

When Contract Wording Matters: Interpreting Employment Agreements

By [Rachel Best KC](#)

3PB Barristers

In [MacLurg & Ors v BSO \[2026\] NIKB 45](#) the High Court of Justice in Northern Ireland (King's Bench Division) recently considered a claim of breach of contract brought by a group of **General Practitioner Medical Advisers** against the **Business Services Organisation (BSO)** for breach of their employment contract in relation to their rates of pay. Rachel Best KC, who acted for the successful claimants, analyses the case. The decision is being appealed by the defendants.

Facts and Background

The Plaintiffs were General Practitioners who were appointed and employed as General Practitioner Medical Advisors (GMPAs). GMPAs have responsibility for GP practices in their regional area dealing with clinical and non-clinical queries, the investigation of medical complaints, adverse incidents and any performance or fitness to practice concerns.

The Plaintiffs brought a claim they had not been paid in accordance with the terms of their contract of employment and as a result had been underpaid for a number of years. The Defendant contended that the Plaintiffs had been paid in line with their contractual entitlements and in the alternative alleged that the Plaintiffs waived any breach of contract or acquiesced in same. The Defendant also raised the limitation claim in relation to the first and fifth Plaintiff's claims.

In the summer of 2004, the Defendant's predecessor, the Eastern Health and Social Services Board, advertised three new GPMA posts. At around that time there were significant changes afoot in relation to the pay and conditions of medical practitioners. A new contract had been introduced for NHS Consultants in January 2004. As of the 15th January 2004, any existing consultants had the choice of remaining on the "old" contract or moving to the new terms. All consultants appointed after that date were placed on the new contract. The salary range quoted for the GPMA reflected that which was payable to consultants under the old contract.

The Plaintiffs' contracts contained a number of references to the consultant terms and conditions of service (Northern Ireland 2004 "CTCS"). These were incorporated in part despite the fact that

GPMAAs and consultants carried out quite different roles for different employers. All consultants between 7 and 29 years' seniority transferred to the Schedule 13 pay scales and the same basic salary but those with more years' seniority would move more quickly via the thresholds to the maximum salary level.

Schedule 14 set out the salary entitlement of consultants appointed after the 15th January 2004. Annex B consists of single pay scale, M400 with a number of spinal points from zero to nineteen, based on the number of years completed as a consultant.

Findings of Fact

The Court considered that this was a case which was primarily concerned with the construction of the contracts of employment entered into by the Plaintiffs and their employer.

Having considered the evidence of all of the witnesses and the contemporaneous documents, the Court found the following facts on the balance of probabilities:

- (i) In the case of the first and fifth Plaintiffs they were never told by any representative of their employer that their salary calculation had changed from being based on Schedule 14 to Schedule 13;
- (ii) None of the documents relevant to the salary calculation process were disclosed to these Plaintiffs and details of this only became known to them in 2018 following the data breach;
- (iii) There was never any written policy setting out how the assimilation process was to be conducted for GPMAAs;
- (iv) There was an agreement recognised and adopted by all parties, that the seniority of GPMAAs would be calculated on the basis of the years since qualification less a period of eight years;
- (v) The second cohort consisting of the second, third and fourth Plaintiffs, were treated in a materially different fashion to the first and fifth Plaintiff;
- (vi) This entailed a decision being made by Mr O'Kane and Mr McPollin to the effect that Schedule 13 pay scales were no longer to be used and introducing an approach whereby salary would be identified by reference to seniority on the Schedule 13 scale and then translated into Schedule 14 salaries;
- (vii) A discussion took place between Dr McLaughlin and Dr O'Brien on the 27th January 2016 in relation to her prospective pay in which Dr O'Brien indicated the likely level of pay, based on her seniority. The Court was satisfied this did not

amount to an unequivocal representation and was only an indication given by Dr O'Brien;

- (viii) An outline explanation was given to Dr McLaughlin by Mr O'Kane on the 21st April 2016 in relation to the use of Schedule 13 to calculate salary and the translation on to Schedule 14. Thereafter Dr McLaughlin disputed her level of salary and at all times made it clear that she considered this to be incorrect and she was working "under protest";
- (ix) The contracts furnished to the second cohort were confused and confusing and none of them understood the mechanism by which their salary was calculated until the conclusion of the grievance appeal process.

