Case Numbers: 1400574/2019, 1400620/2019, 1400648/2019, 1400736/2019, 1400855/2019,1401024/2019, 1402723/2019,1404205/2019

EMPLOYMENT TRIBUNALS

Claimants		**Respondents**
1400574/2019 Miss J Roe 1400620/2019 Miss L Tate 1400648/2019 Miss B Gordon 1400736/2019 Mr S Galyer 1400855/2019 Mr W Chagas Pestana 1401024/2019 Mrs E Peverelle 1402723/2019 Mr E Karaca 1404205/2019 Miss A Powell	**v**	1. Botleigh Grange Hotel Ltd (In Administration) 2.Botleigh Grange Ltd (In Administration) 3. Addison Way Ltd 4. Secretary of State for BE&IS

Heard at: **Southampton** **On:** **11 and 12 June 2020**

Before: **Employment Judge Dawson**

Appearances
For the Claimants: Mr Edwards, for Mrs Peverelle and Mr Karaca,
The following claimants appeared in person:
Mr Chagas Pestana, Mr Galyer, Miss Gordon, Miss Powell, Miss Roe, Miss Tate
For the Respondents: No attendance

JUDGMENT having been sent to the parties on 17 June 2020 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided.

Executive Summary of Reasons

1. Due to a transfer of undertaking on 29 January 2019, all of the claimants, except for Mrs Peverelle, were employed by Addison Way Ltd at the date of the termination of their employment and it was responsible for any deduction from their wages or non-payment of their holiday pay.

2. Mrs Peverelle was employed by Botleigh Grange Hotel Ltd at the date of her dismissal and it would have been liable for any deduction from wages or non-payment of holiday pay. However, the action against it has been stayed and no judgment is made against it.

3. Because Botleigh Grange Hotel Ltd is in administration the Secretary of State for Business Energy & Industrial Strategy ought to make a payment to Mrs Peverelle under section 182 Employment Rights Act 1996.

4. Botleigh Grange Ltd was not, at any point, the claimants' employer.

5. The value of individual claimants' claims is set out within the following reasons.

REASONS

6. The following reasons were given orally at the hearing on 12 June 2020.

The claims

7. The 8 claims which I must determine are all for non-payment of wages and, in some cases, non-payment of holiday pay. As part of his claim, Mr Karaca makes a claim in respect of employee pension contributions which were deducted from his wages but not paid to the pension fund in which he was enrolled. He and Mrs Peverelle also seek an uplift to any award because they raised a grievance which was not dealt with.

8. All of the claims are against Botleigh Grange Hotel Ltd, Botleigh Grange Ltd and Addison Way Ltd. In addition, 3 of the claims, those of Mr Pestana, Mrs Peverelle and Mr Karaca are also made against the Secretary of State for Business Energy & Industrial Skills.

9. At the point when proceedings were presented, Botleigh Grange Hotel Ltd was in administration and a stay was ordered in respect of all claims against it. Companies House shows that the administration started on 29 January 2019. The administrator has refused to consent to the proceedings continuing against Botleigh Grange Hotel Ltd.

10. Botleigh Grange Ltd went into administration on 13 January 2020 and proceedings against it were also stayed. However, by email dated 25 March 2020, the administrators of that company consented to proceedings by Mrs Peverelle (1401024/2019) and Mr Karaca (1402723/2019) continuing against the company. No response has been entered by Botleigh Grange Ltd to either claim. No consent has been given by it to the continuation of any other proceedings.

11. Addison Way Ltd has not entered a response.

12. The Secretary of State for Business Energy & Industrial Skills did present a response to the claims of Mrs Peverelle and Mr Karaca, denying that Botleigh Grange Hotel Ltd or Botleigh Grange Ltd were their employer, but has not appeared at this hearing. I have taken into account the written representations made with the response. In particular the Grounds of Resistance state:

> The Secretary of State has been unable to verify the claimants' employment details or claim with the Administrators and has had no alternative but to reject the applications for payment.
>
> So that the Redundancy Payments Service ("RPS") can determine an employee's entitlement and confirm that a company or individual has been declared formally insolvent, the IP must provide information about the employer and employees. The Secretary of State has developed a standard set of questionnaires to guide IPs through the advice that the RPS needs to gather to assess claims and the Insolvency Practitioner must also verify each claimant's

entitlement, pursuant to section 187 (1) of the 1996 Act . The RPS lodges the resultant debt in the insolvency and the IP must be able to agree the debt in order for the Secretary of State to make recoveries against the insolvent estate on behalf of the Fund

Requests for the statutory information were made to the Administrators by the RPS on 12 March 2019 and 05 May 2019. The RPS received no response and was therefore unable to consider any of the claims for payment.

