THE INDUSTRIAL TRIBUNALS

CASE REF: 2884/17

CLAIMANT: **John Donnelly**

RESPONDENTS: **1. Financial Resolutions**
2. Brian Newell
3. Kieran Morgan

DECISION

(A) The claimant's wages claim against the respondents is not well-founded. Accordingly, that claim is dismissed.

(B) The claimant's holiday pay claim, made pursuant to Regulation 43 of the Working Time Regulations 2016 ("the WTR"), against Brian Newell and against Kieran Morgan, is well-founded. It is ordered that Mr Newell and Mr Morgan shall pay to the claimant the sum of £6,191 in respect of holiday pay.

(C) The amount awarded to the claimant pursuant to the WTR claim has been uplifted by the sum of £1,398 (amounting to four weeks' wages), pursuant to Article 27 of the Employment Rights (Northern Ireland) Order 2003.

(D) No determination has been made in respect of the claimant's unlawful deduction or breach of contract holiday pay claims.

(E) The claimant's equal pay claim against the respondents is not well-founded. Accordingly, that claim is dismissed.

CONSTITUTION OF TRIBUNAL

Employment Judge: **Employment Judge Buggy**

Members: **Mr I O'Hea**
Ms A Gribben

APPEARANCES:

The claimant was represented by Ms E McIlveen, Barrister-at-Law.

Mr Newell was not present or represented.

Mr Morgan was represented by Mr B McKee, Barrister-at-Law.

REASONS

1. The details above under the heading of “Appearances” relate to the situation which existed on the third day of the main hearing. The situations relating to the first and second days of Hearing were as follows:

   (1) On the first day of the hearing, the claimant was present and was self-represented, Mr Newell was present and was self-represented and Mr Morgan was not present or represented;

   (2) On the second day of the hearing, the claimant was self-represented, Mr Newell was not present or represented and Mr Morgan was not present or represented.

2. The claimant worked in a business which traded under the name “Financial Resolutions”, in Market Street, Armagh, from August 2014 until 24 February 2017.

3. The main business of Financial Resolutions was to provide advice and assistance to people who were in financial difficulty. Through the claimant’s period of employment in Financial Resolutions, Mr Kieran Morgan was practising as a solicitor. His office was in the same building as the office of Financial Resolutions.

4. According to the claimant, Financial Resolutions was the trade name of a partnership between the second-named respondent (Brian Newell) and the third-named respondent (Kieran Morgan).

5. According to both of those respondents, the reality, at all relevant times, was that Financial Resolutions was the trade name of a business of which Mr Newell was the sole proprietor.

6. Accordingly, one of the issues which we have had to decide in this case was whether or not Financial Resolutions was the business both of Mr Newell and of Mr Morgan (Obviously, unless Financial Resolutions was the business of both of them, Mr Morgan could not be liable for any compensation which might be awarded in this case).

The claims

7. When these proceedings were begun, the claimant was making a claim of constructive unfair dismissal. However, that claim has been withdrawn.

8. The remaining claims relate only to two matters. Both of those two matters are omissions (as distinct from being things which have allegedly been done). The two relevant alleged omissions are as follows:

   (1) Throughout the period when he was working in Financial Resolutions, the claimant was never given any holiday leave, and he was never given holiday pay in respect of any days on which he wasn’t working.

(2) The claimant also makes claims in respect of the employer's omission to pay wages to him in respect of periods (other than the 2014/15 course year) during his employment, when he was at college.

9. The following are the causes of action In respect of the holiday pay omission. The claims are:

(1) an unlawful deduction of wages claim,

(2) a breach of contract claim,

(3) a claim under Regulation 43 of the Working Time Regulations (Northern Ireland) 2016 ("a WTR claim") and

(4) an equal pay claim.

10. Our understanding is that, in respect of holiday pay, the unlawful deduction of wages claim, the breach of contract claim, and the WTR claim were being made in the alternative. (In other words, the claimant's position was that, if he was successful under Regulation 43 of the WTR, he would not be pursuing any holiday pay claim pursuant to the unlawful deduction of wages legislation, or pursuant to breach of contract law.) Accordingly, as noted above, no determination has been made in respect of the claimant's unlawful deduction of wages or breach of contract claims, in respect of holiday pay.

11. The causes of action in respect of the omission to pay wages are as follows:

(1) an unlawful deduction of wages claim and

(2) a breach of contract claim.

