CASE NO: 2601656/2021

EMPLOYMENT TRIBUNALS

Claimant: **Mrs Susanna Boyd**

Respondents: **Oakham School**

Record of an Open Preliminary Hearing heard by CVP at the Employment Tribunal

Heard at: **Nottingham** **On:** **6 January 2022**

Before: **Employment Judge P Britton**

Representation

Claimant: **Ms A Cheung of Counsel**
Respondent: **Mr A Roberts of Counsel**

Covid-19 statement:
This was a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V – video. It was not practicable to hold a face-to-face hearing because of the Covid-19 pandemic.

JUDGMENT

1. The claim based of indirect discrimination based upon the protected characteristic of sex is dismissed for want of jurisdiction.

2. The claim of indirect discrimination claim based upon the protected characteristic of age is dismissed it having no reasonable prospect of success.

3. The Claimant will pay a deposit in relation to the claim of unfair dismissal as a condition precedent of proceeding with the claim it having only little reasonable prospect of success.

4. The Order for the assessing of the deposit and thence the making of a formal deposit order is hereinafter set out.

REASONS

Introduction

1. The claim (ET1) was presented to the Tribunal on 2 August 2021. It was prepared and presented on behalf of the Claimant by her Trade Union NASUWT. In summary set out was how the Claimant had been employed as a Teacher at Oakham School, which is a public school, between 1 September 2015 and the termination of the Employment of 31 August 2021.

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2. As to the scenario as to why she was dismissed, essentially it came about through the decision of Oakham School to cease being a member of the Teachers' Pension Scheme (TPS) and instead impose upon its teaching staff a new pension scheme known as APTIS. The significance is that TPS is a defined benefits scheme (DB) whereas APTIS is a defined contribution scheme (DC). The benefits from the APTIS in terms of pension entitlement are inferior to those of the TPS Scheme. The latter is in fact the scheme for pensions governed by the Teachers' Pension Regulations 2014 and is adopted across the state sector teaching establishment. Traditionally the independents schools such as Oakham had paid into that scheme, but for reasons which I shall come to and in the case of Oakham School, it was decided that it was too expensive in terms of the very substantial contributions it needed to make, hence its decision within the context of other financial concerns to replace TPS with APTIS. That there was an extensive consultation process with the teaching staff to be affected by the change is obvious from the documentation before me. The teaching staff were then basically given an ultimatum by Oakham School it having decided to continue with its decision to impose APTIS, that they could either sign up to it which would mean a variation in their existing contracts of employment or in the alternative they would be dismissed. Suffice to say that the vast majority of the teachers eventually decided to agree to the amendment to their contracts of employment and accept APTIS, but the Claimant was in a minority it seemed of about 6 to start with who opposed this proposition. She was also a representative in terms of the consultation process in her capacity as a member of NASUWT. She therefore refused to sign up so to speak hence her dismissal. She was 39 at the time of that dismissal and although not pleaded as such within the ET1 particulars, it is clear from the additional information before me as to which see Ms Cheung's skeleton argument that the Claimant has a child. Finally, she was on the face of the evidence that I have a full time teacher.

3. The claims that she brought to Tribunal were as follows:

3.1 Unfair dismissal pursuant to section 95 and 98 of the Employment Rights Act 1996 (ERA)

3.2 A claim of indirect discrimination by reason of age pursuant to section 19 of the Equality Act 2010 (EqA).

3.3 A claim of indirect sex discrimination again pursuant to section 19.

4. The particulars to the claim (ET1 GROUNDS) were somewhat scant but having set out a brief resume of the factual scenario claimed and in the context of her internal appeal and which failed that :

"10) The Claimant claimed that the dismissal was a breach of contract, in that she had signed a contract offering TPS and that the Respondent was not claiming that the Claimant had agreed to a change or that the contract would end due to any fault of the Claimant.