Additionally, as no information regarding the company or employee entitlements were provided to the RPS, the Secretary of State has been unable to verify the claimants' employee status. As he cannot confirm that the claimants were employees (within the meaning of section 230(1) of the 1996 Act) of the company, they are put to proof thereof.

13. No one attended for either Botleigh Grange Ltd or Addison Way Ltd at today's hearing.

14. Except where stated, in these Reasons, references to page numbers are to the bundle or supplemental bundle used at the hearing.

Conduct of Hearing

15. Due to the restrictions required as a result of the coronavirus pandemic, the case was conducted by Cloud Video Platform. All of the claimants consented to that format in advance of the hearing.

16. An interpreter was provided for Mr Pestana although for the majority of the hearing he indicated that he did not wish to use the interpreter's services and only did so for the purposes of giving his evidence and listening to the judgment.

17. Directions had been given for the exchange of witness statements and preparation of a bundle of documents and they had largely been complied with, except in the case of Mr Galyer and Miss Powell- neither of whom had served witness statements. In the event I granted permission for them to give evidence orally.

18. There was no absolute uniformity amongst the claimants as to who they said should be treated as their employer for the purposes of any judgment. Those claimants represented by Mr Edwards sought to persuade me that liability for both holiday pay and arrears of wages properly lay with Botleigh Grange Hotel Ltd, most of the other claimants sought to persuade me that it was Addison Way Ltd who was liable (being Miss Tate, Miss Gordon, Mr Galyer, Miss Powell and Miss Roe). Mr Pestana simply preferred to leave the decision to me.

19. Mr Galyer sought permission to add a claim for holiday pay to his claim of unauthorised deduction from wages. A schedule of loss in respect of that claim had been served by email of 19th February 2020 and is contained within the bundle of documents which had been served on all parties (page 115). The value of the claim was £468 in respect of holiday. For the reasons set out below I gave permission to amend the claim to include that amount.

20. Two of the claims were potentially out of time, being the claims of Mr Karaca and Miss Powell. I was persuaded by the submissions made by Mr Karaca's representative that his claim was not out of time. Given that no one has argued that the claim was out of time (it was simply a point that I asked to be dealt with) I will not set out my reasons for reaching that conclusion in detail, but I was persuaded that when the dates of the Early Conciliation certificates are taken into account the claim was presented in time (albeit on the last day). For the reasons given below I concluded that it had not been reasonably practicable for Miss Powell to present her claim in time and it had been presented in such time as was reasonable.

Issues

21. As, to some extent, foreshadowed above, the issues which I have determined are as follows:

22. Were the claims of Mr Karaca and Miss Powell submitted in time?

23. Should Mr Galyer be permitted to amend his claim form to include a claim of holiday pay?

24. In respect of the claims of unauthorised deduction of wages:

24.1. What was the claimants' entitlement to wages, particularly in December 2018 and January and February 2019.

24.2. Were the claimants paid those wages.

24.3. If not, who was responsible for the failure to pay wages and should be liable in respect of any judgment. This issue requires consideration of whether or not there was a transfer of undertaking between any of the first 3 respondents and, in particular, whether there was an economic entity which retained its identity.

24.4. In the case of Mr Karaca, should sums which were deducted from his pay in respect of employee pension contributions and not paid to the pension provider be treated as wages for the purposes of the Employment Rights Act 1996.

25. In respect of the claims of holiday pay;

25.1. what was the claimants' holiday year,

25.2. at the point at which the claimants' contracts of employment terminated, had they accrued an entitlement to annual leave which had not been taken,

25.3. if so, to what extent should that entitlement have been compensated upon the termination of their employment,

25.4. were those sums paid,

25.5. who was the claimant's employer at the date of the termination of their employment.

25.6. No claimant sought to persuade me that they were entitled to payment in respect of untaken holiday from earlier holiday years.

26. In respect of all of the issues, I take into account that Botleigh Grange Ltd and Addison Way Limited have not entered a response and so the proper approach is to treat them as not disputing the facts in the claim form (as per para 26 of Limoine v Sharma [UKEAT/0094/19/RN]). However, in this case they cannot both be the claimants' employer and so I must make a determination of that issue. In some cases the sums claimed were set out in the claim form, but not in all cases and so I required all of the claimants to satisfy me that the sums that they claimed were properly due to them.

