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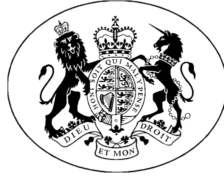

# EMPLOYMENT TRIBUNALS

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| **Claimant:** | **Mr C. Meya** |
| **Respondent:** | **Ladbrokes Betting and Gaming Limited** |
| **Heard at:** | **East London Hearing Centre** |
| **On:** | **5-6, 11-12 June and 12 September 2019**<br>**13 September 2019 (in Chambers)** |
| **Before:** | **Employment Judge Massarella**<br>**Mrs G. Everett**<br>**Mrs G. Bhatt** |
| **Representation** | |
| **Claimant:** | **In person** |
| **Respondent:** | **Mr A. Rozycki (Counsel)** |
| **French interpreters:** | **Ms Gastone / Mrs Lalonga** |

# JUDGMENT

**The judgment of the Tribunal is that:-**

1. the Tribunal lacks jurisdiction to hear the Claimant's claim of unfair dismissal and it is dismissed;

2. the Claimant's claim of direct disability discrimination succeeds in relation to the incident concerning Ms Camara;

3. all other claims of direct disability, race and age discrimination fail and are dismissed;

4. the Claimant's claim of failure to make reasonable adjustments succeeds in relation to the slot machines;

5. all other claims of failure to make reasonable adjustments fail and are dismissed;

6. the Claimant's claim of unlawful deduction from wages succeeds.

# REASONS

## The Hearing

1. This case was originally listed for five days in June 2019; only four days were available within the original listing owing to a lack of judicial resources. An additional day was listed in September, when evidence was completed and submissions heard. The Tribunal then took a further day to deliberate in Chambers. The Tribunal apologises to the parties for the delay in promulgating this judgment, which was again caused by pressure on judicial resources.

2. The Claimant was in person, supported by his wife. He speaks English but his first language is French and he had asked for the help of an interpreter. Although he initially said that he would only call on her assistance when he needed to, the Tribunal decided (in consultation with him) that it was preferable for all questions and answers to be translated to be sure that he was able properly to follow the proceedings.

3. The Respondent was represented by Mr Rozycki of Counsel.

4. The Claimant gave evidence, as did his wife. For the Respondent we heard evidence from Ms McMillan (Stadia Manager at Romford Greyhound Stadium), Mr Johnson (Area Manager), Mr Read (Regional Security Investigator), Ms Boezalt (Marketplace Manager), Ms Javang (Customer Services Manager), Mr Lewis (Marketplace Manager) and Mr Neves (Employee Relations Advisor).

5. We began the hearing with an agreed bundle of just over a hundred pages. By the end of the hearing the bundle had doubled in size as each party provided new documents. Some the Tribunal had asked to see because they ought to have been included in the bundle from the outset (the Respondent's disciplinary policy, for example); others were documents which the parties applied to include in response to matters raised in oral evidence. We allowed them when we considered them necessary to the determination of the issues before us; we did not admit documents which would have required the recalling of a witness who had already been released.

## The application to strike out the unfair dismissal claim

6. There was a successful application at the beginning of the hearing to amend the Respondent's response and to strike out the Claimant's unfair dismissal claim for want of jurisdiction on the basis that there was a break of six months between two periods of employment that the Claimant had with the Respondent.

7. In his ET1 the Claimant gave his dates of employment as 12 October 2015 to 24 March 2018. The Respondent did not dispute those dates in its ET3. By an application dated 3 June 2019 the Respondent sought to amend its Grounds of Resistance in relation to this issue.

8. The application explained that, although it had been thought that the Claimant had continuity of employment from 12 October 2015, it had come to light that the Claimant had had two periods of employment with the Respondent. The first began on 12 October 2015 and ended on 28 November 2016, when the shop in which he was working was sold and his employment transferred to Betfred, a rival bookmakers. The second period began on 14 May 2017, when he rejoined the Respondent and ended when he was dismissed on 24 March 2018.

9. Mr Rozycki for the Respondent argued that the Claimant had been employed by two different employers between 2015 and 2018. His instructions were that there was no connection between the Respondent and Betfred, which are separate legal entities.

10. There were two contracts of employment with the Respondent in the bundle: the first with the Respondent dated 12 October 2015; the second dated 14 May 2017, which states that the period of continuity began on the same date. These documents supported the Respondent's position.

11. In his skeleton argument Mr Rozycki set out the familiar principles, to which the Tribunal should have regard when considering whether to allow an amendment, and the Tribunal had regard to the considerations which he raised at paragraphs 5 to 11 of that skeleton. He argued that, not only should the amendment be allowed, the Tribunal should also dismiss the claim on the basis that it lacks jurisdiction to hear it.

12. The Claimant confirmed that his employment transferred to Betfred on 28 November 2016 and accepted that Betfred is not an associated company of the Respondent. He and some of his colleagues understood that, after a period of six months, they might be able to return to Ladbrokes. He received a call from a former colleague asking if he wanted to return; he said that he did and his re-employment was processed. Some, but not all, of his colleagues also rejoined Ladbrokes.

13. He explained that he did not know about employment law and that when he made his application to the Tribunal he simply put down the start date of the first period of employment and the end date of the second period.

14. In the circumstances the Tribunal concluded that it was just in all the circumstances to allow the application to amend the ET3. Although the application was made late in the day, it went to the Tribunal's jurisdiction. The balance of prejudice favoured the Respondent: if the amendment were not allowed, the Claimant might obtain a remedy to which he was not entitled because the ET lacked jurisdiction to hear his claim.

15. We also allowed the Respondent's application to dismiss the claim. In respect of the second period of employment, this lasted just over ten months and the Claimant lacked the necessary two-year qualifying period to bring a claim of unfair dismissal and the Tribunal lacks jurisdiction to hear it.

## The issues

16. The issues for determination were set out in an agreed list, finalised at a Preliminary Hearing before EJ Brown on 26 November 2018. Those issues are identified as underlined subheadings below. By way of summary, the Claimant complains of direct disability discrimination, direct race discrimination and direct age discrimination; discrimination because of something arising in consequence of disability; failure to make reasonable adjustments; and unauthorised deductions from wages.

