Reserved judgment

THE EMPLOYMENT TRIBUNALS

Between

Mr N Kay and others (see schedule)

Claimants

and

Brighton & Hove City Council

Respondent

Hearing at London South on 13 January 2016 before Employment Judge Baron

Appearances

For Claimant: ***Nicola Newbegin***

For Respondent: ***Victoria von Wachter***

JUDGMENT

It is the judgment of the Tribunal as follows:

1 The Tribunal declares in accordance with section 24 of the Employment Rights Act 1996 that the complaint by the Claimants made under section 23 of that Act that the Respondent has made unlawful deductions from their wages is well-founded;

2 These proceedings are adjourned to a further hearing (if required) to decide upon remedies for the Claimants.

REASONS

Introduction

1 On 1 November 2016 a claim form ET1 was presented to the Tribunal on behalf of the Claimants. The details of the claim were very short. The Claimants stated that in April 2013 they were issued with new contracts of employment, each of which provided for protected pay to be paid to the end of March 2017. The Claimants complained that the Council had ceased to make such payments with effect from the end of March 2016.

2 In the very briefest of summaries, the position of Miss Newbegin was that the Tribunal was not able to go behind the terms of the contracts of employment, and that the date of March 2017 was binding on the Council. Miss von Wachter, on the other hand, submitted that I was able

to look at discussions and events which occurred before the contracts were issued, and that the written documents were not binding. She also made other points with which I will deal. I heard evidence about matters leading up to the issuing of the contracts, and Miss Newbegin cross-examined the witnesses for the Council on the basis that it was without prejudice to her position as set out above.

3 The claim form ET1 was presented to the Tribunal on 1 November 2016 and thus the claims were inevitably for any pay not paid up to that date. After discussion with counsel I ordered that the claim be amended to include any sums alleged to be due up to the end of 2016.

4 I heard evidence from Mr Kay, but not from any of the other Claimants. Evidence for the Respondent was given by Julia Hugall, formerly Visitor Services Manager, and by Vicky Baldwin, Human Resources Manager. I was provided with a modest bundle of documents, and have taken into evidence those documents, or parts of documents, to which I was referred.

The facts

5 As ever with any form of litigation, the findings of fact can only be made on the basis of the oral and written evidence presented to the court. No disclosure order had been made in these proceedings, and none of the documents in the bundle originated from the Claimants. That is particularly unfortunate because I did not hear from any of the Claimants other than Mr Kay as to what documents they now had, or had received in the past. There is the further difficulty in this case that the events in question commenced as long ago as August 2012.

6 The dispute relates to the staff in the Royal Pavilion & Museums Information and Security Team in Brighton. In 2012 a reorganisation was commenced, which could have resulted in redundancies.[1] Just over 30 staff were involved. There were the usual consultations with recognised unions. In the case of the Claimants the negotiations were with Mark Turner, the GMB Branch Secretary for Brighton and Hove.[2] Mr Kay did not at any time meet Mr Turner in this connection. Any information was conveyed to him via the local GMB representatives employed in the same department. I was not provided with any documents from the GMB to its members concerning the discussions, nor did Mr Turner give evidence on behalf of the Claimants.

7 On 13 August 2012 Ms Hugall sent a draft Consultation Document to Mr Turner. It set out the reasons for the proposed changes together with the details of them. Mr Kay is shown as being a Senior Duty Officer, and at risk of redundancy. It was indicated that he (and others who were at risk) would be invited to express a preference for vacant posts. It was stated that at the conclusion of the process each member of staff would be issued with a new job description and an amended contract of employment. No details of proposed financial arrangements were set out.

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[1] I understand that there were some voluntary redundancies, but that is not relevant.
[2] It appears that there were also some negotiations with UNISON.

8 There was a meeting with Mr Turner on the following day and it is apparent that there were detailed financial discussions, including concerning protected pay. On 3 September 2012 Vicky Baldwin sent an email to Mark Turner confirming details of three years' protection. The final Consultation Document was then produced, which included the following paragraph:

> Any change will be managed in accordance with the Council's Framework for Managing Change policy, including salary protection as appropriate.

That document also referred to a maximum pay protection period of three years. I accept Ms Hugall's evidence that a copy of the document was in staff rooms, but go no further than that.

9 It is common ground that the outcome of the reorganisation was that the income of at least some of the staff was reduced because they lost a shift allowance, or accepted lower paid posts, or both. Their pay was not to be reduced during the pay protection period.

