



EMPLOYMENT TRIBUNALS

Claimant: Miss L Viner

Respondent: Lynsey Sampson

Heard at: Manchester Employment Tribunal

On: 1 March 2021

Before: Employment Judge Dunlop (sitting alone)

Representation

Claimant: In person

Respondent: In person

RESERVED JUDGMENT

1. The respondent has made unauthorised deductions to the claimant's wages and is ordered to pay the claimant the gross sum of **£7,228.11**.

REASONS

Introduction

1. This is a wages claim. Miss Viner worked as a beauty therapist in a salon run and Mrs Sampson. She claims that she did not receive the National Minimum Wage throughout her employment. She also makes claims for a period during which the salon was closed as a result of the Covid-19 pandemic, during which time she was not paid at all.

The Hearing

2. The final hearing of this claim was originally scheduled to take place on 18 December 2020, both parties attended a video hearing on that day using the Tribunal's cloud video platform ("CVP"). I conducted that hearing, and it was apparent that neither party was properly prepared to deal with the case. I therefore converted the hearing to a case management hearing, listed the

case for a full hearing today, and gave the parties detailed directions about how they should prepare for the full hearing.

3. The parties have not complied with those directions in full. For example, the documents had not been arranged into a paginated bundle. Instead, Mrs Sampson has compiled the documents that both she and Miss Viner wish to rely on into a number of unpaginated attachments to an email sent into the Tribunal. Where I have referred to documents below, I have identified them by description. As there were limited documents put forward by the parties, we were able to proceed without a paginated bundle. I read all of the documents submitted by the parties.
4. The email did not include (contrary to the directions) a copy of the claim form and response form. This resulted in a short delay to the start of the hearing, as Miss Viner did not have a copy of Mrs Sampson's response form. However, after this had been sorted out we proceeded with the hearing. I was confident that both parties had had sight of the documents the other party wanted to rely on, and nobody suggested that they needed more time or were not ready to go ahead.
5. Miss Viner provided a witness statement and gave further evidence on affirmation in response to questions from me. Mrs Sampson was given the opportunity to cross examine her.
6. Mrs Sampson also provided a witness statement and gave further evidence on affirmation in response to questions from me. Miss Viner was given the opportunity to cross examine her. Both parties struggled to understand the purpose of cross examination, and neither asked more than three or four questions.
7. Mrs Sampson provided a document purporting to be a witness statement from someone called 'Rachel'. She told me this was Rachel Hagan, who worked as a hairdresser at the salon. She was not an employee but rented a chair from Mrs Sampson. She was also related to Mrs Sampson by marriage. The document did not give Rachel's full name or address, it was not signed and it did not contain a statement of truth. Rachel did not attend the video hearing to give her evidence. I read the statement and listened to both sides' comments about it. In the circumstances described, I did not admit it into evidence.

Findings of Fact

8. Miss Viner was first employed as an apprentice by Mrs Sampson from 12 March 2018. Mrs Sampson runs a beauty salon business and trades as 'Ruby's Hair and Beauty'. She does not operate as a limited company and accepts that she employs Miss Viner personally.
9. Miss Viner's date of birth is 6 August 1994 and she was 23 when the employment started and was undertaking an NVQ Beauty Therapy qualification with the Michael John Academy ("the Academy"). Miss Viner had very little experience of employment. She had commenced a college-

based apprenticeship earlier in her teens, but had then had three children. She was, therefore, attempting to commence a career for the first time.

10. The Academy provided a pro-forma Apprenticeship Agreement which was completed and signed by all three parties on 8 March 2018. Part of this document set out the commitments being made by the employer. This included the following text:

I agree to employ and pay my apprentice the Apprenticeship National Minimum Wage for a total of __ hours per week which includes 20% OFF-THE-JOB activity. The Apprentice should be employed for at least 30 hours per week (they are not allowed to be employed for fewer than 16 hours per week in any circumstances).

