



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Chloe Murray

**Respondent:** (1) Cale Nursing Home  
(2) Wadsworth Care Homes Limited

## JUDGMENT

Employment Tribunals Rules of Procedure 2013, Rule 21

**The respondent not having presented a response and on the information before the Judge including a 58-page bundle of documents and the claimant's witness statement**

**The judgment of the Tribunal is that:**

- 1) The claims brought against the first respondent are dismissed on withdrawal, and Cale Nursing Home has no further interest in these proceedings. All claims remain against the second respondent, Wandsworth Care Homes Limited.
- 2) The claim for unfair dismissal, a redundancy payment, wrongful dismissal (notice pay), accrued unpaid holiday and protective award are all well-founded in that the respondent failed to comply with its statutory collective consultation obligations under Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 before the proposed redundancy dismissal took effect at its establishment in Cale Green Nursing Home in respect of the whole workforce that exceeded 20-employees employed there.
- 3) The claimant was wrongfully dismissed and she entitled to statutory notice pay and a statutory redundancy pay, which she has not received. The redundancy pay based on 7-years' service (the effective date of termination was 29 May 2020) at an average weekly pay of £504 totals £3528.00. The

claimant should have received 7 weeks' notice at £412.72 per week, which totals £2889.04 net.

4) The second respondent is ordered to pay to the claimant a statutory redundancy payment in the sum of £3528.00 and notice pay of £2889.04 net.

5) The claimant is owed 3.7 days unpaid holiday, and the second respondent is ordered to pay to the claimant the sum of £305.44 net.

6) Under Section 189(1)(d), (2), (3) and (4) of the 1992 Act, the Tribunal makes a protective award in respect of the claimant and the respondent is ordered to pay remuneration for a protected period of 90 days beginning on 29 May 2020.

7) The remaining claim for unfair dismissal relating to the compensatory award is adjourned to a remedy hearing, the claim for direct sex discrimination brought under section 13 of the Equality Act 2010, maternity discrimination brought under section 18 and unauthorised deduction of wages are adjourned to a liability hearing to be followed by the remedy hearing with an estimated length of 3-hours. The parties will be advised on the hearing date in due course.

8) The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 may apply to the protective award.

## **REASONS**

1. By a claim form presented on 28 September 2020, the claimant brings complaints of unfair dismissal, direct sex discrimination brought under section 13 of the Equality Act 2010, maternity discrimination under section 18, redundancy pay, wrongful dismissal, unpaid accrued holiday pay, unauthorised deduction of wages and protective award in respect of breach of the collective consultation requirements.

2. No response was presented to the claims by the respondents. The claims brought against the first respondent are dismissed on withdrawal, and Cale Nursing Home has no further interest in these proceedings. All claims remain against the second respondent, Wandsworth Care Homes Limited, who has not filed a response and cannot take part in the liability hearing without the leave of the judge.

3. On a full consideration of the file of proceedings, with a witness statement provided by the claimant, it was possible to issue this Judgment under Rule 21 without a hearing.

4. On the information provided, the Tribunal makes the following findings.

Findings

5. The respondent is in the business of nursing homes.
6. The claimant commenced her employment on the 20 November 2013 at Cale Green Nursing Home (“the care home”). Her contract of employment was transferred to the first respondent in July 2019 under TUPE. The first respondent changed its name to the second respondent and new employment contracts were issued on the 23 May 2019.
7. The claimant’s wages increased to £10.50 per hour and that has remained her applicable rate of pay. She earned an average gross income of £504 per week, £412.72 net and was employed for 7 continuous years.
8. The claimant became pregnant and took maternity leave at the end of February 2020. By the time the claimant’s employment was brought to an end on 29 May 2020 she was owed 3.7 days unpaid holiday, totalling £305.44 net.
9. The nursing home was closed on the 29 May 2020 when the claimant was on maternity leave. The claimant was not informed or consulted, and she has received no information from the respondent since. The claimant was entitled to notice pay and a statutory redundancy pay, which she has not received. The redundancy pay based on 7-years’ service (the effective date of termination was 29 May 2020) at an average weekly pay of £504 totals £3528.00.
10. The claimant should have received 7 weeks’ notice at £412.72 per week, which totals £2889.04 net.
11. The claimant was unfairly dismissed and her compensatory award will be addressed at the remedy hearing.
12. In these circumstances, the respondent was in breach of its collective information and consultation obligation under Section 188 of the 1992 Act and the Tribunal makes an award under Section 189 in favour of the claimant in the schedule for the maximum protected period of 90 days commencing on 29 May 2020.
13. The respondent is advised of the provisions of Regulation 5 of the Employment Protection (Recoupment of Jobseeker’s Allowance and Income Support) Regulations 1996, such that, within 10 days of the decision in these proceedings being promulgated or as soon as is reasonably practicable, the second respondent must comply with the provisions of Regulation 6 of the 1996 Regulations and, in particular, must supply to the Secretary of State the following information in writing:
  - (a) the name, address and national insurance number of the claimant to whom the protective award relates; and
  - (b) the date of termination of the employment of the claimant.