10 There were then some general consultation meetings with staff. Mr Kay could not recall whether he attended one, and on balance I find that he did. I would find it strange that an individual whose job was at stake would not do so. The Council did not provide any evidence as to what meetings were held, who attended, nor a copy of any presentation which was made or agenda of items for discussion. The best I can do is look at a question and answer document prepared following those consultations, in which one of the topics raised was pay protection. It was specifically stated in the document that the protection period was to be three years.

11 Ms Hugall prepared a Consultation Outcome Document on or about 19 November 2012 which showed the refined proposals. Mr Kay was shown as having various ring-fenced posts available to him. He ultimately became a Visitor Services Officer. Of more importance the document simply stated in paragraph 4.2 that protected pay would be paid to compensate for loss of shift pay in accordance with Council policy. No period was mentioned. However, in an Appendix there was a reproduction of at least part of the question and answer document, which included clear reference to a salary protection period of three years.

12 I accept the evidence of Ms Hugall that she handed a copy of that document, and a covering letter dated 19 November 2012, to all relevant members of staff apart from one who was absent on long-term sick leave.

13 The GMB issued a collective grievance relating to the loss of shift pay. This is of peripheral interest and is mentioned for the sake of completeness. There was no evidence that My Kay or any of the other Claimants were involved in the detail of it. I saw internal Council emails relating to the grievance, but they are also not of direct relevance.

14 There was considerable confusion concerning a letter, or letters, at the end of January 2013 from Ms Hugall. Again, there is an absence of documentation. An email of 30 January 2013 from Mr Turner to Alison Mcmanamon of the Council refers to documentation having been sent out as agreed but he said that 'vital pieces of information' concerning the 'amount of protection pay that would apply' had been omitted from the

spreadsheet. I did not have a copy of that spreadsheet. Ms Hugall then sent an email to Ms Mcmanamon and Mr Turner also on 30 January 2013 which referred to a letter which had gone out to staff saying that pay protection details would be issued with the new contracts. There was a template of a letter in the bundle dated 31 January 2013 referring back to a letter of 28 January 2013, but there was no copy of that earlier letter.

15 On looking at internal emails in the bundle I find on a balance of probabilities that there were two letters sent to the relevant members of staff, the first being on 28 January 2013 and I also find that the letter of 31 January 2013 was sent. The first paragraph is as follows:

> Following on from the letter dated 28 January regarding the implementation of the new structure at the Royal Pavilion Estate I have enclosed with this letter a breakdown of the pay related to current posts as compared to the new posts which also shows the amount of protected pay per month that would be received for three years. Please note these figures are based on the top of the scale.

Again I was not provided with the document enclosed with that letter.

16 Standard forms of contract of employment were issued to the Claimants in April 2013. There is no evidence of anything occurring between the end of January 2013 and the issuing of the revised contracts. The details of the contract for Mr Kay showed that his salary in his new post would be £16,830 at point 017 on the NJC Pay Scale. The document also states that he would receive a temporary allowance of protected pay of £4,593.60 from 1 April 2013 to 31 March 2017.

17 By mid-May 2013 it was realised by the Council that there had been an error in including the date of 31 March 2017 rather than 2016 in the contracts. I make a finding of fact that it was a simple clerical error that showed the protection period as ending in 2017 and not 2016.

18 Nothing was done about the error at the time as far as the Claimants were concerned. Presumably as a result of no amount in respect of pay protection being included in the pay for April 2016 the point surfaced again. A letter was sent by Nicki Carter of the Council, presumably to all those affected, dated 31 May 2016. It simply stated that the reference to 31 March 2017 was a clerical error, and that it would not be extended beyond three years.

The statutory provisions

19 I was referred to the following sections of the Employment Rights Act 1996:

> **13 Right not to suffer unauthorised deductions**
> (1) An employer shall not make a deduction from wages of a worker employed by him unless—
> (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
> (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.
> (2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—
> (a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

(7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer.

23 Complaints to employment tribunals

(1) A worker may present a complaint to an employment tribunal—

(a) that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18(2)),

(b) that his employer has received from him a payment in contravention of section 15 (including a payment received in contravention of that section as it applies by virtue of section 20(1)),

(c) that his employer has recovered from his wages by means of one or more deductions falling within section 18(1) an amount or aggregate amount exceeding the limit applying to the deduction or deductions under that provision, or

(d) that his employer has received from him in pursuance of one or more demands for payment made (in accordance with section 20) on a particular pay day, a payment or payments of an amount or aggregate amount exceeding the limit applying to the demand or demands under section 21(1).

(2) Subject to subsection (4), an [employment tribunal] shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—

(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or

(b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.

