hours worked on Sundays and Public and Extra statutory holidays or plain time plus time in lieu, as agreed with the manager.*
>
> *(As per paragraph 2.6(a) (Additional Hours) of Part 3 Para 2 (Annex 4) of the NJC National Conditions, part-time employees are entitled to this enhancement only at times and in circumstances in which full time employees in the establishment would qualify. This means that a full working week of 37 hours shall be worked by a part-time employee before overtime rates will be paid.)"*

70. The provision first addresses the general issue of what enhanced overtime rates will apply when employees are required to work beyond 37 hours for the week in question. It then provides the qualification in parenthesis which applies to part-time workers. It is the meaning of this specific qualification which is in dispute. The qualification effectively describes a 'trigger point' at which a part-time employee becomes entitled to the enhanced overtime rates which have been set out.

71. The provision explicitly refers to the *NJC National Conditions* (i.e. the Green Book) as the source of the trigger point. It then states that "*… part-time employees are entitled to this enhancement only at times and in circumstances in which full time employees in the establishment would qualify."* This is a somewhat unclear concept, capable of numerous possibilities.

72. The comparison is to full-time employees 'in the establishment'; not full-time employees working under the same type of contract. Within each of the Claimant's three contracts her place of work is defined as being in an establishment; in respect of the Housing Officer contract and the Community Safety Enforcement Officer contract the establishment is described as in the Stonegravels depot, and in respect of the Enforcement Officer contract the establishment is in 85 New Square. This focus on 'establishments' for comparisons does not add any support for an argument that types of contract are in the parties' minds when creating the comparison between part-time and full-time employees.

73. The provision then translates the broad concept into a more practical, quantified and measurable trigger: *"This means that a full working week of 37 hours shall be worked by a part-time employee before overtime rates will be paid."*

74. Both parties invited the Tribunal to treat the absence of wording which expressly articulates the other party's interpretation as evidence that such interpretation is incorrect. The Tribunal determines that a requirement to work 37 hours without any expressed restriction is more aligned to the Claimant's interpretation that part-time worker is required to work 37 hours for the employer, than the Respondent's interpretation that 37 hours must be worked under each specific contract.

75. The ordinary and natural meaning of the provision itself is that a part-time employee must work a full working week of 37 hours. There is nothing within the provision itself to indicate a further unwritten restriction that those 37 hours must be worked under a single contract.

76. In contrast, within the definitions section of the Green Book, 'A weeks pay' is expressly defined as "*the amount payable by the authority to the employee* ***under the current contract of employment*** *for working her normal hours in a week"* (emphasis added). This shows that those drafting and agreeing the provisions of the Green Book were aware of the need to identify specific contracts where that was necessary to reflect their intentions. They did not

use this type of specification when providing the requirement to beyond work 37 hours.

77. Whilst the Tribunal notes and accepts Mr Milford's submission that each contract must be interpreted separately, that does not mean that each contractual provision is then automatically interpreted to add an implicit restriction to that individual contract.

(ii) <u>any other provisions of the [contractual agreement],</u>

78. The Green book which is the source of the provision both directly and as reflected in the Local Agreements explicitly states at the outset that "*The National Joint Council's guiding principles are **to support and encourage**: … (b) **equal opportunities in employment; equality as a core principle which underpins** both service delivery and **employment relations**; and both **the removal of discrimination** and promotion of positive action; (c) a flexible approach to providing services to the community, which meets the needs of employees as well as employers …"*

79. In Part 2 of the Green Book, it provides under the heading 'Equalities' at 1.1 that "***Employees will be afforded equal opportunities in employment irrespective of** disability, gender, race, religion, age, sexuality, marital status, parental status, caring responsibilities and **hours of work***" (emphasis added).

80. It goes onto to state at 1.2 that "*Local authorities will **ensure that discriminatory practices are identified and removed** and **non-discriminatory practices introduced in all areas of employment** including recruitment, training and promotion. (emphasis added).*

81. At 1.3 it provides that "*The National Council has agreed an Equal Opportunities Guide which intended for use in all local authorities. The Guide is reproduced in Part 4.2 of this national agreement."*

82. When addressing 'working arrangements in Part 3 para 2.3 it provides the basic requirement that employees are required to work beyond the full-time equivalent hours for the period in question. The issue appears to be whether the full-time equivalent hours have been worked. Again, there is no reference to the 37 hours being worked under same contract.