Issue of Interpretation

The Court considered that the central issue in the litigation was whether the Plaintiffs were contractually entitled to be remunerated in accordance with M400 scale contained in Schedule 14 or by reference to Schedule 13.

The Plaintiffs' case was relatively straightforward. Each of them said they were employed after the 15th January 2004 and therefore they ought to have been engaged on the Schedule 14 pay scale without reference to Schedule 13. They agree there was an assimilation process based on their length of experience, less a figure of eight years. The Plaintiffs say that the result of this process ought to have been used to fix their position on the M400 scale and that Schedule 13 simply had no role to play. The failure to pay salary on the basis of the Plaintiffs' contractual entitlement by the Defendant was a breach of contract.

The Defendant says that GPMAs were never employed under the consultant contract itself but rather a bespoke arrangement was devised whereby the remuneration was determined by reference to Schedule 13 seniority principles modified through an assimilation process recognising GP experience, consistently applied thereafter.

The Principles of Contractual Interpretation

The Court considered a trilogy of cases which was decided in a six-year period, where the Supreme Court considered the principles to be applied by the Courts and the construction of contracts. From these cases, *Rainy Sky v Kookman Bank* [2011] UK SC 50 *Arnold v Britton* [2015] UK SC 36 and *Wood v Capita Insurance Services* [2017] UK SC 24, the following principles can be derived:

- (i) The Court's task is to ascertain the objective meaning of the language used by the parties;
- (ii) In doing so the Court should ascertain what a reasonable person, possessed of all the relevant background knowledge available at the time, would have understood the contract to have meant;
- (iii) The Court should consider the contract as a whole;
- (iv) Where the language used by the parties is unambiguous, the Court should give effect to it;
- (v) If there are two possible constructions, the Court is entitled to prefer the construction which accords with business common sense;
- (vi) Evidence of the subjective intentions of the parties is not relevant in determining what the contractual language means;
- (vii) Construction is a unitary exercise in which each interpretation is considered in light of the wording, checked against the provisions of the contract and the commercial consequences analysed.

Contracts of Employment

The Court considered that contracts of employment are subject to the application of these basic structures of contractual interpretation.

However, it was to be recognised that contracts of employment have particular characteristics and constitute one of the species of relational contracts which import duties of good faith. In *Johnson v Unisys Ltd* [2003] 1 AC 518 Lord Steyn stated:

"It is no longer right to equate a contract of employment with commercial contracts. One possible way of describing a contract of employment in modern terms is as a relational contract." (para [20])

In *Keen v Commerzbank AG* [2007] ICR 623, Mummery LJ stated:

"Employment is a personal relationship. Its dynamics differ significantly from those of business deals and of state treatment of its citizens. In general, there is an implied mutual duty of trust and confidence between employer and employee. Thus, it is the duty on the part of an employer to preserve the trust and confidence which an employee should have in him. This affects, or should affect, the way in which an employer normally treats his employee." (para [43])

Employees are entitled, pursuant to *Article 33 of the Employment Rights (Northern Ireland) Order 1996*, to a written statement of particulars of employment. This must contain a number of the

terms and conditions of employment, including either the scale of remuneration or the method of calculating remuneration.

However, such a document may not contain all the terms and conditions applicable to the employment relationship. Such contractual terms may derive from a number of different sources, including:

- (i) Written documents;
- (ii) Verbal agreements;
- (iii) Collective agreements;
- (iv) Implication on the basis of necessity or business efficacy;
- (v) Statutory requirements; and
- (vi) Custom and practice.

In relation to the latter, the editors of Chitty on Contract (36th Edition, at 17.038) state:

“If there is an invariable, certain and general usage or custom of any particular trade or place, the law will imply on the part of one who contracts or employs another to contract for him upon a matter to which such usage or custom has reference a promise for the benefit of the other party in conformity with such usage or custom; provided there is no inconsistency between the usage and the terms of the contract. To be binding, however, the usage must be notorious, certain and reasonable; and it must also be something more than a mere trade practice. But when such usage is proved, it will form the basis of the contract between the parties ...”