17. In terms of the protected characteristic of race, the Claimant is black African. As for age, he is over 50 years of age and compares himself with people in their 20s and 30s. As for disability, as a result of polio one of his legs is shorter than the other, he wears a heavy calliper, he has a limp and experiences chronic backache. It was accepted by the Respondent that the Claimant was at all material times a disabled person within the meaning of the Equality Act 2010.

## Findings of fact

18. The Respondent is a betting and gaming company.

The Claimant's disability

19. As set out above, it was conceded that the Claimant had a disability. The Tribunal observed that the Claimant's mobility was significantly impaired: he walks somewhat cautiously and with a pronounced limp.

20. During his first period of employment the Claimant told the Respondent about his disability. His evidence was that an assessment was arranged with the Shaw Trust. The Respondent has no record of that assessment but does not dispute the Claimant's account.

The Claimant's employment

21. The Claimant was originally employed as a Customer Services Advisor Trainee. By the date of his dismissal he was a Customer Service Manager. He was a hard-working and valued member of staff who often worked overtime and weekends. He was approached by Ms Boezalt to rejoin the Respondent following his time at Betfred because she needed to recruit CSMs and she considered that he had always been a good worker. She had a positive view of the Claimant and approached him with full knowledge of his age, race and disability.

22. The Claimant worked in various shops on his return to the company in May 2017. In August 2017 he was assigned to work primarily from the City Road (London EC1) shop with effect from 1 October 2017. We find that the Claimant was given a choice between two shops and elected to work at City Road, rather than any other, as he wished to continue to work under his previous management, including Ms Boezalt. Further, we were taken to a text message (albeit in respect of a single occasion) when the Claimant was asked to choose where he wished to work and he chose City Road. We find that the Claimant would not have wished to be transferred to another shop, notwithstanding the specific challenges of the City Road shop.

23. When he first worked in City Road he reported to Ms Adama Javang (Marketplace Manager). Following a restructure, she later stepped down to the role of Customer Service Manager (the same role as the Claimant). From then on he reported to Ms Denise Boezalt, who managed two shops (City Road and Cyrus Street). The Claimant managed the City Road shop when Ms Boezalt was not present. At any given time, there would usually be two members of staff working on a shift together.

24. Ms Boezalt reported to the Area Manager, who from January 2018 was Mr Danny Johnson. At the relevant time Mr Johnson had overall responsibility for 17 shops in his area. The Claimant confirmed that he had not met Mr Johnson before January 2018. The Tribunal accepts Mr Johnson's evidence that he only encountered the Claimant on two or three occasions thereafter.

<u>The City Road shop</u>

25. The City Road shop had four shallow steps at the entrance. They provided an impediment of some sort to people with mobility difficulties.

26. The Respondent had installed a lift to assist with access to the shop, which would certainly have been necessary for wheelchair users. The Respondent's witnesses accepted that the lift frequently did not work: Mr Johnson's evidence was that the lift was not currently working, but he did not know whether it was working in 2018; Ms Javang accepted that the lift often did not work. We find that the lift worked intermittently but we note the Claimant's evidence that he never used the lift, even when it was working. We infer that this was because, although climbing the steps was less comfortable for him than for people without mobility difficulties, he was capable of negotiating them, albeit carefully, and preferred to do so rather than taking the lift, which would have been time-consuming.

27. One of the Claimant's daily duties was to empty old-fashioned slot machines, which required him to kneel and reach down to the bottom of the machine and unlock it at the side. Bending down to floor level is difficult for him: he must first remove his leg calliper and then lower himself with care. He demonstrated this manoeuvre in the course of the hearing and we have no doubt that it was uncomfortable for him, as Ms Javang accepted in the course of her oral evidence. However, the Respondent continued to require him to carry out these duties and did not relieve him of them. In January 2018 the Claimant injured his back performing the task and had to go to hospital.

28. We find that the Claimant did not at any point request a specially adapted chair whilst working at City Road during the relevant period. We reject his evidence that, when he was assigned to City Road, he asked Ms Javang for a specialised chair. Had he done so, all the evidence suggests that one would have been provided without any difficulty. We accept the Respondent's evidence that adjustable chairs were readily available within the organisation and were provided when asked for. We accept Ms Javang's evidence that when she was pregnant she asked for one and it was provided immediately.

29. We further accept Ms Boezalt's evidence that there were around fifteen chairs stored in the back office of City Road and that the Claimant was aware that they were there. All he needed to do was to roll one of them through to where he

was working. He did not do so. Ms Boezalt informed us (and we accept) that they were similar to the chair provided for the Claimant's use during the Tribunal hearing, which was a standard, adjustable chair on wheels - and which the Claimant confirmed to us was suitable for his needs.

30. One of the tasks which the Claimant was required to perform was to put posters/promotional material up in the shop window behind a screen. When the disabled lift was working the Claimant was able to access the window. When it was not working, however, access was extremely difficult for him. We find that at those times the duties were assigned to Ms Javang or another employee and the Claimant was not required to perform them.

<u>The Claimant's interactions with Mr Johnson</u>

31. When Mr Johnson took over the area he focused on improving performance across all the shops for which he was responsible. He had a meeting with the City Road team shortly after he took over the shop (in the presence of Ms Boezalt). In individual meetings with each of them he discussed performance issues, including cash differences not being controlled or recorded correctly and betting terminals being closed too early towards the end of the day. We reject the Claimant's evidence that Mr Johnson accused him of stealing at the meeting he held with him. We consider it likely that the Claimant misunderstood, or misremembered, the warning about dealing correctly with cash shortages and wrongly took it as an allegation of theft against him personally.

32. We find on the balance of probabilities that Mr Johnson said that the Claimant might be moved if the shop's performance did not improve. He did not single the Claimant out by warning of the possible consequences of underperformance; we think it likely that he was equally robust in his meetings with all members of staff. Although the Claimant had some managerial responsibility he was not solely responsible for the shop's performance.

<u>The incident with Fatou Camara</u>

33. One of the Claimant's colleagues at City Road was Ms Fatou Camara. Although initially she and the Claimant had a positive relationship, it soon deteriorated. The Claimant thought that Ms Camara performed poorly and was disrespectful to him and he asked not to work with her.