Law

On Amendment

27. In considering the application to amend the starting point is the overriding objective which requires:

> **Overriding objective**
>
> **2.** The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—
>
> (a) ensuring that the parties are on an equal footing;
>
> (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;
>
> (c) avoiding unnecessary formality and seeking flexibility in the proceedings;
>
> (d) avoiding delay, so far as compatible with proper consideration of the issues; and
>
> (e) saving expense.
>
> A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.

28. It is also important to note the Presidential Guidance on General Case Management and in particular Guidance Note 1. The guidance note requires that tribunals must carry out a careful balancing exercise of all the relevant factors having regard to the interests of justice and the relative hardship that will be caused to the parties by granting or refusing the application.

29. Finally, it is important to consider *Selkent v Moore [1996] ICR 836, 843F in which the EAT stated "*It is impossible and undesirable to attempt to list them exhaustively, but the following are certainly relevant.

29.1. *The nature of the amendment.* Applications to amend are of many different kinds, ranging, on the one hand, from the correction of clerical and typing errors, the addition of factual details to existing allegations and the addition or substitution of other labels for facts already pleaded to, on the other hand, the making of entirely new factual allegations which change the basis of the existing claim. The tribunal have to decide whether the amendment sought is one of the minor matters or is a substantial alteration pleading a new cause of action.

29.2. *The applicability of time limits.* If a new complaint or cause of action is proposed to be added by way of amendment, it is essential for the tribunal to consider whether that complaint is out of time and, if so, whether the time limit should be extended under the applicable statutory provisions, e.g., in the case of unfair dismissal, section 67 of the Employment Protection (Consolidation) Act 1978.

29.3. *The timing and manner of the application.* An application should not be refused solely because there has been a delay in making it. There are no time limits laid down in the Regulations of 1993 for the making of amendments. The amendments may be made at any time — before, at, even after the hearing of the case. Delay in making the application is, however, a discretionary factor. It is relevant to consider why the application was not made earlier and why it is now being made: for example, the discovery of new facts or new information appearing from documents disclosed on discovery. Whenever taking any factors into account, the paramount considerations are the relative injustice and hardship involved in refusing or granting an amendment. Questions of delay, as a result of adjournments, and additional costs, particularly if they are unlikely to be recovered by the successful party, are relevant in reaching a decision.

<u>On Transfer of Undertakings</u>

30. The relevant provisions of regulation 3 of the TUPE Regs 2006 state:

(1) These Regulations apply to--

(a) a transfer of an undertaking, business or part of an undertaking or business situated immediately before the transfer in the United Kingdom to another person where there is a transfer of an economic entity which retains its identity;

31. Reg 4 provides

(1) Except where objection is made under paragraph (7), a relevant transfer shall not operate so as to terminate the contract of employment of any person employed by the transferor and assigned to the organised grouping of resources or employees that is subject to the relevant transfer, which would otherwise be terminated by the transfer, but any such contract shall have effect

after the transfer as if originally made between the person so employed and the transferee.

(2) Without prejudice to paragraph (1), but subject to paragraph (6), and regulations 8 and 15(9), on the completion of a relevant transfer—

(a) all the transferor's rights, powers, duties and liabilities under or in connection with any such contract shall be transferred by virtue of this regulation to the transferee; and

(b) any act or omission before the transfer is completed, of or in relation to the transferor in respect of that contract or a person assigned to that organised grouping of resources

32. On the question of economic entity, Harvey on Industrial Relations contains the following passage[1]

> Aside from *Spijkers* the definition of an 'economic entity' in reg 3(2) of the 2006 Regulations can for example be seen reflected in *Cheesman v R Brewer Contracts Ltd* [2001] IRLR 144. In this case the EAT reviewed some key ECJ decisions (*Francisco Hernandez Vidal SA v Gomez Perez: C-127/96, [1999] IRLR 132, ECJ; Sanchez Hidalgo v Aser: C-173/96, [1999] IRLR 136, ECJ, and Allen v Amalgamated Construction Co Ltd: C-234/98, [2000] IRLR 119, ECJ*) and distilled from these a number of factors for determining in relation to the 1981 Regulations whether there was an undertaking and, if so, whether it had transferred. The EAT held:
>
> "(i) As to whether there is an undertaking … an organised grouping of persons and assets enabling (or facilitating) the exercise of an economic activity which pursues a specific objective …
>
> (ii) … such an undertaking … must be sufficiently structured and autonomous but will not necessarily have significant assets, tangible or intangible;
>
> (iii) in certain sectors, such as cleaning and surveillance, the assets are often reduced to their most basic and the activities are essentially based on manpower;
>
> (iv) an organised grouping of wage-earners who are specifically and permanently assigned to a common task may, in the absence of other factors of production, amount to an economic entity;
>
> (v) an activity of itself is not an entity; the identity of an entity emerges from other factors, such as its workforce, management