83. In the next paragraph, 2.4, the Green Book specifically provides: "*The pattern of any revised working arrangements and remuneration adopted by an authority should be clearly related to the continuous improvement of council services. In determining any new working arrangements required to deliver improvements authorities will: … iii. **Ensure that part-time workers receive equal treatment in line with the provisions of Part 2, Para 8.**"*

84. For clarity the Tribunal is not applying a statutory gloss or allowing statutory influences to bleed over into this task of contractual interpretation. The Tribunal is taking these factors into account because the Green Book - the source of the underlying provision in question - within the same agreement provides this explicitly contextual background to the principles underpinning the document. There is no suggestion that this is a sham or a false statement.

85. The Tribunal considers this to be important background knowledge which would have been available to the parties, and which would have heavily influenced the reasonable person's understanding of what the parties intended the language in the contract to mean.

86. The Tribunal notes the stated intention of the parties when they entered this agreement:

86.1. Employees should be 'afforded equal opportunities in employment irrespective of hours of work'.

86.2. The Respondent would avoid and remove any discriminatory practices.

86.3. The National Joint Council's guiding principles encourage: … equal opportunities in employment; equality as a core principle which underpins … employment relations; and both the removal of discrimination and promotion of positive action; a flexible approach to providing services to the community, which meets the needs of employees as well as employers.

87. In the particular context of secondments, the Respondent intended that a secondee should not be disadvantaged because they are on secondment. If moving

(iii) *the overall purpose of the clause and the [agreement],*

88. The purpose of the provision is to provide the trigger by which full time and then part-time employees become entitled to enhanced overtime rates as a reward for the volume of hours they provide. The element in dispute is the element which describes when a part-time lower paid workers who work beyond normal 37 hours per week should be paid more.

(iv) *the facts and circumstances known or assumed by the parties at the time that the document was executed*

89. The Green Book is an important agreement which is known to have significant consequences for large number of workers who are employed within local authorities across England, Wales and Northern Ireland.

90. The Green Book was intended to be a document for everyday use within local authorities; a document which could and should be read, understood and applied by managers and union officials at all levels, without having to bring in lawyers to examine, debate and resolve intricacies of the drafting.

91. The Green Book was intended to produce a commonsense outcome which, in the context of a collective agreement, means a sensible industrial relations/employment relations outcome. This is consistent with the principle that a "sensible industrial outcome" may be given particular weight in the interpretation of collective agreements expressed in **Public Service Association and Professional Officers Association Amalgamated Union of New South Wales v Secretary of the Treasury [2014] 87 NSWLR 41**

which was quoted with apparent approval by Supperstone J in **Royal Mail Group Ltd v Communications Workers Union [2017] EWHC 2548 (QB)**.

(v) *commercial common sense,*

92. The Tribunal assessed the commercial consequences of the Respondent's interpretation would be as follows:

92.1. Part-time employees with two contracted roles with the Respondent could have to work almost twice as many hours as full-time hours before becoming entitled to enhances overtime rates. Part-time employees with three contracted roles with the Respondent could have to work almost twice as many hours as full-time hours before becoming entitled to enhances overtime rates. This would be a substantial disincentive for employees to take second contracts

92.2. As Mr Shellum submitted that the provision in question was the only source of overtime rates (i.e. the rate that applied when the Claimant was working more than her normal 18.5 hours in either role). There was no provision which said that overtime for hours 18.5 to 37 in one role would be paid at plain rate. The absence of information on the rate applicable for those overtime hours suggest that this cannot have been the parties' intention.

92.3. The arrangements for calculating pay for part-time workers who worked hours beyond their normal week would be extremely simple for the Respondent to manage.

93. The Tribunal assessed the commercial consequences of the Claimant's interpretation would be as follows:

93.1. The Respondent would have to use a system that recorded hours worked in the order they were worked and by reference to each role

94. The Respondent's argument that it would be difficult to know which hours in which role would be due for overtime rate does not appear to the Tribunal to be a sizeable commercial barrier as the Respondent describes. Firstly, employees can only work in one role at a time and therefore chronologically there will come a point in time when the part-time worker has worked 37 hours in that week. At that point all hours subsequently worked in either role should be paid at the enhanced overtime rate applied to the plain rate for the role worked.

95. Secondly, the existence of two contracts and in particular two different rates of pay undoubtedly adds an additional layer of complexity to the calculation but it does not make it unworkable or lacking commercial sense. The Local Government Association ("LGA") provides guidance on how to address the practical issues around the use of multiple contracts. This includes how to manage the added complexity of calculating various statutory pay entitlements for two contracts such as statutory maternity pay, statutory adoption pay etc. This is identified only to identify that an additional level of complexity is not in itself a reason to declare the outcome 'unworkable' or

'lacking in business sense'. There was no evidence before the Tribunal that the Respondent had difficulty managing these additional complexities that arose from the statutory provisions.

