



EMPLOYMENT TRIBUNALS

Claimant: Mrs L MacInnes

Respondent: Telecare Services Association

HELD AT: Manchester

ON: 29 March 2017
28 April 2017, 7 May
2017
(in Chambers)

BEFORE: Employment Judge Ross
Mrs C Jammeh
Mr T Harvey

REPRESENTATION:

Claimant: Mr MacInnes, Husband

Respondent: Ms K Clarke, Consultant

REMEDY JUDGMENT

The judgment of the Tribunal is that:

1. We find that the claimant is entitled to an award for injury to feelings in the sum of £5,000.(Inclusive of interest)
2. We find that the claimant is entitled to an award for psychiatric personal injury: £5,000. (Inclusive of interest)
3. We find that the claimant is entitled to an award for physical personal injury: £3,000. (Inclusive of interest)
4. We find there is no entitlement to an award for aggravated damages
5. We find that the claimant is entitled to a sum for loss of earnings: £983.30. Interest is payable on this sum of £ 91.77

6. We find that the claimant is entitled to a sum for pension contributions for the period April 2011 to 28 February 2014 in the sum of £9,841.99 .Interest is payable on this sum of £918.58.
7. We find there is no entitlement to an award for loss of pension growth and no entitlement to an award for employee contributions.
8. The claimant is entitled to a sum for medical expenses of £116.60. Interest is payable on this sum £10.88.
9. The claimant is entitled to recover the issue fee of £250 and the hearing fee of £950 from the respondent
10. We find there is no entitlement to an uplift based on an alleged breach of the ACAS Code of Practice.

REASONS

We heard from the claimant. We had submissions from Mr McInnes, the claimant's husband and from Ms Clarke, legal consultant for the respondent. We turn to consider each type of award sought by the claimant.

Injury to Feelings

1. The Tribunal reminded ourselves of the guidelines in *Prison Service & others v Johnson* [1997] ICR 275 EAT:
 - Awards for injury to feelings are designed to compensate the injured party fully but not to punish the guilty party.
 - An award should not be inflated by feelings of indignation at the guilty party's conduct.
 - Awards should not so low as to diminish respect for the policy of the discrimination legislation. On the other hand awards should not be so excessive that they might be regarded as untouched riches.
 - Awards should be broadly similar to the range of awards in personal injury cases.
 - Tribunals should bear in mind the value in everyday life of the sum they are contemplating.
 - Tribunals should bear in mind the need for public respect for the level of awards made.
2. The Tribunal had regard to the guidelines as set out in **Vento v Chief Constable of West Yorkshire Police No. 2 [2003] ICR 318 CA**. The Tribunal had regard to the case of **Da'Bell v National Society for Prevention of Cruelty to Children [2010] IRLR 19 EAT** where the bands were increased, and the Tribunal also applied the uplift in **Simmonds v Castle [2012] EWCA Civ 12/88** and finds that

the bands are now lower band £660 to £6,600; middle band £6,600 to £19,800; and top band £19,800 to £33,000.

3. The Tribunal remind ourselves that the only allegation which succeeded before the Tribunal was the allegation that the respondent did not backdate employer's pension contributions to the date the claimant informed the respondent she wanted to join the scheme (April 2011). We found that was an act of direct race discrimination.

4. We have borne in mind our findings in the judgment that the burden of proof shifted and we were not satisfied that the respondent had discharged the burden of proof in satisfying us that the failure to backdate her pension contributions to the date she informed the respondent she wanted to join the scheme in April 2011 was in no sense whatsoever related to race. We were given no clear explanation as to why the employer contributions were backdated only to March 2014 (see paragraph 195). At paragraph 196 we stated:

“Therefore the shifting burden of proof causes us to find that in the absence of a non discriminatory explanation the respondent treated the claimant less favourably because of her race in failing to backdate her employer pension contributions to April 2011.”

5. We remind ourselves that having regard to the guidance in **Prison Service & others v Johnson**, but also to the guidance in relation to the **Vento** bands, that this was a one-off act of discrimination. We must consider what is fair, reasonable and just in the particular circumstances of what we found was an isolated one-off occurrence. We found the claimant's other allegations of discrimination all failed. We find that the award should be towards the top of the lower band.

