mf

EMPLOYMENT TRIBUNALS

Claimant: **Mr A Stinton**

Respondent: **Cambria Automobiles (South East Ltd)**

Heard at: **East London Hearing Centre**

On: **16 -17 October 2018, 5 December 2018, 11 February 2019,**
12-14 November and in chambers – 14 and 15 November 2019

Before: **Employment Judge Jones**

Members: **Mr N J Turner OBE**
Mr J Quinlan

Representation

Claimant: Mr A Griffiths (Counsel)

Respondent: Mr McDonald (Counsel)

RESERVED JUDGMENT

The unanimous judgment of the Employment Tribunal is that: -

(1) The Claimant was not dismissed. His complaint of unfair dismissal fails and is dismissed.

(2) The complaint of failure to make reasonable adjustments is out of time. It is not just and equitable to extend time to enable the Tribunal to consider it.

(3) The complaints of direct discrimination and discrimination because of something arising in consequence of disability fail and are dismissed.

(4) The complaints against Mr Coakley were not pursued and are dismissed.

(5) The complaint of a failure to pay holiday was withdrawn and is dismissed.

(6) The complaint of unlawful deduction of wages succeeds. The Claimant is awarded £416.66 gross as his remedy.

REASONS

1. The Claimant brought complaints of unfair dismissal, failure to make reasonable adjustments in breach of sections 21 of the Equality Act 2010 and discrimination arising from disability in breach of section 15 of the same Act. He also brought complaints of unlawful deduction of wages and for holiday pay.

History of this matter

2. The Claimant's claim was issued on 5 January 2018. He initially issued against 4 Respondents: Cambria Automobiles, Joe Coakley, Daniel Green and Brendan Corr.

3. The Respondent presented a Response on behalf of all Respondents on 15 February 2018.

4. At a preliminary hearing on 9 April 2018 before EJ Reid, the parties put forward a list of issues in this matter which contained areas that needed to be clarified. For instance, EJ Reid noted that the list contained two options as to whether an actual dismissal by reason of redundancy was being claimed or whether the Claimant relied on a constructive dismissal because of a failure to pay an agreed pay rise.

5. At that hearing the Claimant clarified that he was not relying on dyslexia as a disability but was only relying on his hearing impairment.

6. At that hearing, the Claimant confirmed that he would no longer pursue complaints against some of the named Respondents, namely Mr Green, Mr Lockhead and Mr Corr and the claims against them were dismissed.

7. The claim against Mr Coakley was for harassment. That complaint was struck out by EJ Russell at a preliminary hearing on 26 June 2018. Mr Coakley was dismissed as a Respondent in these proceedings.

8. Also at that hearing, the Claimant was ordered to pay the Respondent's costs assessed in the sum of £2,760.

9. EJ Russell listed the case for a final hearing between 16-19 October 2018, inclusive.

10. On 1 October 2018 the Claimant's solicitor wrote to the Tribunal to confirm that he Claimant was profoundly deaf and had been since birth. She informed the Tribunal that some consequences of that are that he finds it difficult to communicate with people and that his speech had not developed enough to make it easy to understand. It had initially been thought and indeed EJ Reid had recorded a request for a hearing loop system/sign interpreter to be the only adjustment that the Claimant needed in order to participate in the hearing. Ms Hayes' letter stated that this would be insufficient as the Claimant was unable to use a loop system with his current hearing aid. The Claimant's solicitors asked that his mother should be allowed to interpret for him and the other parties as she could explain things in a way that the Claimant could understand. The solicitor suggested that this would be a reasonable adjustment. She also suggested that the Claimant would also be able to lip read all those involved in the hearing.

11. The Claimant later confirmed that he could sign and lip read and the Tribunal confirmed that it would arrange for British Sign Language interpreters to be at the hearing listed for 16-19 October 2018.

12. At the start of the final hearing on 16 October the parties engaged with the Tribunal in a discussion on the list of issues which is summarised below. The Claimant was then sworn in and began to give evidence. Shortly after he started to give evidence, one of the BSL interpreters spoke to the Tribunal in the presence of the parties at an adjournment to indicate that he was not satisfied that the Claimant understood the questions that were being put to him by the Respondent's Counsel and that his answers may not be the answers that he would want to give if he understood the question.

13. The Claimant's Counsel indicated that the extent of the Claimant's hearing impairment had only become clear to him at the start of cross-examination as he had not been cross-examined before. The proceedings were halted so that the Claimant's solicitor could make enquiries to see what independent assistance could be secured for the Claimant in the context of these proceedings. The Tribunal was to also make enquiries of the resources available to it to enable and assist the process of conducting a fair hearing and complying with the overriding objective.

14. A telephone preliminary hearing was set for 7 November 2018 at which all parties and the Judge could consider what was the most appropriate way forward in this case.

15. At the telephone preliminary hearing on 7 November the Tribunal recorded that the Claimant's solicitors had made extensive enquiries to find a suitable intermediary to assist the Claimant in giving evidence in the resumed hearing and giving instructions to the Claimant's legal representatives in the interim period. The Claimant's solicitors had identified someone called Louise Harte who is a deaf intermediary registered with the Ministry of Justice who can and is experienced in facilitating communication with the Claimant as a vulnerable witness in his case.

16. A full note of the 7 November hearing was provided to the parties at the time. The Claimant's solicitors were instructed by the Tribunal to instruct Ms Harte to meet with the Claimant, assess his needs, write a report to the Court on what arrangements, adjustment or facilities were needed to enable the Claimant to give instructions to Counsel, to give his evidence and to put his case to the Court in the Tribunal hearing. The Tribunal Service undertook to cover the costs of the provision of the report.

17. The Claimant's solicitor, Minal Backhouse, also produced a witness statement dated 9 November 2018 in which she set out the process of preparing the Claimant's witness statement and his case.

18. A further preliminary hearing was set for 5 December 2018 to consider further orders. That hearing was vacated as there was insufficient time for Ms Harte to meet with the Claimant and prepare a report subsequent to the Tribunal signing her terms and conditions. Ms Harte saw the Claimant and produced a report dated 10 December 2018.

19. The second preliminary hearing in this matter was held on 9 January 2019. In that hearing, it was decided that Respondent's Counsel would prepare a list of the questions he wished to put to the Claimant in cross-examination beforehand and that Ms Harte would go through those with the Claimant, independently of his solicitors and his family so that he would have difficult words and concepts explained to him before the hearing.

20. A full minute of the 9 January hearing and the Orders made was provided to the parties at the time.

21. Ms Harte confirmed in writing that the BSL interpreters would be required for the final hearing as well as SSE interpreters for herself. It was made clear that the language in which she communicates with the Claimant is different from BSL as SSE is also another language.

22. The listing for the liability hearing on 11, 12 and 13 February 2019 was not effective because due to an administrative error at the Tribunal and miscommunication with the Claimant's solicitors; the BSL interpreters were not booked. The implications of the adjournment that resulted are the subject of correspondence between the Tribunal administration and the parties. The Tribunal has made no judgment on the responsibility for what happened. Those matters are not aired in this judgment. The matter was relisted for 4 days, being 12, 13, 14 and 15 November 2019.

List of issues

23. Well before this hearing started, the Claimant withdrew his complaint of constructive unfair dismissal and confirmed that the holiday pay claim was no longer pursued. The remaining claims were of unfair dismissal and disability discrimination.

24. At the start of the hearing in October 2018 there were applications to amend and/or extend the claim which were addressed. There were further discussions between the parties and between the Claimant and those representing him. A final list of issues was agreed between the parties and presented to the Tribunal at the beginning of this listing. We have determined the case based on that list of issues rather than the one that had been presented to EJ Reid in May as the case has changed since then. The list of issues is discussed in detail in the judgment section of these reasons.

Evidence

25. The Tribunal had an agreed bundle of documents. There were additional documents inserted into the bundle as the hearing progressed. Where relevant those are identified in the findings of fact.

26. The Tribunal had two witness statements from the Claimant. The Tribunal also had witness statements from Phil Hamberger, who at the time was General Manager; Joe Coakley, who at the time was Bodyshop Manager and Natalie Kooyman, who at the time was Bodyshop administrator; on behalf of the Respondent. These were also the witnesses who attended the hearing to give evidence. The Claimant was assisted in the hearing by Ms Louise Harte, intermediary and Ms Harte was attended by her SSE interpreter, Ms Leahy. The Tribunal also had the assistance of Mr Shields and Mr Grieve as court appointed BSL interpreters. Those were different BSL interpreters to the gentlemen who attended the hearing on 16 – 17 October 2018.

27. From that evidence, the Tribunal made the following findings of fact. The Tribunal has only made findings of fact on those matters that relate to the issues in the case. We have not made findings of fact on every piece of evidence that was put before us.

Findings of Fact

28. The Claimant was employed as fitter and stripper at the Respondent's Cambria site from December 2004. He was initially employed by County Motor Works in 2004 and was part of transfers of the business under the TUPE Regulations to the Respondent in 2013.

29. We had all the terms and conditions of employment that the Claimant had been given over the years in the bundle of documents. We were not taken to them and have not referred to them in any detail in these reasons.

30. The Claimant is profoundly deaf and has been so from birth. He has between 90-100% hearing loss. It was the Claimant's evidence that at the start of his employment it was easier for him to hear high pitched sounds but that changed when he had the cochlear implant in 2014.