34. The situation came to a head on 2 February 2018 when the Claimant and Ms Camara had a heated argument. In the course of that argument Ms Camara used words to the effect that the Claimant was "dumb, useless and a sick man"; she said that she did not know why the company was employing the Claimant and said: "look at you, you are a sick man," while pointing at his leg. Ms Boezalt in her witness statement confirmed that, when the Claimant told her about this incident, he specifically mentioned that Ms Camara had referred in a derogatory way to his disability. The Claimant also told Ms Javang about this incident: there are text messages between them, in which Ms Javang expressly refers to "abuse" and sympathises with the Claimant that the Respondent continued to require him to work with Ms Camara.

35. The Claimant was so distressed by this incident that he approached Ms Boezalt to make a formal complaint. Ms Boezalt accepts that she had a discussion with

him about the incident and that she made a written record of his complaint, which we find was in substance a complaint of disability discrimination. The complaint should have been forwarded to HR and Ms Boezalt showed poor judgment by not doing so: this was a serious complaint of discrimination against an employee who remained in employment. No action was taken to address the complaint.

36. Although text messages from the time suggest that Ms Camara was initially moved away from City Road after the incident, it is clear from a message from Ms Javang to the Claimant that Ms Camara was assigned to work at City Road on at least one further occasion, 5 February 2018, which was the night before the Claimant was suspended. According to the text the decision was taken by an Area Manager called Mark Couchy, who looked after the area when Mr Johson was away. There is no evidence that he was aware of Ms Camara's earlier treatment of the Claimant.

<u>The disciplinary investigation</u>

37. The Respondent has a central auditing team in Gateshead, which monitors suspicious activity in any of the Respondent's branches.

38. On 5 February 2018 Mr Mark Reed, who is a Regional Security Investigator, was alerted to three suspicious bets originating in City Road. The system identified that they had been manually edited and that the Claimant was responsible for all of them.

39. Once the issue had been identified a process occurred by which the shop was interrogated to discover whether there were any further, similar issues. Before the meeting took place Mr Reed was provided by Ms Boezalt with three additional bets, which had been manually voided by the Claimant. It is clear from the notes of the meeting that, although there was a brief reference to other matters which had been raised, the issues which were investigated by Mr Reed and which went forward to the disciplinary hearing related solely to the late losing bets.

40. 'Late losing bets' are bets placed after the races in question have started; as the name suggest they are bets which would have been unsuccessful, had they been placed in time. However, they should not have been accepted in the first place and the customer is entitled to a refund of the stake. The correct procedure in those cases is that the stake should be returned to the customer on presentation of the betting slip, which has a barcode on it and which the customer retains. The customer presents the ticket, the member of staff scans the barcode and pays out the original stake to him or her. The system records the transaction.

41. Because the betting slip is also scanned into the system before being given to the customer, bets can be paid out manually by typing the number into the till. However, this is only allowed in certain circumstances, for example when a customer his lost his or her slip. When that happens a 'lost slip claim form' must be completed by the customer, who must present identification. S/he is required to write a copy of the bet out on the claim form; staff then consult the scan of the original slip and compare the handwriting with the scan of the original. If everything matches the member of staff may pay the customer out.

42. The information on the three bets in question clearly indicated that they were paid out by the Claimant. Moreover, they were paid out some considerable time after they had been placed: in the first case just under three hours later; in the second some seven hours later; and in the third case three days later. CCTV evidence showed that when the bets were paid out no customers were present at the counter, which explained why the barcodes had not be scanned. The Claimant had overridden the system in each case and paid the stakes out manually. One of the bets was for £50, the other two for £20 each.

43. Mr Reed contacted the Claimant's Area Manager, Mr Johnson, who was on holiday at the time. Mr Johnson arranged for Ms Karen McMillan, another Area Manager, to deal with the matter in his absence. He asked her to suspend the Claimant pending a security investigation.

The suspension and investigation

44. Ms McMillan arranged to meet the Claimant on 6 February 2018 and explained that he was to be suspended because of a security investigation regarding suspicious bets. The Claimant was understandably upset by this news. Ms McMillan told him that he would remain on full pay during the suspension.

45. She confirmed this decision by way of a letter dated 13 February 2018. That letter also contains the following passage:

> 'whilst on suspension you are required to be available during your normal working hours for discussions or meetings. Please be aware that if you are not contactable or available on any work day, your pay may be withheld'.

46. Also on 13 February 2018 Mr Reed held an investigatory meeting with the Claimant. In the course of the meeting, the notes of which consisted of a detailed verbatim transcript, Mr Reed put to the Claimant that he had either stolen the money or used it to cover a cash difference. The Claimant vehemently denied stealing the money. However, he accepted that he may have paid the bets out in order to cover a cash difference. He explained that the shops were under pressure from Mr Johnson to deal with the issue of cash shortages and that it might have been that, when he checked the balance of the till at the end of the day, he discovered a shortage, identified a bet which was outstanding and paid it out to cover the shortage. However, it was difficult for him to recall the precise circumstances given the passage of time.

47. The Tribunal considers that Mr Reed's conduct of the meeting was not appropriate. He conducted it more in the manner of a police interview than an investigation meeting in an employment context. He put pressure on the Claimant and repeated questions unnecessarily. We have no doubt that the Claimant did not pay the bets out for personal gain. However, he did accept in response to Mr Reed's questions that he may have paid them out to cover cash differences. The Tribunal might have questioned the reliability of those admission, given the pressure he was put under at this meeting, had the Claimant not gone on to repeat them at the later disciplinary hearing with Mr Lewis, which was conducted in a more measured and appropriate way.

48. Notwithstanding our concerns about Mr Reed's approach, we reject any suggestion that he was part of a conspiracy against the Claimant or that his

actions were in any way influenced by the Claimant's age, race or disability. There is no evidence that these protected characteristics played any part in his decision to investigate the Claimant's actions or that any member of the team within which the Claimant worked had sought to influence him. He was acting independently and was only involved in a circumscribed part of the process.