6. Although we accept the claimant's evidence that she was very distressed by the respondent's conduct in general, she can only recover for injury to feelings in relation to the one allegation which succeeded which in the context of the claimant's claim of race discrimination which consisted of a total of 15 allegations. These were 8 allegations of direct race discrimination-allegations 8.1.1 to 8.1.7. These totalled 8 allegations because the allegation which succeeded was in 2 parts (Allegation 8.1.2). See paragraphs 146-223 of the liability judgement for our detailed findings. There were also 7 allegations of harassment on grounds of race. These were allegations 8.2(a)-(g). See paragraphs 224-260 of the liability judgement for our detailed findings into these allegations.

7. Taking all this into account we consider the appropriate award for injury to feelings is £5,000. In reaching this figure we have also taken into account the award we have made for psychiatric and physical injury.(See below)

8. We turn to consider an award for personal injury. The claimant has claimed an award for both physical and psychiatric injury. **Sherriff v Klyne Tugs (Lowestoft) Ltd 1999 ICR 1170 CA** is authority for the proposition that a claimant may claim for personal injury (physical or psychological) as a separate head of loss.

9. Any award is made on tortious principles so it is for the claimant to show that the physical and or psychiatric injury was caused by the one allegation of discrimination where her claim succeeded.

10. **Thaine v London School of Economics 2010 ICR 1422** reminds us that where there are other causes for the claimant's ill health it is appropriate to apportion the award by such percentage as reflects the apportionment of the responsibility of the respondent.

Psychiatric/Psychological Personal Injury

11. We had the benefit of a consultant Psychiatrist Report from Dr Nabavi, an expert jointly instructed by the parties. See p266-304. Dr Nabavi concluded that the claimant is suffering from a depressive disorder which had "been precipitated by a direct result of her employment difficulties since 2013" p299. Specifically Dr Nabavi apportioned "80% of the claimant's mental health problems due to her traumatic experiences during her past 3 years at Telecare Services Association" and "20% due to her other life events"

12. When asked to identify how far the failure of the respondent to backdate the claimant's pension contributions to the date the claimant requested to join the scheme (April 2011) caused or aggravated the claimant's condition (p306) Dr Nabavi produced an amended report stating that her mental health problems were caused or aggravated 60% by the failure to backdate pension contributions to the date the claimant wanted to join the scheme. P 342.

13. Unsurprisingly, given the successful allegation in relation to pension was only a very small part of the respondent's behaviour complained of by the claimant (see our liability judgment for detailed facts and findings in relation to the 15 allegations of race discrimination) the respondent wanted to ask Dr Nabavi to clarify his reasoning. P354. The claimant's representative refused this question to be put. P354. Accordingly we do not know how Dr Nabavi reached this figure, which on the face of it seems surprising and at odds with the evidence. Most of the claimant's concerns during her last 3 years at Telecare were unrelated to pension. The issue of failure to back date the pension to 2011 (rather than backdating to 2014 which was permitted) was a small part of an issue which figured very little in the evidence before the Tribunal. If it was an issue which caused the claimant a great deal of distress we would have expected to hear more about it. In fact the contrary was true. The claimant admitted in evidence that she had not chased the issue of joining up the pension scheme and we found in our judgement there had been inaction on her part. (Paragraph 56.)

14. We turned to consider the Judicial College Guidelines (formerly known as the JSB guidelines). We considered the bracket for psychiatric damage. We relied on Dr Nabavi's report that the claimant had suffered from a major depression (page 338). We note Dr Nabavi found the depression was moderate to severe but predominantly moderate (see page 337).

15. We reminded ourselves that the claimant was absent from work between April 2014 and April 2016. We find that she had returned to work on a phased return in April 2016 and that her employment had ended by reason of redundancy in August 2016. We noted that Dr Nabavi said he was tentative in giving a prognosis. He stated, "I would feel complete improvement not to be achievable in the long-term", however he stated, "In the absence of any major psychosocial events, I would view such improvements to be measured in the order of two years". He indicated that the claimant had a close relationship with her family who

were supportive, and that “these factors would positively contribute to her mental health and her overall progress”. He also noted that “the ongoing litigation by itself is a stressor factor”. He found that on the balance of probabilities the claimant “will continue remaining vulnerable and at a higher risk of experiencing a deterioration in her mental health in the future”. At page 348 he stated the claimant “is likely to experience further improvement in the severity of her depressive and anxiety symptoms by changing her medication”. He also stated, “In my opinion Ms MacInnes is likely to benefit from adequate psychological interventions such as Cognitive Behavioural Therapy”. He set out other treatment options and stated, “On the balance of probabilities it more likely than not that she will respond to the above approach”.