[1] Harvey on Industrial Relations and Employment Law/Division F Transfer of Undertakings/2. Transfer of Undertakings/C. Relevant transfer/(3) Relevant transfer under reg 3(1)(a) (a 'business transfer')/(a) Generally

style, the way in which its work is organised, its operating methods and, where appropriate, the operational resources available to it."

As to the question of whether there had been a transfer, the following factors were highlighted by the EAT in Cheesman:

"(i) … the decisive criteria for establishing the existence of a transfer is whether the entity in question retains its identity, as indicated … by the fact that its operation is actually continued or resumed; …

(iii) in considering whether the conditions for … a transfer are met, it is necessary to consider all the factors characterising the transaction in question, but each as a single factor and none is to be considered in isolation;

(iv) amongst the matters … for consideration, are the type of undertaking, whether or not its tangible assets are transferred, the value of its intangible assets at the time of transfer, whether or not the majority of its employees are taken over by the new company, whether or not its customers are transferred, the degree of similarity between the activities carried on before and after the transfer, and the period, if any, in which they are suspended;

(v) account has to be taken … of the type of undertaking or business in issue, and the degree of importance to be attached to the several criteria will necessarily vary according to the activity carried on;

(vi) where an economic entity is able to function without any significant tangible or intangible assets, the maintenance of its identity following the transaction … cannot logically depend on the transfer of such assets;

(vii) even where the assets are owned and are required to run the undertaking, the fact that they do not pass does not preclude a transfer; …

(x) the absence of any contractual link between the transferor and transferee may be evidence that there has been no relevant transfer, but it is certainly not conclusive as there is no need for any direct contractual relationship;

(xi) when no employees are transferred, the reasons why that is the case can be relevant as to whether or not there was a transfer."

This considered approach was approved by the Court of Appeal in *McCarrick v Hunter* [2012] EWCA Civ 1399, [2013] ICR 235 and applied by the EAT in *Beynon v Crash Accident Repairs*

Services Ltd (Debarred) UKEAT/0255/12 (14 March 2013, unreported).

On Deduction From Wages

33. The Employment Rights Act 1996 contains the following relevant sections

13.— Right not to suffer unauthorised deductions.

(1) An employer shall not make a deduction from wages of a worker employed by him unless—

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

…

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

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

23.— Complaints to employment tribunals.

(1) A worker may present a complaint to an [employment tribunal] —

(a) that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18(2)),

…

(2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—

(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or

(b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.

(3) Where a complaint is brought under this section in respect of—

(a) a series of deductions or payments, or

(b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates, the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

27.— Meaning of "wages" etc.

(1) In this Part *"wages"* , in relation to a worker, means any sums payable to the worker in connection with his employment, including—

(a) any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise,

(b) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992,

(c) statutory maternity pay under Part XII of that Act,

(ca) [statutory paternity pay][2] under Part 12ZA of that Act,

(cb) statutory adoption pay under Part 12ZB of that Act,

(cc) statutory shared parental pay under Part 12ZC of that Act,

(d) a guarantee payment (under section 28 of this Act),

(e) any payment for time off under Part VI of this Act or section 169 of the Trade Union and Labour Relations (Consolidation) Act 1992 (payment for time off for carrying out trade union duties etc.),

(f) remuneration on suspension on medical grounds under section 64 of this Act and remuneration on suspension on maternity grounds under section 68 of this Act,

(fa) remuneration on ending the supply of an agency worker on maternity grounds under section 68C of this Act,

(g) any sum payable in pursuance of an order for reinstatement or re-engagement under section 113 of this Act,

(h) any sum payable in pursuance of an order for the continuation of a contract of employment under section 130 of this Act or section 164 of the Trade Union and Labour Relations (Consolidation) Act 1992, and

(j) remuneration under a protective award under section 189 of that Act,

but excluding any payments within subsection (2).