31. The Claimant's work was manual, his evidence was that he worked with his hands. At work he communicated mostly with his manager and with the other fitters in the bodyshop.

32. The Claimant's evidence was that he has only hundreds of words in his vocabulary whereas most people have thousands of words in their vocabulary. He told us that he can lip read and use sign language. He has BSL levels 1 and 2. We did not know how many levels of BSL there are but it is likely that these are basic levels of understanding of the BSL language. With the support of Ms Harte, the Claimant was able to communicate with the BSL signers in the hearing room, as well as with the Tribunal.

33. The Claimant's evidence was that he had difficulty understanding the English language, especially in written form. We find that the Claimant's evidence was that he was dyslexic which he did not believe the Respondent was aware of but that they were aware that he could not read and write very well. We did not hear more of the Claimant's dyslexia in the hearing.

34. We find that the Claimant's line manager, Mr Coakley and the Head of Business, Phil Hamberger, were both based on site where the Claimant worked. Mr Coakley was also Bodyshop manager for the Respondent's second site in Tunbridge Wells, Kent. We find that Mr Coakley had the most interaction with the Claimant during his employment. Mr Coakley was an experienced manager, having started his employment with County Motor Works in 2000. He was employed by the Respondent throughout the Claimant's employment.

35. Mr Coakley's evidence was that he had no difficulty in communicating with the Claimant. His evidence was that where necessary, he gave the Claimant instructions, and that the Claimant followed those instructions and completed jobs as required. Mr Hamberger's evidence was also that he had no difficulty in communicating with the Claimant and that they greeted each other and had conversations about work. Ms Kooyman who worked as the admin person in the bodyshop gave evidence of a friendship with the Claimant and that they talked about personal matters with each other. Her evidence was that she also had no difficulty in communicating with the Claimant. We accepted her evidence.

36. Ms Kooyman must have been aware that he had some difficulties as it was also her evidence that she would often check with the Claimant after a meeting to make sure that he understood what had happened in the meeting. We find that apart from the redundancy announcement meeting which we shall come on to in these reasons, we did not hear about many other whole bodyshop meetings that took place.

37. We find that the Claimant had appraisal meetings with Mr Coakley. We had notes from the 2009 appraisal meeting in the bundle. It is likely that in preparation for that meeting, the Claimant had assistance in completing the appraisal form from his sister. We find it likely that the concerns raised in the form were his.

38. In the form (pg100) the Claimant stated that when attending courses, he would like a communicator to assist him with his understanding of the words and questions in tests as he finds it difficult to understand the English language. In response, Mr Coakley wrote on the form that he discussed this with the Claimant and queried "*will company pay for interpreter (?)".* As the form was then given to HR, it is likely that he is directing this question through HR to more senior managers. We were not told that

the Respondent gave the Claimant any response to this question.

39. At the bottom of the form the Claimant stated: *"I feel disappointed with the lack of deaf awareness within the workplace which does cause me stress…."* And later *"I would feel much happier in my role if my work mates were deaf aware. E.g. I would like them to come up to me + approach me rather than whistle at me from far away. Everyone* would *benefit from a deaf awareness course + learn how to communicate respectively to a deaf person.* They discussed these points in the appraisal meeting. In response, Mr Coakley wrote that over the 5 years of the Claimant's employment he had not seen anyone treat the Claimant with disrespect. He stated that on the contrary, everyone was aware of the Claimant's deafness and had the utmost respect for him and believed that he was an admirable colleague. The Respondent did not directly address the Claimant's request that the Respondent organise deaf awareness training.

40. In this appraisal, the Claimant was assessed as always being reliable, cooperative, flexible, a good communicator and with good attendance levels at work. The agreed objective was for the Claimant to attend the ATA glass training. Mr Coakley's comments were that the Claimant had worked extremely hard and had been a very important and flexible member of the bodyshop team and a committed member of staff. He thanked the Claimant for his continued efforts and commitment to the bodyshop objectives.

41. The Claimant's evidence was that during his employment, he asked Mr Coakley for an iPad to allow him to look up difficult words that he did not understand or to aid communication with the Respondent. We did not have a date when this request was made. We find that although the issue of communication had been raised in the 2009 appraisal, it is unlikely that iPads were in existence at the time. Also, the request for an iPad was not written in the appraisal form. We find it more likely that this was an issue which was raised by the Claimant later in his employment. It is likely that it was raised after 2010 when iPads became more commonly available.

42. The Respondent obtained a quality kitemark in or around 2009. Mr Coakley's evidence was that the Respondent got it for the accident/repair centre and they had had it for about 8 years until the bodyshop was closed in 2017. We find that the Claimant had to go off on training along with the other fitters before the kitemark was awarded. Thereafter, he had to complete the ATA test in order for the Respondent to keep the kitemark. ATA means Automotive Technician Accreditation.

43. It is likely that the Claimant had difficulty in understanding the English used in the multiple-choice tests that formed part of the ATA qualification process. We find that the Claimant had difficulty with passing the online part of the test although his practical assessments were fine. The Respondent hired a company to get its fitters through the qualification process. That company wrote to the Respondent to confirm that the pass rate was 60% and that the Claimant's score was 40%. We find that the Claimant took two of the exams four times and by October 2015 had still not passed them.

44. The Respondent brought the assessment process in-house. We find that this meant that the trainers were able to train the team together and that this helped the

Claimant. We saw the certificates in the trial bundle showing that the Claimant did eventually pass the exams.

45. We find that the Claimant was left on his own to answer queries and assist the BSI inspectors when they attended to conduct an investigation. The bodyshop was independently inspected once a year. The inspectors would attend without notice. The Claimant communicated well with them and was able to respond to any queries that they had. The Claimant also dealt with customers and guests to the bodyshop and addressed any concerns they had on the vehicles he worked on.

46. We find that the Respondent had no issues with the Claimant's work. The Claimant was engaged in some repetitive tasks and also had to make use of car manuals and information on computer screens. For instance, he would access car manuals on the computer for instructions to be able to take air bags out of cars and to reinstall them or install new ones as part of his job.

47. The Claimant strongly disputed Mr Coakley's suggestion in his live evidence that the Respondent implemented a touchpad system on which the Claimant's jobs were loaded and which would then show information, photos from the estimator on each repair job. This was not in Mr Coakley's witness statement and we were unable to ascertain when it was that he was suggesting this had been the Respondent's practice.

48. We find that in September 2016, the Claimant had a cochlear implant. It improved his hearing slightly when it was switched on. From then on, the Claimant asked that if his colleagues wanted to get his attention they should do so by tapping him on the shoulder rather than shouting as he was no longer able to hear high pitched noises.

49. We find that the Claimant asked the Respondent to install a fire safety alarm with a flashing light in the area that he worked. There was a fire alarm in the bodyshop. But as it depended on noise to alert staff of a fire drill or of fire, there was nothing that could alert the Claimant in the same way. The Respondent held fire drills on a weekly basis. These were usually done on a Tuesday. For a time in 2016, the Claimant was based in the Valet Bay working on his own and it was at this time that he asked for an alarm with a flashing light to be installed for his safety. He would not have heard the noise alarm and would not have known when to evacuate the building. This would be dangerous if there ever was a fire while he was there.

50. The Respondent took the Claimant's request seriously and obtained some quotes for the installation of a flashing beacon fire alarm. There were copies of the quotes in the hearing bundle. The Respondent's Health & Safety (H&S) coordinator, Paige Wiggins, with assistance from someone from a fire alarm company, conducted an assessment and wrote to Mr Hamberger with an assessment of what it would cost to install the flashing beacon alarm. At the time, there were no fire alarms installed in the valet bay which meant that the quote for setting up fire alarms included installing a traditional alarm as well as the flashing beacon. In the main bodyshop the Respondent would only have needed to add the flashing beacon to the existing system. After consideration of the quotes, the Respondent decided not to go ahead with either

suggestion. It was concerned that if the Claimant was under a vehicle when the alarm went off it would be difficult for him to be able to see the flashing light.

51. Instead, the Respondent made alternative arrangements. The Claimant moved back to the main bodyshop and the Respondent arranged for one of its fire marshals Daniel Green, to collect the Claimant when leaving the building whenever there was a fire drill or alarm. We were told that there were two marshals who were given this job but only Mr Green was mentioned in the hearing.

52. We find it likely that the Respondent would have needed to make an arrangement for the valeters as there was no traditional noise fire alarm in the Valet Bay. It is likely that the other fire marshal was assigned to get them out in the event of a fire alarm or fire drill. The Respondent considered the valeting bay to be at low risk of fire.

53. We find it likely that sometime in April 2017 a fire drill happened and the Claimant was left working. Mr Green had not collected the Claimant on his way out of the building, as had been arranged. The procedure that had been put in place did not work and it is likely that Mr Green forgot to get him. Although this was denied by the Respondent and its case was that the Claimant had been in Kent when that drill happened, we find it likely that he had been at work as he clearly remembered the incident. We find it likely that Ms Kooyman noticed that the Claimant was still working once everyone else was out of the building and she knocked on the window and asked what he was still doing working and whether he was aware that the fire alarm had gone off.