96. Furthermore, the Tribunal notes that this issue would similarly apply to an employee with two roles on different rates of pay which are specified under one contract.

(vi) disregarding subjective evidence of any party's intentions

97. The Tribunal notes Mr Shellum's submission that the trade union is supporting the Claimant's case but considers this to be an implicit indication of one the parties' subjective intentions. As such it was disregarded and not taken into account.

anything else which would have affected the way in which the language of the document would have been understood by a reasonable person

98. The Tribunal identified the following elements which would have affected the way in which the language of the document would have been understood by a reasonable person.

99. The Tribunal did not identify any positive reason or commercial basis from the evidence or submissions put forward by the Respondent as to why it would want to only count hours towards the 37 hour trigger if they were performed under the same contract as the overtime. The only logical reason that readily emerges is that doing this would save small elements of money that the Respondent would otherwise pay to part-time employees like the Claimant as enhanced overtime rates. However, when Mr Shellum suggested this rationale by stating in perhaps pejorative terms that the Respondent appeared to be 'nickel and diming' employees such as the Claimant, Mr Milford politely but robustly objected to that suggestion on behalf of the Respondent, thereby suggesting that it is not the reason. The lack of a discernible commercial rationale for the Respondent's interpretation undermines the likelihood that this is what was intended.

100. The Local Agreements were made between (i) the Respondent which has access to legal resources and (ii) large, experienced trade unions (being listed as UNISON and GMB in the 2008 agreement, and, as Unite, UNISON and GMB in the 2025 agreement) which have access to significant internal and external legal resources

101. The Green Book was made between (i) representatives of local authorities across England, Wales and Northern Ireland with access to government legal resources and (ii) large, experienced trade unions (being listed as Unite, UNISON and GMB) which have access to significant internal and external legal resources.

102. One of a trade unions' most important purposes is to protect the interests of its members. Typically, those members are, as Mr Shellum put it, 'modestly paid'. The trade unions would want to ensure that their members who are

modestly paid receive their fullest entitlement to pay and they do not suffer disadvantage by reason of being a part-time worker.

103. One of a local authority's principles when seeking to provide high-quality services to the public is agreeing an employment framework for their provision of services is that it should meet that needs of the employer (for example by being cost effective) as well as employees. Local Authority employers would naturally want to minimise the costs of employment.

104. Many employers, including local authorities, would consider it appropriate to only pay part-time employees enhanced overtime rates once the part-time employee has first worked the same number of hours at the normal rate as a full-time employee must work before receiving enhanced overtime rates. This is a practical assessment borne out of a sense of what is fair/reasonable in the real world (not a consequence of the legal approach to interpretation of contracts). It is not unusual for employers to require part-time employees to work the same number of hours so that part-time and full-time employees trigger the entitlement when they have worked the same number of hours for that employer.

105. In the real world, employers and trade union officials do not consider this type of fairness/reasonableness through the lens of hours worked under different contracts.

106. There was no other provision which expressly dealt with the rate of pay for hours worked above the Claimant's normal for each individual contract. Whilst this did not mean in any sense that the Claimant's interpretation must be correct, in a contract which provided a good deal of specificity on hours and pay, the absence of an express provision dealing with the payment of plain rate for all hours worked under a contract until 37 hours had been worked under that contract did make it slightly more likely that the Claimant's interpretation was correct.

Other submissions

107. The Tribunal does not accept that Supreme Court's guidance in **Uber (above)** on statutory interpretation assists with the contractual interpretation before the Tribunal. The principles by which that contractual interpretation takes place on well established. The mechanism and meaning of the words of s13 ERA 1996 and related sections are clear, well known and understood in the harm they seek to address. They do not require a purposive interpretation.

108. Section 13 ERA 1996 does indeed provide a fundamental statutory protection for workers; it provides protection against having sums which are properly payable as wages deducted without lawful authority. The task before the Tribunal is to determine what sums are properly payable according to the normal principals of contractual interpretation.

109. If the Tribunal were to conduct contractual interpretation influenced by a purposive approach according to whichever legislation required the contractual interpretation, then that risked the same contractual clause being given different interpretations depending on the purpose of whichever

legislation triggered the need for a contractual interpretation. The Tribunal did not consider that to be appropriate.

110. Mr Shellum submitted that the fact that the Respondent produces a single pay slip which rolls up all pay and the National Insurance was aggregated. However, I accept Mr Milford's submission in response that this reflects an administrative system and the different nature of the PAYE deductions system which is based on pay not contracts.