(3) Where a complaint is brought under this section in respect of—

(a) a series of deductions or payments, or

(b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates,

the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

(4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

(5) No complaint shall be presented under this section in respect of any deduction made in contravention of section 86 of the Trade Union and Labour Relations (Consolidation) Act 1992 (deduction of political fund contribution where certificate of exemption or objection has been given).

Submissions for the parties

20 Miss Newbegin submitted quite simply that evidence as to what occurred during pre-contract negotiations was not admissible. She put forward the following propositions:

20.1 Where there is a written agreement then the parties will ordinarily be bound by the terms of that agreement, whether or not he has read them, or is ignorant of their precise legal effect – *Parker v. South Eastern Railway* (1877) 2 CPD 416 at 421.

20.2 The terms of the contract are to be interpreted objectively by a reasonable person having all the background knowledge reasonably available to the parties, but excluding evidence of previous negotiations and declarations of subjective intent – *Investors' Compensation Scheme v. West Bromwich Building Society* – [1998] 1 WLR 896 ('*ICS*'), *Chartbrook v. Persimmon Homes Ltd* [2009] 1 AC 1101

20.3 A court should be slow to reject the natural meaning of a provision as correct because it appears to have been imprudent – *Arnold v. Britton* [2015] AC 1619 paras 17-22.

20.4 Documents should be construed against the grantor – *Lexi Holdings plc v. Stainforth* [2006] EWCA Civ 988.

20.5 Any mistake (and it was not accepted by the Claimants that there had been a mistake) could only be corrected by interpretation / construction of the contract where it is clear on the fact of the documents that there was a mistake and also what correction ought to be made to it – *Chartbrook.*

20.6 Extrinsic evidence of pre-contract negotiations is only admissible as evidence in a claim for rectification, and the Tribunal does not have the jurisdiction to entertain such a claim.

21 Miss Newbegin submitted that in this case the wording was absolutely clear, and there could not be any ambiguity about it. Further, it did not give rise to an absurd or irrational outcome. The Claimants had accepted the new terms by signing and returning the contracts. Miss Newbegin also submitted that there had been a clear estoppel by representation, being the terms of the contract and the Claimants' reliance upon them.

22 Miss von Wachter said that the Claimants knew, or ought reasonably to have known that there had been an error, and that was material to a correct interpretation of the contractual terms. The Respondent was highly unionised, there had been full consultation with the unions, and the Respondent was entitled to expect that the unions would communicate fully with members. There had been a simple mistake and the Tribunal can look at what should have happened. Miss von Wachter emphasised the relevance of the Respondent's policy, saying that there was no

evidence of any agreement to extent the protected pay beyond the three year period.

23 In her written submissions Miss von Wachter stated that the Respondent relied upon clause 24 of the contracts as issued, which gave the Respondent the right to effect unilateral variations. However, in her oral submissions she confirmed that she was not relying on the point. Miss von Wachter submitted that section 13(4) of the 1996 Act applied and so the cessation of payment of the additional amount with effect from 1 April 2016 was justified. She relied on *Dunlop Tyres Ltd v. Blows* EAT/350/99 in connection with any point as to delay between the error having been discovered in 2013 and the Claimants having been notified of the issue in 2016.

24 Miss von Wachter submitted that what had occurred here fell within section 13(4) on the basis that if the pay protection had been continued beyond 31 March 2016 then the Council would have been entitled to reclaim it under the provisions of that subsection.

Discussion and conclusion

25 It was agreed that the starting point in this case depends upon what sums were ‘properly payable’ to the Claimants from 1 April 2016, and that further in these circumstances that was the same question as to what sums were contractually due. It was not a case where there was any possibility of ‘properly payable’ having any meaning other that the legal entitlement of the Claimants.

26 Before hearing the evidence and submissions I looked at *Chitty on Contracts* and the relevant parts of *Halsbury’s Laws of England*.[3] Both texts contain equivocal terminology such as ‘appears’ and suggests’. I return to *Chitty* below.

27 I have no difficulty that the general rule is that parties to an agreement are bound by the document which has been signed. It is a matter for the courts how that document is to be interpreted. The current leading authority on the question of interpretation is *ICS*. Miss Newbegin referred me to the following passage from that authority:

> . . . I should preface my explanation of my reasons with some general remarks about the principles by which contractual documents are nowadays construed. I do not think that the fundamental change which has overtaken this branch of the law, particularly as a result of the speeches of Lord Wilberforce in *Prenn v. Simmonds* [1971] 1 W.L.R. 1381, 1384-1386 and *Reardon Smith Line Ltd. v. Yngvar Hansen-Tangen* [1976] 1 W.L.R. 989, is always sufficiently appreciated. The result has been, subject to one important exception, to assimilate the way in which such documents are interpreted by judges to the common sense principles by which any serious utterance would be interpreted in ordinary life. Almost all the old intellectual baggage of "legal" interpretation has been discarded. The principles may be summarised as follows.
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> (1) Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.