54. We find that on 25 November 2016 the Claimant addressed a letter to Mr Coakley in which he tendered his notice to leave the Respondent's employment. He gave a month's notice with an end date of 23 December 2016. The Claimant wrote the letter himself. In it he indicated his clear intention to leave the Respondent's employment because of two things – issues with the wrong parts being sent and the time it took to sort them out and issues with his pay. In the letter, the Claimant stated that he was unhappy that he had not had a pay rise for the past 11 years and that when he asked about it he was told that it may be possible if the Respondent got busier. He indicated that if the Respondent wanted him to stay they should offer him more money. The Claimant stated that he had been offered employment with another company called Boar Tye.

55. The Respondent accepted the Claimant's resignation. On or near his last day of employment, the Claimant was in the process of packing his tools into a van to leave the Respondent, in accordance with his letter of resignation; when Mr Coakley came outside and spoke to him. He spoke to the Claimant on his own and during their discussion he offered him an increased salary of £30,000 to stay. The Claimant accepted this.

56. There was a letter in the bundle dated 23 December 2016 (pg 396) from Mr Coakley which confirmed the Claimant's new salary of £32,000 and stated that all other terms and conditions remained unchanged. We find that it is likely that this was a standard HR letter and that the only signature on the letter to confirm the pay rise was

Mr Coakley's. The letter did not refer to him having sought anyone else's permission before the raise was offered or confirmed. The Claimant signed it to confirm his acceptance of the raise and he was paid according to that level thereafter. The change would start from 1 January 2017.

57. On 31 May 2017, the Claimant wrote again to Mr Coakley to tender his resignation. There was no indication that he had any assistance from anyone in writing that letter or one written in the previous year. In this letter he confirmed that the issue for him was money. He stated that he had not had yearly increases in wages to keep up with inflation whereas he believed that Boar's Tye, where he intended to go, would make annual increases to his wages. He stated that his notice would expire on 30 June 2017. He stated that this was a shame as he had been in Country Motor Works for 12 years now and done all sorts of hard work to help out and that he would 'do anything' for Mr Coakley.

58. There was a dispute between the parties as to whether there had been a discussion about a pay rise between the Claimant and Mr Coakley at the end of June 2017, following the Respondent's receipt of this resignation letter. We find it likely that there had been such a discussion. We say this because of the Claimant's evidence and because of Mr Coakley's email to his senior managers on 7 August 2017. In that email he gave a rundown of the staff at the two sites over which he had managerial responsibility. When it came to the Claimant he stated that the Claimant had been 'seen for £34,000' which we find is likely to have been what the Claimant asked for in the conversation that they had. The email stated that he would 'stay for extra 2.8k, letter received has resigned' which we find was a suggestion that although he had resigned, the Claimant would remain in the Respondent's employment for £32,800.

59. The Claimant's case was that on 30 June, when he was packing up his tools to leave the Respondent in accordance with his notice Mr Coakley came out and spoke to him. His evidence was that he persuaded him not to leave and that by the end of their conversation Mr Coakley had offered him an increased salary of £32,500 which he accepted and they shook hands on it. The Claimant referred to it in his live evidence as a 'gentleman's agreement'. We find it likely that the Claimant asked for confirmation of the agreed increase in writing as he had been given a letter confirming the last pay increase and wanted this again. Mr Coakley responded by asking him whether he had ever let him down. The Claimant accepted his reassurance and did not continue to press for written confirmation of the agreed new salary. He therefore considered that they had a binding agreement for a pay rise to £32,500. Once again, there was no mention of Mr Coakley having to go to someone else for authorisation of the increase or needing to get permission before the increase could come into effect.

60. The Claimant's wage was unchanged at the end of July. The Claimant approached Mr Coakley and asked him when this payment would be made. Mr Coakley told him that he would get it by the end of the month and that it would be backdated. The Claimant asked him about it again on 28 August. It was at this point that Mr Coakley stated that he would speak to the 'top manager' that day and would come back to the Claimant to sort it out.

61. There was in the bundle an exchange of an email and a text message between

the Claimant and someone called James in the Respondent's HR department. The communications were undated. The message from James (page 132) stated that as Mr Coakley refuted the Claimant's suggestion that any agreement was put in place and in the absence of a confirmed written agreement from senior management, the Claimant's wages would remain the same. James stated that Mr Coakley told him that at the time, he told the Claimant that he would look into it and review it with senior management. This was followed by the redundancy announcement at the end of August and then the Claimant's resignation. It is likely that James' message was a response to a query from the Claimant following his resignation.

62. In his response, which was also undated but was placed as the next document in the trial bundle (page 133), the Claimant set out the chain of events as he recalled them. He stated that he had handed in his notice at the end of May to 'joe' giving a month's notice. On the last day of his notice, 30 June, "joe came to see me before I finish the last day ready put tools in the van and he said to me and offer me more money and I said need a letter to proof that joe offer what he said then kept asking me do I let you down? In back of my mind I wasn't sure then ok I agree then shake hands with me and I have three witnesses who saw me and joe shake hands that I stay in country and told me my money will go up in 1st July month from that date so by the time I said to joe would will be on 1st July and been told sorted you will get your money then. By the end of July month when pay day come look my wages and done nothing and I ask joe what happing he told there been cut out date between July month and joe told me you will get it next Aug month with backdated July month owning and I had witness heard what joe told me so by Aug pay day I look my wages again still nothing then I ask joe again what going on then he said will see top manager from there and the next day there was a meeting for first letter saying going to be redundancy so could sort out what joe told me there should be two months money owing what joe offer me more money from 1 July".

63. We find that on 30 August 2017 everyone from the bodyshop, including the Claimant and Ms Kooyman, were called into a meeting with Phil Hamberger and the HR manager. We find that HR provided Mr Hamberger with a script (document 401), which he had to read to the room to inform them of what was happening. We find it likely that he read the script as it was written down.

64. We say this because as soon as he was questioned about the script in the Tribunal hearing, the Respondent was able to locate it, having had no prior warning that it was going to be requested. We also find that the wording of the script is almost identical to the wording of the letter sent to bodyshop staff on the same day.

65. We find it likely that Mr Hamberger would not have wanted to stray away from the words prepared by HR as he was making a difficult announcement. He would have followed the script and read it out as it was written. It would have been easier for him to do so rather than make up his own statement.

66. We find that the announcement to staff was that following a review the company regrettably found itself in the difficult position with the brands represented in that location, which had led it to identify a need to re-franchise to an alternative brand. That would mean that there would be an increase in the need for service capacity. The

company's preliminary view was that at the same time, all 9 'associates' in the bodyshop were at risk of redundancy as the bodyshop would be closed. Mr Hamberger read out the following:

> *'I wish to make it clear that we will do everything we can to explore ways of avoiding redundancies including seeking suitable alternative employment. You will be invited to a consultation meeting in due course to put forward any individual representations you may have. At all times, steps would be taken to try to identify alternative employment that matched your skills and experience'*.

Also, staff were assured that those who had been continuously employed for at least 2 years had the statutory right to take a reasonable amount of time off to look for another job or to arrange training. Staff were told that a letter would be issued to them that day confirming what was said in the meeting and that they could speak to HR or Management if they had any queries. The date on which work was expected to cease at the bodyshop was 30 September 2017.

67. Mr Hamberger stated that he was available to answer questions if anyone wanted to ask any. There were no questions. We find that Ms Kooyman burst into tears in the meeting. It is likely that everyone was surprised at the announcement and she was upset at the prospect of the bodyshop closing down. We find that the staff congregated with each other after Mr Hamberger made the announcement. We find it likely that they talked about it with each other. It is also likely that the Claimant found the announcement to be confusing. Up until that time, redundancy was not a word that he had in his vocabulary. His evidence to us was that he was told 'to go'. Those words were not in the written address. It is likely that Ms Kooyman spoke to him about the announcement.

68. As both the bodyshop and service manager for County Motor Works, Mr Coakley position was not at risk of redundancy but he had attended the meeting with his team. We find it likely that on the same day, sometime after the meeting, the Claimant spoke to Mr Coakley about the pay rise and about the issue of redundancy. In his witness statement the Claimant stated that he was aware from the meeting that there would be a letter sent out advising that there was a risk of redundancy. In the conversation with Mr Coakley that day, he asked him about the promised pay rise which Mr Coakley denied ever agreeing with him. We find it likely that in that conversation, Mr Coakley informed him that as it was likely that he would be made redundant, he should contact Boar's Tye and see if they would still employ him. We preferred the Claimant's evidence on this over that of Mr Coakley as there were parts of Mr Coakley's evidence that we found were self-serving rather than an attempt to assist the Tribunal. We found his evidence on the pay rise discussion to be unreliable as there was evidence that contradicted it in the bundle and when it was drawn to his attention in cross-examination, he was unable to explain it and instead stated that he did not remember. Also, the text from the Claimant to him on the following day, 31 August, appears to be the end of this conversation. In it, the Claimant referred to 'the job' as though Mr Coakley would know what job was being referred to.

69. We find it likely that the Claimant contacted Boar Tye on 30 August following his conversation with Mr Coakley and asked whether the job was still available. That text message was not in the hearing bundle but we did have a copy of the response from Boar Tye. Someone called Alistair from Boar's Tye wrote a text message to the Claimant at 10.23am the following morning, 31 August, to inform him that he would offer the Claimant the position for the final time and if he wanted it he could start immediately, if that suited him. He told the Claimant that he should let him know or call in for a conversation. It was likely that there were further text messages between them during the day.