16. We consider that given that the claimant has suffered from a major depression but that Dr Nabavi tentatively outlines a positive prognosis, although suggests the claimant will not fully recover, that the proper band is £19,360-£50,000. This is the moderately severe bracket and includes a **Simmonds v Castle** uplift of 10%. We note the guideline states that the majority of awards are in the £24,200-£31,350 bracket.
17. We note that the claimant was able to return to work on a phased return. Unfortunately Dr Nabavi does not deal in detail with the claimant's ability to do this. We note his positive recommendations in relation to treatment and that he notes the close family relationships and support that the claimant has. We consider the appropriate award for a personal injury of this type of a major depression with lifelong consequences, although in an individual who has been able to return to work and was subsequently made redundant, to be £30,000. However, we remind ourselves that any award must be made on tortious principles. Dr Nabavi identified 80% of the claimant's illness to be attributable to work related stressors. When asked how the pension allegation which succeeded attributed he stated 60% of that 80%. The respondent was refused permission by the claimant's representative to put a question in relation to that apportionment to Dr Nabavi.
18. The Tribunal is therefore in a situation where it is very difficult for us to be clear as to how far and on what basis the claimant's psychological illness was directly attributable to the one allegation which succeeded. The Tribunal reminds itself that the evidence at the liability hearing was primarily in relation to how the claimant was treated by Trevor Single and later by Alison Scurfield. Neither of them made the decision in relation to the backdating of pension contributions which was made by the Board, who were not employees of the respondent. We note the claimant was absent from work from 30 April 2014 and did not find out in until November 2014 that her pension would not be backdated to the date she would have wished but instead to March 2014. By November 2014 she had already been absent from work for a period of many months with a stress related illness. This is consistent with a finding that the claimant's absence and illness was caused by factors other than the failure to backdate the pension to a specific point.
19. We note the claimant had returned to work in a phased return in April 2016. She was made redundant for unrelated reasons and there is no claim in relation to that dismissal or appeal against it.

20. The Tribunal must consider how to apportion an award for personal injury on tortious principles.
21. The respondent suggested that given that there were 15 allegations of discrimination then the appropriate way to deal with the causative connection was to divide the amount of the award by 1/15th on the basis that each discriminatory allegation had an equal but separate causative influence. On this basis given we think the appropriate award is 30,000 for the nature of the illness the award would be either £2,000 if we awarded 1/15 of £30,000 or £1,600 if we also relied on the evidence of Dr Nabavi that only 80% of the illness was work related and awarding 1/15 of that sum (£24000).
22. The Tribunal considered that approach but found it to be very mechanical.
23. The Tribunal looked at the matter in the round. The Tribunal reminded itself that the claimant can only recover from the loss flowing from the breach. The Tribunal noted that there was no explanation for Dr Nabavi's finding of 60% of the claimant's condition was due to the pension allegation and that Dr Nabavi started from a premise where only 80% of the claimant's condition was work related in any event. In the absence of an explanation from Dr Nabavi the Tribunal did not rely on his finding that 60% of the claimant's work related symptoms were caused by the discriminatory pension allegation.
24. The Tribunal reminded ourselves that in fixing an award for the claimant's psychological/psychiatric condition and her claim for injury to feelings we had to look at the overall picture. We reminded ourselves that the claimant also suffered from a physical manifestation of her stress related symptoms, including lockjaw, IBS, blurred vision and high blood pressure (see the claimant's statement at paragraphs 76-95). We rely on the evidence of Dr Lewis, who explained that lockjaw was a stress induced condition. We rely on the claimant's evidence that her other conditions were stress induced. We find it is not appropriate to make a separate award for physical manifestations for a stress related condition when we are taking those conditions into account when considering the claimant's claim for injury to feelings and psychological illness. These symptoms are taken into account when we reached the figure of £30,000 for the claimant's psychological personal injury, before apportionment.
25. We have had regard to the evidence of Dr Nabavi, which we treat with caution in relation to the apportionment of 60%. We have taken into account the very small part that the failure to backdate adequately the claimant's pension contributions played in the evidence in this case and we have taken into account the fact that the claimant had already been absent from work for a lengthy period of six months by the time she found out that her claim for pension loss was being backdated only to March 2014 and not any earlier. We have taken into account the fact that the claimant herself admitted that she had failed to chase up the issue in relation to pension and it did not form part of her grievance until a late stage which suggests that this was not a major causative factor of her illness. In the circumstances balancing all these factors the Tribunal awards the claimant £5,000 for psychiatric injury.