The course of the proceedings

12. In *Wisniewski v Central Manchester Health Authority* [1998] PIQR 324, Brooke LJ declared what can conveniently be described as the *Wisniewski* principle, in the following terms:

> "From this line of authority I derived the following principles in the context of the present case:
>
> (1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.
>
> (2) If a court is willing to draw such inferences they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.
>
> …

(3) If the reason for the witness's absence or silence satisfies the court then no such adverse inferences may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified.

13. The main hearing in this case took place on 10 May 2018, on 4 December 2018 and on 28 June 2019. Mr Newell was present on the first day of the hearing. On that day, he provided sworn oral testimony. On the second day of the hearing, Mr Newell was not present. On that day, the tribunal viewed a video, which was provided to the tribunal by the claimant, but received no other evidence from anybody, on that day. Mr Newell did not attend the hearing on 28 June 2019. Accordingly, he did not make himself available to provide supplementary oral testimony on that date, or for cross-examination on that date.

14. Mr Newell did not ask for the postponement of the main hearing in June 2019. (He was right to refrain from doing so; by that point, the proceedings had been under way for a very lengthy period. He did however, provide a medical certificate from his GP, which unfortunately was only received in the Office of the Industrial Tribunals at some time during business hours on 28 June 2019, and the existence of that certificate did not come to the attention of the tribunal until the 28 June hearing was over. The GP's certificate is very brief, it is entitled "Statement of Fitness for Work For social security or Statutory Sick Pay". It merely states that the claimant is "not fit for work". However, it does add the following comments:

> "Significant stress. Will be unable to attend tribunal due to mental health problems".

15. Against the background described in the last preceding paragraph, we do not consider that it would be appropriate, in the circumstances of this case, to draw any adverse inferences, from the absence, in June 2019, of Mr Newell.

16. Mr Morgan was not present on any of the dates of the main hearing. In particular, he was not present during the reconvened date of the main hearing in June 2019. At that time, a detailed report was provided by a GP, Dr Eimear Moriarty. According to that report, it was Dr Moriarty's opinion that:

> "Due to Mr Morgan's extreme frailty, propensity to collapse episodes and poor general health I strongly believe that he is unfit to attend a full hearing at the Industrial Tribunal Office as is proposed".

17. We invited Mr Morgan's representatives to seek clarification in relation to Mr Morgan's state of health. In particular, we invited those representatives to seek an opinion from Dr Moriarty on the following questions:

> "(1) In Dr Moriarty's opinion, is Mr Morgan currently unfit to attend in Belfast, for cross-examination for a period of approximately an hour on some date to be arranged?
>
> (2) If so, how long is that unfitness likely to last?"

18. Dr Moriarty's written clarification, which was dated 1 July and which she provided in a note to the claimant's solicitor, was as follows:

> "I am responding to your recent email seeking clarification as to whether Mr Morgan is fit to attend a 1 hour tribunal hearing in Belfast. You will be aware that I did not feel he was fit to attend a full hearing lasting 3-5 hours as outlined in my previous letter on 20 June 2019.
>
> I am <u>unsure</u> as to whether he will be able to attend a 1 hour hearing in Belfast – this will be dependent upon how he is feeling physically on the day and the added travel time may be problematic for him given the nature of his medical conditions.
>
> …
>
> You may wish to consider the opinion of an Occupational Health Physician if a more detailed assessment is required of his functional capability". [Our emphasis].

19. In our view, the original GP's opinion was unequivocally to the effect that Mr Morgan was medically unfit to attend a full hearing. In our view, the supplementary opinion is, broadly, to the effect that Dr Moriarty is not sure whether or not Mr Morgan would be fit to attend a one hour hearing in Belfast.

20. Against the background described in the last two preceding paragraphs, we do not consider that it would be appropriate, in the circumstances of this case, to draw any adverse inferences from the absence, in June 2019, of Mr Morgan.

Illegality?

21. At one point, during the course of this protracted litigation, a question arose as to whether on a particular occasion, some money had been paid, by "Financial Resolutions", to the claimant, without any deduction of income tax; and, if so, whether, in the circumstances, that was permissible under income tax law.

22. The claimant has not asserted that there was any relevant failure to comply with income tax law. Mr Newell's Response does not contain a suggestion that there was any relevant failure to comply with income tax law. Mr Morgan has never indicated that there was any relevant failure to comply with income tax law.