70. The Claimant did not pack up his tools and leave after the meeting on 30 August or even at the end of the day. He attended work as normal on 31 August which was the day following Mr Hamberger's announcement. He received the offer of work from Boar's Tye that morning. By 6pm on 31 August the Claimant had made up his mind. By that time, he knew that Boar's Tye want him to start on the following Monday morning. He wrote the following text message to Mr Coakley at 18.00:

> *"Hi joe, Just got text 10 mins ago that I got the job and they want me start on Monday coming if I don't take until September month I lose it so I need to take it short notice I go to look after number one my self"*

71. We find that Mr Coakley responded by text to tell the Claimant that they could talk more in the morning and that he could borrow the Respondent's van to move his tools if he wanted. The Claimant was happy with the offer of the loan of the van and expressed his thanks in a text message. Mr Coakley replied to say that he always looked after the Claimant and the Claimant agreed. The Claimant told him Boar's Tye wanted him to bring his tools over early the following day, Friday 1 September, as they were not open at the weekend. Mr Coakley replied that they would be able to sort it all out during the following day so that the Claimant could take his tools later in the day.

72. We find it likely that between 30 August and 1 September there were conversations between the Claimant and his colleagues about the impending redundancy and the possibility of redundancy pay being paid to staff. We find that this evidence was given in Mr Coakley's witness statement and he was not challenged on it in the hearing. His evidence was that the Claimant told colleagues that he was leaving for a role at Boar's Tye and starting employment on 1 September and that he needed help arranging for a hire van to move his tools from County Motor Works. The Claimant's colleagues told him that he should not leave as he would lose out on money. The Claimant asked his colleagues not to tell Mr Coakley anything. We find that no-one was assigned to speak to the Claimant to ensure that he understood everything that was happening but we do find that in a situation where redundancy had not been expected and where there is a small team of 9 people who worked together in close proximity to each other; that it is highly likely that there were conversations about redundancy, redundancy pay and money between members of the team over those two days. Although the Claimant was profoundly deaf we had evidence of him having conversations with members of staff and there being communication between them. This was especially so with Ms Kooyman.

73. We find that following their exchange of text messages after work on 31 August, the Claimant went to see Mr Coakley when he attended work on the following morning, 1 September. There is a dispute between the parties as to what happened between them once he went to see Mr Coakley in the office.

74. We find it likely that they had a conversation in which Mr Coakley told the Claimant that he needed to resign. This was particularly required as the Claimant was intending to leave without working his notice. It was likely that the Claimant's intention was to simply walk out of his employment. That was why he told his colleagues not to let Mr Coakley know. We find that Mr Coakley typed the letter at page 439 on a computer and that the Claimant stood behind him as he did so. The wording of the letter is completely different to the previous resignation letters that the Claimant prepared himself which we have already referred to in these reasons. The letter was a resignation letter. It used words such as 'entitlement', 'redundancy', 'terminate' and 're-languishing' which we find were not words that the Claimant had used in his previous letters to the Respondent. We find that he did know the word 'entitlement' as he used it in a letter which we will come on to later in these reasons.

75. We find it unlikely that the Claimant dictated the letter to Mr Coakley as was Mr Coakley's evidence in the hearing but we do find that having been told that he had to resign, the Claimant and Mr Coakley worked together on the contents of the letter to record the Claimant's resignation in writing. Mr Coakley captured the Claimant's intention and sentiments in the letter using his words.

76. We considered the sentence that included the phrase 're-languishing any entitlement to redundancy pay' which is at the end of the letter. We carefully considered whether this was a sentiment that the Claimant expressed because his priority was on securing the new employment or whether this was a sentence inserted in the letter by Mr Coakley in an effort to close off any possibility of the Claimant coming back to the Respondent at a later date to ask for redundancy pay. It is also possible as Mr Coakley said in evidence that he explained the Claimant's entitlement to a redundancy payment to him and the Claimant instructed him to write something along those lines. We considered whether either of those options were what happened or whether something else entirely happened here. We find that even though he did not understand the concept of 'redundancy' the Claimant did understand the possibility of being entitled to a payment of money, however it was titled. The Claimant was able to read and did read documents in the hearing. Mr Coakley knew that the Claimant could read and could not have been sure that he could get a sentence that had not been agreed between them, past him when he gave him the letter to sign.

77. The Claimant was told that he needed to formally resign as he was not going to work his notice and in order for a P45 to be issued, which he needed for the other job. This was his last day so it was appropriate to get him to do the resignation letter then. There was a level of trust that the Claimant placed in Mr Coakley as we saw in their text messages where they both confirmed that Mr Coakley always looked out for him. The Claimant was also a person with dyslexia.

78. Having weighed up the facts that existed at the time, we cautiously find that it is more likely than not that when the Claimant signed this letter, he was aware that he

was choosing the new job over anything else, including the likelihood of money being due to him as a result of the bodyshop closing.

79. The Claimant signed the letter and left the business that day with a copy in his possession. The main part of the letter stated as follows:

> *"I wish to inform you that today will be my last day of employment with County Motor Works Bodyshop and that I terminate my employment.*
>
> *I will not be working my notice period or attending any redundancy meetings.*
>
> *I will be taking another position within the Bodyshop Industry thus re-languishing any entitlement to any redundancy payments"*

80. In his witness statement he stated that he did not understand the letter due to his dyslexia. This was not something he raised with Mr Coakley on the day. The Claimant did not get a relative or friend or advisor to read the letter for him that day or over the next few days as he could have done, if he did not understand the contents.

81. The Claimant subsequently received the letter dated 30 August from Mr Hamberger in which he repeated the information that had been read out to staff at the announcement meeting. The letter confirmed that the Respondent's preliminary view was that the Bodyshop Operations would cease on 30 September 2017. Due to this provisional view, all 9 associates who were assigned to the bodyshop were at risk of redundancy. The letter stressed that this was a provisional view and that the Respondent would continue to try to identify any alternative positions within the business that may be appropriate. The letter confirmed that members of staff would be invited to an individual meeting in due course to discuss the situation further. The letter set out what would be discussed in these individual meetings and the Claimant was advised that he was entitled to be accompanied to that meeting.

82. Lastly, the letter confirmed that if the Claimant was made redundant, he would be entitled to payment in lieu of any accrued but untaken holiday and that if he had more than 2 years' service, he would be entitled to a statutory redundancy payment calculated on the basis of age and weekly salary subject to the cap and length of service. The Claimant was advised that if he had any queries on the contents of the letter or the process, he should not hesitate to contact Mr Hamberger. The Claimant did not contact the Respondent in response to this letter, which we would have expected him to do, if he had not appreciated before that he was entitled to a redundancy payment.

83. We find that on 30 August, HR forwarded to Mr Hamberger a list of people that he was due to see for individual redundancy consultation meetings. The Claimant was on the list and was timetabled to be seen on 7 September. The Claimant was removed from the list following his departure on 1 September.

84. On 31 August, the Respondent wrote to the Claimant notifying him of the proposed meeting on 7 September and setting out again what would be discussed in that meeting and reminding him of his right to be accompanied to it. The way in which

his redundancy pay would be calculated was again set out in that letter.

85. The leaver notification form in the bundle confirms that the Claimant left on 1 September.

86. On 5 September Mr Coakley signed an HR prepared letter to the Claimant in which he thanked him for his letter of resignation and confirmed that the Claimant was not going to be working his notice and that he had relinquished any entitlement to a redundancy pay. The letter confirmed that the Claimant was entitled to 8 days holiday pay which it stated would be included in his final wage. The Claimant was also told that his P45 would be sent to him. He was asked to complete an exit form which was enclosed with the letter.

87. The Claimant replied to Mr Coakley's letter of 5 September. We find it likely that the Claimant wrote the response himself. In it he queried his entitlement to holiday pay and stated that he thought that he was owed 10 days holiday pay rather than 8. He also commented on his entitlement to be paid for working overtime. He used the word 'entitlement' a few times in that letter confirming our earlier finding that this was a word he was familiar with and was comfortable using. There was no mention of the word 'redundancy' or 'redundancy pay' as referred to in Mr Coakley's letter. He did not ask what those words meant or what payment Mr Coakley was referring to.

88. Of the remaining 8 employees in the bodyshop 7 were made redundant and Ms Kooyman was redeployed to another of the Respondent's businesses. All the other fitters/strippers were made redundant and the Respondent confirmed in evidence that the bodyshop was closed. It is likely that this occurred at the end of September as had been predicted.

Law

89. In this case the Claimant's complaints were of unfair dismissal, wrongful dismissal, direct disability discrimination, failure to make reasonable adjustments, breach of section 15 of the Equality Act 2010 and unlawful deduction of wages. The Respondent resisted all claims and also submitted that the discrimination complaints were out of time and unrelated to the redundancy situation and that therefore, it was not just and equitable to extend time. The Claimant submitted that those allegations formed part of a course of conduct.

90. The hearing dealt solely with issues and law on liability.

Unfair Dismissal

91. Section 94 of the Employment Rights Act 1996 (ERA) states that an employee has the right not to be unfairly dismissed by his employer.

92. In this case, if it is the Tribunal's judgment that the Claimant was dismissed, it would be concerned with the question of determining the reason for the Claimant's dismissal and whether it is one of the reasons set out in section 98(2) of the ERA. The

burden is on the Respondent to show the reason for the dismissal and that it is a potentially fair reason i.e. that it relates to the employee's conduct or capability or that the employee was redundant.