[3] Accessed online on 12 January 2017

> (2) The background was famously referred to by Lord Wilberforce as the "matrix of fact," but this phrase is, if anything, an understated description of what the background may include. Subject to the requirement that it should have been reasonably available to the parties and to the exception to be mentioned next, it includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man.
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> (3) The law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent. They are admissible only in an action for rectification. The law makes this distinction for reasons of practical policy and, in this respect only, legal interpretation differs from the way we would interpret utterances in ordinary life. The boundaries of this exception are in some respects unclear. But this is not the occasion on which to explore them.
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> (4) The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax: see *Mannai Investments Co. Ltd. v. Eagle Star Life Assurance Co. Ltd.* [1997] A.C. 749.
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> (5) The "rule" that words should be given their "natural and ordinary meaning" reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had. Lord Diplock made this point more vigorously when he said in *Antaios Compania Naviera S.A. v. Salen Rederierna A.B.* [1985] A.C. 191, 201:
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> > "if detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business commonsense, it must be made to yield to business commonsense."
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> If one applies these principles, it seems to me that the judge must be right and, as we are dealing with one badly drafted clause which is happily no longer in use, there is little advantage in my repeating his reasons at greater length. The only remark of his which I would respectfully question is when he said that he was "doing violence" to the natural meaning of the words. This is an over-energetic way to describe the process of interpretation. Many people, including politicians, celebrities and Mrs. Malaprop, mangle meanings and syntax but nevertheless communicate tolerably clearly what they are using the words to mean. If anyone is doing violence to natural meanings, it is they rather than their listeners

28 As is apparent from the extract quoted above, *ICS* was a case involving the interpretation of complex documentation. I was referred to several authorities post-dating *ICS*. *Lexi Holdings plc v. Stainforth* [2006] EWCA Civ 988 involved the interpretation of a property agreement which contained inadequacies and deficiencies.[4] *Chartbrook Ltd v. Persimmon Homes Ltd* [2009] 1 AC also related to a property transaction, and involved the interpretation of a certain clause held to be ambiguous. My reading of the authority is that the issue before the court, in broad terms, was to what extent evidence of previous communications between the parties could be admitted to assist the court in interpreting the contract. I do, however, note that before being able to have such evidence admitted

[4] See paragraph 14 per Carnwath LJ

'it should be clear that something has gone wrong with the language and that it should be clear what a reasonable person would have understood the parties to have meant.'[5]

29 The final authority is *Arnold v. Britton* [2015] AC 1619. The wording of a service charge provision in a 99 year leases granted in 1974 was in question. In essence, the wording of the provision was held to be clear, but it had unforeseen effects many years later. The Supreme Court held that in such circumstances the wording must prevail, although it is apparent from paragraph 62 of the judgment of Lord Neuberger JSC that it was perhaps with some reluctance. Lord Carnwath JSC dissented and referred to the provisions in question as 'wretchedly conceived'. He considered that the natural meaning was 'so commercially improbable that only the clearest words justified the court in adopting it.'[6] He would have adopted an amendment proposed by the lessees.

30 There is in my view a very clear distinction to be drawn between those cases and the circumstances which prevail here. In all the above authorities the issue revolved around the interpretation of contractual provisions where there was at least some ambiguity about them. Here the contractual provision is absolutely clear. There is no ambiguity about it, and it is not a provision which is wholly unlikely to appears in a new contract of employment following a reorganisation. The protected pay period was expressed simply to be from 1 April 2013 to 31 March 2017. The situation would of course have been different if the provision had been, for example, 'for a period of three years from 1 April 2013 to 31 March 2017.'

31 I have already referred to *Chitty*. The following are the paragraphs I considered and which I mentioned to counsel. In my view they are particularly relevant to the facts of these proceedings.