The number '24' has been written by hand in the gap. The parties agree that this number was entered when the apprenticeship commenced and that it was agreed by all parties. Miss Viner recollects that she was unable to work the recommended 30 hours because of her childcare commitments.

11. Mrs Sampson has told me that she was never able to agree to offer Miss Viner 24 hours of work per week. The salon was a very small business which did not open every day of the week. Mrs Sampson did not employ any other therapists, except for Miss Viner. The parties both agree that Miss Viner only ever worked on Thursdays, Fridays and Saturdays. Mrs Sampson said that the salon was open for less than 24 hours in total on those days, hence Miss Viner could never have worked for 24 hours. Mrs Sampson was, however, unable to explain why she had signed the agreement including the reference to 24 hours, simply saying that that was what had been filled in by the college.

12. At the start of her apprenticeship, Miss Viner was paid £84.00 per week. That equates to £3.50 per hour (based on a 24-hour week) which was national minimum wage for first-year apprentices as at March 2018. It may have been the intention of the parties that the 24 hours would also include the time that Miss Viner spent at college (which she attended on a Monday) as "Off-The-Job training". This seems likely on one reading of the Apprenticeship Agreement, but neither Miss Viner nor Mrs Sampson seemed to have any real understanding of where the 24-hour figure had come from.

13. As a matter of practice, I find that Miss Viner did not work 24 hours per week at any point during her apprenticeship. I have had some difficulty, however, in identifying the hours that she did work.

14. Mrs Sampson has submitted a screen shot from the businesses Facebook page which shows the hours to be as follows:

Wednesday 9.30 – 16.00

Thursday 9.30 – 17.00

Friday 9.30 – 17.00

Saturday 9.30 – 14.00

(Closed all other days)

She asks me to find that that the opening hours on Thursday to Saturday represent the maximum hours that Miss Viner worked. Miss Viner says that those were not the maximum hours for the following reasons:

- 14.1 She says the published opening hours were subject to change. Her evidence is that over the period that she worked the business at one point opened 'late night' opening on either a Thursday or Friday, and that Saturday hours have also changed, although she cannot recall the detail of this. She says that the salon's printed pricelist shows longer opening hours than the Facebook page, but she has not included a copy of that pricelist in the bundle.
 - 14.2 Further, she says that long-standing clients would be offered appointments outside the published opening times. In support of this, she provided photographs of salon diary entries which showed at least some appointments booked under her name at 8.30am on a Saturday morning, and some starting at 5pm on Thursdays or Fridays or 2pm on Saturdays. She also included in the bundle photographs of text message exchanges with clients in which early evening appointments (outside the opening hours given above) were being arranged.
 - 14.3 In further support, Miss Viner submitted a letter from her child's school confirming that the child was in after-school care until 6pm, and was often picked up later than this incurring additional costs. Of course, that does not definitely prove that Miss Viner was unable to collect earlier due to work – she had travel time to take account of and also had other children being looked after elsewhere, however, it does lend further support to her oral evidence that she frequently worked after 5p.m. in the evening.
15. For her part, Mrs Sampson had this to say:
- 15.1 She does not dispute that Miss Viner occasionally worked outside the published opening hours. Her argument is that this was minimal, and was more than offset by times when she would not be working within the published hours. Mrs Sampson says that the business was often quiet and that Miss Viner, in particular, did not build her client list to the extent Mrs Sampson had hoped. The salon diary entries are supportive of this to some extent as there do appear to be some very quiet days.
 - 15.2 She says that Miss Viner almost always took an hour for lunch, if not more.
 - 15.3 She says that Miss Viner was not required in the salon before 9.30am and that if she was late getting to school for pick up, it was not due to her work.
16. Having listened to the evidence from both parties, I find that Miss Viner worked variable hours as follows:
- 16.1 She started work shortly after 9am on Thursday and Friday, going to work immediately after dropping her children at school. She often arrived before Mrs Sampson and was given the responsibility of holding keys relatively early in her apprenticeship.
 - 16.2 She normally started work at a similar time on Saturday, although the salon would occasionally be opened early on a Saturday to accommodate clients.

