COIT

6748/67.

Case No: 1803898/12

EMPLOYMENT TRIBUNALS

Claimant:	Eville & Jones (UK) Limited
Respondent:	Grants Veterinary Services Limited (in Liquidation)
Heard at:	Leeds **On:** 16 & 17 June 2014
Before:	**Employment Judge Maidment**
Members:	Miss Y Fisher
	Mr G H Hopwood
Representation	
Claimant:	Mr R Ascroft, Counsel
Respondent:	Mrs L Lightfoot, Solicitor

JUDGMENT

1 The Respondent failed to comply with its obligations pursuant to Regulation 11 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") (Notification of Employee Liability Information).

2 The Respondent is ordered to pay to the Claimant compensation of £65,500 arising out of the aforementioned failure.

[Judgment and reasons having been given to the parties orally, the Claimant requested written reasons which are hereby produced upon such request.]

REASONS

1. **The Issues**

1.1. This case involved a second generation contracting out of services where services formerly provided by the Respondent were carried out by the Claimant following a re-tendering exercise. There is no dispute that such transaction/transfer of services constituted a relevant transfer within TUPE. The Claimant however maintains that the Respondent had failed to comply with its duty to provide to it the

requisite "employee liability information" and in particular had not informed the Claimant that, in its reasonable belief, employees might bring claims against the Claimant arising out of their employment with the Respondent.

1.2. In particular, as a matter of undisputed fact, the Respondent had failed to pay the final/most recent instalment of the transferring employees' salaries due prior to the transfer date, such that such liability transferred to the Claimant. It indeed settled such liability directly with the transferred employees. The key issue of dispute is the failure to provide information regarding a potential failure to pay this final instalment of wages.

1.3. Following the transfer the Respondent was placed in liquidation and this complaint was defended in essence on behalf of the liquidators appointed to the Respondent in circumstances where, whilst a proof of debt had been admitted in the insolvency proceedings, the Chancery Division of the High Court of Justice (Leeds District Registry) had ordered that the matter be referred to the Employment Tribunal for determination, including as to quantification of the Claimant's complaint. This could have the effect of varying amount of the Claimant's proof of debt in the liquidation of the Respondent.

2. The Evidence

2.1. The Tribunal, having identified the issues with the parties, took some time to privately read into the witness statements presented and the documentation referred to. Such documentation consisted of two lever arch files, the first of which numbered some 283 pages and the second "disputed bundle" a further 78 pages. It was clarified at the outset that on behalf of the Respondent it was not contended that the Tribunal ought not, for any reason other than relevance, consider the documents in the disputed bundle. On that basis the Tribunal proceeded to read the documents it was referred to and could in due course determine for itself whether the contents thereof had any relevance to the issues in these proceedings.

2.2. The Tribunal then heard live evidence from Dr Jason Aldiss, Managing Director of the Claimant and from another Director, Mr Terry Pearson. No witness evidence was called on behalf of the Respondent.

2.3. Having considered all of the relevant evidence the Tribunal makes the findings of fact as follows.

3. The Facts

3.1. The Claimant, the Respondent and other providers supplied veterinary and meat inspectors to slaughterhouses under contracts with the Food

Standards Agency ("the FSA"). The contracts were of fixed terms of three years due to expire in November 2011.

3.2. In March 2011 the FSA issued notices to all the contractors that their existing contracts would terminate on 1 April 2012.

3.3. On 30 August 2011 the FSA issued invitation to tender documents for all the "clusters" into which the FSA's areas of operation had been geographically divided. Tenders had to be submitted by 10 October 2011.

3.4. As a first stage, to be allowed to tender, contractors had to provide to the FSA evidence of their financial standing.

3.5. Six companies, including the Respondent and the Claimant, were allowed through to a final tender stage.

3.6. On 24 November 2011 it was announced that the Claimant had been successful in tendering for all the clusters in England.

3.7. The Respondent had won none of the available contracts. In circumstances where the FSA was in fact the sole customer of the Respondent's business, that meant an effective cessation of its core business activity.

3.8. The Respondent and the Claimant recognised from the outset that TUPE would apply to the change in service provider and that all of the Respondent's employees would transfer to the Claimant on 2 April 2012.