11. The Claimant also claimed that the decision of the Respondent to leave TPS had a disproportionate impact on younger teacher staff, and female teachers, denying them a greater period of time within TPS.

12. The Claimant's belief as expressed to the Respondent, was that the APTIS Scheme was unlikely to provide the returns equivalent to a package offered by the TPS, with the impact of Brexit and Covid- 19, impacting on the global and UK markets.

13. The Claimant argued that women were more likely to be part-time workers and have absences to work due to childbearing and childcare. As a result, women needed the better and guaranteed benefits offered by TPS.

*14. The Claimant expressed that she personally would be disadvantaged by the forced withdrawal from TPS by the Respondent, following advice received from independent financial advisors as to the effect of the contract variation. (*Stopping there I have had no such evidence put before me on behalf of the Claimant for the purposes of today) *and*

15. The Claimant attended a one to one consultation meeting where she explained the impact on her and her opposition to the contract change, including her belief of its discriminatory impact…

16. Paraphrased she pleaded that the appeal hearing was *" a sham".*

Legal Claims

*17. (*She pleaded the unfair dismissal*),*

18. That the decision to withdraw from TPS amounted to indirect discrimination contrary to section 19 Equality Act 2010 on the grounds of both age and gender…."

19. The Claimant suffered unlawful discrimination and was unfairly dismissed…"

5. By its comprehensive response (ET3) the Respondent essentially pleaded that the dismissal had been a fair one within section 98 of the ERA it having a some other

substantial reason (SOSR) justifying the move to APTIS and essentially for economic reasons that it set out in detail. Second that it had undertaken a fair consultation procedure; and it denied inter alia the accusation in the ET1 that the appeal "was a sham". Thus it pleaded that the dismissal was a fair one within of course the range of reasonable responses available to an employer in a similar situation in essence having regard to size administrative and undertaking resources equity and the substantial merits of the case.

6. On the same scenario it therefore pleaded that there was no indirect discrimination and essentially falling back on the final limb of section 19 of the EqA to which I shall come, essentially this therefore being a defence of justification.

7. On 21 September 2021 my colleague Employment Judge Ahmed, obviously having considered the pleadings, directed that there be this hearing to;

> *"Determine whether the complaints of age discrimination and/or indirect sex discrimination should be struck out as having no reasonable prospect of success or whether a deposit order should be made".*

8. Hence this hearing. Counsel before me have both presented detailed written representations for which I am most grateful. They have also provided a bundle of authorities, and a supplemental bundle has been provided by Ms Cheung. I have had before me an agreed bundle of documentation. I have not heard any sworn evidence or considered any witness statements in this matter it having been dealt with on the basis of submissions and on the face of the documentation and which is the usual approach of course to take in determining these kind of issues at an Open Preliminary Hearing.

9. The final point to make is I obviously on the paperwork need to take the Claimant's case at its highest but for reasons that I shall come to what today is all about essentially in relation to the indirect discrimination claims is primarily first a matter of law. Before I go there, I need to point out that not on the agenda in terms of a consideration strike out was the unfair dismissal claim, but this does not preclude me in terms of the 2013 Employment Tribunal rules of procedure from making a Deposit Order if I consider that to be appropriate. The parties accept that the rules of procedure give me that power as to which see rule 39(1).

The law engaged and first observations

10. Dealing with my powers as to strike out engaged is Rule 37 of the Employment Tribunals Rules of Procedure 2013 thus:

> *"(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds-*
>
> *(a) That its scandalous or vexation or has no reasonable prospect of success…".*

11. As to the making of a Deposit Order engaged is Rule 39(1).

> *"(1) Where at a Preliminary Hearing (under Rule 53) the Tribunal considers that any specific*

allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party a party (the paying party) to pay a deposit not exceeding £1000 as a condition of continuing to advance that allegation or argument".