49. Mr Reed told the Claimant that he may need to see him for a further investigation meeting. On 26 February 2018 Ms Boezalt invited the Claimant to a meeting the following day. The invitation was sent by text message, which was not an appropriate method of contacting an employee about a matter of such seriousness. We accept the Claimant's evidence that he did not receive this text message because his phone was broken. Ms Boezalt accepted in cross-examination that the evidence of the texts suggested that the Claimant did not, in fact, read it until 26 April 2018. Because the Claimant did not attend the meeting, the Respondent stopped his pay.

<u>The disciplinary meeting</u>

50. By letter dated 19 March 2018 the Claimant was invited to a disciplinary meeting on 24 March 2018. The meeting was conducted by Mr John Lewis, who at the time was a Marketplace Manager. At that meeting the Claimant said: 'I remember paying the bets to verify cash differences' and 'I only remember flashing and paying to cover shop cash difference. I didn't take any money. If I amended any bets it was for a reason.' He went on:

> 'the reason they were paid is because of accusations of previous cash differences and if I had any more they would think that I am unable and he [Mr Johnson] would kick me out. I wanted no cash difference, five pounds positive or negative.'

51. At the end of the meeting, following an adjournment, Mr Lewis told the Claimant that he had decided to terminate the Claimant's employment. That decision was confirmed by way of a letter dated 9 May 2018. We were given no explanation as to why there was such a long delay in sending out the letter of dismissal.

52. On 10 May 2018 Claimant appealed the decision to dismiss him and the appeal meeting took place on 19 June 2018, conducted by Ms Kirsty Caruth. There was no information before us as to what occurred during that meeting, other than the brief summary in a letter dated 10 July 2018 dismissing his appeal. Ms Caruth no longer works for the Respondent and no notes of the meeting were available. The Respondent's explanation for this was that managers were required to scan notes of meetings and email them to HR and then dispose of the original hard copies. The Respondent believed that Ms Caruth had failed to do so.

53. The appeal outcome letter records that:

> 'at the meeting we discussed the main ground of your appeal: you believe that the outcome had been unfair due to yourself not financially gaining from the processed bets. You also stated that at the time you were under a lot of pressure not to have cash differences at the shop so you were trying to ensure that this did not happen.
>
> ….

At the meeting you confirmed that you did process the bets to cover a cash difference which would be a breaching company procedure.'

**The law**

Time limits

54. S.123(1)(a) EqA provides that a claim of discrimination must be brought within three months, starting with the date of the act to which the complaint relates.

55. S.123(3)(a) EqA provides that conduct extending over a period is to be treated as done at the end of the period. The leading authority on this provision is *Hendricks v Commissioner of Police of the Metropolis* [2003] ICR 530, in which the Court of Appeal held that Tribunals should not take too literal an approach to determining whether there has been conduct extending over a period: the focus should be on the substance of the complaint that the employer was responsible for an ongoing situation or a continuing state of affairs in which an employee was treated in a discriminatory manner.

56. The Tribunal may extend the three-month limitation period for discrimination claims under s.123(1)(b) EqA where it considers it just and equitable to do so. That is a very broad discretion. In exercising that discretion, the Tribunal should have regard to all the relevant circumstances. They will usually include: the reason for the delay; whether the Claimant was aware of his rights to claim and/or of the time limits; whether he acted promptly when he became aware of his rights; the conduct of the employer; the length of the extension sought; the extent to which the cogency of the evidence has been affected by the delay; and the balance of prejudice (*Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] ICR 1194).

57. Failure to provide a good excuse for the delay in bringing the relevant claim will not inevitably result in an extension of time being refused (*Rathakrishnan v Pizza Express (Restaurants) Ltd* [2016] IRLR 278 at para 16). There is no requirement for exceptional circumstances to justify an extension (*Pathan v South London Islamic Centre,* UKEAT/0312/13/DM at para 17).

58. The limitation period in a claim for a failure to make reasonable adjustments was considered by the Court of Appeal in *Hull City Council v Matuszowicz* [2009] ICR 1170. For the purposes of claims where the employer was not deliberately failing to comply with the duty, and the omission was due to lack of diligence, it is to be treated as having decided upon the omission when, if it had been acting reasonably, it would have made the reasonable adjustments. The Court acknowledged that imposing an artificial date from which time starts to run is not entirely satisfactory, but pointed out that the uncertainty and even injustice that may be caused could, in appropriate cases be alleviated by the Tribunal's discretion to extend the time limit where it is just and equitable to do so.

The burden of proof

59. The burden of proof provisions are contained in s.136(1)-(3) EqA:

**(1) This section applies to any proceedings relating to a contravention of this Act.**

**(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.**

**(3) But subsection (2) does not apply if A shows that A did not contravene the provision.**

60. The effect of these provisions was conveniently summarised by Underhill LJ in *Base Childrenswear Ltd v Otshudi* [2019] EWCA Civ 1648 (at para 18):

> **'18. It is unnecessary that I reproduce here the entirety of the guidance given by Mummery LJ in *Madarassy*. He explained the two stages of the process required by the statute as follows:**
>
> **(1) At the first stage the Claimant must prove "a *prima facie* case". That does not, as he says at para. 56 of his judgment (p. 878H), mean simply proving "facts from which the Tribunal could conclude that the Respondent 'could have' committed an unlawful act of discrimination". As he continued (pp. 878-9):**
>
> > **"56. … The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a Tribunal 'could conclude' that, on the balance of probabilities, the Respondent had committed an unlawful act of discrimination.**
> >
> > **57. 'Could conclude' in section 63A(2) [of the Sex Discrimination Act 1975] must mean that 'a reasonable Tribunal could properly conclude' from all the evidence before it. …"**
>
> **(2) If the Claimant proves a *prima facie* case the burden shifts to the Respondent to prove that he has not committed an act of unlawful discrimination – para. 58 (p. 879D). As Mummery LJ continues:**
>
> > **"He may prove this by an adequate non-discriminatory explanation of the treatment of the complainant. If he does not, the Tribunal must uphold the discrimination claim."**
>
> **He goes on to explain that it is legitimate to take into account at the first stage all evidence which is potentially relevant to the complaint of discrimination, save only the absence of an adequate explanation.**

61. In *Hewage v Grampian Health Board* [2012] ICR 1054 the Supreme Court held (at para 32) that the burden of proof provisions require careful attention where there is room for doubt as to the facts necessary to establish discrimination, but have nothing to offer where the Tribunal is in a position to make positive findings on the evidence one way or the other.