93. A dismissal that falls within those categories can be fair. In order to decide whether it is fair or unfair, the Tribunal needs to look at the processes employed by the Respondent leading up to and including the decision to dismiss. That would depend on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee. This shall be determined in accordance with equity and the substantial merits of the case.

94. Section 139 of the ERA states that an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to –

(a) The fact that his employer has ceased or intends to cease –

a. To carry on the business for the purposes of which the employee was employed by him, or

b. To carry on that business in the place where the employee was so employed, or

(b) The fact that the requirements of that business-

a. For employees to carry out work of a particular kind, or

b. For employees to carry out work of a particular kind in the place where the employee was employed by the employer,

have ceased or diminished or are expected to cease or diminish.

95. Section 135 of the Employment Rights Act states that:

"(1) An employer shall pay a redundancy payment to any employee of his if the employee –

(a) is dismissed by the employer by reason of redundancy, or

(b) is eligible for a redundancy payment by reason of being laid off or kept on short-time."

96. If the Claimant had not been dismissed but had resigned, that would be the end of the matter as there is no existing complaint of constructive unfair dismissal.

97. The Claimant submitted that he had been dismissed. He also submitted that the facts of this case lent itself to the "special circumstances" exception referred to in

these cases where the employee 'resigned'. He firstly referred to the case of *Barclay v City of Glasgow District Council* [1983] IRIR 313 in which an employee who was unfortunately described in the court report in terms that would not be used today – as 'mentally defective' - stated that he 'wanted his books' on the following day after an altercation with his manager. On the following day he was asked to sign a blank form, unaware that he was signing a resignation document. When he turned up for work on the next occasion, he was sent home on the ground that he had resigned. The EAT held that the Tribunal had erred in finding that the employer had been entitled to treat his unequivocal words of resignation as notice of termination, in circumstances where they knew that he was 'mentally defective'. The EAT confirmed that the Tribunal was correct to hold that the employee meant it when he demanded his 'books' in the heat of the moment. The real question however, was whether in the '*special circumstances'*, the employer was entitled to assume that this was a conscious, rational decision. The EAT held that the proper approach was to have regard, not merely to what was said on the day in question but to what happened on the following day. The Tribunal should also have taken into consideration the employer's indefensible practice of requiring the employee against his will to sign a blank document which was later completed as a letter of resignation. In the circumstances, the EAT commented that a reasonable employer would have at least consulted with one of the employee's sisters – who usually advocated for him at work – before assuming that he meant the words that he had used.

98. The Claimant also referred to the case of *Kwik-Fit (GB) Ltd v Lineham* [1992] IRLR 156, which was a case of an employee resigning in what could be described as the 'heat of the moment'. In that case during an argument with a senior manager, the claimant threw his keys on the counter and left. On the following day, he telephoned to ask for his money and when told that he had not been dismissed, he stated that he would not be back and would rather let the Tribunal decide the matter. The EAT held that the dismissal was unfair as the employers were not entitled to assume in all the circumstances that what occurred was in fact a resignation. The EAT stated -

'Where words or actions of resignation are unambiguous, an employer is entitled to treat then as such and accept the employee's repudiation of contract at once, unless there are special circumstances arising due to personality conflicts or individual characteristics. Words spoken or actions expressed in temper or in the heat of the moment or under extreme pressure, or the intellectual makeup of an employee may be such special circumstances. Where special circumstances exist, an employer should allow a reasonable period of time to elapse before accepting a resignation at its face value, during which facts may arise which cast doubt upon whether the resignation was really intended and can properly be assumed. If the employer does not investigate those facts, its runs the risk that evidence may be forthcoming which indicates to the Tribunal that in the special circumstances an intention to resign was not the correct interpretation when the facts are judged objectively. Such a reasonable period of time is likely to be relatively short, such as a day or two."

99. In *Willoughby v CF Capital plc* [2011] EWCA Civ 1115 the impact of "*special circumstances*" and what constitutes them was explored. In that case the Court of Appeal held that the starting point is the "*rule*" that a notice of resignation or dismissal (whether given orally or in writing) has effect according to the ordinary interpretation of

its terms. Once such a notice is given it cannot be withdrawn except by consent. LJ Rimer stated that the "*special circumstances*" exception to that rule is not strictly an exception but is rather in the nature of a cautionary reminder to the recipient of the notice that, before accepting or otherwise acting upon it, the circumstances in which it is given may require him first to satisfy himself that the giver of the notice did in fact really intend what he had apparently said by it. He must be satisfied that the giver really did intend to give a notice of resignation or dismissal; as the case may be. The nature of the "*special circumstances*" exception is not an opportunity for a unilateral retraction or withdrawal of a notice of resignation or dismissal but is for the giver of the notice to satisfy the recipient that he never intended to give it in the first place – that, in effect, his mind was not in tune with his words.

100. In the case of *Morton Sundour Fabrics v Shaw* [1966] 1WLUK 11 the Divisional Court held in a case where a foreman went out and found another job as soon as he was told that he would shortly be made redundant; that he had not been dismissed because at the time he gave notice of termination, he had not been given valid notice by his employers. In order for notice to be valid it must specify the date of termination or at least contain facts from which the date can be inferred.

Discrimination complaints

101. The Claimant's discrimination complaints all related to his disability. The Respondent conceded that the Claimant was disabled within the meaning of Section 6 and Schedule 1 to the Equality Act 2010 by reason of his hearing impairment.

Direct Discrimination and Discrimination Arising

102. Section 13 and 15 of the Equality Act refer.

103. In dealing with this complaint the Claimant submitted that the Tribunal must consider:

(a) whether the employer has treated the employee unfavourably

(b) whether the unfavourable treatment was because of something arising in consequence of the employee's disability. In answering that question the Tribunal must:

i. identify the something that is said to arise in consequence of the employee's disability (X)

ii. decide whether X arose in consequence of the employee's disability;

iii. decide whether the reason for the unfavourable treatment was because (i.e. to a significant extent (per Underhill J in *IPC Media v Millar* [2013] IRLR 707]) of X; and

iv. decide whether the unfavourable treatment is a proportionate means of achieving a legitimate aim. That is, whether: (a) there is

a legitimate aim which the employer was pursuing; and (b) the treatment was a proportionate means of achieving it.

The duty to make reasonable adjustments

104. The law in relation to this complaint is the Equality Act 2010, Sections 19, 20 and 21. Section 19 states that: -

> *"(1) A person (A) discriminates against another (B) if A applied to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.*
>
> *(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's If –*
>
> *(a) A applies, or would apply, it to persons with whom B does not share that characteristic,*
>
> *(b) it puts, or would put persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*
>
> *(c) it puts, or would put, B at that disadvantage, and*
>
> *(d) A cannot show it to be a proportionate means of achieving a legitimate aim."*

105. Disability is listed as being one of the protected characteristics.

106. Section 20 sets out the duty to make adjustments as follows:

> *"(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply…*
>
> *(2) The duty comprises the following three requirements,*
>
> *(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.*
>
> *(4) The second requirement is a requirement, where a physical feature puts the disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage,*

(5) The third requirement is a requirement, where 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, to take such steps as it is reasonable to have to take to provide the auxiliary aid."

107. Section 21 deals with the consequences of a failure to comply with the duty:

"(1) A failure to comply with the first, second or third requirements is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against B if he fails to comply with that duty in relation to that person.

(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second and third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of another provision of this Act or otherwise."

108. Schedule 8 deals with the employer's knowledge and sets out the following:

"20(1) A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know –
[(a) N/A to this case]

(b) … that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement

109. In the case of *Environment Agency v Rowan* [2008] IRLR 20 the EAT set out Guidance on how an employment Tribunal should approach a complaint of a failure to make reasonable adjustments under what was then section 3A(2) of the DDA by failing to comply with the Section 4A duty. The Tribunal must identify the following (amended since the equality Act 2010): -

109.1 the provision, criteria or practice applied by or on behalf of an employer, or;

109.2 the physical feature of premises occupied by the employer;

109.3 N/A

109.4 the identity of non-disabled comparators (where appropriate; and

109.5 the nature and extent of the substantial disadvantage suffered by the Claimant.

110. The EAT held that an employment Tribunal cannot properly make findings of a failure to make reasonable adjustments without going through this process. Unless it has identified the four matters as set out above it cannot go on to judge if any proposed adjustment was reasonable.

111. The burden of proving discrimination complaint rests on the employee bringing the complaint. However, it has been recognised that this may well be difficult for an employee who does not hold all the information and evidence that is in the possession of the employer and also because it relies on the drawing of inferences from evidence. The concept of the "shifting burden of proof" was developed to deal with this aspect. This concept was discussed in a number of cases and is set out in section 136 of the Equality Act which states that "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. If A is able to show that it did not contravene the provision then there would be no need to consider its explanation.

112. The Tribunal can consider all evidence before it in coming to the conclusion as to whether or not a Claimant has made a prima facie case of discrimination (see also *Madarassay v Nomura International Plc [2007] IRLR 246)*.

113. In every case the Tribunal has to determine the reason why the Claimant was treated as s/he was. As Lord Nicholls put it in *Nagarajan v London Regional Transport [1999] IRLR 572* "this is the crucial question". It was also his observation that in most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator. If the Tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reasons. It is sufficient that it is significant in the sense of being more than trivial.