12. As to strike out I am well aware of the principal authorities on the topic essentially flowing through from ***Anyanwu v The South Bank Students Union [2001] IC391HL,*** and to the effect that a strike out should not be made except in the most obvious cases and because discrimination based claims are in general fact sensitive and require full examination to make a proper determination. However, that does not preclude strike out if as an example the claim is hopeless as a matter of law or essential propositions relied upon on the face of it fanciful as to which see ***Ahir v British Airways Plc [2017] EWCA Civ 1392 at 23 per Underhill L J.*** For a fuller accurate resume of these fundamental principles see paragraphs 5 and 6 of Mr Roberts written submissions.

13. That then brings me to the definition of indirect discrimination thus as per section 19 of the EqA (1):

Section 19 EqA

"(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

"(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

(3) The relevant protected characteristics are—

- *age;*

(……)

- *sex;*

The Indirect Sex Discrimination clam: the competing submissions and my findings

14. Put at its simplest and without going into a detailed resume of the factual scenario in this case which is essentially not in dispute, and the Claimant's proposition is as per the grounds of the ET1 to which I have referred that the effect of introducing APTIS is that she will as per section 19 be put to a particular disadvantage as a member of the inner pool so to speak of female teachers and because the benefits under the APTIS Scheme being not as beneficial as those under the TPS will as she has stated mean that she will therefore be disadvantaged in terms of the value of the fund that she can build up on a proposition that she is likely I assume, although it is not at all clear from the pleading, to be disadvantaged because there is the potentiality that she will need to take time off for instance she were to have another child or for child

caring reasons which will mean that she is disadvantaged in terms of the benefits she would accrue presumably on a pro rata basis if she takes time off or goes part time in comparison with the benefits that she would get under the TPS.

15. As is perhaps obvious there is not much particularisation at present on this contention in the Grounds of Claim. However the gravure is best summed up first in what she wrote inter alia in her letter of appeal against the dismissal on 21 April 2021 and under the third heading[1] The first paragraph relates to age discrimination to which I return. The second part relates to indirect sex discrimination. Stated is :-

> *"The School's proposal to withdraw from the (TPS) will also disproportionately affect me, as a female teacher, and other female (especially part time) colleagues.. Aa female teacher I am more likely to affected by future maternity or childcare responsibilities and therefore to accrue lower contributions to all my pensions as a whole. To remove me from the (*TPS) *which is a far more secure Defined Benefit scheme with much higher returns than can be expected from a private Defined Contribution scheme, therefore amounts to sex discrimination".*

16. And in the appeal hearing at which she was also represented by Mr Lloyd from NASUWT inter alia she said (see Bp 79), and having gained comfort from the McCloud case and to which I shall return:

> *"…any decision to move away from a more secure scheme with defined benefits will affect women disproportionately. This school has a large number of female part- time staff. They need a higher financial amount to go into the new scheme and they can't if they are part time. Its inherently better if you are male".*

17. Now leaving aside whether or not the Claimant can get herself within the disadvantaged pool and on the basis that she was full time and the Respondent pleads had never indicated any difficulties with performing her role or needing to go part time, there is a fundamental flaw in the claim and which is where I am with Mr Roberts and it is this. Self-evidently the argument being raised is that the APTIS disadvantages women and particularly those who are part time or "burden of childcare is with women" etc as to which see again Bp 79. Thus, self-evidently engaged are the provisions in the EqA relating to equality of terms and commencing at Chapter 3 and which follows on from Chapter 2 which relates into Occupational Pension Schemes; and specifically engaged is section 67 which makes plain that; -

> *"(1) if an Occupational Pension Scheme does not include a sex equality rule it is to be treated as including one",*
>
> and the important point being section 67(2);
>
> *"(2) A sex equality rule is a provision that has the following effect—*
>
> > *(a) if a relevant term is less favourable to A than it is to B, the term is modified so as not to be less favourable…."*

18. And the determination of whether or not there is a less favourable provision in terms of the impact of the Occupational Pension Scheme is a matter which is to be

[1] See page (Bp) 73 in the bundle.

determined under this Chapter and of course as per section 69 and in effect analogous to an equal pay claim if the Tribunal was to find that there was the inequality, then the Respondent can rely upon the defence of general material factor if he can establish the same as per section 69 at Chapter 3. And thus, comes the crucial point at section 70 which excludes therefore the bringing of an indirect sex discrimination as per S39(2).