(2) Those payments are—

(a) any payment by way of an advance under an agreement for a loan or by way of an advance of wages (but without prejudice to the application of section 13 to any deduction made from the worker's wages in respect of any such advance),

(b) any payment in respect of expenses incurred by the worker in carrying out his employment,

(c) any payment by way of a pension, allowance or gratuity in connection with the worker's retirement or as compensation for loss of office,

(d) any payment referable to the worker's redundancy, and

(e) any payment to the worker otherwise than in his capacity as a worker.

34. Under section 24(2) of the Act, where a Tribunal makes a declaration that there has been an unlawful deduction from wages it may order the employer to pay such amount as a Tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.

35. In *Delaney v Staples* [1991] IRLR 112 the Court of Appeal held that a complete failure to pay wages due on any occasion would qualify as a deduction from wages for the purposes of section 13(3) Employment Rights Act 1996.

36. Where a claim is made in respect of a 'series of deductions', the three-month time limit starts to run from the date the last deduction in the series was made — S.23(3). In *Bear Scotland Ltd and ors v Fulton and ors and other cases 2015 ICR 221, EAT*, Mr Justice Langstaff, held that whether there is a 'series' of deductions is a question of fact, requiring a sufficient factual and temporal link between the underpayments. This, he said, meant that there must be a sufficient similarity of subject matter, so that each event is factually linked, and a sufficient frequency of repetition. He also held that a gap of more than three months between any two deductions will break the 'series' of deductions.

37. In *The Halcyon Skies [1977] QB 14* the Admiralty Court decided that employee contributions to an occupational pension scheme constituted wages and, if not paid to the pension provider, were therefore recoverable in a claim for unpaid 'wages' under s 1(1)(o) of the Administration of Justice Act 1956.

On Holiday Pay

38. The following regulations are in the Working Time Regulations 1998

14 Compensation related to entitlement to leave

(1) Paragraphs (1) to (4) of this regulation apply where—

(a) a worker's employment is terminated during the course of his leave year, and

(b) on the date on which the termination takes effect ("the termination date"), the proportion he has taken of the leave to which he is entitled in the leave year under [regulation 13] [and regulation 13A] differs from the proportion of the leave year which has expired.

(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).

16 Payment in respect of periods of leave

(1) A worker is entitled to be paid in respect of any period of annual leave to which he is entitled under regulation 13 [and regulation 13A], at the rate of a week's pay in respect of each week of leave.

30 Remedies

(1) A worker may present a complaint to an employment tribunal that his employer—

(a) has refused to permit him to exercise any right he has under—

…

(b) has failed to pay him the whole or any part of any amount due to him under regulation 14(2) or 16(1).

(2) [Subject to [regulations 30A and [regulation] 30B], an employment tribunal] shall not consider a complaint under this regulation unless it is presented—

(a) before the end of the period of three months (or, in a case to which regulation 38(2) applies, six months) beginning with the date on which it is alleged that the exercise of the right should have been permitted (or in the case of a rest period or leave extending over more than one day, the date on which it should have been permitted to begin) or, as the case may be, the payment should have been made;

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three or, as the case may be, six months

<u>On Extension of Time</u>

39. The leading authority on statutory provisions such as the ones which are relevant in this case is the decision of the Court of Appeal in *Palmer and Saunders v Southend-on-Sea Borough Council* [1984] 1 All ER 945, [1984] IRLR 119, [1984] ICR 372*, CA*. In that case, May LJ stated

> "[W]e think that one can say that to construe the words "reasonably practicable" as the equivalent of "reasonable" is to take a view that is too favourable to the employee. On the other hand, "reasonably practicable" means more than merely what is reasonably capable physically of being done—different, for instance, from its construction in the context of the legislation relating to factories: compare *Marshall v Gotham Co Ltd [1954] AC 360, HL*. In the context in which the words are used in the 1978 Consolidation Act, however ineptly as we think, they mean something between these two. Perhaps to read the word "practicable" as the equivalent of "feasible" as Sir John Brightman did in [*Singh v Post Office [1973] ICR 437, NIRC*] and to ask colloquially and untrammelled by too much legal logic—"was it reasonably feasible to present the complaint to the [employment] tribunal within the relevant three months?"—is the best approach to the correct application of the relevant subsection."

40. Even if a claimant satisfies a tribunal that presentation in time was not reasonably practicable, that does not automatically decide the issue in his or her favour. The tribunal must then go on to decide whether the claim was presented 'within such further period as the tribunal considers reasonable'. Thus, while it may not have been reasonably practicable to present a claim within the three-month time limit, if the claimant delays a further three months a tribunal is likely to find the additional delay unreasonable and decide that it has no jurisdiction to hear the claim.