<u>Failure to make reasonable adjustments</u>

62. The requirements of the duty to make reasonable adjustments are set out in ss.20-22 and 39 EA 2010, and paras 1, 2, 5 and 20 of Schedule 8.

63. A duty under s.20 EqA arises where:

    63.1. a provision, criterion or practice (PCP) puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled; or

63.2. a physical feature put a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled; or

63.3. a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled.

64. By sch.8, Part 3, para 20(1)(b) Equality Act 2010 the duty to make adjustments does not arise unless:

64.1. the employer knew, or could reasonably have been expected to know, that the employee was disabled and additionally:

64.2. the employer knew, or could reasonably have been expected to know, that the PCP(s) placed the employee at a substantial disadvantage compared to people without his disability.

65. The EHRC Code (Para 6.16) emphasises that the purpose of the comparison with persons who are not disabled is to determine whether the disadvantage arises because of the disability and that, unlike direct or indirect discrimination, there is 'no requirement to identify a comparator or comparator group whose circumstances are the same or nearly the same as the disabled person's'.

66. The reasonableness of an adjustment falls to be assessed objectively by the Tribunal (*Morse v Wiltshire County Council* [1998] IRLR 352).

<u>Direct discrimination</u>

67. S.13(1) EqA provides:

> **A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.**

68. The conventional approach to considering whether there has been direct discrimination is a two-stage approach: considering first whether there has been less favourable treatment by reference to a real or hypothetical comparator; and secondly going on to consider whether that treatment is because of the protected characteristic, here race/religion.

69. More recently, the appellate courts have encouraged Tribunals to address both stages by considering a single question: the 'reason why' the employer did the act or acts alleged to be discriminatory. Was it on the prohibited ground or was it for some other reason? This approach does not require the construction of a hypothetical comparator: see, for example, the comments of Underhill J in *Martin v Devonshires Solicitors* [2011] ICR 352 at para 30.

70. In *Reynolds v CLFIS (UK) Ltd* [2015] ICR 1010, the Court of Appeal confirmed that a 'composite approach' to an allegation of discrimination is unacceptable in principle: the employee who did the act complained of must himself have been motivated by the protected characteristic (para 36).

<u>Discrimination because of something arising in consequence of disability</u>

71. S.15 EqA provides as follows:

**15. Discrimination arising from disability**

**(1) A person (A) discriminates against a disabled person (B) if—**

> **(a) A treats B unfavourably because of something arising in consequence of B's disability, and**
>
> **(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.**

**(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.**

72. The correct approach to a claim of this sort was considered by the Court of Appeal in *City of York Council v Grosset* [2018] IRLR 746 *per* Sales LJ:

> **'36. On its proper construction, section 15(1)(a) requires an investigation of two distinct causative issues: (i) did A treat B unfavourably because of an (identified) "something"? and (ii) did that "something" arise in consequence of B's disability.**
>
> **37. The first issue involves an examination of A's state of mind, to establish whether the unfavourable treatment which is in issue occurred by reason of A's attitude to the relevant "something" ...**
>
> **38. The second issue is an objective matter, whether there is a causal link between B's disability and the relevant "something" ….'**

73. The Code of Practice issued by the Equality and Human Rights Commission offers the following explanation of what is meant by something arising in consequence of disability for the purposes of s.15 of the EqA:

> **5.9 The consequences of a disability include anything which is the result, effect or outcome of a disabled person's disability. The consequences will be varied, and will depend on the individual effect upon a disabled person of their disability. Some consequences may be obvious, such as an inability to walk unaided or inability to use certain work equipment. Others may not be obvious, for example, having to follow a restricted diet.**

74. It is then necessary to look to the employer's defences of justification (s.15(1)(b)). The issues for determination are: whether the treatment in question had a legitimate aim, unrelated to any discrimination based on any prohibited ground; whether the treatment was capable of achieving that aim; and whether in the light of all the relevant factors, the measure was proportionate.

<u>Unauthorised deduction from wages</u>

75. S.13 Employment Rights Act 1996 provides:

> **(1) An employer shall not make a deduction from wages of a worker employed by him unless—**
>
> > **(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or**
> > **(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.**
>
> **(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—**
>
> > **(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or**

> **(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.**

> **(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.**

76. The traditional requirement for the implication of a contractual term by custom and practice is that the custom in question must be reasonable, notorious and certain (see, for example, *Sagar v H Ridehalgh and Son Ltd* [1931] 1 Ch 310, CA). This means that the custom must be fair and not arbitrary or capricious; that it must be generally established and well known; and that it must be clear-cut.

77. In *Albion Automotive Ltd v Walker* [2002] EWCA Civ 946 the Court of Appeal considered when a term would be incorporated by custom and practice and listed relevant factors (there, in the context of entitlement to enhanced redundancy payments) as follows:

> **(a) whether the policy was drawn to the attention of the employees;**
> **(b) whether it was followed without exception for a substantial period;**
> **(c) the number of occasions on which it was followed;**
> **(d) whether payments were made automatically;**
> **(e) whether the nature of communication of the policy supported the inference that the employers intended to be contractually bound;**
> **(f) whether the policy was adopted by agreement;**
> **(g) whether employees had a reasonable expectation that the enhanced payment would be made;**
> **(h) whether terms were incorporated in a written agreement;**
> **(i) whether the terms were consistently applied.**

## Submissions

78. Both the Claimant and Mr Rozycki provided helpful written documents by way of closing submissions, which they then supplemented orally. The Tribunal had regard to those submissions, which we do not propose to reproduce in what is already a lengthy judgment.

## Direct discrimination: race and/or age and/or disability (s.13 EqA)

79. The Claimant relies on the following alleged acts of direct discrimination.

Issue 1, direct race discrimination: Danny Johnson accusing the Claimant of stealing money in a meeting with Mr Johnson and the supervisor.

80. The Tribunal has already found (para 31) that Mr Johnson did not accuse the Claimant of stealing money. For that reason, this claim does not succeed.

Issue 5, direct race and/or age and/or disability discrimination: Danny Johnson telling the Claimant that if he was unable to manage the shop, the Respondent would put someone else in charge. The Claimant contends that Mr Johnson perceived him as unable to manage the shop because of his race and/or disability and/or age.