- 16.3 She stayed in work until the salon closed each day. The closing time varied a little over the time of her employment, but was not earlier than 5pm on a Thursday or a Friday. Sometimes the salon stayed open until 6pm. On Saturdays, it closed at 2pm or 3pm depending on the appointments booked.
- 16.4 The opportunity to take a lunch break depended on how busy the salon was. I find that on Thursdays and Fridays Miss Viner generally did get to take a lunch break of at least 30 minutes, and sometimes this would be up to an hour. On Saturdays, the salon was busier and the day was shorter. Often there would be no time for a formal lunch break, although Miss Viner would usually be able to eat a sandwich between clients.
17. On this basis, Miss Viner was spending roughly 18-22 hours per week at the salon during her apprenticeship. Whilst this may have been slightly lower in the initial weeks and months, it did not take long before she was trusted by Mrs Sampson to hold keys to the property and to work with limited supervision. I accept that all of her time at the salon (except for any lunch break) was working time. When she did not have a client appointment she would have other duties such as setting up for clients, cleaning and tidying and updating the salon's social media accounts. Mrs Sampson kept no records of the hours worked by Miss Viner. She says that she sometimes paid her extra amounts in cash where she worked extra hours (for example if there was a client booked outside the opening times) and that she supplied details of these payments to her accountant. However, Mrs Sampson has not produced any record of those payments for this hearing. Further, she accepted that any list of payments provided to the accountant would not include a record of the hours that they were referable to.
18. The Apprenticeship National Minimum Wage rate increased in April 2018 to £3.70. Miss Viner's pay was not increased. Her claim form makes reference to the fact that it ought to have increased, but this claim was not particularised. Mrs Sampson told me today that she accepts that the rate increased two weeks' after Miss Viner started, and that she ought to have increased her pay. Mrs Sampson has put forward a calculation, which is discussed further below.
19. Miss Viner's apprenticeship was due to continue until June 2019. However, the Academy was closing and, as a result, Miss Viner and her contemporaries were 'rushed through' the end of their training. She achieved her Level II qualification and ended her apprenticeship in March 2019. The parties were unclear about the exact date and I will proceed on the basis that the apprenticeship lasted for exactly one year. (In any event, even if the apprenticeship continued for a short while, an apprentice is entitled to be paid at the standard NMW rate for their age group once they have completed the first year of the apprenticeship.)
20. Miss Viner continued to work for Mrs Sampson under the same arrangements as to hours and pay as she had worked as an apprentice. Miss Viner contends that there was no conversation about this. Mrs Sampson contends that they discussed the hours to be worked, and that these would be limited to the opening hours of the salon on Thursdays,

Fridays and Saturdays. I find it more likely than not that there was some limited discussion about the fact that Miss Viner's employment would continue, and that both parties were happy for the arrangement to continue. I find there was no discussion around wages and, specifically, no discussion about the fact that Miss Viner would be entitled to a much higher National Minimum Wage rate now that she was not an apprentice. As a 24-year-old in March 2019, Miss Viner was entitled to a rate of £7.38 per hour. From April 2019, that increased to £7.70.