Time limits

114. Section 140A and 140B of the Equality Act 2010 states that (these) complaints of discrimination under section 120 may not be brought after the end of (a) the period of 3 months starting with the date of the act to which the complaint relates, or (b) such other period as the employment Tribunal thinks just and equitable. Subsection (3) states that for the purposes of this section – (a) conduct extending over a period is to be treated as done at the end of the period; (b) failure to do something is to be treated as occurring when the person in question decided on it.

115. In relation to the reasonable adjustments complaint the Respondent referred to the case of *Abertawe Bro Morgannwyg University Local Health Board v Morgan* [2018] EWCA Civ 640 in which the Court of Appeal took the view that, where the breach is a failure to act, time runs from the end of the period in which the employer might reasonably have been expected to comply with the relevant duty.

116. In considering whether it was appropriate to extend time where complaints were issued outside of the 3-month time limit, the Tribunal noted that in claims before the civil courts, section 33 of the Limitation Act 1980 applied. That section provided that when considering whether to allow a claim presented outside of the primary time

limitation period to proceed, the court is required to consider the prejudice which each party would suffer as a result of granting or refusing an extension, and to have regard to all the other circumstances, such as: (a) the length of and reasons for the delay; (b) the extent to which the cogency of the evidence is likely to be affected by the delay; (c) the extent to which the party sued had co-operated with any requests for information; (d) the promptness with which the Claimant acted once he or she knew of the facts giving rise to the cause of action; and (e) the steps taken by the Claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action (see *British Coal Corporation v Keeble* [1997] IRLR 336).

117. There is no presumption that a Tribunal should exercise its discretion to extend time, and the burden is on a Claimant to persuade the Tribunal to exercise its discretion in their favour. In *Robertson v Bexley Community Centre* [2003] IRLR 434, Auld LJ held that 'the exercise of discretion is the exception rather than the rule'.

Unlawful deduction of wages

118. The Respondent correctly submitted that in order for an employee to establish a claim for arrears of pay, the sums claimed must be ‘properly payable’ i.e. payable pursuant to a contract.

119. Section 13 ERA states that an employer shall not make deduction from wages of a worker employed by him unless the deduction is required or authorised to be made by a statutory provision or a provision of the worker’s contract or the worker has previously signified his agreement/consent to the making of the deduction in writing.

120. Subsection (3) states that 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 as a deduction made by the employer from the worker’s wages on that occasion.

Applying Law to Facts – Here the Tribunal follows the final agreed list of issues:

Unfair Dismissal

121. *Was the Claimant dismissed? What was the reason for dismissal (if there was a dismissal)? Was the dismissal fair? Was the Claimant wrongfully dismissed? if so was he entitled to be paid notice pay?*

122. The Claimant’s case was that he was either dismissed by Mr Hamberger’s address to the team on 30 August 2017 or that he was dismissed when Mr Coakley said to him that he was being made redundant and should try to get the other job back. His case was that Mr Coakley wrote out a resignation letter and told him that if he did not sign it, he would not receive his P45, thereby coercing him into signing it. The Claimant’s case is that in so doing, he dismissed him. There is no claim for constructive dismissal in this case.

123. In this Tribunal’s judgment, Mr Hamberger’s address was simply an

announcement informing staff of a redundancy situation. This was the beginning of the redundancy consultation. The team were informed that the Respondent were going to do everything to explore ways of avoiding redundancies. Steps would be taken to identify alternative employment, if there was any and staff were advised that they would be given time off to look for other jobs. Staff were advised that there would be a letter coming that would confirm what had been said at the meeting. In our judgment, the Claimant did not consider that he had been dismissed in that meeting as his actions following the meeting were not aligned with a belief that he had been dismissed. The Claimant attended work on the following day and did not collect his tools and leave. He did not give any indication that he considered that he had been dismissed. The Claimant confirmed in evidence that he understood that there would be a letter coming out to him from the Respondent giving him more information about redundancy.

124. In his address, Mr Hamberger gave no indication of when the 8 members of staff in the bodyshop would be made redundant or would lose their jobs. Work was expected to cease at the bodyshop on 30 September which would mean that it was unlikely that they would be working there beyond that date but they were not told that they would be made redundant then. Mr Hamberger's address was silent on the issue of notice which confirms that it was not a dismissal *(Morton Sundour Fabrics)*. It is our judgment that by the end of the meeting, even though he was not familiar with the word '*redundancy'*, the Claimant knew that there were changes coming, he knew that there would be a letter coming to him at home from the business explaining the changes and he knew that he would be given time to attend interviews for a new job while still employed at the Respondent. it is likely that he also knew that there were going to be individual meetings with Mr Hamberger before anything else happened.

125. Even if we took the word '*redundancy'* out of consideration as we agree that this was a word that had not been in the Claimant's vocabulary up until that address; the address did not ask staff in the bodyshop to leave, Mr Hamberger did not tell them that their jobs had ended and crucially, he spoke about letters that would be sent, meetings that had to happen in the near future and searches for alternative work that needed to be made; all of which meant that they were likely to continue to be employed - at least while that happened. Mr Hamberger's words were unambiguous and clear.

126. It is our judgment that even though the Claimant was a disabled person, there was nothing said in Mr Hamberger's address that should have led the Claimant and his colleagues to conclude that they had been dismissed. The Claimant and his colleagues went back to work and discussed what had happened in the meeting. The Claimant had an opportunity to speak to Mr Hamberger and Mr Coakley after the meeting to ask for clarification of the term 'redundancy' if that was something that he had difficulty comprehending. The Claimant could not have understood at the end of the meeting that he was dismissed. In this Tribunal's judgment the Claimant and his colleagues were not dismissed by Mr Hamberger's address.

127. It is our judgment the Claimant spoke to Mr Coakley after the meeting because he trusted Mr Coakley. They had worked together for a long time. The Claimant did not read the Respondent's redundancy policy but trusted his conversation with Mr Coakley. Mr Coakley encouraged the Claimant to make enquiries of Boar's Tye to see

whether the job that the Claimant had previously been offered was still available. In our judgment Mr Coakley did not tell him that he had to leave immediately. It is likely that everyone in the bodyshop was talking about what they were going to do and where they were going to go and this job was the Claimant's option. The Claimant told his colleagues that had had got a job at Boar's Tye and was leaving and that they should not tell Mr Coakley. It is likely that this happened during the day on 31 August as he received the text message offering him the job at 10.34am but did not send the resignation text message to Mr Coakley until that 6pm that evening. Mr Coakley's evidence was that the Claimant's colleagues told him that he should stay for the redundancy money.

128. It is our judgment that the Claimant resigned his employment. In our judgment, the Claimant resigned by the text message he sent to Mr Coakley on 31 August. In that text message he stated that he had obtained the job at Boar's Tye and was leaving the Respondent. He acknowledged that he was giving his employer short notice but he felt that he had to put himself first. This was a clear repudiation of his employment contract with the Respondent. The Claimant indicated that he would be starting his new job on the following Monday and that he wanted to take his tools over on Friday 1 September so that they would be at Boar's Tye on Monday morning ready for him to start work. Mr Coakley responded by text message to indicate that the Respondent accepted his resignation and that the Claimant could borrow the Respondent's van to take his tools to the new job. In our judgment, that text message was the Claimant's resignation which was accepted by the Respondent and arrangements put in place to enable him to start his new job on Monday.

129. This was not a resignation in the '*heat of the moment'* as in *Lineham*. The meeting at which the Hamberger address had been given, had happened the previous day. Following the meeting, the Claimant had sufficient time to speak to Mr Coakley, to seek independent advice and to speak to his family, if he was not aware of the implications of a redundancy situation. The Tribunal also did not agree that the principle in *Barclay* applied to this case. We did not have the special circumstances in this case, that existed there. In that case the Claimant had mental capacity issues and the employer was aware that he needed his sisters to advocate for him in the workplace. That was a very different situation to that of the Claimant in this case. Although the Claimant is a person with a profound hearing disability, there was no evidence of him having cognitive or mental impairment. Apart from his sister assisting him with the appraisal form in 2006, he generally dealt with work matters on his own. The Claimant's vocabulary is limited but he was able to make decisions about where he wanted to work and who he wanted to work for. In our judgment, the Claimant is a person capable of making decisions on his employment. He had previously resigned the Respondent's employment on two previous occasions because he believed that the Respondent was not paying him enough and he would be better paid at Boar's Tye. There was no contention that he was unaware of what he was doing on those occasions. It is our judgment that he made an independent decision to resign on this occasion.

130. Unlike the Claimant in *Lineham*, no-one was in any doubt as to the Claimant's intentions on 31 August. This was borne out by his subsequent actions. As stated in the text message, the Claimant came in on 1 September borrowed the Respondent's

van, loaded it up with his tools and left. He did not return to work for the Respondent. It is our judgment that when he sent the text on 31 August he was not confused. In our judgment, the Claimant made a decision to focus on the new job prospect, which he wanted to secure, rather than any money that might be coming to him from the Respondent. That was a rational decision even though it may not have been the best or wisest decision. It was unlikely that he understood the word '*redundancy'* at the time of the announcement but we judge that whatever his understanding was then, by the time he resigned he had chosen the more immediate issue which was to take up a job which gave him the security that he was looking for; over anything else.