23. Against that background, we have not made any enquiries in relation to any illegality issue. In deciding not to make such inquiries, we have had regard to the following.

24. First, we have had regard to the principles which were set out at paragraphs 21-33 of an industrial tribunal decision in *Hall and McLaughlin v Print Yard Ltd and Another* [CRNs 1333/13 and 1334/13, Decision issued on 30 June 2014]. In particular, we have had regard to the summary of the law which was set out, in the following terms, at paragraph 33 of the *Hall* decision:

> "The implications, in the present context, of the points made in the relevant paragraphs of Chitty can be summarised as follows:

(1) A tribunal has to consider the illegality issue, if there is evidence in respect of participation in illegal performance, even if no party to the litigation has raised the illegality issue.

(2) If there is evidence pointing towards "participation" on the part of the claimant (in the illegal performance of a contract) but the alleged illegality has not been raised in the response, a tribunal should not act upon that evidence, unless the tribunal is satisfied that the whole of the relevant circumstances are before it.

(3) If a tribunal is not sure that the claimant has "participated" in the illegal performance of a contract, the tribunal should not decline to enforce the contract".

25. In this case, in relation to any illegality issue, we are not satisfied that the whole of the relevant circumstances are before us; furthermore, we are not sure that the claimant has "participated" in any illegal performance of his contract; indeed, on the basis of the limited information available to us, we are not satisfied, on the balance of probabilities that this contract was illegally performed at all.

26. Secondly, in arriving at our conclusions in relation to any potential illegality issue, we have also had regard to the UK Supreme Court judgment in *Patel v Mirza* [2016] UKSC 42. We note that the general approach in that case seems to be applicable within the context of employment law claims which are based on a contract of employment. We note also that the relevant principles in that case can usefully be summarised as follows:

(1) In that case, it was unanimously agreed, by all the Supreme Court judges, that UK law had been in a mess ever since the inception of the concept of illegality, by Lord Mansfield, in a 1775 case (where he said "no court will lend its aid to a man who founds his cause of action upon an immoral or illegal act").

(2) A majority of at least five of the Supreme Court Justices concluded in *Patel* that the proper approach, to an illegality issue, is a "factorial" one (as opposed to a being a "rule-based" one), with the principal factors being:

(a) the preservation of the integrity of the legal system,

(b) the public interest at stake and

(c) whether denial of the claimant's claim, in pursuit of the public interest would be a proportionate response.

(See, Division A1/ Chapter 1/Section B/Section 10/Subsection D of "Harvey on Industrial Relations and Employment Law").

27. Thirdly, in relation to the potential illegality issue, we have noted that a WTR claim, unlike an unlawful deduction of wages claim, and unlike a breach of contract claim,

is not based on a person's employment contract. Instead, it is a statutory duty, imposed upon an employer, in light of the existence of the employer-employee relationship.

The WTR claim

28. On the basis of the sworn oral testimony of the claimant in this case, we are sure that, throughout the period when the claimant was working in Financial Resolutions, he was never allowed any paid holiday leave.

29. As Mr McKee realistically accepted, because of the conclusion which is set out at paragraph 28 above, the claimant is entitled to succeed in his WTR claim, against the then employer, in respect of holiday pay. (As Mr McKee pointed out, that inevitable success is the result of the ultimate outcome of the *King v Sash Windows* litigation).

30. Comments which were made in "Harvey on Industrial Relations and Employment Law [Division C1/1/K] are relevant in the present context. At paragraph 237, those comments were as follows:

> "One of the effects of the decision of the ECJ in *Stringer* that leave which a worker cannot take during a particular leave year for reasons beyond his or her control, such as extended sickness, must be carried forward, and that a payment in lieu must be made if the sick leave ends on termination of the employment, would appear to be remove in many cases, problems over the running of time, since the obligation to pay in lieu only crystalises at the moment of dismissal, and time [whether under the WTR or under the unlawful deduction of wages legislation] will therefore only begin to run at that point. This is equally so even in relation to pay in lieu of leave not taken in earlier leave years, subject to the issue for how long untaken leave can be carried forward and thus still be preserved at the point of termination of employment and converted into a right to be paid in lieu; see further below on this. The same applies to claimants for pay in lieu on termination, where leave was not taken <u>because the employer refused to pay</u>, and it was in consequence carried forward, as in *King v The Sash Window Workshop Ltd*; C-214/16 [2018] IRLR 142 …". [Our emphasis]

31. We note that claims for breach of Regulation 17 of the WTR (which is entitled "Compensation related to entitlement to leave") are brought under Regulation 43; we note that the primary time limit in Regulation 43 is the period of three months beginning with the date on which it is alleged that the payment should have been made; and we note that, in the context of a termination of employment, previously refused annual leave transforms into an entitlement to pay in lieu of the untaken annual leave; but that that transformation only happens at the time of the termination.

