



## How much is a day's pay?

**Recently the Supreme Court held that a day's pay in the context of a monthly contract is calculated as 1/365 of the yearly salary** (*Hartley and ors v King Edward VI College* [2017] UKSC 39).

Hartley and the two other claimants were teachers at a sixth form college. They went on a one-day long strike, and the college deducted 1/260<sup>th</sup> of their pay as a result. Their contracts did not set out how pay was apportioned or how much pay should be deducted for one day's work. The figure (1/260) was chosen based on the fact that the teachers worked 5 days a week for 52 weeks of the year.

Hartley and others argued that being deducted 1/260<sup>th</sup> was too much, and that as their contracts were silent as to how to calculate a day's pay, the Apportionment Act 1870 (the **Act**) applied and so a day's pay should have been calculated as 1/365<sup>th</sup> of their salary instead.

### **Decision in *Hartley and ors v King Edward VI College***

The Supreme Court held that the correct calculation was 1/365. It held that:

- the Act applied for the context of periodic payments which are entire indivisible payments. Although the teachers' work was split into "directed time" (days when the teachers were required to teach lessons) and "undirected time" (where the teachers worked in their own time (often on weekends and holidays) to prepare lessons, mark papers and complete other teaching tasks), the employees' salaries were entire indivisible payments as they did not expressly provide for salaries to be paid to staff pro rata for directed work only (or provide for any other split of work where some was paid and some was unpaid).
- under section 2 of the Act, if an employment contract is an annual contract, "accrues day by day" meant calendar days (which is consistent with the majority of case law on this point) and so resulted in an apportionment calculation of 1/365. (The Supreme Court made clear that the rate could be different for contracts which were not annual contracts.)
- there was nothing in the teachers' contracts to "expressly stipulate" that apportionment should not apply, which would have prevented



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the Act from applying (under section 7 of the Act), and the language in the contract was not inconsistent with apportionment. This last point casts doubt on the judgment given in *Amey v Peter Symonds College* [2013] EWHC 2788 (which was heard on very similar facts) as in that case the court held that section 7 of the Act did apply and so the calculation to be used was 1/260.

So, it seems that pay accrues (in annual contracts) by calendar day, however, it is clear that depends on the content of the contract itself, and that this also will be different for non-annual contracts. Employers might be minded to expressly state how pay accrues for strike days, in particular if they operate in an industry where industrial action is more frequent.