19.Thus, it follows that as the claim has not been brought as one based upon inequality of terms as per chapter 3 of the EqA and there is no application being made to amend the claim so as to bring it within that chapter, that the claim cannot be pursued. Ms Cheung had not addressed that point in her skeleton argument and I do not criticise her for that as it hadn't been raised in the response (ET3); but before me she has not put forward any real argument to dissuade me that Mr Roberts is in fact correct.

Conclusion on this issue

20. Thus it follows that I dismiss the indirect sex discrimination.

The Indirect Age Discrimination Claim

21. Back to the ET1 GROUNDS, namely:

> *11. The Claimant also claimed that the decision of the Respondent to leave TPS had a disproportionate impact on younger teacher staff, and female teachers, denying them a greater period of time within TPS.*

22. Not set out was as to which age group the Claimant put herself in, but I will work on the premise as per the skeleton argument of Ms Cheung that the Claimant seeks to put herself in an age group of those below 40. Going back to her appeal grounds as at 21 April 2021 and the third heading at Bp73 , and it has to be borne in mind that it dovetails within the sex discrimination claim but endeavouring as I will to treat the age claim as discrete for the purposes of the competing arguments pleaded at paragraph 1 was:

> *"I am a relatively young teacher and as a result, I have not had the same amount of time to accrue benefits as other, longer serving teachers. Furthermore the recent ruling in the McCloud case implies that I will shortly be entitled to a retrospective change to my TPS conditions. Given that this has been postponed due the Covid 19 crisis and further delays are highly likely, it is conceivable that I may lose this benefit due to the five year deadline to re-enrol in the Teachers' Pension Scheme in order to maintain current benefits".*

23. That of course is conflating the TPS scheme which the Respondent is abandoning with the APTIS scheme which it is imposing. This becomes relevant in terms of the arguments made by Mr Roberts as to the import thereof in terms of the judgment of Mr Justice Underhill as he then was sitting as President of the Employment Appeals Tribunal in the case of ***ABN Amro Management Services Limited and Another v Hogben UKEAT/0266/09/DM*** and in particular at paragraph 27. To put it at its simplest the scenario in ABN Amro and in relation to the point engaged in terms of Mr Justice Underhill's conclusions at paragraph 27 can be summarised thus. There had been a takeover of ABN Amro by Royal Bank of Scotland (RBS). The net result was that in terms of the integration there would be redundancies. Put at its simplest the selection

process started with the oldest members of the at risk management groups across both businesses. At that time both RBS and ABN Amro in effect exercised their discretion to provide that bonuses (which I will refer to as PCP 1[2]), which were a very important part of remuneration, would be paid pro rata for the year in question to those who during the year were made redundant. So, those in the older age group selected at the first stage of redundancies and up to circa 2 April 2008 when they departed got the bonus. But then there was a change in the bonus scheme (PCP 2) meaning that thereafter those dismissed by reason of redundancy would not get the bonus pro rata other than in exceptional circumstances. The Clamant being under notice applied for his bonus but was refused on the basis that his was not an exceptional circumstance. At the end of the notice period his dismissal by reason of redundancy took effect. In terms of his subsequent claim for indirect discrimination to the Employment Tribunal by way of indirect discrimination put at its simplest what he sought to do was to conflate PCP 1 with PCP 2 so as to mean that he could argue that there was age related indirect discrimination which otherwise there would not be as all those remaining post 2 April 2008 would be subject to the same disadvantage in terms of the loss of the pro rata bonus other than in exceptional circumstances and irrespective of age. And in finding against the Claimant we come back to paragraph 27 per Mr Justice Underhill ….