3.9. A process commenced of the Claimant seeking and the Respondent providing employee information relating to those employees, which would transfer to the Claimant. By 6 February 2012, whilst there had been an initial co-operation by the Respondent, Dr Aldiss, the Claimant's Managing Director, was suspicious that Mrs Elizabeth Grant, Managing Director of the Respondent, was seeking to make changes to the conditions of the transferring employees. He had no hard evidence of that but asked the FSA to intervene to raise with the Respondent that there were "rumours" regarding such prospective changes in the hope that this would have the effect of the Respondent ceasing to seek to make any employment contract changes.

3.10. Dr Aldiss did not seek any indemnities from the FSA in circumstances where he did not consider the Respondent's attempted changes to the contracts to be significant.

3.11. TUPE information continued to be provided including schedules of contract terms and relevant information for each transferring employee.

3.12. On 8 February 2012 the Claimant entered into a new contract with the FSA for the delivery of services across England. No indemnities were contained within that agreement. The agreement reflected the basis upon which the potential service providers had tendered and it is unlikely, and there is no evidence that, the FSA would have agreed to depart from its standard terms.

3.13. The Claimant was unaware of the Respondent's financial situation up to the transfer date of 2 April 2012. It had assumed that this was essentially "sound" given that the Respondent had been allowed by the FSA through to the final tender stage.

3.14. The reality was that the Respondent was in financial difficulties, particularly as a result of the loss of the FSA as its sole client.

3.15. Baker Tilley, professional accountants and insolvency practitioners, had reported on 28 July 2011 that whilst balance sheet insolvent, the Respondent's business should continue to receive the bank's support. This report was, however, based on some inaccurate information including an expiry date of the Respondent's current contracts of 2 February 2014 and suggesting the retention of a particular cluster in Yorkshire, which in fact was to be lost due to service failures in any event. Indeed it was lost to the Claimant.

3.16. In November 2011, business recovery professionals, Cooper Williams, had been engaged by the Respondent to assist it regarding its financial difficulties.

3.17. By 15 December 2011 the Respondent had an unpaid debt due to HMRC of £333,994.75 including a late payment penalty in respect of PAYE. That debt grew and the Respondent had to reach a "time to pay" agreement with HMRC to forestall enforcement action. The terms of that agreement were in fact subsequently dishonoured by the Respondent and fresh proposals made to HMRC.

3.18. HMRC presented a winding up petition to the Court on 9 February 2012 with a hearing date then set for 26 March 2012. This was, it appears in error, never served on the Respondent so that the hearing was ultimately cancelled. The Respondent did subsequently become aware of the hearing date and indeed the publication of the winding up petition and hearing date came to the attention of others, including the FSA, who raised this as a concern with the Respondent which advised the FSA that its information was in error.

3.19. Mrs Grant, it is noted further, had given notice to appoint an administrator to the Respondent on 17 February 2012 although no appointment was ultimately made. In a letter of 20 February 2012 to HMRC, Cooper Williams referred to threatened legal proceedings by HMRC and to an intention to present a company voluntary arrangement proposal to the Respondent's creditors.

3.20. The employees of the Respondent received their wages (paid in arrears) at the end of February in normal course.

3.21. It is clear that the Respondent continued to work then towards a possible company voluntary arrangement. A trading history was produced on 1 March 2012 by the Respondent to assist in that purpose.

3.22. The Respondent continued to experience financial difficulties. On 15 March 2012 there was a threat from its car lease company to

terminate all finance agreements. A further surcharge was raised by HMRC dated 16 March 2012 in the sum of £41,210.36.

3.23. By 20 March 2012 it appears that HMRC were prepared to come out in favour of a draft company voluntary arrangement proposal, which they had by this stage been provided with by the Respondent.

3.24. It remained to inform the Respondent's bankers of the proposed company voluntary arrangement. By 28 March 2012 indeed they were still unaware of the proposal and it appears to have been determined by the Respondent that they would be the last to know.

3.25. By 28 March 2012 it is further noted that the Respondent had settled over £139,000.00 of liabilities owed to a connected company, Pro Agri.

3.26. On 27 March 2012 Mrs Grant had written to all the Respondent's employees advising that their March salaries would not be paid on Friday 30 March when they were due but would in fact be delayed until a payment on 5 April 2012.

3.27. The main reason given for such a delay involved a stated need to assess the amount of deductions properly to be made from wages on account of damage to returned company vehicles.

3.28. The Tribunal is sceptical of such being a valid explanation in circumstances where not every employee had a company vehicle and the salaries due greatly exceeded any deductions, which were likely to have been applicable in respect of damage or loss relating to the vehicles.