111. Mr Shellum also submitted that if the Employee chose not to opt out of the 48 maximum working week, then this would mean that she could never be entitled to overtime. That may be true but working more than 48 hours would be the worker's choice as it always was. A full-time worker whose normally worked 48 hours per week would be in the same position.

112. In Mr Milford's submission, if a worker is entitled to enhanced overtime rates for any time worked on a variable hours job, then it would be a massive disincentive to the Respondent hiring an existing employee for a variable hours posts, and that cannot have been the Respondent's intention. However, all manner of financial implications or disincentives apply to different working arrangements in the real world. By way of illustration there are often greater costs when employing two people to work in a job share arrangement compared to employing one person to work full time but that is not a barrier to practical barrier to the use of job share arrangements. Furthermore, the Respondent has complete control over to whom it offers roles, and it can therefore manage those incentives. There is also an incentive of employing known persons who are familiar with the workings of the Respondent and have a strong commitment to the success of the Respondent. If the additional cost of the work in that situation is deemed too great for the value of work done, then the Respondent doesn't need to offer that work to the individual. Whether the incentive or disincentive is the stronger is for the Respondent to decide. It has control over that.

113. Where an employee worked for the Respondent under two different contracts with different pay rates working 20 hours in each, then under the Claimant's interpretation they would be entitled to enhanced overtime pay but it would be impossible to say which role the enhanced rates should be applied to. It would be simpler to calculate under the Respondent's interpretation but that does not make the consequence of C's interpretation 'bizarre or unworkable'. The hours under two roles can't be worked at the same time so the aggregated hours up to 37 could be paid at plain rate to that point and then whichever hours were worked in a role beyond 37 hours in the week would be paid at the applicable enhanced overtime rate.

Conclusion

114. The Tribunal has taken into account the contractual language, the factual background and the implications of rival constructions described above and balanced those indicators as per the guidance in **Wood v Capita Insurance**

Services Ltd [2017] AC 1173. Having done so, the Tribunal determines that a reasonable person having all the background knowledge which would have been available to the parties (as detailed above) would have understood the parties to be using the language in the contract to mean that once a part-time employee had worked 37 hours (matching the relevant number of hours in a full time worker's full working week when they would become entitled to enhanced overtime rate) for that employer, then that employee should be paid at the enhanced overtime rate.

115. The Claimant's Housing Officer contract and her Community Safety Enforcement Officer contract entitled her to be paid at the relevant enhanced overtime rate when she worked more than 37 hours for the Respondent Council regardless of which contract those 37 hours were worked under.

Remedy

116. The remaining remedy issue is simply how much is the Claimant owed?

117. The Schedule of loss referred to payments and shortfalls for asserted overtime across all three contracts. However, the amendment to add deductions from the variable hours Enforcement Officer contract was refused and therefore the asserted deductions from the Enforcement Officer contract could not be claimed.

118. The Tribunal recorded that at the hearing the parties believed that the deductions claimed under the Enforcement Officer contract were those in paragraphs 18 to 25 of the Claimant's witness statement. The Tribunal also recorded that the parties agreed that they would provide written confirmation of the asserted deductions by 7 August 2026. However, at the time of issuing judgment, they do not appear to have done so. Therefore, the Tribunal has proceeded on the information it had from the hearing and disregarded the amounts specified as deductions in paragraphs 18 to 25 of the Claimant's witness statement. (If either party believes this is an error, then they are at liberty to apply for reconsideration.)

119. The Claimant experienced unlawful deductions in the total sum of £1,737.11 comprised as follows:

119.1. An unlawful deduction of £138.91 in the May 2024 pay date

119.2. An unlawful deduction of £135.81 in the June 2024 pay date

119.3. An unlawful deduction of £231.67 in the August 2024 pay date

119.4. An unlawful deduction of £345.47 in the September 2024 pay date

119.5. An unlawful deduction of £188.28 in the November 2024 pay date

119.6. An unlawful deduction of £278.32 in the December 2024 pay date

119.7. An unlawful deduction of £163.72 in the January 2025 pay date

119.8. An unlawful deduction of £171.79 in the August 2025 pay date

119.9. An unlawful deduction of £70.86 in the September 2025 pay date

119.10. An unlawful deduction of £51.54 in the August 2025 pay date.

120. The Respondent must pay the total sum of £1,737.11 to the Claimant.

Approved by:

Employment Judge Ost

29 October 2026

JUDGMENT SENT TO THE PARTIES ON

.....08 November 2026.....

.....Farhan Sheikh.....

FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. 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:

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