> **3-022 Mistake Known to the Other Party**
> A mistake as to the terms of the contract, *if known to the other party*, may affect the contract. In this case, the normal rule of objective interpretation is displaced in favour of admitting evidence of subjective intention. In *Hartog v Colin and Shields* the defendants offered for sale to the plaintiffs some Argentine hare skins, but by mistake offered them at so much per pound instead of so much per piece. The previous negotiations between the parties had proceeded on the basis that the price was to be assessed at so much per piece, as was usual in the trade. But the plaintiffs purported to accept the offer and sued for damages for non-delivery. The court held that the plaintiffs must have known that the offer did not express the true intention of the defendants and that the apparent contract was therefore void. On the same principle, it has been held in Canada that an offer contained in a tender cannot be accepted when it is apparent that the tender had mistakenly omitted a price escalation clause.
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> **3-023 Mistakes Which Ought to Have Been Apparent**
> It is not clear whether for the mistake to be operative it must actually be known to the other party, or whether it is enough that it ought to have been apparent to any reasonable person in the position of the other party. In Canada there are suggestions that the latter suffices, but the Singapore Court of Appeal has held that the common law doctrine of mistake applies only when the non-mistaken party had actual knowledge of the other's mistake. In England there is no

[5] Lord Hoffmann at paragraph 25
[6] Paragraph 158

> clear authority, but two cases suggest that if the other party ought to have known of the mistake, he will not be able to hold the mistaken party to the literal meaning of his offer. In *Centrovincial Estates Plc v Merchant Investors Assurance Co Ltd* the Court of Appeal appeared to consider that the plaintiff might be able to negate any binding agreement by showing that the defendant ought to have known that the plaintiff's offer contained an error; and in *O.T. Africa Line Ltd v Vickers Plc* Mance J. said that the objective principle would be displaced if a party knew or ought to have known of the mistake. The latter situation would include cases in which the party refrained from making enquiries or failed to make enquiries when these were reasonably called for, but first there must be a real reason to suspect a mistake. In rectification cases, however, it has been said that a unilateral mistake made by one party is a ground for rectification only if the other party actually knew of it. This may suggest that only actual knowledge of a mistake in an offer will prevent the other party from accepting it. Thus it is possible that the courts apply a different standard when the parties have signed a written document recording their agreement. However, it has been argued that rectification for unilateral mistake should be granted when the mistake was not known but ought to have been known to the defendant. These points will be discussed when we consider rectification.

32 In *Hartog* there was a finding of fact that based upon earlier negotiations and the custom of the trade the buyer actually knew that there had been a mistake made by the seller, and that the price quoted should have been per piece and not by weight. The buyer could not enforce the written terms. In a footnote (not reproduced) there was reference to *Ulster Bank Ltd v. Lambe* [2012] NIQB 31. In that case there had been negotiations between the bank and Ms Lambe as to the amount that the bank would accept to settle a debt. The debt was denominated in sterling, and negotiations had been carried on in sterling. A letter was then written by the bank offering a figure for settlement denominated in euros, and Ms Lambe purported to accept that offer. Weatherup J found as a fact that Ms Lambe 'knew and must have known that the offer in euros was a mistake and that she sought to accept it in the knowledge that it was a mistake.'[7] The judge relied on *Hartog* and other authorities.

33 It was part of the case for the Council that not only had there been a mistake, but that the Claimants knew, or ought to have known, that that was the case. Miss Newbegin pointed out that it was of the essence of the above two cases that there had been negotiations between the parties before the issuing of the erroneous documentation the subject of the litigation.

34 I conclude that where there is actual knowledge of a mistake then reliance cannot be placed upon it. I will accept for present purposes that the law is also that reliance cannot be placed on a mistake where the fact of the mistake ought reasonably to have been known to the other party. That raises the initial question as to whether Mr Kay did actually know of the mistake. He denied that he did, and I accept that evidence. He was not directly involved in any negotiations with the Council. They were carried out by Mr Turner, and indeed Mr Turner did not report directly to the Claimants. The principal issue which Mr Kay and his colleagues had was to oppose the proposed changes *in toto* rather than the details of the new terms being offered by the Council.

[7] Paragraph 25

35 Two matters were relied upon by the Council to support the proposition that the Claimants ought to have known of the mistake. The first was that it had always been the Council's policy that a protected pay period could not extend beyond three years, and that was clearly set out in written policy documentation. As a fact that is true. However, I do not accept that therefore individuals in the position of the Claimants ought to have been aware of the policy and the fact that a four year period was specified was an error. Such policies may be dealt with on a day-to-day basis by the Human Resources Department. On a day-to-day basis the Claimants were responsible for that jewel in the Brighton crown, the Royal Pavilion.

36 The second matter is the document handed out by Ms Hugall on 19 November 2012 which referred to a three year period. Again, my conclusion is that that does not mean that the Claimants ought to have been aware some six months later that the Council had made an error. The Claimants, without any disrespect to them, are relatively low paid employees of a large city council. They were entitled to assume that formal documentation issued by the Council as their employer was correct.

37 For those reasons I find that the claims succeed. I trust that the question of remedies for each of the Claimants can be agreed without the necessity for the expense of a further hearing, but such hearing will be arranged if necessary.

Employment Judge Baron

27 January 2017