3.29. On 29 March 2012 Cooper Williams telephoned Barclays Bank, the Respondent's bankers, to inform them that a company voluntary arrangement proposal would be on its way to them.

3.30. Quickly following that call at 10:41 am the bank cancelled the Respondent's online banking facilities and the Respondent was then notified of that fact.

3.31. Late on 30 March 2012 the Claimant, through Dr Aldiss, became aware of the delay in salary payments and the letters sent out to its staff by the Respondent. He discovered this by indirect means not attributable to the Respondent itself.

3.32. Dr Aldiss was naturally concerned but at that point believed that the Respondent would honour the salary payment on 5 April as it stated it would in the correspondence. He knew Mrs Grant and her family personally and expected her to behave, as he put it, honourably.

3.33. Dr Aldiss e-mailed the Respondent's staff nevertheless on 31 March stating that he had alerted the FSA regarding this late payment and had sought their help. He said that he would continue to apply pressure to the FSA to ensure payment on or before 5 April as the Respondent had promised.

3.34. It is noted at this stage that the Respondent's bank account showed on 2 April a positive balance of around £250,000 and an overdraft

facility of £300,000. The salary and expenses due to employees was around £400,000 in total.

3.35. The Claimant's contract with the FSA commenced on 2 April and the Respondent's employees transferred to it with effect from such date. At 4:31 pm on 2 April Barclays Bank froze the Respondent's bank account.

3.36. The Respondent failed to pay the employees' March salaries as it had undertaken to do so. The Claimant, having provided to some employees loan facilities to assist in overcoming difficulties with direct debit payments, ultimately settled that liability directly with the transferred employees.

3.37. In evidence, Dr Aldiss referred to the Respondent's contract with the FSA signed on 8 February 2012 saying that the terms of that contract placed the Claimant in the position of *"not having a choice but to deliver on the contractual arrangements; if we failed to commence the contract we would be in default, if we continued, we accepted the transfer and the salary liability."*

3.38. The Tribunal also noted the contents of a letter written by Mr Terry Pearson to Baker Tilley following their appointment as the Respondent's liquidators effectively pointing the finger at them when referring to Barclays subsequent decision to freeze the bank account. He went on to say: "*You made the comment that E & J could have taken action to mitigate its loss; it did by offering a loan facility to employees on the word of the Director that salary payments would be made on 5 April 2012... Is it seriously being suggested that you believe there would have been no consequences to E & J had they refused to fully service a contract signed some two months previously to Food Standards Agency... Had E & J withheld or even delayed the formal start of the contract period the ramifications of that would have been commercial suicide, not to mention some 50% of the meat processing industry coming to a standstill on 2 April 2012 compromising consumer protection as well as a threat to food safety and animal welfare throughout the UK.*"

3.39. It is clear from the correspondence already mentioned that, in the brief window of opportunity Dr Aldiss had to deal with the late payment issue, he had spoken to the FSA and sought their help. When questioned as to what he would have done had he had notice of the future default 14 days before the transfer date i.e. 19 March he responded that he would have done something and would not simply have sat back.

3.40. He referred to the potential of harming the Claimant's relationship with the FSA at the start of a new contract had there been the suggestion of a refusal to proceed with that contract from 2 April. However, in circumstances where the Claimant was the preferred bidder and the FSA needed the work carried out without any cessation from 2 April, he believed that the Claimant had a strong bargaining position.

3.41. He accepted that there would not have been any change to the tender arrangements put forward and agreed but believed that a future variation of contract could have been possible given that he had worked with the FSA before in circumstances where contract variations had been agreed.

3.42. It was also possible in his view that the tender process could effectively have been suspended albeit he recognised the tensions which would have existed with the FSA as its client.

3.43. It was suggested further that the FSA may have terminated the contract with the Respondent before 2 April in circumstances where it was adjudged to be insolvent and that the Claimant or the FSA might have taken over the Respondent's employees on an interim basis prior to the original contract coming into play.

3.44. The Tribunal heard no evidence regarding any particular financial leverage, which the FSA might have held over the Respondent.

3.45. Dr Aldiss referred to the ability to ask the bank for a low interest rate loan rather than having to use a more expensive overdraft facility had the Claimant had greater notice.

3.46. He also suggested that he could have negotiated with the Respondent further to see if he could have prevented the default referring to his relationship with the Grant family. He suggested that the Grant family might have sold him particular assets at an undervalue to effectively compensate him for the Claimant's 'hit' taken on the March salaries.