In this context the word “notorious” refers to a custom or practice being so well known that the contracting parties are presumed to have entered into their agreement by reference to it. The editors of Chitty say:

“To establish such a usage, it must be proved that a course of dealing has acquired such a notoriety, has been so well established and has become so universal in the particular trade, that it must be taken to be incorporated into any contract that is entered into by the parties dealing in this particular business.” (at 17.039)

Construction of the contracts

Applying these principles, and in light of the relevant background knowledge, the reasonable person would have understood each of the contracts to mean that the GPMAs were employed on a bespoke contract which incorporated, in part, the CTCS.

It was evident that the GPMAs were not employed as consultants but were entitled to certain of the terms and conditions which pertained to consultants. These included the provisions in relation to salary which was, in accordance with clause 19, calculated in accordance with the provisions in Schedules 13 and 14 of the CTCS.

Schedule 13 applies to those “whose first appointment as an HSC consultant is before 15 January 2004.” Schedule 14 applies to those appointed as an HSC consultant after that date. None of these plaintiffs were ever employed “as an HSC consultant” whether before or after 15 January 2004. However, in each case, they were employed as a GPMA after the date in question.

The role of the court was to objectively ascertain what the parties meant when they used the words “calculated in accordance with the provisions in Schedule 13 and 14.”

The parties agree that a practice was adopted whereby the definition of seniority applied to GPMAs was based on the number of years post qualification less a period of eight years which represented the average time to qualify as a consultant. This was recognised and understood by each of the plaintiffs. This definition therefore modified the definition of seniority contained in the Schedules.

The distinguishing feature between Schedule 13 and 14 is that date of appointment, namely 15 January 2004. The defendant invites the court to ignore that distinction for the purposes of GPMAs. The problem with this analysis is that there was no agreement between the parties that the distinction be dispensed with in the way the seniority definition was modified. The only way in which the court could depart from the express words of the contract would be if an alternative term could be implied on the basis of custom and practice.

The defendant also contended, in the case of the second, third and fourth plaintiffs, that a custom was adopted whereby their seniority was used to establish salary on the basis of Schedule 13 before this was translated onto the M400 Schedule 14 scale.

However, there are three principal difficulties with the defendant’s argument:

- (i) The bespoke GPMA contracts contain an entire agreement clause;
- (ii) In order to have contractual effect, any such a custom and practice must be “notorious”; and
- (iii) It requires to be applied “invariably.”

The defendant’s reliance on the alleged custom or practice manifestly failed the notoriety test. The evidence of each plaintiff, which was entirely accepted by the Court, was that they did not know about the basis of salary calculation. The first and fifth plaintiffs, employed well after 15

January 2004, were not told that their salaries were being calculated exclusively by reference to Schedule 13. In the case of the other plaintiffs, it was not well-known or established at the time of entering into these contracts or thereafter that Schedule 13 and 14 would be engaged by the defendant in this particular manner, not least because no-one told them.

Furthermore, it is quite evident from the case of another doctor that the defendant's claimed custom and practice was not the invariable approach taken in GPMA contracts.

For these reasons, there is no basis whatsoever to depart from the express words of the contract in relation to the application of Schedule 13 and Schedule 14. The operative date must remain 15 January 2004 when considering which of the Schedules applies to the employment of a GPMA. If he or she is engaged after 15 January 2004, then Schedule 14 must apply. If prior to that date it must be Schedule 13. That conclusion simply gives effect to the explicit wording of the contracts.

As a result, the defendant's case on this issue failed. The parties' respective rights and obligations are defined by the express words of the contracts, objectively construed, save for the agreed replacement definition of seniority for the GPMAs.

The outworking of this analysis is that each of the plaintiffs, through their tenure as a GPMA, has been entitled to be paid in accordance with the provisions of Schedule 14 (M400) without reference to Schedule 13. The relevant experience is not "as a consultant" but as a qualified doctor, but the distinction between these is properly recognised in the subtraction of eight years to give the requisite period of seniority. Once this was established, each of these plaintiffs was entitled, as a matter of law, to be placed on the relevant point in the M400 payscale.

Conclusion

The Court found entirely for the plaintiffs concluding that the proper construction of their contracts of employment provides that payment of salary ought at all times to have been made in accordance with Schedule 14. The Court also rejected the defendant's arguments regarding waiver, acquiescence and limitation.

Insofar as the defendant has failed to pay salary on this basis it was held to be liable to compensate each of the plaintiffs in respect of its breach of contract.

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Rachel Best KC

Barrister
3PB Barristers

020 7583 8055

rachel.best@3pb.co.uk

3pb.co.uk

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