81. As we have already found (para 32), Mr Johnson did warn the Claimant that if the performance of the city workshop did not improve he might consider moving him. We think it unlikely that he did so because he considered the Claimant incapable of performing his role. The evidence suggests that he was a robust manager. If he had formed that conclusion, we consider he would have taken action immediately, which he did not do. On the contrary, we think it more likely that Mr Johnson considered that the Claimant was capable of discharging his management functions and that he would respond positively to a warning of this sort.

82. The Tribunal concludes that the sole reason why Mr Johnson made the remarks he did was because he wished to motivate the Claimant to play his part in improving the performance of the shop. His approach may have been heavy-handed but, the Tribunal concludes, the Claimant's race, disability and age played no part whatsoever in it.

Issue 2, direct disability discrimination: January 2018, Fatou Camara saying to the Claimant that he was "dumb, useless and a sick man" and that she did not know why the company was employing the Claimant and saying, "look at you, you are a sick man."

83. We have already found (para 34) that the incident occurred as described by the Claimant. Ms Camara abused him explicitly by reference to his disability and told him that she did not understand why the company was employing him, given his disability. That abuse was inherently discriminatory: Ms Camara chose to use language which she would not have used about a person without the Claimant's disability, knowing it would be offensive to him. Further, in making the abusive remarks, Ms Camara made a grossly stereotypical assumption that, because the Claimant was disabled, he must be a 'useless' employee. In so doing, she treated him less favourably that she would have treated a person without the Claimant's disability. The Claimant's complaint of direct disability discrimination in relation to this incident succeeds, subject to questions of limitation.

Issue 3, direct race discrimination: the Respondent requiring the Claimant to continue with Fatou Camara, despite him complaining on about 2 February 2018 about Fatou Camara's behaviour towards him. The Claimant contends that the Respondent was protecting white people from having to work with Fatou Camara, who was known to be difficult to work with. The Claimant contends that Fatou Camara was African and the Respondent assumed that the Claimant could work with her.

84. We have already found (para 36) that the Respondent allowed Ms Camara to work with the Claimant again on at least one occasion after the abusive incident. However, the Tribunal concludes that the Claimant has not discharged the burden on him to prove facts from which it could reasonably conclude that this was done because of his race.

85. We reject the Claimant's argument that the Respondent assumed the Claimant could work with Ms Camara because they were both of African ethnic origin. There is no evidence to support this, other than a bare assertion by the Claimant. We further reject the Claimant's assertion that the Respondent was 'protecting white people from having to work with Fatou Camara'. Again, there is no evidence to support this. Moreover, it is inconsistent with the Claimant's evidence in his own witness statement that the City Road shop was not

exclusively staffed by black employees and that Mr Johnson had introduced two white members of staff into the shop.

86. On the balance of probabilities, we think it far more likely that the assignment of Ms Camara back to the shop after the alteration with the Claimant was because of poor communication and/or poor administration: no mechanism had been put in place to ensure that the Claimant and Ms Camara were permanently separated and a manager unconnected with City Road (Mr Couchy) simply assigned Ms Camara to the shop, unaware of the earlier difficulties between them. This claim accordingly fails.

Issue 4, direct race and/or disability discrimination: the Respondent failing to take any action on the Claimant's complaint

87. It is right that no action was taken in relation to the Claimant's complaint about Ms Camara (para 35). However, we accept Ms Boezalt's evidence that the reason why she did not take any further action was that, within a matter of days, the Claimant had been suspended for the reasons set out above. Some time later Ms Boezalt destroyed the document containing the complaint. Again, we accept her explanation that she did so because she believed (without checking) that the Claimant was no longer an employee and she had been asked to dispose of records relating to former employees. Regrettable though these actions were, they were consistent with what appeared to us to be a culture of lax administration in matters of human resources, further examples of which were the decision to invite the Claimant to an investigatory meeting by text and the failure to ensure that records of the appeal meeting were retained.

88. The Tribunal concludes that her actions were in no sense whatsoever because of the Claimant's race or disability and this claim accordingly fails.

Issue 6, direct race and/or disability and/or age discrimination): suspending the Claimant. The Claimant contends that the Respondent took the opportunity to suspend him because it perceived that he was unable to manage the shop and/or it perceived that he did not fit in with the Respondent's desired new younger image.

89. The decision to suspend the Claimant was taken by Mr Johnson and communicated to the Claimant by Ms McMillan (para 43). We reject the Claimant's assertion that he took advantage of this opportunity to suspend him because he perceived that the Claimant was unable to manage the shop. We have already found that Mr Johnson did not have that perception of the Claimant and so that could not form part of the reason for the decision.

90. We are satisfied that Mr Johnson took the decision solely because he regarded the security matters which had been drawn to his attention as potentially serious concerns which, if proven, might amount to gross misconduct and lead to the Claimant's dismissal. The Claimant's race, age and disability played no part whatsoever in the decision. The Claimant also alleged that Mr Johnson was behind the initial raising of these issues. We reject that suggestion: the process of alerting the Gateshead centre to the three late losing bets was an automated auditing process; Mr Johnson played no part in it.

91. For completeness we will deal with the Claimant's suggestion that the Respondent took the opportunity to suspend him because he 'did not fit in with the Respondent's desired, new and younger image'. Such evidence as we had

before us suggested that the Respondent's workforce was diverse in terms of age. Although the Claimant gave evidence in his witness statement that a number of the junior staff who worked under him were in the 20- to 30-year-old age group, the Tribunal finds it unsurprising that junior staff, employed in relatively low paid work, would tend to be younger than their manager, the Claimant. We do not consider that it amounted to evidence that the Respondent was pursuing a recruitment policy, from which the Tribunal could reasonably conclude that unlawful age discrimination played any part in the decision to suspend the Claimant. We regard the suggestion as fanciful.

92. The Tribunal concludes that the decision to suspend the Claimant was unconnected with his race, his disability or his age.

Issue 7, direct race and/or disability and/or age discrimination: dismissing the Claimant. The Claimant contends that he did not fit in with the Respondent's new, younger image.