3.47. He referred to the fact that he would not have paid the Respondent for equipment he had purchased from them in February had he been provided with adequate notice of the Respondent's financial situation. Indeed some equipment had been purchased in February a significant time before the obligation to provide employee liability information arose in circumstances where the value was quite small. On questioning, Dr Aldiss withdrew such suggestion as being a realistic course of action he might have taken.

3.48. He also referred to the possibility of him advising employees to make their claims against the Respondent and not the Claimant or his option to refuse to accept the transfer of any of the staff, but again on questioning it was conceded that he appreciated that liability transferred to the Claimant and pursuant to TUPE the Claimant did not have the straightforward option of refusing to engage transferring employees. He intimated that different "measures" could have been taken by the Respondent relating to the TUPE transfer but did not suggest what those were or that any measures had been taken after the transfer.

3.49. There was no evidence of any negotiations with the FSA subsequent to the 2 April transfer date whereby any variation in contract was sought or agreed nor any form of compensation or ex gratia payment.

4. **Applicable law**

4.1 This complaint engages the application of Regulations 11 and 12 of TUPE. Regulations 11 and 12 state as follows:

"11 Notification of Employee Liability Information

(1) The transferor shall notify to the transferee the employee liability information of any person employed by him who is assigned to the organised grouping of resources or employees that is the subject of a relevant transfer —

(a) in writing; or

(b) by making it available to him in a readily accessible form.

(2) In this regulation and in regulation 12 "employee liability information" means—

(a) the identity and age of the employee;

(b) those particulars of employment that an employer is obliged to give to an employee pursuant to section 1 of the 1996 Act;

(c) information of any—

(i) disciplinary procedure taken against an employee;

(ii) grievance procedure taken by an employee,

within the previous two years, in circumstances where the Employment Act 2002 (Dispute Resolution) Regulations 2004(1) apply;

(d)information of any court or tribunal case, claim or action—

(i) brought by an employee against the transferor, within the previous two years;

(2) An employment tribunal shall not consider a complaint under this regulation unless it is presented—

(a) before the end of the period of three months beginning with the date of the relevant transfer;

(b)within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where an employment tribunal finds a complaint under paragraph (1) well-founded, the tribunal—

(a) shall make a declaration to that effect; and

(b) may make an award of compensation to be paid by the transferor to the transferee.

(4) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances, subject to paragraph (5), having particular regard to—

(a) any loss sustained by the transferee which is attributable to the matters complained of; and

(b) the terms of any contract between the transferor and the transferee relating to the transfer under which the transferor may be liable to pay any sum to the transferee in respect of a failure to notify the transferee of employee liability information.

(5) Subject to paragraph (6), the amount of compensation awarded under paragraph (3) shall be not less than £500 per employee in respect of whom the transferor has failed to comply with a provision of regulation 11, unless the tribunal considers it just and equitable, in all the circumstances, to award a lesser sum.

(6) In ascertaining the loss referred to in paragraph (4)(a) the tribunal shall apply the same rule concerning the duty of a person to mitigate

(ii) that the transferor has reasonable grounds to believe that an employee may bring against the transferee, arising out of the employee's employment with the transferor; and

(e) information of any collective agreement which will have effect after the transfer, in its application in relation to the employee, pursuant to regulation 5(a).

(3) Employee liability information shall contain information as at a specified date not more than fourteen days before the date on which the information is notified to the transferee.

(4) The duty to provide employee liability information in paragraph (1) shall include a duty to provide employee liability information of any person who would have been employed by the transferor and assigned to the organised grouping of resources or employees that is the subject of a relevant transfer immediately before the transfer if he had not been dismissed in the circumstances described in regulation 7(1), including, where the transfer is effected by a series of two or more transactions, a person so employed and assigned or who would have been so employed and assigned immediately before any of those transactions.

(5) Following notification of the employee liability information in accordance with this regulation, the transferor shall notify the transferee in writing of any change in the employee liability information.

(6) A notification under this regulation shall be given not less than fourteen days before the relevant transfer or, if special circumstances make this not reasonably practicable, as soon as reasonably practicable thereafter.

(7) A notification under this regulation may be given—

(a) in more than one instalment;

(b) indirectly, through a third party.

12 Remedy for failure to notify employee liability information

(1) On or after a relevant transfer, the transferee may present a complaint to an employment tribunal that the transferor has failed to comply with any provision of regulation 11.

his loss as applies to any damages recoverable under the common law of England and Wales, Northern Ireland or Scotland, as applicable.