131. We do not find that there were special circumstances in this case, in the way envisaged by the authorities. The Claimant is a disabled person and the implications of that will be considered below in relation to his discrimination complaints but in relation to the claim for unfair dismissal, it is our judgment that he made a conscious, informed decision to resign as he had another job to go to which he did not want to lose. He clearly did not want to let Boar's Tye down and he did not want to lose this opportunity. The evidence did not support a conclusion that he was lacking in knowledge or confused about the fact that there was likely to be redundancy pay or money coming to him in the near future from the Respondent, if he stayed.

132. It is our judgment that in their discussion in the office on 1 September, Mr Coakley informed him that he could not just leave but that he had to formally resign in order to get his P45. The Respondent wanted a formal resignation in writing. By that time the contract had already been brought to an end. The Claimant was also leaving without working his notice. It made sense, due to the Claimant's previous resignations and retraction, the redundancy situation and the uncertainty around it; that the Respondent would ask the Claimant to submit a formal letter to confirm his resignation rather than rely on the text message. That was not coercion by Mr Coakley. It is our judgment that the Claimant asked Mr Coakley for assistance in writing the letter and it is highly likely the words in it are likely to be Mr Coakley's words putting across what the Claimant wanted to say. They discussed it as Mr Coakley wrote it down. It is our judgment that the Claimant had already resigned and this letter was to formalise the situation.

133. We did debate between us whether the Claimant told Mr Coakley specifically to write in the letter that he was relinquishing his right to redundancy pay or words to that effect. On the one hand, he would have had a better understanding of the word '*redundancy'* by this time and on the other hand, some of the wording in the letter is Mr Coakley's rather than the Claimant's. A comparison with the earlier resignation letters of 25 November 2016 and 31 May 2017 and the text message of 31 August shows that they are very different to this letter. However, the Claimant read the letter and signed it. He did say that he could not understand every word due to his dyslexia. Even though they were not his words, by signing the letter he confirmed his agreement to them being from him. The Claimant left the Respondent with a copy in his possession. If he was not clear on what it said, we would have expected him to get someone such as a relative to read/explain it to him and to complain about it to the Respondent. That never happened. In our judgment, this was because he agreed with its contents as it confirmed the decision to leave which he had already communicated to the Respondent in the text message of 31 August.

134. The Claimant did not return to work after 1 September. The Respondent wrote two letters to him after that date. The Claimant received a letter dated 31 August which notified him of the redundancy consultation meeting on 7 September and which contained a calculation of his redundancy pay entitlement. There was another letter dated 5 September which confirmed that the Claimant had resigned, his holiday entitlement, that he was not going to work his notice and that he had relinquished any entitlement to redundancy pay. In our judgment, that was the Respondent checking that the situation was as it understood it to be. This was the Respondent, as stated in *Willoughby*, checking that the Claimant did mean to resign and forego any redundancy pay. This was his opportunity to complain that Mr Coakley had made him sign a letter that he did not agree with or to claim that he had been tricked into resigning – if that was his belief. If the Respondent was in any doubt that the Claimant had resigned with the knowledge that this meant that he would not get redundancy pay; his response made that clear. In his response, which we judge the Claimant personally wrote, he only addressed the issue of holiday pay. He made no query about redundancy pay or his entitlement to it.

135. Taking all the above into consideration, it is this Tribunal's judgment that the Claimant resigned his employment. The Claimant was not dismissed.

136. The complaint of unfair dismissal fails and is dismissed.

137. The Claimant was not wrongfully dismissed as he resigned. The Claimant is not entitled to notice pay.

Unlawful discrimination on grounds of disability

Selection for redundancy

138. *Was the Claimant selected for redundancy? Was the Claimant dismissed by reason of redundancy? Was the Claimant thereby treated less favourably than a hypothetical comparator in materially similar circumstances?*

139. In his evidence the Claimant stated that he did not agree that his selection for redundancy had anything to do with his disability.

140. It is our judgment that the Respondent did not treat the Claimant less favourably in including him in the pool selected for the redundancy. The whole team that worked in the bodyshop was invited to the consultation meeting on 30 August. Everyone was subsequently made redundant or resigned, apart from Ms Kooyman who was redeployed elsewhere in the Respondent's business.

141. If the Claimant had not resigned it is highly likely that he would have been made redundant with the other fitters, who we understand were not disabled. As it is, the Claimant resigned his employment and was not dismissed.

142. The Claimant accepted that there was a genuine redundancy situation at the Respondent. it is our judgment that there was no evidence that the Respondent was not in a genuine redundancy situation. The Claimant was not subjected to less

favourable treatment by the Respondent in relation to his selection for consultation on redundancy.

143. This claim fails and is dismissed.

Failure to make reasonable adjustments

144. The Claimant complains that the Respondent applied the following provisions, criterion or practices which put him at a substantial disadvantage because of his profound hearing impairment. The alleged PCPs were i) to communicate with colleagues and managers; ii) requiring colleagues to respond to audible-only fire alarms: iii) judging an employee's performance by way of oral communication skills; iv) employees assuming valid communication.

Did the Respondent apply these PCPs?

145. In relation to item iii), it is our judgment that the Respondent did not apply a PCP of judging the Claimant's or anyone's performance by way of oral communication skills. The Claimant was judged on the way he performed his duties. The appraisal form completed in 2009 demonstrated that he was well regarded at the Respondent and there were no complaints/issues with his performance. There was no evidence of a decreased likelihood of progress or increased risk of dismissal based on objective criteria – which was stated to be the substantial disadvantage which this PCP would alleviate.

146. In relation to item iv), it is also our judgment that there was evidence that there was valid communication between the Claimant and his colleagues. The Claimant successfully negotiated pay rises with his manager. He communicated well with Mr Coakley and Ms Kooyman and to a lesser extent as they did not work together – with Mr Hamberger. The Claimant withdrew allegations of harassment by some of the fitters which was likely to be the main issue that the request for deaf awareness training was meant to address.

147. The Claimant's main complaint seemed to be that he had trouble understanding the English Language on the course papers that he had to study and leant in relation to the ATA and other structured training that the Respondent asked him to undertake. It was not his case that he had difficulty with any of the car manuals or the instructions given to him at work. His 2009 appraisal confirmed that he followed instructions and Mr Coakley also confirmed this in evidence.

148. The Respondent did not apply a PCP of requiring colleagues to respond to audible-only fire alarms as stated in item ii). The Respondent did not put in the flashing fire alarm that the Claimant requested but it did put in another measure to address the substantial disadvantage that the Claimant perceived which was the adjustment of identifying one of the fire marshals as the person who would make sure that the Claimant left the building if there was a fire alarm. We heard about one occasion when that did not work as well as intended but it is likely that it worked on other occasions.

149. It is this Tribunal's judgment that the only one of the alleged PCPs that was applied was i) in relation to communication in general. There was no requirement or

practice for the Claimant to understand the redundancy policy and novel orders but he was expected and did communicate with colleagues and managers. He did so by speaking to them, lip reading and engaging in written communication with them. There was no evidence that the Claimant was asked to comply with novel orders. The announcement of the redundancy situation was not a novel order as the Claimant was not asked to do anything in relation to the announcement. He was told and recalled in evidence that he was told that there would be letters sent to all members of staff and there would be meetings with managers so that he could discuss it further.

Consideration of whether the claim for failure to make reasonable adjustments is within time and can be considered by the Tribunal.

150. When does time start to run? In our judgment, it is likely that the Claimant asked for the iPad from around 2010 and the deaf awareness training from 2009. It is the Claimant's case that both of these adjustments were related to the communication with colleagues and managers PCP and would have alleviated the substantial disadvantage he alleges that he experienced because of the application of that PCP. We considered that the latest proposed adjustment was raised in 2015 which was the request for a flashing fire alarm to ensure that the Claimant was able to respond to the alarm whenever there was a fire drill or an actual fire.

151. It was the Claimant's submission that the failure to provide the iPad created the situation that arose at the redundancy and therefore it should be considered as a continuing failure bringing it within time. We did not agree. The Claimant's case was that the iPad would have allowed him to look up unfamiliar words or phrases rather than to communicate with his managers.

152. It is our judgment that the Claimant's ET1 was issued on 5 January 2018, which means that these complaints were brought to Tribunal substantially outside of the statutory time limit of 3 months. It was not submitted that these were part of a continuing act.

153. The Respondent submitted, applying the principle in the case of *Abertawe* that time should start to run at the end of the period in which the Respondent might reasonably have been expected to comply with the relevant duty. The Tribunal agrees that that is the applicable law. Applying that principle to this case, the Claimant should have issued his complaints of a failure to make reasonable adjustments in relation to these issues in at the latest, 2010 (deaf awareness training) and 2011 (iPad) respectively. The decision on the fire alarm was made in 2016 and so any claim should have been brought in 2017. There was no evidence that he raised those issues again with the Respondent. He wrote letters to Mr Coakley thereafter and to HR but they were about his wages. The opportunity was there for him to raise the issue of the reasonable adjustments that he was concerned about, but he did not.

154. In this Tribunal's judgment, the complaints of failures to make reasonable adjustments are out of time. They are substantially out of time as the complaints about the Respondent's failure to make them were not issued until 2018 making them at least 1, 7 and 8 years out of time.

155. Was it just and equitable to extend time to allow us to consider this complaint? The Claimant's first submission was that he did not believe that he had to persuade the Tribunal to use its discretion to extend time. We did not have submissions or evidence on why these complaints were not brought to the Tribunal before 2018. The Claimant's next submission was that it must be just and equitable to extend time.