Physical Personal Injury

26. The Tribunal relies on the report of Dr Lewis at pages 383-396. The Tribunal has taken into account that the claimant is suffering from an underlying congenital disease known as Anderson Fabry Disease which has resulted in an increasing thickness of her heart muscle (see pages 379-380). The Tribunal notes the claimant also has vasospastic angina which has been aggravated by stress. The Tribunal notes that the claimant had a history of GP hospital attendances in relation to chest pain which predates the grievance hearing in May 2014 and the outcome in relation to the allegation which succeeded before the Tribunal. Accordingly the Tribunal is satisfied that the allegations which succeeded cannot be entirely causative of the claimant's ongoing condition. The Tribunal notes that Dr Lewis finds that the claimant did return to work on a phased return and anticipates that the symptoms of chest pain from which she is suffering are likely to improve in future. He considers Cognitive Behavioural Therapy will need to be continued and will improve although it will not cure the condition. He also envisages when the claimant finds new employment this will distract her from her distress over the recollections of the past years and then there may be "a significant diminution in her symptomology related to her employment with Telecare".
27. He indicates she is likely to continue to have stress related vasospastic angina and indeed some exercise and cold related angina lifelong. He envisages a 50% improvement in her symptomology with regarding her stress related angina.
28. It is very difficult for the Tribunal to find appropriate guidance as the appropriate band of compensation because there is no separate section in the guidelines dealing with heart conditions such as this. The Tribunal finds that the most appropriate comparative approach is in relation to the guidelines for chronic pain disorders (see pages 465 and 566). The Tribunal finds that the appropriate bracket is the moderate bracket which is £17,600-£32,180. The Tribunal finds that the claimant is at the top end of this bracket at £30,000. The Tribunal is mindful that a chronic pain condition is likely to be more severe than the claimant's condition because by its very nature chronic pain provides persistent symptoms whereas the nature of the vasospastic angina, by the claimant's own description, involves intermittent symptoms of chest pain.
29. The Tribunal turns to apportionment. The Tribunal relies on the apportionment conducted by Dr Lewis. He says 80% of the claimant's symptoms are due to work related stress and of those 12.5% due to the pension allegation, and therefore the correct figure is 10%. We therefore award £3,000 for the physical injury. We award interest at the usual rate.

Interest on awards for injury to feelings and personal injury.

30. The Tribunal reminds itself of the provisions in relation to interest Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 SI 1996/2803. We consider that it is not appropriate to make a separate award for interest in relation to the claimant's claims for personal injury, psychological injury and injury to feelings because we have taken the level of interest into account (8% from the date of the discriminatory act) and factored this into the total award for physical and psychological personal injury and the award for injury to feelings.

Aggravated damages

31. We turn to consider the claimant's claim for aggravated damages. We remind ourselves of the guidance in **Prison Service & others v Johnson [1997] ICR 275 EAT** and **Alexander v The Home Office [1988] ICR 685**. Aggravated damages can be awarded in a discrimination case where the defendants have behaved in a "high-handed, malicious, insulting or oppressive manner in committing the act of discrimination". We remind ourselves of the guidance in **Commissioner of the Police of the Metropolis v Shaw EAT 0125/11** which identified three broad categories of case:

- Where the manner in which the wrong was committed was particularly upsetting. This is what the Court of Appeal in **Alexander** meant when referring to acts done in a high-handed, malicious, insulting or oppressive manner.
- Where there was a discriminatory motive i.e. the conduct was evidently based on prejudice or animosity or was spiteful, vindictive or intended to wound.
- Subsequent conduct by the respondent

32. We are not satisfied there are facts which justify a finding of aggravated damages in relation to the successful allegation of race discrimination that the respondent did not backdate the employer's pension contributions to the date the claimant informed the respondent she wanted to join the scheme in April 2011. We remind ourselves that the claimant was permitted to backdate her contributions but the discriminatory act was not to permit the claimant to back date contributions to the date she informed the respondent she wanted to join the scheme.(She was permitted to backdate to the date the matter was raised in a grievance in March 2014.) We remind ourselves that we found the burden of proof shifted because of the reasons set out in our judgment at paragraphs 191-194. We remind ourselves that we were not satisfied that there was a clear explanation as to why the claimant was not permitted to backdate her pension to the earlier date. We rely on our findings that the decision was made by the Board, not by one individual. (see paragraph 187). .