21. On 6 August 2019 Miss Viner turned 25. That meant that she was entitled to a further increase in NMW rate to £8.21.
22. From shortly after that date, Mrs Sampson in fact increased Miss Viner's pay to £100 per week. That level of pay would allow for just over 12 hours work at the relevant NMW rate at that time. Even taking Mrs Sampson's evidence at its highest, I do not understand her to be saying that Miss Viner was working for only 12 hours per week. She told me that she knew about the NMW rates in force, but could not explain how she came to the calculation that paying Miss Viner £100 per week satisfied the requirement to pay her the minimum wage. It is also worth noting that, whereas the initial rate of £84 per week had been directly referable to the £3.50 rate (multiplied by 24 hours) it is impossible to see where the £100 has come from.
23. Miss Viner did not complain about the wage she was receiving. Indeed, both parties have stressed that there was a warm relationship between them at that stage and that each considered the other one to be a friend. Miss Viner has explained that she did not raise the issue as this was her first job and she was unaware of the rate of minimum wage that she should have been receiving.
24. The lack of formality and failure to ensure that Miss Viner benefitted from the employee rights she was legally entitled to appears to have extended beyond the minimum wage issue. There is no holiday pay claim in this case and the parties agreed, in response to questioning, that Miss Viner had taken one week's holiday during 2019, for which she was paid at her usual rate. In addition, she had some paid holiday when the salon was closed on her usual working days e.g. over Christmas and Easter. It appears very unlikely that this amounted to the full 5.6 weeks' paid annual leave entitlement provided for by the Working Time Regulations 1998. Again, Miss Viner's circumstances and background meant that she did not assert her rights by asking for additional holiday whilst she was in employment.
25. At no time was Miss Viner on a PAYE system. She has complained that HMRC has no record of her working at the salon. Mrs Sampson received advice from her accountant that it was not necessary to operate a PAYE system as she did not employ anyone over the threshold wage of £120 per week (shown by a screenshot in the bundle). Employers will often use the same records to comply with tax obligations and obligations to employees (such as ensuring they receive correct wages and holiday pay) and commercial payroll software, for example, may help them to fulfill both sets of obligations. However, despite an overlap to that extent the obligations are separate, and this Tribunal's jurisdiction is in respect of employment rights

only. I therefore make no finding as part of this case as to whether Mrs Sampson has complied with any obligations that arose in respect of payment or record-keeping for the purposes of tax (including National Insurance).

26. The situation changed with the Covid-19 lockdown of March 2020. Mrs Sampson received advice from her accountant about putting employees on furlough. She told me that this was not personalised advice, but a letter sent to all the accountant's clients. It said that she should inform employees in writing that they were to be furloughed. I fully accept that both Mrs Sampson and her accountant would have had only a limited understanding at that time about the furlough scheme and what it would ultimately entail. On 1 April 2020 Mrs Sampson sent Miss Viner an email as follows:

*Hi Lauren,
As per telephone conversation please accept this email as notice of
furloughment as of March 21st 2020.
Thank you
Lynsey xx*

27. There was no written agreement as to the furlough. However, Miss Viner gave evidence that she understood would be put on furlough and that this would mean that she would not attend work or do any work for Mrs Sampson (the salon was, of course, closed) and that she would be paid 80% of her wages. She formed this understanding from media reports about the furlough scheme.
28. Subsequently, and before any furlough wages were paid, Mrs Sampson received advice that she would not be able to claim any monies in respect of Miss Viner from the government furlough scheme for Miss Viner. She informed Miss Viner of this and Miss Viner subsequently received no pay from Mrs Sampson until the salon re-opened and she started back at work on 16 July 2020.
29. Miss Viner was unhappy about not receiving wages during the furlough period. The atmosphere between Miss Viner and Mrs Sampson soured. Miss Viner resigned with effect from 31 August 2020. She sought advice from ACAS about her wages, this resulted in her putting in this claim. The claim included a calculation for unpaid wages during furlough and for underpaid wages during the preceding period. ACAS had helped her with the calculations and they were based on a 24-hour working week.
30. In her response Mrs Sampson drew attention to the fact that Miss Viner has gone into business on her own account. She believes that that is why Miss Viner wanted to leave. As this is not a claim about unfair dismissal, the reason why Miss Viner left is not something I have had to consider. I only have to consider whether Miss Viner was at all times paid the wages that she was entitled to.
31. Mrs Sampson's position is that the hours that Miss Viner actually worked were such that she was properly paid. On that basis, she has not formally conceded that money is owed. However, she accepts that she has not kept records of the hours worked. She therefore proposes that Miss Viner's

wages should be calculated based on the published opening hours of the salon. She has helpfully prepared alternative calculations for the amount of wages that she says I should award, working on that basis.