> *"It is artificial and unnatural to describe the change from one substantive PCP to another as in itself constituting a policy or criterion. To make the same point another way what "is applied" to the Claimant in such a case is not the change itself but the new substantive policy brought about by the change, and unless that policy in itself is discriminatory (indirect discrimination) is not engaged…."*

24. Thus says Mr Roberts given the Claimant's pleaded case it is on all fours.

25. The counter to that as advanced by Miss Cheung is the case of ***Edie and others v HCL Insurance BPO Services Ltd UKEAT/153/14*** and which was a Judgment of the EAT presided over by His Honour Judge Lewis. That of course is a 2015 case and the argument in relation to ABN Amro appears to have been advanced in that it is referred to.

26. Essentially the scenario in Edie was that the by then employer trading under the name of Liberata had via a series of acquisitions and thus TUPEs (Transfer of Undertakings) inherited a workforce in which terms and conditions were not harmonised. Thus, it sought to impose a harmonisation for on the face of it sound business reasons. The problem was that within the workforce there was an older category of employees who enjoyed better terms and conditions which they therefore were going to lose. If they did not accept the change in terms and conditions, they would be dismissed. The disadvantaged group who is as now perhaps self-evident were the oldest therefore brought a claim based upon indirect age discrimination. At first instance an Employment Judge found that this was in terms of the first limb of section 19, indirect discrimination in that it put them at a particular disadvantage; but he then went on to find in terms limb 3 of the definition and the justification defence that *"the introduction of the new terms had the legitimate aim of reducing staff costs so as to ensure the employers future viability and in the absence of practical alternative, the requirement was a proportionate means of achieving a legitimate aim".* Both sides appealed but for my purposes

[2] Provision criteria or practice.

of significance and distinguishing as they did and as per the Judgment of Lewis J the EAT dismissed the cross appeal and found that: -

> ***"the requirement to enter into a new contract on different terms or be dismissed was a provision, criterion or practice*** *which was discriminatory in relation to age within the meaning of section 19….; that it was applied to all employees and put certain employees within a particular age range at a disadvantage as they lost the benefit of advantageous contractual terms…."* [3]

27. It also went on then, however, to dismiss the appeal of the Claimants on the basis that the Judge at first instance had not erred in finding in favour of the Respondent in terms of there being justification for the imposition of the change.

28. But of significance to me is that the Respondent's argument before Judge Lewis and his panel members that this was not age discrimination, and which submission of course failed, was based on submissions much like those submitted to me in terms of the purport of ABN Amro by Mr Roberts as to which see the argument of Mr Cooper, Counsel for the Respondent commencing at paragraph 34. And put at its simplest the distinction that Judge Lewis and his panel was making at para 38 was that in the case before it there was a distinguishable group of older employees with the benefits to which I have touched upon who by reason of the new provisions were put at a particular disadvantage thus:

> "*38 Applying the language of section 19 of the 2010 Act:*
>
> *(1) There was a PCP within the meaning of section 19 (1) of the 2010 Act , namely a requirement that, if employees wished to remain employed by the employer, they were required to enter into a new contract with effect from 16 June 2011 under which they would not have contractual entitlement to private health insurance, carers days, and enhanced redundancy payments, and in which their working hours would be 37 hours per week and annual leave would be 25 days a year.*
>
> *(2) The employer applied that PCP to persons who did not share the relevant characteristics of the other employees, that is they were not within the same age band as the other employees, thus satisfying the requirements of S19(2)(a)…*
>
> *(3) The employer applied it to each of the claimants, and to other persons who shared the characteristic, that is they fell within the same age range, and it put or would put them at a particular disadvantage when compared with persons not in that age band – the affected employees became contractually obliged to work longer hours… whereas the employees in the different age band were not put at those disadvantages…*
>
> *and he went on to say this: -*
>
> *39. Furthermore, this case is distinguishable on the facts from the decision in ABN Amro Management Services Limited v Hogben. There, there was one policy (discretionary bonus policy) which applied to all employees up until 2 April 2008. Thereafter, there was a different bonus policy applicable again to all employees. There was no time at which some employees were treated differently from others. The difference in treatment was established solely by looking from one side of the change- date to the other. The claimant who was dealt with at a time when the new policy was in place was seeking to compare himself with what happened at a different time when a different policy was in place. It was in those circumstances the appeal tribunal concluded that a change of policy in itself could not amount to a PCP within the meaning*