33. We remind ourselves that this was an allegation which turned on the burden of proof. We did not find any discriminatory motive. We found that the burden of proof had shifted and the respondent did not advance a clear non discriminatory reason as to why they did not permit the claimant to backdate to an earlier point in time.

34. We are not satisfied that our findings at paragraph 191 suggest the action of Mr Single was intentional. The document of 20 July 2011 came to light late in the day. The circumstances in which that document came to light were taken into account and caused us to find that it amounted to "something more" which enabled the burden of proof to shift. We are not satisfied that it amounts to high-handed, malicious, insulting or oppressive behaviour to justify an award for aggravated damages.

35. Finally we made no findings of any actions that there was any subsequent action of the respondent which was aggravating. We made no other findings of discriminatory treatment and we make no findings of any aggravating subsequent conduct by the respondent's representative. Our only concern about the conduct of the respondent was in relation to the disclosure of the document referred to at paragraph 191-3 of our judgment . That concern was taken into account by causing us to find it amounted to "something more" meaning the burden of proof shifted. We remind ourselves that the EAT stated in **Zaiwalla and Co v Walia 2002 IRLR 697** that aggravated damages in respect of alleged misconduct of proceedings will be exceptional. We find no aggravating conduct by the respondent and no exceptional circumstances. Accordingly for these reasons we decline to make an award for aggravated damages.

Pension Contributions

36. The Tribunal turns to deal with pension loss. The claimant claimed for employee contributions, employer contributions and loss of pension growth.

37. The Tribunal reminds ourselves of the nature of the allegation which has succeeded. The respondent allowed the claimant to join the pension scheme. The respondent backdated the claimant's contributions to the pension scheme to March 2014. The Tribunal found the failure to backdate pension contributions far enough i.e. to April 2011, was an act of discrimination. The Tribunal found that there were generally administrative problems in relation to the pension scheme and other employees were affected by that administrative difficulty.

38. Turning therefore first of all to the issue of pension growth, the claimant is not entitled to be compensated according to tortious principles. That would have put her in the position as if she had not been permitted to join the pension scheme at all rather than putting her in the position to compensate her for the failure to backdate her pension contributions at a particular point in time.

39. Secondly, the information provided by the claimant does not identify any pension growth in relation to the failure to provide backdated pension in relation to a specific time point only.

40. The Tribunal considers the appropriate way to compensate the claimant for the failure of the respondent to backdate her pension contributions in 2015 back to 2011 rather than to March 2014 is by awarding those contributions and interest.

41. Accordingly the Tribunal awards the claimant £9,841.99.

42. We remind ourselves of the provisions in relation to interest. Employment Tribunals (Interest on Awards in Discrimination Cases) (Amendment) Regulations 2013 SI 1669/2013 amends Reg 3(2) so that, for claims presented to the tribunal on or after 29 July 2013, the rate of interest payable on a claimant's losses up to judgment increased to 8 per cent.. The Tribunal may award interest from the mid point of the discriminatory act to the remedy hearing date. The discriminatory act was November 2014 and the hearing date for remedy March 2017. This is 28 months so the mid point is 14 months from November 2014 i.e. February 2016.

43. We award 14 months interest at 8% on £9,841.99 = £918.58.

44. The claimant also seeks her own employee contributions. The Tribunal finds that the claimant is not entitled to her own contributions on tortious principles. The Tribunal found that the respondent failed to back the employer contributions. The Tribunal did not make any finding that there was any failure of the employer in relation to the employee contributions. The Tribunal heard evidence that if the employer backdated contributions it was a matter for the employee to backdate their own contributions. Accordingly no award is made under this head.

Loss of Earnings

45. The Tribunal turns to the claimant's claim for loss of earnings. The Tribunal reminds ourselves that the claimant was absent from work for two years and that absence from work had already been lengthy by the time the claimant discovered there had been a failure to backdate her pension contributions to earlier than March 2014. She discovered this in November 2014 and had commenced her absence from work in April 2014. The claimant's absence from work was for stress related illness. The Tribunal, when considering the claimant's loss on tortious principles, has the same problems with the medical evidence of Dr Nabavi as outlined above.

46. The Tribunal accepts the calculations of the respondent as being accurate in terms of the loss of earnings suffered by the claimant (see pages 14A and 14B). The total loss by the claimant was £9,833.00. From the medical evidence of both Dr Lewis and Dr Nabavi 80% of the absence was related to work. Of that 80% only a very small proportion was caused by the failure to backdate the pension contribution adequately. If the respondent's principle of 15 equal causes each contributing 5.33% is adopted, the claimant would only recover £524.43. If the principle set out by Dr Lewis was adopted the sum of £983.30 would be recoverable.