Relevant Legal Principles

32. The parties did not refer me to any statutes or case law.

33. I have had regard to the following statutory provisions and legal principles. I have simplified what they say to help the parties understand this Judgment.

33.1 Section 28 of the National Minimum Wage Act 1998 says that where an employee claims they have been paid at less than the national minimum wage, the Tribunal will find that they have been paid at less than the national minimum wage unless the employer proves that they have been paid correctly.

33.2 Regulation 59(1) of the National Minimum Wage Regulations 2015 says that an employer must keep records which are sufficient to establish that she is paying her employees at a rate which is at least equal to the national minimum wage rate that applies to the employee.

33.3 Section 13 of the Employment Rights Act 1996 gives an employee a right not to suffer unauthorised deductions to her wages and section 23 says that complaints about unauthorised deductions can be presented in the Employment Tribunal. However, section 23(4A) limits the period for which such claims can be made – an employee can only go back for two years from the date when she brought the claim. Where an employee has been paid less than the national minimum wage, they can claim the difference as a ‘deduction’ from their wages and under this legislation.

Discussion and conclusions

34. I decided that Mrs Sampson had failed in her obligation to pay Miss Viner the national minimum wage. I consider that this was effectively admitted by Mrs Sampson in her proposals for calculating the sums I should award to Miss Viner. As will be clear from my findings of fact, I also consider that the weight of the evidence shows that Miss Viner was at all times working in excess of the hours which would be covered by the payments she was receiving.

35. I then had to decide what underpayments Miss Viner should be compensated for, and how these should be calculated.

36. The most important question was how much Miss Viner should have been paid for each week of employment. The National Minimum Wage Regulations provide detailed guidance on how this should be done, and there is case law around whether particular activities count as working time.

However, all this relies on records being kept by the employer, which was not done in this case.

37. I have no choice but to estimate the actual time that Miss Viner was working. In doing so, I have to give her the 'benefit of the doubt' as it is Mrs Sampson who has failed to keep the records, in breach of her obligations. Miss Viner said I should base the calculations on a 24-hour working week as that was what was set out in her contract. I considered whether I should do so, given the terms of s.28 of the National Minimum Wage Act 1998. However, it is clear from the evidence that, even on Miss Viner's case, the contract did not correctly record her working time and she was, in actual fact, working less than 24 hours. I therefore considered that to base the compensation on a 24 hour working week would mean that Miss Viner would recover more money than she is entitled to.

38. I have decided to award compensation based on a 21.5 hour working week. I have reached this as follows:

Thursday: Starting work at 9am, finishing at 6pm. 30 minute unpaid lunch break.

Friday: Starting work at 9am, finishing at 5pm. 30 minute unpaid lunch break

Saturday: starting work at 9am, finishing 2.30pm. No lunch break.

39. Although I do not find that Miss Viner worked these exact hours, I am satisfied that this is an approximation which ensures that she is fully compensated for the hours that she did work. Although there were occasions when she worked outside these hours (for example an 8.30 start on a Saturday) I am satisfied that these will be more than offset by time that she was not at work within these hours (for example she did not start at 9am regularly – most days it would be shortly after 9).

40. I accept that this calculation will result in some degree of overcompensation to Miss Viner, but if I was to award a lesser figure, there is a danger that Miss Viner would be under-compensated. Given that the responsibility to keep records and burden of proof to show that proper payment has been made were on Mrs Sampson, it is right that the inaccuracies this 'rough and ready' calculation must operate against her.