7. The respondent will not be required to make any payment under the protective awards made until it has received a recoupment notice from the Secretary of State or notification that the Secretary of State does not intend to serve a recoupment notice having regard to the provisions of Regulation 7(2). The Secretary of State must normally serve such recoupment notice or notification on the employer within 21 days of receipt of the required information from the first respondent.

Employment Judge Shotter

Date 4 October 2021

JUDGMENT SENT TO PARTIES ON

7 October 2021

FOR THE TRIBUNAL OFFICE

**Public access to employment tribunal decisions**

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

## ANNEX TO THE JUDGMENT (PROTECTIVE AWARDS)

### Recoupment of Benefits

The following particulars are given pursuant to the Employment Protection (Recoupment of Benefits) Regulations 1996, SI 1996 No 2349.

The respondent is under a duty to give the Secretary of State the following information in writing: (a) the name, address and National Insurance number of every employee to whom the protective award relates; and (b) the date of termination (or proposed termination) of the employment of each such employee.

That information shall be given within 10 days, commencing on the day on which the Tribunal announced its judgment at the hearing. If the Tribunal did not announce its judgment at the hearing, the information shall be given within the period of 10 days, commencing on the day on which the relevant judgment was sent to the parties. In any case in which it is not reasonably practicable for the respondent to do so within those times, then the information shall be given as soon as reasonably practicable thereafter.

No part of the remuneration due to an employee under the protective award is payable until either (a) the Secretary of State has served a notice (called a Recoupment Notice) on the respondent to pay the whole or part thereof to the Secretary of State or (b) the Secretary of State has notified the respondent in writing that no such notice is to be served.

This is without prejudice to the right of an employee to present a complaint to an Employment Tribunal of the employer's failure to pay remuneration under a protective award.

If the Secretary of State has served a Recoupment Notice on the respondent, the sum claimed in the Recoupment Notice in relation to each employee will be whichever is the less of:

- (a) the amount (less any tax or social security contributions which fall to be deducted therefrom by the employer) accrued due to the employee in respect of so much of the protected period as falls before the date on which the Secretary of State receives from the employer the information referred to above; OR
- (b) (i) the amount paid by way of or paid as on account of jobseeker's allowance, income-related employment and support allowance or income support to the employee for any period which coincides with any part of the protected period falling before the date described in (a) above; or

- (ii) in the case of an employee entitled to an award of universal credit for any period (“the UC period”) which coincides with any part of the period to which the prescribed element is attributable, any amount paid by way of or on account of universal credit for the UC period that would not have been paid if the person’s earned income for that period was the same as immediately before the period to which the prescribed element is attributable.

The sum claimed in the Recoupment Notice will be payable forthwith to the Secretary of State. The balance of the remuneration under the protective award is then payable to the employee, subject to the deduction of any tax or social security contributions.

A Recoupment Notice must be served within the period of 21 days after the Secretary of State has received from the respondent the above-mentioned information required to be given by the respondent to the Secretary of State or as soon as practicable thereafter.

After paying the balance of the remuneration (less tax and social security contributions) to the employee, the respondent will not be further liable to the employee. However, the sum claimed in a Recoupment Notice is due from the respondent as a debt to the Secretary of State, whatever may have been paid to the employee, and regardless of any dispute between the employee and the Secretary of State as to the amount specified in the Recoupment Notice.



## NOTICE

### THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: **2415365/2020**

Name of case: **Miss C Murray** v **Wadsworth Care Homes Ltd**

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 judgment day" is: **7 October 2021**

"the calculation day" is: **8 October 2021**

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

For the Employment Tribunal Office