47. The Tribunal considers that Dr Lewis' approach is the type of approach normally adopted. However, Dr Lewis' report is in relation to the angina and heart condition. The claimant's absence is variously noted as work related stress or later as anxiety and depression.

48. The Tribunal have looked at the matter in the round and taken all of the factors into account that made up the medical evidence together with our concerns about Dr Nabavi's report with regard to the figure of 60% being apportioned to the pension allegation. We award the claimant £983.30 for loss of earnings which the Tribunal considers reflects a sum commensurate with an appropriate level of apportionment.

49. The Tribunal considered interest. Employment Tribunals (Interest on Awards in Discrimination Cases) (Amendment) Regulations 2013 SI 1669/2013 amends Reg 3(2) so that, for claims presented to the tribunal on or after 29 July 2013, the rate of interest payable on a claimant's losses up to judgment increased to 8 per cent. The Tribunal may award interest from the mid point of the discriminatory act to the remedy hearing date. The discriminatory act was November 2014 and the hearing date for remedy March 2017. This is 28 months so the mid point is 14

months from November 2014 i.e. February 2016. Interest at 8% for 14 months on £ 91.77.

50. The Tribunal turns to the claimant's claim for future loss of earnings. The Tribunal reminds itself of tortious principles. The claimant was on a phased return to work in August 2016 when she was made redundant. The Tribunal notes there was no appeal against redundancy and no further claim was brought in relation to it amounting to a discriminatory act.
51. The Tribunal finds that the redundancy broke the chain of causation and declines to make any award for future loss of earnings in relation to the allegation which succeeded, namely the failure of the respondent to backdate the pension contribution to April 2011 instead of March 2014.

Medical Expenses

52. There is a lack of detail about the lack of medical expenses. The claimant claims £733 in relation to medical insurance and a future loss of £432 for future psychological treatment. The total figure is £1,165. The Tribunal relies on its findings above in accepting the medical evidence of Dr Lewis, treating the apportionment of the claimant's illness by Dr Nabavi with caution in relation to the figure of 60% and also not being satisfied that the contribution of each allegation of discriminatory conduct as an equal factor i.e. 5.33%, is an appropriate way to proceed. The Tribunal considers that Dr Lewis' approach is more satisfactory i.e. 10% attributable once the fact that some of the illness is unrelated to work is taken into account. The Tribunal therefore awards £116.60 (10% of £1,165).
53. Employment Tribunals (Interest on Awards in Discrimination Cases) (Amendment) Regulations 2013 SI 1669/2013 amends Reg 3(2) so that, for claims presented to the tribunal on or after 29 July 2013, the rate of interest payable on a claimant's losses up to judgment increased to 8 per cent. Strictly speaking the claimant is not entitled to interest on future loss only on past loss. However given the negligible amount of interest involved on this item and the difficulty of further identifying past and future loss the Tribunal awarded interest on the whole figure for loss of earnings.
54. The Tribunal may award interest from the mid point of the discriminatory act to the remedy hearing date. The discriminatory act was November 2014 and the hearing date for remedy March 2017. This is 28 months so the mid point is 14 months from November 2014 i.e. February 2016. Interest at 8% for 14 months on £ 116.60 is £10.88.
55. We turn to the other awards sought by the claimant. We find there are no grounds for an award for failure to follow the ACAS Code of Practice. The relevant allegation which succeeded is in relation to failure to backdate pension to April 2011 when the employer allowed backdating to March 2014. The claimant made no complaint about the failure to backdate her pension contributions or her pension generally until March 2014. When she raised that complaint it was considered at the hearing in May 2014. She had a meeting where the outcome was determined in relation to the contributions in November 2014. We made no findings in our liability judgement that there was failure to follow the ACAS Code of Practice.

56. The claimant is entitled to recover her issue fee and hearing fee. The claimant makes an application for costs which will be dealt with at a separate hearing.

Employment Judge Ross

Date 17 May 2017

JUDGMENT AND REASONS
SENT TO THE PARTIES ON

18 May 2017

FOR THE TRIBUNAL OFFICE



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: 2401885/2014

Name of case: Mrs L MacInnes v Telecare Services Association

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: 18 May 2017

"the calculation day" is: 19 May 2017

"the stipulated rate of interest" is: 8%

MR S ARTINGSTALL
For the Employment Tribunal Office