32. Accordingly, the claimant's WTR holiday pay claim is well founded.

The wages claim

33. In these proceedings, the claimant's wages claim is a claim for wages in respect only of periods of attendance at the college, during the period of his employment in Financial Resolutions which began after the 2014/2015 college year.

34. In respect of unpaid wages (in relation to periods during the 2015/16 and 2016/17 college years, when the claimant was attending college), the claimant's claim must fail, against the following background and for the following reasons.

35. In respect of the 2014/15 course year of his college course, it was expressly agreed between the claimant and Mr Newell that he would be paid wages in respect of his periods of attendance, during that college year, and he was indeed paid wages in respect of those periods.

36. On the basis of what we consider to be the honest oral testimony of the claimant, we have concluded that, although there was subsequently some discussion (between Mr Newell and the claimant) about the claimant being paid for periods of attendance at college during the 2015/16 and 2016/17 college years, those discussions were relatively tentative, and Mr Newell never expressly and unequivocally agreed that the claimant would be paid wages in respect of any period of college attendance, at any time after the conclusion of the 2014/15 year of the claimant's college course.

37. In his Response in this case, Mr Newell contended that at all material times, the claimant was a worker, (under a zero-hours contract) as distinct from being an employee.

38. Having considered all the oral and documentary evidence in this case, and having in particular considered the claimant's sworn oral testimony, which, again, we found to be honest on this point, we are sure that, throughout his period of working in Financial Resolutions, the claimant was an employee. The pattern of interactions, between the claimant and Mr Newell, throughout the period when he was working in Financial Resolutions, was generally much more consistent with an employee/employer relationship than with any "worker" status.

Was Mr Morgan a partner?

39. The next issue is whether Mr Morgan was one of the claimant's employers. The contention, on the claimant's side of the case, that Mr Morgan was one of the claimant's employers, is based on three propositions:

    (1) The claimant said that he believed that Mr Morgan had paid income tax on income earned by Mr Morgan from Financial Resolutions.

    (2) The claimant said that he had seen a written partnership agreement between Mr Newell and Mr Morgan.

(3) The claimant said that much of the income coming into and going out of Financial Resolutions went into, or came out of a Bank of Ireland bank account which was entitled "Kieran Morgan, t/a Financial Resolutions".

40. During the course of his oral testimony, those three assertions were explored with the claimant.

41. The claimant's evidence in relation to the payment by Mr Morgan of tax was vague and unclear and we are not satisfied that the claimant had any adequate basis for what we consider to be his honest belief that Mr Morgan had paid tax on income which Mr Morgan had received from Financial Resolutions.

42. In relation to the second matter identified at paragraph 39 above, the claimant's evidence was as follows. He said that he recalled seeing a written agreement between Mr Newell and Mr Morgan; that it looked to him like a partnership agreement; but that he had not read the detail of the agreement. In those circumstances, we are not satisfied that point (2), at paragraph 39 above, has been established as a matter of fact.

43. We are left with the situation that there is now no doubt at all that, at all material times, Mr Morgan was holding himself out, both to the bank in which the relevant bank account was based (the Bank of Ireland), and to payees from that bank account, that he (Mr Morgan) was trading as "Financial Resolutions".

44. We have seen the relevant Bank of Ireland account. It is entitled "Mr Kieran Morgan t/a Financial Resolutions Office A/C".

45. In a letter to the Office of the Industrial Tribunals dated 6 February 2018, Mr Morgan provided details of his involvement with Financial Resolutions in the following terms:

> "I refer to your letter of 22 January 2018 enclosing a Record of Proceedings of 17 January 2018.
>
> Mr Newell sometimes discusses with me legal issues in respect of some of his cases for an initial Legal Opinion. If there is legal merit, his clients may wish to engage me in respect of such legal issues and if so his client may become my client.
>
> Our offices are in the same building (as is also a restaurant).
>
> I frequently saw Mr Donnelly standing outside this building smoking and we occasionally greeted each other. I had no discussions with him in relation to his work. I was not employing him. He sometimes complained in regard to the distance he had to travel from his home to his place of work in Armagh.