93. For the same reasons we conclude that the decision to dismiss the Claimant, which was taken by Mr Lewis, was taken for reasons wholly unconnected with the Claimant's race, disability or age. Mr Lewis dismissed him because of his conduct in relation to the three late losing bets. He had ample evidence on which to base his decision, including the fact that the CCTV showed that there were no customers at the counter when the Claimant paid the bets out and the Claimant made admissions at the meeting with him that he paid the bets out in order to cover cash differences. Mr Lewis regarded this as an act of dishonesty: the Claimant purported to pay the money out to a customer but in fact put the money in the till to make good a cash shortage. That in turn populated the accounting ledger with false information. The Respondent's handbook is clear that 'making any false declarations of monies or bets' and 'false accounting' may lead to summary dismissal.

94. For completeness, we will deal with the comparator whom the Claimant raised in the course of his evidence: Mr Tighe. Mr Tighe was suspended and investigated for not following procedures, which led to his unwittingly serving a known conman, who was deliberately making ambiguous bets. Had Mr Tighe adhered to the correct procedures, he would have been alerted sooner to the customer's intentions. There was no suggestion of dishonesty on his part and he accepted responsibility for his actions; by contrast, Mr Lewis considered that the Claimant, although he admitted the conduct, did not accept responsibility for his actions. Mr Tighe was issued with a Stage 3 warning; the Tribunal concludes that the difference in treatment is satisfactorily explained by the difference in circumstances.

### Discrimination Arising from Disability (s.15 EqA)

Issue 1: Did the Respondent treat the Claimant unfavourably by suspending and dismissing him because of something arising in consequence of his disability? The Claimant contends that the Respondent perceived him as being unable to manage the shop and as not fitting in with its image because of his physical disabilities arising from his polio. If so, has the Respondent shown that suspension and dismissal were a proportionate means of achieving a legitimate aim?

95. For the reasons we have already given we conclude that the Claimant was neither suspended nor dismissed because of something arising in consequence

of his disability (a perception that he was unable to manage the shop because of his disability). There was no such perception and those actions were taken solely because of the allegations of misconduct relating to the late losing bets. Accordingly, his claim fails at this stage.

### Failure to make reasonable adjustments

Did the Respondent have actual or constructive knowledge of disability and disadvantage?

96. The Respondent concedes both that the Claimant was disabled by reason of polio and its effects and that it had actual knowledge of the disability. Knowledge of disadvantage is dealt with below, as relevant.

But for the provision of a suitably adjusted chair and work station, would the Claimant be put at a substantial disadvantage compared to people who were not disabled? (The Claimant contends that, at the start of his employment, the Shaw Trust provided a work place adviser who came to the Respondent's workplace and identified the chair and work station required by the Claimant in order for him to be able to work without pain and discomfort. The Claimant contends that his old Area Manager, Sue Harper, did provide a chair and suitable work station, but that these things were not provided after 2016.)

97. In a 'colleague information form' of October 2015 the Claimant identifies only that 'no adjustment needed but cannot carry weight over 5 kg'; there is no reference to the need for adjustments relating to a chair. In the form completed in 2017 (when he rejoined the company) he stated: 'required sitting down position and a comfortable chair'.

98. Dealing first with the issue of the workstation, the Claimant made no mention in either document of the need for an adjusted work station, for example a desk, as distinct from a chair. He led no evidence that his work station caused him difficulties or put him at a disadvantage in any way and we find that it did not.

99. As for the provision of a suitable chair, we have already found (paras 28-29) that the Claimant did not ask for a more suitable chair and that, had he done so, one would have been provided. We have also found that suitable chairs were readily available and could have been accessed without difficulty or delay, which makes it all the more striking that the Claimant did not ask for one. We conclude that, had the absence of a specialised chair put the Claimant at a substantial (more than minor or trivial) disadvantage, he would have asked for one. On the balance of probabilities, we infer from the fact that he did not do so that the absence of such a chair did not put him at a substantial disadvantage.

100. Accordingly, this claim fails.

Did the stairs and the old-fashioned machines (i.e. the physical features) of the City Road shop put the Claimant at a substantial disadvantage in comparison with persons who were not disabled?

101. We unanimously conclude that the steps in the City Road shop did put the Claimant at a substantial disadvantage. His mobility issues are such that climbing stairs would be more difficult for him than for a non-disabled person to a more than trivial extent. We further conclude that the Respondent knew, or ought reasonably to have known, that negotiating the steps gave rise to that

disadvantage. His mobility difficulties must have been obvious to his colleagues simply by observing him.

102. We further conclude that the old-fashioned machines, which required the Claimant to remove his calliper and lower himself to floor level, caused him significant discomfort and inconvenience. Again, we conclude that the Respondent had actual knowledge that assigning these duties to the Claimant caused that disadvantage, given that his colleagues must have observed this manoeuvre.

103. Moreover, no risk assessment or disability assessment was carried out at the City Road shop. Had that been done, which we consider would have been a reasonable precaution, the Respondent could reasonably be expected to have identified the disadvantage.

Did the Respondent apply the following Provision, Criterion or Practice: requiring the Claimant to deal with promotional material?

104. It is right that the Respondent required the Claimant to deal with promotional material in the shop window. That was part of his role. The Claimant could only comfortably access the window when the disabled lift was working. When it was not working it was extremely difficult for him to squeeze past it and access the window. Accordingly, we accept that the Respondent applied the PCP and that, on the occasions when the lift was not working, the application of the PCP put him at a substantial disadvantage. It was not in dispute that the Respondent knew that requiring him to access the window when the lift was not working was difficult for him: Mr Johnson acknowledged this in his oral evidence.

Did the Respondent fail to take such steps as was reasonable to avoid the disadvantage identified above?

105. With regard to the steps, the only adjustment contended for by the Claimant was moving him to another shop. In circumstances where the Claimant had elected to work full-time at City Road, rather than at another shop, and chose to use the steps at City Road rather than the disabled access lift (even when it was working) we conclude that it would not have been a reasonable adjustment to transfer him to another shop. It would have been contrary to the Claimant’s own wishes and, therefore, unreasonable. The Tribunal has come to the conclusion that this is an adjustment which the Claimant relied on in these proceedings in order to bolster his claim, rather than because it was an adjustment which he sought or desired, or indeed would have accepted if it had been proposed, at the time.