[3] See headnote at F. The emphasis is mine.

of section 19…

40. The present case is different on the facts. The PCP that was being applied was a requirement that employees agree to new terms and conditions or be dismissed. That did put certain employees at a disadvantage because they had existing contractual rights which were different from those enjoyed by other employees…

29. So if I look to the Edie Judgment and contrast it with ABN Amro is that fatal as Mr Roberts would plead to the survival of the age discrimination claim before me because none of the factors applying in the Edie case apply in the case before me. To turn it around another way the PCP originally whereby all the teachers were in the TPS applied to all of them. Subsequent to APTIS coming into play, and from what I would gather that would be that the start of the new school year, all members of the teaching workforce would again be treated the same. But of course in the ABN Amro/RBS scenario there was a situation whereby those in the older age group who were fortunate enough to be made redundant before 2 April 2008 benefitted by getting their pro rata bonus whereas those in the post 2008 were not going to get it. That sounds to me more like a direct age discrimination claim and which was not advanced in the Tribunal or on appeal. And obviously the Edie case can also be distinguished because there was clearly a disadvantaged group who were going to now be treated differently from how they had been previously treated and who formed a distinct grouping which is not the case in the scenario before me.

30. The final case, which has been raised of course by the Claimant is ***Lord Chancellor and another v McCloud and others [2018] EWCA Civ 2844***[4]. That of course is the well known pensions case. Put at its simplest consequent upon the Government deciding to change the Judicial Pension Scheme it decided to implement transitional provisions which gave additional protection to the oldest age group of the judiciary thereby affected. It then provided a tapering provision for the mid age group and then for the youngest age group no protection at all from the disadvantages impact of the new scheme. The same applied to the firefighters who brought their claim as well. The important point to make however is that The Court of Appeal in its Judgment was dealing with direct age discrimination and because that was the first limb upon which the claims were brought. And because it found that the Government did not satisfy it that the imposition of the scheme was proportionate in terms of direct age discrimination[5]. it would therefore logically follow that although it did not need to deal with the tandem claim of indirect discrimination it would have been bound to succeed. It follows that McCloud is of no assistance to me.

31. But reverting to the free standing indirect sex discrimination claim, in terms of my decision I draw comfort from that their Lordships held that it could not succeed because:

"*pensions constituted pay and where the alleged sex discrimination related solely to pay as in the present case, the claim could only be made under the equal pay provisions".*

32. And of course in that respect the claim before me does relate solely to pay because

[4] (2019) IRLR 477 CA.

[5] See s13(2) of the EqA. Unlike the other protected characteristics protected from direct discrimination, an employer can advance a justification defence if age discrimination is found to have occurred.

the whole thrust of the Claimant's argument before the internal process and in the grounds of the claims to the Tribunal t was that Oakham school should not continue to seek to impose APTIS but in effect maintain the status quo vis TPS because the benefits ie the retirement pay in reality would be more beneficial to such as the Claimant under the older scheme.

32. But, as is clear from my rehearsal of the main issues and the law and the limited jurisprudence I have been referred to, this claim cannot be advanced as one of indirect discrimination unless the TPS is restored as it as a PCP has gone. It is not about the impact of one group only who will be disadvantaged by a harmonisation PCP as in Edie. That PCP clearly impacted upon one group who historically enjoyed better terms that the rest of the workforce. That is not the case here. All had the same terms and benefits under the TPS and likewise under the APTIS once it came into effect.