41. In view of my decision to limit the calculation to a 21.5 hour working week, there is no basis for finding that Miss Viner was underpaid during her apprenticeship, as the payments she received were at all times in excess of 21.5 hours at the apprenticeship rate. I therefore calculated the losses as running from 12 March 2019.

42. In respect of the furlough period, it is important to remember that the obligation to pay wages to an employee is not dependent on whether those wages can be recovered by the employer from the furlough scheme. I am satisfied that Miss Viner remained in employment during the furlough period. Again, if proper records had been kept of her working hours prior to the lockdown it would have been possible to make a more accurate calculation of her pay entitlement during the furlough period. As it is, I will

proceed on the basis that her contractual working week was a 21.5 hour working week. Although there is no written furlough agreement, Miss Viner accepted in her evidence that she only expected to be paid for 80% of her contractual working hours during this period. I therefore find there was an implied variation to the contract, whereby both parties agreed that payment during the furlough period would be limited to 80% of the contractual hours.

43. These various findings result in a calculation of underpayments as set out in the table below. (As the award is based on an approximate number of weekly hours in any event, I have simplified the calculation by rounding up/down to whole weeks for each section of the table):

Period start date	Period end date	Comment	NMW rate applied	No of weeks	Total payment due	Actual Payment made	Underpayment
12.3.18	31.3.19	End of apprenticeship – C is entitled to NMW for her age group	£7.38 (21+)	3	21.5 x 3 x £7.38 £476.01	3 x £84 £252.00	£224.01
1.4.19	5.8.19	NMW increases	£7.70 (21+)	17	21.5 x 17 x £7.70 £2,814.35	17 x £84 £1,428.00	£1,386.30
6.8.2019	12.8.2019	C turns 25	£8.21 (25+)	1	21.5 x 1 x £8.21 £176.52	1 x £84 £84.00	£92.52
13.8.2019	20.3.20	R increases C's pay to £100 per week	£8.21 (25+)	31	21.5 x 31 x £8.21 £5,471.97	31 x £100 £3,100	£2,371.97
21.3.20	31.3.20	Furlough period starts	£8.21 (25+)	1	21.5 x 0.8 x 1 x £8.21 £141.21	£0	£141.21
1.4.20	15.7.20	NMW increases (furlough continues)	£8.72 (25+)	16	21.5 x 0.8 x 16 x £8.72	£0	£2,399.74
16.7.20	31.8.20	Return to work until resignation	£8.72 (25+)	7	21.5 x 7 x £8.72 £1,312.36	7 x £100 £700.00	£612.36
							£7,228.11

44. On that basis, I have calculated the total amount underpaid to be £7,228.11.

45. I finish this judgment by saying that I accept Mrs Sampson's evidence that she was running a very small business and that she was paying Miss Viner what she believed the business could afford. I also acknowledge that Miss Viner was, at the time, happy to work for the wages Mrs Sampson offered. In those circumstances, I have no doubt that Mrs Sampson may feel aggrieved by this Judgment. However, we have now had national minimum

wage legislation in this country for well over twenty years. It is there due to a recognition that individuals are not always able to protect themselves from exploitation, and there are many circumstances which can lead people to agree to work for very low rates of pay. It is vital for every employer, however small, to ensure that they are aware of how that legislation applies to any employee that they take on, and to be scrupulous in ensuring that no employee is paid at a rate which falls below that minimum. To fail to do so means that employers may face not just Employment Tribunal proceedings such as these but also, potentially, criminal charges.

Employment Judge Dunlop

Date: 8 March 2021

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

15 March 2021

FOR EMPLOYMENT TRIBUNALS



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: 2415665/2020
Miss L Viner v Lynsey Sampson

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: 15 March 2021

"the calculation day" is: 16 March 2021

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

MR S ARTINGSTALL
For the Employment Tribunal Office

INTEREST ON TRIBUNAL AWARDS

GUIDANCE NOTE

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

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

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

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

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

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

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