Mr Newell had advised me that John Donnelly had taken proceedings against him.

Then, more recently, I understand Mr Donnelly sought to add my name as a Respondent in these proceedings. As Financial Resolutions is a very small business, one employee, Mr Donnelly, the bookkeeper, would have had an intimate knowledge of its structure and he would have been fully aware that I was not a partner in the business, and accordingly it is understandable that he did not initially include me as a respondent. However, I understand those proceedings from England were on a "no win no fee basis" and that he is a self-litigant. He is aware Mr Newell is a discharged bankrupt, does not own a home and has no assets, and in the circumstances that I may be a better mark for some money if he can allege sex discrimination.

During the course of that letter, there was no reference to Mr Morgan being an account-holder in relation to Financial Resolutions.

46. On 28 November 2018, Mr Morgan wrote to the claimant's solicitor by email, and copied the Office of the Tribunals into that email. In that email, Mr Morgan stated the following:

> "When Brian Newell firstly attended this office … [he] had been declared bankrupt as a result of the banking crisis. He had been attempting to work from someone's garage and he had no bank account.
>
> My sister, the owner of this building had some vacant rooms on the top floor and he was allowed to use those rooms rent free to see if he could reestablish himself again, as Financial Resolutions.
>
> He advised he had no bank account. I agreed to open an account to enable him to pay bills etc. I did not share in his profits (or losses - I have not heard of any)."

47. It is clear law that, if Mr Morgan was, at the relevant times, Mr Newell's partner, in respect of the Financial Resolutions business, he, as well as Mr Newell, is liable in respect of the claimant's WTR claim.

48. The following are some principles of Northern Ireland partnership law which seem to be relevant in the context of the current issue:

    (1) The Partnership Act 1890 (which applies throughout the United Kingdom) forms the basis of Northern Ireland partnership Law,

    (2) A partnership relationship can arise by mutual consent, which may be express or inferred from party's conduct,

(3) In Northern Ireland law, a partnership is not an entity separate and distinct from the partners who at any time compose it,

(4) The rights and liabilities of a partnership are the collection of the individual rights and liabilities of each of the partners;

(5) The firm's name is a mere expression, not a legal entity,

(6) The name of a partnership firm is, subject to certain exceptions which are not relevant in the present context, no more than convenient shorthand for referring to a group of persons who conduct a business together,

(7) A partnership may be inferred from the conduct of the putative partners where there are no contra-indicators,

(8) There is also no requirement for a profit to be actually made, in order for a partnership to exist. It suffices that profit is the goal of the relationship, even if profit is not the outcome of the relationship,

(9) There is also no need for participation of every partner in the partnership business; a sleeping partner with an entirely dormant role can still be a partner in the eyes of the law.

49. Mr McKee pointed out that there was no evidence that Mr Morgan, in his personal capacity (as distinct from his capacity as the solicitor for certain customers of Financial Resolutions), ever received any income or capital from Financial Resolutions. That is true. However:

(1) Subsection (1) of section 1 of the Partnership Act 1890 defines partnership as "… the relation which subsists between persons carrying on a business in common <u>with a view to</u> profit". [Our emphasis]. Accordingly, that definition does not include a requirement that a business was <u>actually</u> conducted at a profit.

(2) Section 2 of the 1890 Act merely contains a list of matters to which regard is to be paid in determining whether or not a partnership did, or did not, exist. In particular, in that connection, subsection (3) of section 2 merely provides that the receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in that business. (There is no relevant statutory provision which states that receipt of a share of the profits, of a particular business, is a necessary condition for establishing that one is a partner in that business).

50. Against the factual background set out above, and in light of the legal principles which are outlined above, we conclude that, as a matter of law, Mr Morgan must be regarded as having been the person, or one of the persons, who was/were trading as Financial Resolutions, during the period of

the claimant's employment there; and that, accordingly, Mr Morgan was the claimant's employer, or one of the claimant's employers, at all the times which are relevant in the context of this case.

The equal pay claim

51. Because of our conclusions in respect of the WTR cause of action in respect of holiday pay, we do not need to arrive at any conclusions in respect of the claimant's unlawful deduction of wages or breach of contract claims in respect of holiday pay.

52. We do however need to adjudicate in respect of the claimant's Equal Pay Act cause of action in respect of holiday pay.