156. We were mindful of the principle that time limits in the employment Tribunal must be maintained and that 'the exercise of discretion is the exception rather than the rule'. The Claimant has to persuade the Tribunal to use its discretion to extend time.

157. The Claimant is a disabled person. The Claimant raised issues of concern in writing to the Respondent on occasions during his employment. He asked for adjustments related to his disability in 2009, 2010, and 2017. He continued to write to the Respondent in 2016 and 2017. In his letters of resignation, he referred to his frustration over not getting annual pay increases and parts being delivered late. Those letters were written closer in proximity to the requests for reasonable adjustments but they are not mentioned within them.

158. The Claimant sought advice from a solicitor in order to bring this complaint in 2018. It is possible that he could have done so sooner. If these matters were of continuing concern to him, it is our judgment that he would have sought legal advice and/or brought a complaint much earlier that the Respondent had failed to make reasonable adjustments for him.

159. It was not submitted that the delay was due to the Respondent not cooperating with the Claimant in response to any requests for information. We did not have any information on the steps taken by the Claimant to obtain appropriate legal/professional advice once he realised that the Respondent were not going to implement the adjustments he requested.

160. The Respondent was able to respond to the complaint. It is likely that if the complaints had been brought years earlier there may have been some additional evidence that the Respondent could have brought to assist the Tribunal but as Mr Coakley was available and as there were records of the appraisal meeting and the correspondence around the fire alarm, the Respondent was able to respond to the complaints. The cogency of the evidence was not particularly adversely affected by the delay.

161. If the Tribunal does not extend time the Claimant would not be able to pursue these complaints and so the prejudice would weigh heavily against him if time was not extended. Having considered the circumstances, it is this Tribunal's judgment that the extent of the delay and the fact that the Claimant does not appear to have raised them again lead us to conclude that he abandoned his requests for reasonable adjustments. Whether he did or not, it is this Tribunal's judgment that it would not be just and equitable to use our discretion to extend time to allow complaints issued 1, 7 and 8 years out of time to be considered by an employment Tribunal.

162. It is our judgment to maintain the statutory time limits, which means that we

have no jurisdiction to consider the complaints of failure to make reasonable adjustments.

163. The complaints of the Respondent's failure to make reasonable adjustments are dismissed.

164. *Section 15 Equality Act 2010 – Did the Respondent subject the Claimant to unfavourable treatment because of something arising in consequence of his disability? The Claimant relies on the following "unfavourable treatment":*

164.1. The alleged dismissal at the Hamberger address. The 'something arising' is "because the Claimant was unable to understand that he had not yet been made redundant, owing to his reduced vocabulary and comprehension, symptoms of the Claimant's disability. Put differently, because the Claimant understood that he had been made redundant"

164.2. Selection for redundancy. The 'something arising' was "because the Claimant had an impaired ability to communicate, being a symptom of his disability, and the Respondent assessed performance in part on the basis of oral communication".

165. In relation to point (1). It is already the Tribunal's judgment that there was no dismissal in this case. The Hamberger address did not dismiss the Claimant. It did not give notice of dismissal. The Claimant was not dismissed by Mr Hamberger's address. The Claimant resigned his employment by text message to Mr Coakley on 31 August.

166. Even if the Claimant had an unclear understanding of what happened in the meeting, the Claimant does not identify what the unfavourable treatment was that he complains of. The Respondent informed him and his colleagues on 30 August that he was at risk of redundancy and that a redundancy consultation process had begun. In his written submissions, Mr Griffiths for the Claimant stated that the unfavourable treatment was the Claimant's perception at the Hamberger address that he had been dismissed. in his oral submissions he stated that it was either that the Hamberger address was not as it seemed and it was an immediate dismissal or that the Respondent required the Claimant to understand that he had not been made redundant and to not resign. Neither of those identify what the Respondent's unfavourable treatment.

167. The Respondent did not write the Hamberger address in the way it did and/or Mr Hamberger did not give the address in the way he did because the Claimant had reduced vocabulary and comprehension. The Respondent did not conduct the redundancy consultation process in the way it did because the Claimant was unable to understand that he had not been made redundant.

168. The Respondent was going to hold an individual meeting with him in which he would have had an opportunity to discuss what was likely to happen and to ask any questions about it but the Claimant did not wait for the letter or for the meeting. He confirmed in his evidence that he was aware that the Respondent proposed to send a

letter and to hold a meeting with him.

169. In relation to point (2). It is our judgment that the Claimant was not selected for redundancy because of his disability. The Claimant agreed that was the case during the hearing and that is the judgment set out above.

170. The Respondent closed the bodyshop and all fitters were either made redundant or resigned. The Claimant was employed in the bodyshop as a fitter and it was likely that had he not resigned, he would have been dismissed shortly after that time. The Respondent valued the Claimant's contribution to the business and did not assess his performance unfavourably based on his oral communication. The written appraisal form and the Respondent's evidence was that the Claimant was good at his job, had good relationships with his manager and colleagues and that he was considered as a capable colleague.

171. In this Tribunal's judgment, the Respondent did not subject the Claimant to the alleged unfavourable treatment. There was no unfavourable treatment to the Claimant because of something arising in consequence of his disability.

172. The Claimant did have reduced vocabulary and comprehension arising from his hearing impairment. However, in our judgment the Respondent did not compose or give the Hamberger address in the way it did, because of something arising in consequence of his disability. Also, it is our judgment that the Respondent did not select the Claimant for putting at risk of redundancy because of something arising in consequence of his disability.

173. The complaint of unfavourable treatment because of something arising in consequence of the Claimant's disability fails and is dismissed.

Unlawful deduction of wages

174. The Claimant brings a claim for wages that he says are owed to him because the Respondent agreed to increase his wages to £32,500 in June but failed to pay him the increase in his July wage. His claim is for the difference in what he was paid and what he ought to have been paid if the increase had been applied.

175. This Tribunal found Mr Coakley's evidence on this matter to be unreliable. In this Tribunal's judgment, Mr Coakley held himself out as having authority to agree pay increases with the Claimant. We find it likely that Mr Coakley led the Claimant to believe that he had the authority to make decisions about pay rises and that he did not need to get anyone else's permission to do so. He had agreed a pay rise in 2016 with the Claimant without the need to check with senior managers first. In our judgment, it is highly unlikely that, Mr Coakley told the Claimant that this would not come into effect until it had been sanctioned by a more senior manager, at the time they talked about the pay rise on 30 June. In order to reassure the Claimant that he could rely on his authority to make such an agreement, Mr Coakley asked him whether he had ever let him down. He asked the Claimant to rely on the history of their working relationship as evidence that he had authority to do this.

176. In our judgment, if there had not been an agreement on 30 June it is unlikely that the Claimant would have remained in the Respondent's employment. He had given in his resignation, had a job to go to and was in the process of packing up his tools to leave. In those circumstances, it is unlikely that he would have remained if he had not made an agreement with Mr Coakley.

177. It is more likely than not that the chain of events the Claimant described in his contemporaneous email to HR is what occurred on 30 June.

178. It is this Tribunal's judgment that Mr Coakley as a senior manager and someone who had previously had wage review discussions with the Claimant and his colleagues, had the authority to bind the Respondent to any agreement that he made with an employee.

179. In this Tribunal's judgment, the parties made a binding agreement when they shook hands on 30 June.

180. It was sometime later and around the time that Mr Coakley knew that the redundancy consultation was about to be announced that the Claimant asked him about the wage rise again. Mr Coakley informed him that he needed to speak to a senior manager about it.

181. It is our judgment that they made a binding agreement on 30 June for the Claimant to remain in employment and rescind his resignation for an increased wage of £32,500per annum.

182. It is our judgment that the Claimant's complaint of unlawful deduction of wages succeeds.

Remedy

183. The agreement between the Claimant and Mr Coakley was for an increased wage of £32,500. The Claimant's wage was increased to £30,000 from 1 January 2017. The increase agreed on 30 June was of £2,500 to take his wage to £32,500 and was due to start from July 2018. The Claimant was employed for two further months before his resignation on 31 August. The Respondent paid him at the rate of £30,000 for the months of July and August.

184. The Claimant has included a figure of £416.66 in his schedule of loss for this element. It is likely that this was calculated by taking £2,500/12 x 2. It is this Tribunal's judgment that this calculation is accurate. The Claimant is owed the gross sum of £416.66 as his remedy for his successful complaint of unlawful deduction of wages.

185. It would be disproportionate and not in keeping with the overriding objective for the Tribunal to require the parties to incur the costs of attending a remedy hearing on the Claimant's successful claim as it is clearly set out in the schedule of loss and easily calculated and understood. The Tribunal has made the judgment based on its understanding of the complaint and the calculation in the schedule of loss.

Judgment

186. The Claimant resigned. He was not dismissed. His complaint of unfair dismissal failed and is dismissed.

187. The Claimant's complaints of direct discrimination and discrimination in consequence of something arising, fail and are dismissed. It is our judgment that the complaint of failure to make reasonable adjustments is out of time. We were not able to use our discretion to extend time to enable us to consider them because of the considerable time that had elapsed between the dates on when these issues were raised with the Respondent and the date of the claim; and the other factors referred to above.

188. The Claimant's complaint of unlawful deduction of wages succeeds. The Respondent is ordered to pay the Claimant the sum of £416.66 as his remedy for his successful complaint.

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Employment Judge Jones
Date: 19 March 2020