(7) Section 18 of the 1996 Tribunals Act (conciliation) shall apply to the right conferred by this regulation and to proceedings under this regulation as it applies to the rights conferred by that Act and the employment tribunal proceedings mentioned in that Act."

4.2 Applying the statutory provisions to the facts as found, the Tribunal reaches the following conclusions.

5. Conclusions

5.1. The Claimant's complaint is brought relying on a breach of Regulation 11(d)(ii) of TUPE and alleges a failure to provide information about a claim that the Respondent had reasonable grounds to believe that employees might bring against the Claimant arising out of their employment with the Respondent.

5.2. The obligation, if it arose, was to inform the Claimant by 19 March 2012 albeit there was a continuing obligation up to 2 April if the situation changed.

5.3. On the facts the Tribunal concludes that as at 19 March the Respondent had reasonable grounds to believe that claims would be brought in circumstances where the employees were in fact unlikely (given the way the Respondent company was being operated) to receive their March salaries.

5.4. By 19 March it was clear that the Respondent's business was in financial difficulties and was planning some form of insolvency arrangement that would render it unlikely that the employees would be paid. The Respondent, to pay the employees, would have to have increased its indebtedness and was unlikely to be able to do so or indeed, on the evidence, was unlikely to be willing to take such course of action.

5.5. Certainly by 27 March 2012 there existed a situation where utilisation of an overdraft facility would be necessary to pay the March salaries and in circumstances where the bank was about to be told of a company voluntary arrangement proposal with the inevitable effect that the bank would not increase its own liability as a creditor of the Respondent. Certainly by that date the Respondent knew that claims from employees for unpaid wages were likely to be brought against the Claimant.

5.6. The Respondent's letter to employees regarding the mere delay of payment to 5 April 2012 cannot be regarded as a genuine statement of what was likely to occur. Even if it was, the Respondent was liable to the employees for complaints of unauthorised deductions from

wages/breach of contract after 30 March by which date such salary payments ought to have been made pursuant to their contracts of employment. It was therefore highly likely and the Respondent had reasonable grounds to believe that employees might bring a claim against the Claimant in any event.

5.7. Given the Respondent's knowledge of likely events there can be no special circumstances found such as to explain or render not reasonably practicable the Respondent's compliance with its obligation to provide employee liability information. The Tribunal rejects the proposition that no duty on the Respondent to provide information arose until its bank account was frozen after the transfer or at the very earliest on the notification of suspension of online banking facilities. The Respondent effectively controlled events and their timing and certainly for a significant period prior to those events.

5.8. On the Tribunal's findings the respondent was therefore in breach of its notification obligation pursuant to Regulation 11(d)(ii) and the Claimant's complaint succeeds.

6. **Remedy**

6.1. The Claimant seeks compensation arising out of the failure to notify. The relevant failure is indeed the failure to notify and not the liability for unpaid wages itself. The Claimant does not contest otherwise. The Tribunal must have regard to any loss sustained by the Claimant as a result of the failure although the Tribunal fundamentally awards compensation on a just and equitable basis.

6.2. The Claimant has incurred management expenses and legal costs together with additional banking expenses in having to react quickly to a problem of which it had little forewarning and in actioning the payment of arrears of wages to the employees. Its loss incurred in so doing falls validly to be compensated for.

6.3. However, the Claimant's primary contention in respect of significant loss sustained by the Claimant is that the Claimant lost an opportunity to reduce its liability by the Respondent's failure to comply with its Regulation 11 obligations.

6.4. As already recited, Dr Aldiss in evidence said that if he had known on 19 March (or even later) about the likely default he would have done something. He would not simply have sat back.

6.5. The Tribunal was clear that when he did find out about a possible default on 30 March he had very little time to react and indeed over a weekend period before the Claimant's new contract commenced. Had he had more time he could have thought through the Claimant's position in a more measured fashion.

6.6. However, he could not tell the Tribunal what he would have done had he known about the default at an earlier stage. Ultimately, the Tribunal concludes he would have spoken to the FSA and asked them to put pressure on the Respondent. Indeed, however, by 31 March he had done that in any event (in the limited window of opportunity) but

nevertheless without any results. No FSA pressure (if there was any and none has been evidenced) on the Respondent achieved the payment of wages by the Respondent to the employees by 5 April 2012.