106. With regard to the promotional material, we have already found (para 30 above) that the Claimant was relieved of those duties when the lift was not working. That was a reasonable adjustment, which effectively removed the disadvantage. There was no breach by the Respondent.

107. The claim that there was a failure to make reasonable adjustments fails in these two respects.

108. With regard to the old-fashioned slot machines, we consider that it would have been a reasonable adjustment to assign these duties to another employee to avoid the need for him to bend uncomfortably to the floor: according to the

Respondent, it was normal practice for there to be at least two employees on duty at any given time. We have already found (para 27) that the Respondent did not make this adjustment.

109. The claim that there was a failure to make reasonable adjustments succeeds in this respect, subject only to questions of limitation.

**Does the Tribunal have jurisdiction to hear the Claimant's claim of direct disability discrimination in relation to the incident with Ms Camara and failure to make reasonable adjustments in relation to the old-fashioned machines?**

110. The claim form was presented on 12 June 2018, after an ACAS Early Conciliation period between 12 May and 16 May 2018.

111. Although the claim form was in time by reference to the effective date of termination on 24 March 2018, the incident with Ms Camara on 2 February 2018 was out of time.

112. As for the reasonable adjustments claim in relation to the disadvantage caused by the old-fashioned machines, the authorities are clear that time runs from the point at which the adjustments in question ought reasonably to have been made. The Claimant moved to the City Road shop in September 2017. The Tribunal finds that the adjustments ought reasonably to have been made within a month, i.e. by the end of October 2017 to allow time to explore the issue and to make the necessary arrangements.

113. Turning first to the length of the delay, it is relatively short in the case of the incident of Ms Camara (around five weeks); it is significantly longer (some five months) in relation to the reasonable adjustments claim.

114. With regard to the incident with Ms Camara the Claimant acted promptly to raise the matter with his manager. Although an attempt to resolve matters internally does not automatically provide grounds for an extension of time it is a factor to which we may have regard. In this case we find that it is a compelling factor. The Claimant was entitled to expect that his complaint would be dealt with within a reasonable period. He was not to know that no action would be taken and the written record of his complaint destroyed.

115. As for the failure to make adjustments, the Claimant did not complain internally about this matter. The Claimant accepted in cross-examination that he was aware throughout the material period that he could go to an Employment Tribunal if he wished to complain about discrimination. We heard no evidence that he sought legal advice. He said that he was 'waiting to see how the situation unfolded'. We infer that the Claimant issued proceedings when he did because he considered that they would be in time by reference to his dismissal. As a litigant in person he was not to know that this claim was fatally flawed because of the break in continuity of employment.

116. Turning then to the balance of prejudice, the prejudice to the Claimant if time were not extended would be very substantial indeed: he would be deprived of a potential remedy in respect of two claims which we have found to be meritorious. By contrast, we conclude that the prejudice to the Respondent of time being extended is far less substantial. It is right that Ms Fatou no longer works for the company. She returned to her country of birth in November 2018.

The Tribunal notes that this was some time after the commencement of these proceedings, yet the Respondent had taken no steps to take a statement from her before she left or since. Further, the Respondent was still able to seek to defend the claim by reference to the accounts of other witnesses. The absence of a contemporaneous written record of the Claimant's complaint about the incident is, of course, entirely the Respondent's own fault.

117. As for the reasonable adjustments claim, the Tribunal concludes that the delay in issuing proceedings did not have a substantial effect on the Respondent's ability to deal with the claims. The essential facts in relation to this claim were not in dispute: it was agreed that the old-fashioned machines were challenging for the Claimant.

118. Weighing all these factors in balance - on the one hand taking into account that the Claimant's explanation for the delay is in some respects unsatisfactory, on the other having regard to the balance of prejudice which favours the Claimant - the Tribunal unanimously concludes that it is just and equitable to extend time in respect of these two claims.

**Unlawful deductions from Wages**

Did the Respondent make unlawful deductions from the Claimant's wages when it stopped paying his salary after he failed to attend a meeting, but the invitation to the meeting was not sent in accordance with the way in which the Respondent had agreed to communicate with the Claimant regarding meetings and the Claimant therefore did not know about the relevant meeting?

119. It is not in dispute that the Respondent stopped the Claimant's pay after he failed to attend the second investigatory meeting and that he was invited to that meeting by a text message, which we have found was an inappropriate method of communication and which, in any event, he did not receive in time.

120. Those deductions within the meaning of s.13 were not required or authorised by virtue of a statutory provision, nor was there anything in the contractual or policy documentation before us which entitled the Respondent to make a deduction for that reason. The Claimant had not previously signified in writing his consent to the making of these deductions.

121. The Respondent's primary contention was that there was a contractual term implied by custom and practice entitling the Respondent to withhold pay if an employee failed to engage properly with a disciplinary process. Even if there were such a contractual entitlement, we conclude that it would be implicit that the Respondent must notify the employee by reasonable means of the meeting which he is expected to attend. It did not do so in this instance.

122. In any event, the Tribunal concludes that there was no such implied contractual term. Our starting point is that the proposed term was insufficiently certain: the letter to the Claimant merely warned him that 'if you are not contactable or available on any work day, your pay *may* be withheld' [emphasis added]. It is expressed as a mere discretion and no further explanation is given as to what factors will be taken into account in the exercise of that discretion.

123. We accept that, to this extent only, a risk of deductions was drawn to the attention of the Claimant in the letter sent to him. However, we heard no

evidence from the Respondent as to how and when this supposed term had been implemented, for example whether it was agreed; nor was there evidence as to the number of occasions on which it was followed. Our attention was drawn to one other letter (to Mr Tighe) in which such a warning was given. We conclude that this is not sufficient to discharge the burden on the Respondent to show that the contractual term was sufficiently notorious and consistently applied.

124. Accordingly, the Claimant's claim of unauthorised deduction from wages succeeds in an amount to be determined at the remedy hearing.

**Remedy hearing**

125. The remedy hearing will take place on 14 January at 10 a.m. for one day, as previously listed. A separate case management order will be sent out, giving directions for preparation for that hearing.

Employment Judge Massarella

2 January 2020