33. It has to be about whether the substitution of the APTIS scheme will in its effect constitute indirect discrimination of the age group within which the Claimant puts herself and including its impact upon her. It has not been so pleaded. I repeat the relevant part of the claim:

> *11. The Claimant also claimed that the decision of the Respondent to leave TPS had a disproportionate impact on younger teacher staff, and female teachers, denying them a greater period of time within TPS.*

34. It follows the claim as currently pleaded is focussing on the departure from TPS and by reference to the extracts that I have in terms of the NASWUT grievance and the Claimant's appeal, the focus is on the departure from TPS and not APTIS. So I am with Mr Roberts that this an attempt to conflate and it does fall foul of the dicta in ABN Amro. It would have been different if the claim had been amended, but it has not been And no application has been made to amend it.

Conclusion on this issue

35. I accordingly dismissed the claim for indirect sex discrimination as wrong in law and thus misconceived, and accordingly having no reasonable prospect of success.

The unfair dismissal claim

36. Prima facie the process including the appeal passes muster as best practice.

37. In that respect I note that from the onset of the consultation process and which was comprehensive, Oakham School set out for the benefit of the workforce and in particular for my purposes the teaching staff in the fullest possible detail the rationale behind the need to move from TPS to APTIS. It then in the very full decision rejecting the Claimant's appeal, and as to which see its appendices, set out the business case. Against an already worsening financial position all of which is set out, the school suffered an imposition in terms of increased employer contributions to the TPS scheme in September 2019 from 16.48% to 23.68%. Unlike state schools its contribution is not provided by the Government. And the net impact upon the school in terms of employer

costs grows from £1.442 million in 2008 to £2.054 million and could be expected to rise every 4 years if it remained in the TPS scheme; and this was on top of the other adverse circumstances it was already facing and then of course the impact of Corona.

38. The Claimant seeks to plead that insufficient consideration was given to the counter proposals of NASUWT in particular in the consultation process but on the face of it and again cross referencing to those appendices the employer did consider what had to be said and it did increase the amount of pension contribution it would make into APTIS to some extent counteract the impact of going out of TPS.

39. As to the Claimant pleading that the appeal process is a sham. Looking at the detailed explanation for the decision and the questions that were raised in the appeal hearing, again I think that Claimant is in considerable difficulty.

40. What it means is that on the face of the papers before me I have concluded that the Claimant has only little reasonable prospect of success. Thus I am making a deposit order as I consider it in the interests of justice so to do, a primary reason being the costs implications if the Claimant loses as to which see Rule 39(5)(a).

41. That therefore leads me to the way forward. I therefore now need to assess the amount of the Deposit Order and that will require that the Claimant provides a statement of her means. I therefore make the orders as hereinafter set out.

ORDERS
Made pursuant to the Employment Tribunal Rules 2013

1. **Within 21 days of the issuing of these reasons and orders** the Claimant will serve upon the Tribunal and the Respondent a statement of her means including assets. She will also inform the Tribunal as to whether she is prepared to allow the matter to proceed on the basis of the Judge simply assessing the amount of the Deposit Orders on the face of that statement of means or whether she wishes an attended hearing to assess the amount.

2. The Respondent then has a right of reply to the statement of means if it so wishes **within 14 days of receipt of the statement of means**.

3. This Judge will then assess the amount of the Deposit Order on the face of the papers unless the Claimant requires a hearing in which case the same will be listed to assess and thence order the amount of the Deposit Order to be paid.

4. As to otherwise the way forward, further orders will be made once the Deposit Order has been complied with. If it is not, then the case will be automatically dismissed which will end the proceedings.

Employment Judge P Britton

Employment Judge P Britton

Date: 21 January 2022

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