53. The latter claim is based on that the following factual assertion, which was set out in the claimant's claim form:

> "11. In November 2016, Josephine McShane, Administrator, began her employment with the respondent,
>
> 12. Josephine and the claimant both took three days' holiday each in January 2017. When the claimant was sorting out that month's pay roll he asked Brian [Newell] how many hours holiday he was to put Josephine down for. Brian instructed him to put all three of Josephine's days through as hours work rather than holidays, while the claimant was not paid at all for his three days".

54. In light of our conclusion that the claimant's WTR holiday pay claim is well-founded, it seems to be doubtful that the claimant would gain anything much if we were also to uphold his Equal Pay Act cause of action in respect of holiday pay.

55. We have concluded that the claimant's Equal Pay Act claim is not well-founded, because it has not been proven, to our satisfaction, that, at any relevant time:

    (1) the claimant was employed on "like work" with Ms McShane, or

    (2) that the claimant's work had been rated as equivalent with that of Ms McShane, or

    (3) that, in terms of the demands made on the claimant, his work was of "equal value" to that of Ms McShane.

Remedies

56. The next issue relates to remedies. On 25 July 2019, Ms Emma McIlveen, on behalf of the claimant, provided a Schedule of Loss ("the Schedule of Loss"), which contained figures in relation to financial loss to which there had been no objection from Mr McKee. According to that statement of loss, the claimant's

financial loss in respect of holiday leave pay (if training time was not being treated as part of contractual pay), in respect of each of the following years, was as follows:

2014/15	-	£985 (being 12.07% of total annual wages of £8,162)
2015/16	-	£1,615 (being 12.07% of £13,384)
2016/17	-	£2,193 (being 12.07% of £18,171)

57. The total of the sums specified in the last paragraph above is £4,793.

58. We are satisfied that that financial loss calculation is accurate. We note that it is consistent with aspects of sworn oral testimony which the claimant provided in this case.

59. Accordingly, in respect of holiday pay, the claimant is entitled to an award of £4,793.

60. Although the claimant was an employee at Financial Resolutions for a long time, he never received the statement of employment particulars which the employer was under a duty to provide to him, pursuant to Article 33(1) and indeed pursuant to Article 36(1), of the Employment Rights Order 1996. Because of that failure, the claimant has sought an uplift, to the amount of the WTR holiday pay award, of four weeks' wages.

61. That uplift request is based on the provisions of Article 27 of the Employment (Northern Ireland) Order 2003.

62. That Article applies to proceedings brought under Regulation 43 of the WTR. In the circumstances of this case, the effect of paragraph (3) of Article 27 of the 2003 Order, is as follows: If an industrial tribunal finds in favour of an employee in respect of a WTR claim, the tribunal must, subject to the provisions of paragraph (5) of Article 27, increase the award by the minimum amount and, if it considers it is just and equitable in all the circumstances to do so, it may increase the award by the higher amount instead.

63. Paragraph (5) of Article 27 provides that the uplift duty under paragraph (3) of that Article does not apply to a tribunal in any particular case if there are exceptional circumstances which would make a paragraph (3) increase unjust or inequitable in that particular case.

64. Paragraph (4) of Article 27 provides that the "minimum amount" is two weeks' wages and the "higher amount" is four weeks' wages.

65. We have noted that, in this case, the omission to provide the claimant with written terms of conditions of entitlement lasted over a lengthy period. In those circumstances:

    (1) We are sure that it would not be unjust or inequitable to uplift the claimant's compensation pursuant to paragraph (3) of Article 27.

(2) We consider that it is just and equitable, in all the circumstances, to increase the award by the higher amount.

66. We note that the Schedule of Loss has confirmed that, at the time of the termination of the claimant's employment, he was entitled to an annual salary of £18,171. That indicates a weekly salary of £349.44. Four times £349.44 is £1,398.

67. The sum of £4,794 (see paragraph 57 above) and of £1,398 is £6,191.

The trade name

68. The so-called first named respondent ("Financial Resolutions") is merely a trade name, which is not a legal entity - so no proceedings can be brought or pursued against Financial Resolutions.

Interest

69. This is a relevant decision for the purposes of the Industrial Tribunals (Interest) Order (Northern Ireland) 1990.

Employment Judge:

Date and place of hearing: 10 May 2018, 4 December 2018 and 28 June 2019, Belfast.

Date decision recorded in register and issued to parties: