TRIBUNALS JUDICIARY

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EMPLOYMENT TRIBUNALS
(ENGLAND & WALES)

EMPLOYMENT TRIBUNALS
(SCOTLAND)
Judge Shona Simon
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4 September 2017

RESPONSE TO JUDICIAL CONSULTATION

Employment Tribunal awards for injury to feelings and psychiatric injury following *De Souza v Vinci Construction (UK) Ltd* [2017] EWCA Civ 879

Introduction

On 20 July 2017 the Presidents of the Employment Tribunals in England & Wales and in Scotland launched a consultation on proposed changes to Employment Tribunal awards for injury to feelings and psychiatric injury following the decision of the Court of Appeal in England & Wales in *De Souza v Vinci Construction (UK) Ltd* [2017] EWCA Civ 879. This was a judicial consultation conducted by the Presidents in advance of proposed Presidential Guidance. It was not a public consultation conducted by HMCTS or by the Ministry of Justice.

Attention to the consultation paper was widely drawn. Employment Tribunal users and stakeholders at large were invited to contribute. The consultation paper was published on the internet at: https://www.judiciary.gov.uk/wp-content/uploads/2017/07/vento-bands-consultation.pdf. The background to the consultation and the issues to which it gave rise are best obtained from the consultation paper itself.

The consultation closed on 25 August 2017. 41 responses were received to the consultation. 22 responses were from individual judges, tribunal members, practitioners or academics. 19 responses were from firms or organisations and were frequently composite responses reflecting a range of views from their membership.

Summary of responses

The very large majority of responses supported the proposed uprating to the Vento bands and the methodology for doing so.

The following points emerged from the responses. A particular consultee might have made more than one such point. A consultee might also have been broadly supportive of the consultation proposals, but expressed some small reservations or advanced points that could improve the proposals. The summary below is not designed to be comprehensive, but sets out the arguments made by those who were not wholly supportive of what was proposed or who sought to improve the proposals.

One consultee questioned whether the order in which the rate of inflation and the 10% uplift were applied made any difference arithmetically to the outcome. A second consultee argued that if RPI was to be used then it should be used without any other amendments (including rounding) and based upon the original bands.

One consultee argued that merely uprating in line with RPI was inadequate and that a larger uprating was appropriate. This consultee argued in general that the Vento bands should be significantly increased, particularly to the higher band. A second consultee, concerned at what the consultee perceived to be low average/median levels of discrimination awards, argued for the lower end of the lowest band to be increased to £3,000 and that there should be no upper limit on an injury to feelings award so as to act as a deterrence to discrimination. In contrast, a third consultee reflected a view that the proposed lower end of the Vento scale at £1,000 might be too high, particularly for small employers.

One consultee suggested that the change should apply to all existing cases and not just from the date of the Presidential Guidance or to claims issued on or after that date. A second consultee argued that the 10% uplift should be applied immediately, but that any inflationary increase should be transitional and should not be applied in proceedings that have been already issued. That view was also reflected in a composite submission from a third consultee, who was concerned about the effect on existing and ongoing settlement negotiations. A fourth consultee argued for the revisions to be applied to all cases regardless of issue date.

One consultee pointed out that the Judicial College Guidance rounded up figures to the nearest £10 and suggested that rounding up the Vento bands to the nearest £100 would prevent undesirably large step changes in the bands upon future uprating. This was a view coincidentally made by a second consultee. A third consultee favoured rounding the lower band to the nearest £50, if at all, with rounding to £500 in the middle band and £1,000 in the higher band. A fourth consultee made the same point, but suggested rounding to the nearest £500. A fifth consultee also made this point, suggesting that the rounding should be to £250 or £500. A sixth consultee pointed out that if the bands were to be uprated for inflation on an annual basis, it would make a

considerable difference depending upon whether inflation was applied to the rounded figures or the unrounded figures. This consultee questioned whether an annual uprating exercise was really necessary and supported an uprating of the bands every 2-3 years, with account also being taken of the size of discrimination awards generally and in relation to, for example, personal injury awards. A seventh consultee also had concerns about the cumulative effects of rounding and suggested that rounding to the nearest £10 produced the fairest result.

One consultee contended that the Presidents' proposal that the Vento bands should be uprated annually could be said to go further than the invitation issued by the Court of Appeal in *de Souza*. However, this consultee concluded that to safeguard the value of discrimination awards an annual review would provide welcome clarity to practitioners and litigants.

One consultee requested that the Vento bands should be capable of reduction in the event of devaluation or deflation.

One consultee questioned the value of retaining three bands, each ending where the next began, instead of having one range upon which the Tribunal might fix an award according to the assessment of the injured feelings. A second consultee expressed a concern that the proposed uprated bands might be too wide and uncertain, and that the proposed middle band, in particular, would become too broad. It followed that there was an argument for a greater number of bands or the introduction of sub-bands, in this consultee's submission. A third consultee made similar points about the range and the span of awards within and between the bands, and that uplifting for inflation on a regular basis would ever widen the gap between the bands and between the lower and upper limits.

One consultee preferred that the bands be re-valued as soon as possible and then simply uprated in future by reference to RPI in the individual case.

One consultee, while accepting that RPI was the appropriate rate of inflation to be applied, counselled that the approach to uprating injury to feelings awards should in future follow any changes in the approach in the Judicial College Guidelines. A second and third consultee took the same line, arguing that the Vento bands should be calculated consistently with the Judicial College Guidelines and that any uprating should coincide with any changes in those Guidelines. A fourth consultee accepted that RPI was the appropriate benchmark, but also reflected a minority view that the continued use of RPI could result in discrimination awards increasing at a disproportionate rate to wages (so that CPI or CPIH could be the better overall measure). This consultee floated the argument that the award should reflect the damage to the individual and the value of the award to that individual, rather than the current value of goods and services or commodities.

One consultee radically questioned whether RPI truly reflected the relevant economic impact of the actions being compensated for, comparing adversely annual increases in annual salaries with movement in the Vento bands. This

consultee submitted that it seemed excessive for the proposed start of the new top band to begin where the original one ended. It pointed out that the increases appeared disproportionate. It did not agree with the proposed use of RPI simply on the basis that an individual's injured feelings do not become more valuable with inflation. This consultee argued for the application of a 10% uplift periodically without also accounting for inflation.

One consultee noted that the top of the higher range was proposed to be set at £42,000 whereas in this consultee's experience most awards do not exceed £20,000. This consultee suggested that in order to manage claimant's expectations it might be useful to publish the range within which 70% of awards fall. This consultee also suggested that the Presidential Guidance could include guidance on the factors that take a case from one band to another.

One consultee suggested that the annual uprating should be aligned with the date of the annual uprating of various statutory sums for employment rights purposes under section 34 of the Employment Relations Act 1999. A second consultee contended for an annual uprating in April based upon the RPI figure for March.

One consultee argued for a wider review of the Vento bands, reassessing them so as to bring them back into line with the Judicial College Guidelines. The argument here was that a simple mathematical or formulaic approach to the Vento bands without considering the relative value of the resultant figure was not appropriate.

All of those consultees who specifically addressed the matter of whether the *Simmons v Castle* uplift should apply in Scotland favoured it doing so, with a number of negative consequences being said to arise if it did not, such as: inconsistency of approach between the two legal jurisdictions in the employment law sphere, which is an area in which the substantive law is reserved to the United Kingdom Government, with the underlying rights giving rise to the relevant compensation being the same in each jurisdiction; the risk that if compensation is higher in England and Wales than in Scotland this could lead to claimants, who would otherwise normally bring their claims in Scotland, deciding instead to raise their claims in England; and the risk that if awards in Scotland were lower this could be viewed as an unwillingness on the part of the Scottish system to treat such claims as seriously as they are in England and Wales. However, one consultee who favoured the uplift being applied in principle, noted that in light of the provisions of section 124(6) of the Equality Act 2010, which give Employment Tribunals in Scotland the power to award compensation on the same basis as a sheriff, that if the 10% uplift does not apply in the Sheriff Court then it cannot apply in the Employment Tribunal.

The Presidents' considerations

The Presidents are very grateful for the interest taken in this judicial consultation and for the quantity and quality of responses to it.

We do not consider that we can accept the invitation of a small number of consultees to conduct a wide-ranging review and reform of awards for injury to feelings generally and the *Vento* bands in particular. That is the task of the appellate courts or the legislature. The Presidents are not empowered – either by the invitation of the Court of Appeal in *De Souza* or by the statutory scope of Presidential Guidance – to embark upon a principled or root and branch reconsideration of the *Vento* bands. The consultation was concerned only with how to re-value the *Vento* bands for inflation and the incorporation of the *Simmons v Castle* uplift, with slightly different considerations applying in connection with both these matters in England and Wales, on the one hand, and in Scotland, on the other.

It would not be appropriate for the Presidential Guidance to include guidance on the factors that take a case from one band to another. That is classically a matter for the Tribunal in the exercise of its judicial discretion in the individual case and having heard the evidence. Any such guidance is also properly within the remit of the appellate courts. It is also not for the Presidents to manage claimants' expectations. There are or have been various sources in which the range within which awards fall have been published.

So far as the position in Scotland is concerned, the Scottish President has decided that the guidance to be issued in Scotland should be the same as that in England and Wales, for the reasons set out in the Appendix attached, subject to the proviso that in Scotland it will be open to an Employment Tribunal to conclude, having invited submissions from parties, that the *Simmons v Castle* uplift is not to be applied as a matter of Scots law, but in so doing they should set out in the judgment their reasoning for reaching that conclusion.

We have decided to issue joint Presidential Guidance on 5 September 2017 and taking effect from 11 September 2017. The Presidential Guidance will be published in a separate document and will be placed on the internet (as will this document). In order to provide a degree of certainty to litigants and their advisers, the Presidential Guidance will apply to claims presented to the Employment Tribunal on or after 11 September 2017. In respect of claims presented before that date it is always open to the parties and the Tribunal to adjust the bands and awards for injury to feelings where there is cogent evidence of the rate of change in the value of money.[1] The Presidential Guidance will provide the methodology for so doing.

The Presidents will review and, if necessary amend, the Presidential Guidance in March 2018 and annually thereafter. Any new Presidential Guidance will come into effect in respect of claims presented on or after 6 April in each year.

The Presidents consider that for the time being the RPI index of inflation is the appropriate index. They will consider at the relevant time any future change to

[1] *AA Solicitors Ltd v Majid* (2016) UKEAT/0217/15. See also *Bullimore v Pothecary Witham Weld* (2010) UKEAT/0189/10, [2011] IRLR 18 at para 31.

the appropriate index of inflation that might be adopted in the Judicial College *Guidelines for the Assessment of General Damages in Personal Injury Cases*[2] and/or by section 34 of the Employment Relations Act 1999.

We recognise the need to adopt a simple and transparent method for re-valuing injury to feelings awards in the light of *Simmons v Castle* and *De Souza v Vinci Construction (UK) Ltd* as follows.

In *Vento v Chief Constable of West Yorkshire Police (No. 2)* [2002] EWCA Civ 1871, [2003] IRLR 102, [2003] ICR 318 the Court of Appeal in England & Wales identified three broad bands of compensation for injury to feelings awards, as distinct from compensation awards for psychiatric or similar personal injury. The lower band was set at £500 to £5,000 (less serious cases); the middle band was set at £5,000 to £15,000 (cases that did not merit an award in the upper band); and the upper band was set at £15,000 to £25,000 (the most serious cases), with the most exceptional cases capable of exceeding £25,000.

The Court of Appeal decision in *Vento* was on 20 December 2002. On that date the appropriate value in the RPI All Items Index (January 1987 = 100) was 178.5 (December 2002). On 4 September 2017 the appropriate value was 272.9 (July 2017 issued on 15 August 2017).[3] To uprate the bands for present inflation the appropriate formula is *x* divided by *y* (178.5) multiplied by *z* (272.9) and where *x* is the relevant boundary of the relevant band in the original *Vento* decision.[4]

As at 4 September 2017 that produces a lower band of £764 to £7,644 (less serious cases); a middle band of £7,644 to £22,932 (cases that did not merit an award in the upper band); and an upper band of £22,932 to £38,221 (the most serious cases), with the most exceptional cases capable of exceeding £38,221.

To that must be applied the *Simmons v Castle* uplift of 10%, subject to the proviso above regarding Employment Tribunals sitting in Scotland.

As at 4 September 2017 that produces a lower band of £840 to £8,408 (less serious cases); a middle band of £8,408 to £25,225 (cases that did not merit an award in the upper band); and an upper band of £25,225 to £42,043 (the most serious cases), with the most exceptional cases capable of exceeding £42,043.

We turn then to the question of rounding. The Presidents accept that rounding has the capacity for producing undesirably large step changes in the bands

[2] It is understood that the Judicial College guidelines are routinely referred to and applied in Scottish courts. Indeed they are included for reference in McEwan and Paton on Damages for Personal Injury in Scotland (Editor: Ann Paton Q.C., Sweet and Maxwell)

[3] See: https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/chaw/mm23.

[4] This formula can be adopted for claims presented before 4 September 2017 by selecting the appropriate value (*z*) from the RPI All Items Index for the month and year closest to the date of presentation of the claim (and then applying the *Simmons v Castle* 10% uplift).

and particularly when uprating the bands in the future. The way to safeguard against this when undertaking the annual uprating is to always start with the original *Vento* bands and apply to those figures the appropriate inflation index value and then add the 10% uplift and then round up or down to the nearest £100.

Conclusion

In conclusion then, as at 4 September 2017, that produces a **lower band of £800 to £8,400** (less serious cases); a **middle band of £8,400 to £25,200** (cases that did not merit an award in the upper band); and an **upper band of £25,200 to £42,000** (the most serious cases), with the most **exceptional cases capable of exceeding £42,000**.

We remind judges and users alike that the Employment Tribunal retains its discretion as to which band applies and where in the band the appropriate award should fall. Once inflation and the 10% uplift is accounted for, it is that exercise of judicial discretion that ensures that a claimant is properly and appropriately compensated, that there is no unfairness to the respondent and that justice is done in the individual case.

Judge Shona Simon
President (Scotland)

Judge Brian Doyle
President (England & Wales)

4 September 2017

EMPLOYMENT TRIBUNALS (SCOTLAND)
Judge Shona Simon
President

APPENDIX

Response to Judicial Consultation on Employment Tribunal awards for injury to feelings and psychiatric injury

The reasoning of the President of Employment Tribunals (Scotland) to support her conclusion that the Presidential Guidance in connection with the calculation of Employment Tribunal awards for injury to feelings and psychiatric injury should essentially be the same in Scotland as in England and Wales is as follows:

1. In reaching my conclusion about how to proceed I considered the following matters:

- Is there a legal basis for Employment Tribunals in Scotland applying the "Vento guidance" figures (as adjusted for inflation), given that quantification of damages is a matter of Scots Law (see below)?
- Assuming the Vento guidance figures can be used in Scotland, is there a legal basis upon which awards for (a) injury to feelings and (b) psychiatric injury can be increased by 10% to take account of the uplift which is to apply to such awards in Employment Tribunals (England and Wales) following the decision of the Court of Appeal in *De Souza v Vinci Construction (UK) Ltd* [2017] EWCA Civ 879, applying *Simmons v Castle* [2012] EWCA Civ 1039.

2. In some areas, Scottish Employment Tribunals apply Scots law – quantification of damages is one of those areas. Statutory employment law tends to respect and reflect this fact. For example, Section 124(6) of the Equality Act 2010 makes it clear that the amount of compensation which is to be awarded by a Scottish Employment Tribunal under the Act is to correspond to "the amount which could be awarded by… the sheriff under section 119 "of that Act. Section 119(3) states that a sheriff has the power to make any order which could be made by the Court of Session in proceedings for reparation[5] or in a petition for judicial review. In section 119(4) it is made clear that any award of damages may include compensation for "injured feelings".

3. In these circumstances, given that quantification of damages is a matter of Scots law, the decisions of the Court of Appeal in *Vento v Chief Constable of West Yorkshire Police [*No.2*.* 2003] IRLR 102, 2003 [ICR 318] and of the

[5] Reparation equates to tort in the law of England and Wales.

Employment Appeal Tribunal in *Da' Bell v NSPCC* [2010] IRLR 19 are not binding, as a matter of precedent, on Employment Tribunals in Scotland (see *Brown v Rentokil Limited* [1992] IRLR 302.)

4. However, these cases (and what has become known, in shorthand, as the "Vento guidelines") are routinely cited by those appearing before Employment Tribunals in Scotland, for both claimants and respondents, as those which should apply to the quantification of compensation for injury to feelings and they are, in fact, routinely applied by Scottish tribunals when determining the level of such awards, without apparent criticism from higher courts in Scotland.

5. That is not surprising given that in *Allan v Scott* 1972 S.C.59, a case involving the approach to be taken to the quantification of what is know as "solatium" in Scotland (damages for pain and suffering which includes suffering arising from injury to feelings), the Inner House of the Court of Session held "that there was no reason why Scottish awards should be lower than English; that English precedents in similar cases could and should be taken into account in determining the appropriate figure for solatium" (rubric). In Lord Walker's opinion (having concluded that solatium in Scotland is equivalent to general damages in England[6]) it was "neither good sense nor good law to ignore English precedents" (p.63), while Lord Fraser stated that "there is no reason why awards in England for what we would call solatium should not be available for comparison when making such awards in cases of personal injury in Scotland. On the contrary, I think there is everything to be said for using them for purposes of comparison, in the same way as one would use Scottish cases". Ultimately the Inner House, having considered the sums awarded for general damages in a number of Court of Appeal decisions, increased the figure awarded for solatium by the Outer House Judge, taking these decisions into account. There are other decisions to similar effect – see, for example, *Dalgleish v Glasgow Corporation* 1976 S.C. 32. English Courts also proceed on the basis that, following *Allan v Scott,* "prospects are the same" in both countries when it comes to quantification of damages in personal injury cases – see *MacShannon v Rockware Glass Ltd* [1978] A.C. 795.

6. In *Duthie v Macfish Ltd 2001 S.L.T. 833* Lord Macfadyen, in the Outer House, was required to assess solatium in a personal injury case. Counsel for both sides relied upon what were then known as the Judicial Studies Board (JSB) *Guidelines for the Assessment of General Damages in Personal Injury Cases* (4th edition) (now the Judicial College *Guidelines*) with each identifying a particular (although different) paragraph within the *Guidelines* which should be applied to the case. Counsel for the pursuer argued that the Guideline figure should be increased to take account of inflation and also increased to take account of the decision of the Court of Appeal in *Heil v Rankin* [2001] QB 272; [2000] 3 All ER 138 in which the Court of Appeal held that there should be a general increase in the level of awards of damages above

[6] There is scope for debate here on exact equivalence – see **McEwan and Paton on Damages for Personal Injury in Scotland** at para. 8-05 but certainly there is broad equivalence

a specified amount for pain and suffering in personal injury cases. Counsel for the defender argued against *Heil* being applied. Lord Macfadyen, in determining the award, identified the paragraph in the JSB *Guidelines* into which the case fell and fixed the award within that band, in light of the particular facts of the case in question. He also concluded at para 28:

"It is, in my view, appropriate for me to take note of the decision of the Court of Appeal in *Heil* . In doing so, I am not undertaking the task undertaken by the Court of Appeal of reviewing the general level of awards (at [2000] 2 WLR, p 1200C, para 82). I am simply having regard to what is now the current level of awards in England. It has been clear since *Allan v Scott* that it is appropriate to do that. I am not bound by *Heil*, but I would in my view be going against the spirit of *Allan v Scott*, by which I am bound, if I were to ignore it."

7. In *Wallace v Paterson* 2002 S.L.T. 563; 2001 S.C.L.R. 175 , a decision of Lady Paton in the Outer House, it was submitted for the defender that the Scottish courts should not follow the guidance in *Heil* , since it was a decision of the English Court of Appeal, influenced by a report from the English Law Commission on *Damages for Personal Injury: Non-Pecuniary Loss* (1999, Law Com no 257) and reflected English views about appropriate levels of damages for personal injuries. In repelling that submission Lady Paton stated (at para. 64):

"With reference to *Heil v Rankin*, the decision of the Court of Appeal is in my view highly persuasive. I consider that Scottish courts can and should find assistance in the guidelines set out in *Heil* . Damages to compensate a victim for pain and suffering are measured by reference to the injuries suffered, not by reference to the area in which the victim lives. It would be unfortunate if levels of awards for personal injuries in Scotland were to be significantly different from levels for such awards in England: cf. dicta in *Allan v Scott*."

8. So far as the decision in *Simmons v Castle* [2012] EWCA Civ 1039 and 1288: [2013] 1 W.L.R. 1239 is concerned in **McEwan and Paton on Damages for Personal Injury in Scotland**, in a case note headed "General Increase in Awards for Pain and Suffering"[7] reference is made to the increase in awards at the upper end of the scale as a result of the decision of the Court of Appeal in *Heil* (supra) and then to the increase in general damages announced in *Simmons*. The learned authors, under reference to these cases, and the fact that Scottish Courts are entitled to have regard to English awards for pain and suffering, go on to state that "accordingly Scottish Courts may find the guidance in *Heil v Rankin* and *Simmons v Castle* highly persuasive".

9. So far as the application of the Judicial College *Guidelines for the Assessment of General Damages in Personal Injury Cases* is concerned, *Duthie* is an example of what is understood to be general practice in Scottish Courts – the Guidelines are routinely referred to by those acting for pursuers and defenders and applied both by sheriffs and judges in the Outer House of the Court of Session. That is supported by the fact that they are included in their entirety for reference in **McEwan and Paton on Damages for Personal Injury in Scotland.** The current version of the *Guidelines* already

incorporates the *Simmons v Castle* uplift so far as awards for psychiatric injury are concerned (see para. 34 of *De Souza v Vinci Construction (UK) Ltd* 2017 EWCA Civ 879). It is not understood that, in practice, in citing or applying the Guidelines a discount is sought/given to remove the *Simmons* uplift element.

10. The decision in *Allan v Scott*, is binding on Scottish Employment Tribunals, insofar as relevant to quantification of damages. While *Duthie* and *Wallace* are not binding they provide good examples of the approach taken in Scottish Courts (nothing, in my view, turns on the fact that these are Outer House decisions rather than those of a sheriff) to quantification of damages for solatium: that is the approach which the relevant employment provisions (see para. 2 supra) state is to be applied by Employment Tribunals in Scotland. Neither *Duthie* nor *Wallace* was appealed and they are cited with approval in **McEwan and Paton[8].** From the foregoing the following relevant points emerge as to the approach in the Scottish Courts:

(i) That there is no reason why Scottish awards for solatium should be lower than those in England and Wales and English precedents can and should be taken into account *(Allan)*;
(ii) That it is recognised that it would be unfortunate if levels of awards for personal injury were significantly different in Scotland than in England and that damages are to be measured by reference to the injury suffered, not where the victim lives (*Wallace);*
(iii) That Scottish courts can and do refer to, and apply, the Judicial College *Guidelines* (*Duthie* is but one example)[9]*.*
(iv) That Scottish courts can and do take into account English cases such as *Heil* in which it is decided that there should be a general increase in damages (*Duthie* and *Paterson*) and that there is a likelihood that Scottish Courts may find the guidance in *Heil* and *Simmons* 'highly persuasive (**McEwan and Paton**)

11. Against this background I have come to the conclusion that the Presidential Guidance which should be issued in connection with the uprating of awards both for inflation and to reflect the decision of the Court of Appeal in *De Souza* should be, in essence, the same in Scotland as it is in England and Wales, subject to one additional point being made (see below). I did consider whether there should be a difference of approach to damages for psychiatric injury, on the one hand, and compensation for injury to feelings, on the other. The Court of Appeal decided in *De Souza* that there was no distinction to be drawn between awards for psychiatric injury and those for injury to feelings for these purposes- both were to be subject in England and Wales to the *Simmons v Castle* uplift. Likewise, I have reached the conclusion, based on the foregoing analysis, that the courts in Scotland would conclude that there was no basis for any such distinction.

12. The above sets out my reasoning for deciding that the Presidential Guidance in connection with the uprating of award for injury to feeling and

[8] See, for example, at CN0-00
[9] With **McEwan and Paton** providing additional academic support.

psychiatric injury should essentially be the same in Scotland as it is in England and Wales. However, there is one caveat to that: as I have already made clear, since the matter relates to quantification of damages, Employment Tribunals in Scotland, unlike those in England and Wales, are not legally bound by the decision of the Court of Appeal in *De Souza.* I have explained why I consider the relevant awards in Scotland should be uprated in line with *De Souza* but Employment Judges in Scotland would be entitled to come to a different view on the matter and to quantify awards accordingly. In the Presidential Guidance I will make that clear but at the same time I will also state that Employment Judges should, if they decline to apply the *Simmons v Castle* uplift, set out their reasons for so doing. In due course it may be that further guidance will be given by a higher court in Scotland as to the correctness or otherwise, as a matter of law, of the *Simmons v Castle* uplift being applied by Scottish Employment Tribunals.

Judge Shona Simon
President (Scotland)
4 September 2017