6.7. There is no evidence that any earlier pressure would have had a different result. The Respondent was not going to have a continuing relationship with the FSA. It was not going to continue to trade and Mrs Grant was not likely to be concerned about customer relationships. She would not and perhaps could not even have been able to effect a payment to the employees by the stage where the obligation to provide employee information arose.

6.8. There is no evidence to support the proposition that the FSA would have made an ex gratia payment to the Claimant or varied or relaxed its contract terms.

6.9. This did not happen after the transfer suggesting that the FSA did not recognise any positive moral obligation towards the Claimant.

6.10. Certainly it had no legal obligation. The tender it produced put the risk on the transferee as would be expected in a second generation contract for services, particularly in a public sector context.

6.11. The FSA would not on 19 March 2012 have been likely to terminate the Respondent's contract. There was only two weeks to run before its chosen provider, the Claimant, would be in place and significant arrangements had already made for the takeover. There is no basis for concluding that the FSA would have made a decision in this interim period and certainly that it would have decided to take on the Respondent's employees itself or even ask the Claimant to do so on an interim basis. In any event TUPE would still have been triggered included in terms of any salary liability incurred to date.

6.12. It is said, on behalf of the Claimant, that it had a strong bargaining position in that the FSA desperately needed it to perform this contract. However Dr Aldiss' evidence is such that he would not have threatened to walk away from the contract because of the damage which would have been done to his reputation with the FSA and more widely.

6.13. It is more likely that he would still have taken the contract, which is a lengthy contract, and sought to put the Claimant in the best possible position in terms of recouping that loss over the course of the contract term with the FSA.

6.14. The Tribunal has seen evidence that it was unthinkable that the Claimant would simply default on its obligations to the FSA, as described by Mr Pearson.

6.15. Indeed, in not doing so, there is no argument that the Respondent can credibly run to the effect that the Claimant has failed to mitigate its loss. The Claimant had no legal basis for terminating its agreement with the FSA and would have put itself in breach of contract and liable to a damages claim from the FSA if it had done so.

6.16. In conclusion there is no evidential basis for asserting that the Claimant lost an opportunity which could with any degree of likelihood have changed the Claimant's position and avoided or mitigated the salary costs it incurred, a salary cost which indeed it incurred as a consequence of TUPE and a liability it could not have escaped even if it had declined to take on any of the otherwise transferring employees.

6.17. The Employment Tribunal awards as compensation such amount as is just and equitable having regard to any loss sustained by the transferee.

6.18. However, the amount of compensation shall be not less than £500 per employee unless it is just and equitable to award a lesser sum. It might be just and equitable to award a lesser sum if the failure to notify was minor or inadvertent. The Tribunal's findings however are that the failure was significant and anything but inadvertent.

6.19. In awarding a minimum of £500 per employee the Tribunal is not constrained by the maximum level of loss suffered by the Claimant.

6.20. If the sum of £65,500 (based on 131 transferring employees) was to be awarded to the Claimant, that sum would exceed the Claimant's losses attributable to the breach of the obligation to notify. The Claimant puts management costs at a maximum figure of £42,000 albeit it is unlikely the entirety of such costs could be attributed to the failure to notify and initial legal costs in taking advice on the situation are likely to have been little more than £3,000. Any more favourable banking terms which could have been arranged, had there been more notice given, were not quantified but unlikely to amount to a further significant sum.

6.21. Nevertheless the Claimant did undoubtedly have a lot to do and advice to take in reacting to the disclosure that employees were not to be paid their March salaries. Whilst the cost of management time and other costs would not reach the £65,500 level, such costs were not insignificant and would indeed have been of a material sum.

6.22. In all the circumstances the Tribunal does not view it to be just and equitable to make an award of less than £500 per employee and makes an award that the Respondent shall pay to the Claimant the sum of £65,500.

Employment Judge Maidment

Date 27/8/14

JUDGMENT SENT TO THE PARTIES ON

28 August 2014

FOR THE TRIBUNAL OFFICE

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number(s): 1803898/2012

Name of case(s): Eville & Jones (UK) v Limited — Grants Veterinary Services Limited (in Liquidation)

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: 28 August 2014

"the calculation day" is: 29 August 2014

"the stipulated rate of interest" is: 8% per annum

For the Employment Tribunal Office

INTEREST ON TRIBUNAL AWARDS

GUIDANCE NOTE

1. This guidance note should be read in conjunction with the booklet, 'The Judgment' which can be found on our website at www.justice.gov.uk/tribunals/employment/claims/booklets

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

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

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

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

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

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