41. Lady Smith in *Asda Stores Ltd v Kauser* EAT0165/07 stated: 'the relevant test is not simply a matter of looking at what was possible but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done'.

42. The EAT made it clear in *GMB v Hamm* EAT 0246/00 that the words 'not reasonably practicable' are to be given the same meaning whenever they appear in an equivalent context in comparable legislation, so similar considerations will apply to all other statutory employment claims using the same formula.

43. A claimant's complete ignorance of his or her right to claim unfair dismissal may make it not reasonably practicable to present a claim in time, but the claimant's ignorance must itself be reasonable. As Lord Scarman commented in *Dedman v British Building and Engineering Appliances Ltd* [1974] ICR 53, CA, where a claimant pleads ignorance as to his or her rights, the tribunal must ask further questions: 'What were his opportunities for finding out that he had rights? Did he take them? If not, why not? Was he misled or deceived?' In *Porter v Bandridge* Ltd 1978 ICR 943,CA, the majority of the Court of Appeal, having referred to Lord Scarman's comments in Dedman, ruled that the correct test is not whether the claimant knew of his or her rights but whether he or she ought to have known of them.

44. Where the claimant is generally aware of his or her rights, ignorance of the time limit will rarely be acceptable as a reason for delay. This is because a claimant who is aware of his or her rights will generally be taken to have been put on inquiry as to the time limit.

45. In *DHL Supply Chain Ltd v Fazackerley* EAT 0019/18 the claimant was dismissed on 15 March 2017 but his appeal was not heard until 22 June. Shortly after being told that his appeal had not been successful, the claimant took advice and brought proceedings on 19 July. The claimant explained that he had contacted Acas some days after his dismissal and was advised that before considering any form of action such as tribunal proceedings he should first exhaust the internal appeal process. He did not seek any further advice and the employment judge found that it was reasonable for him to approach the matter on the basis of Acas' advice. The EAT observed that if the claimant had simply awaited the outcome of an appeal, this would not have been enough. However, the Acas advice, while limited in scope, was relied upon and 'tipped the balance'.

46. In *University Hospitals Bristol NHS Foundation Trust v Williams* EAT 0291/12 the EAT emphasised that this limb of S.111(2)(b) does not require the tribunal to be satisfied that the claimant presented the claim as soon as reasonably practicable after the expiry of the time limit in order to allow the claim to proceed. Rather, it requires the tribunal to apply the less stringent test of asking whether the claim was presented within a reasonable time after the time limit expired.

47. In *Nolan v Balfour Beatty Engineering Services* EAT 0109/11 the EAT reiterated that tribunals, when considering whether to extend time under S.111(2)(b), should always bear in mind the general principle that litigation should be progressed efficiently and without delay. It stated " [23] These provisions demonstrate a legislative intention that claims should be presented promptly – reflecting the general principle that it is in the public interest that litigation should be progressed as efficiently as possible — and that claimants should not be permitted to delay in presenting them once whatever the obstacle was that prevented timeous presentation has been removed" The EAT went on to hold that, when deciding what would have been a reasonable time within which to present a late claim, tribunals should have regard to all the circumstances of a case, including what the claimant did; what he or she knew, or reasonably ought to have known, about time limits; and why it was that the further delay occurred.

48. In *Radakovits v. Abbey National Plc* [2010] IRLR 307, Elias LJ held that "tribunals have properly to guard against exercising a jurisdiction when the statutory conditions are not met. But they are not bloodhounds who have to sniff out potential grounds on which jurisdiction can be refused. If the parties agree that a particular claimant is an employee, for example, then there would have to be good reason for the tribunal to doubt that that was the case and to require a preliminary hearing to investigate the matter. If, on the face of it, it appears that the tribunal does have jurisdiction or if there appears to have been a satisfactory explanation for extending what would be the usual time limits, then the tribunal can properly act on that. It does not have to explore fully every case where a jurisdictional issue could potentially arise."

On Employment Status

49. In *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance* [1968] 2 QB 497, [1968] 1 All ER 433, the court held: "A contract of service exists if these three conditions are fulfilled. (i) The servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master. (ii) He agrees, expressly or

impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master. (iii) The other provisions of the contract are consistent with its being a contract of service …'.'

On ACAS uplift

50. Section 207A TULRCA 1992 provides

> (1)This section applies to proceedings before an employment tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule A2.
>
> (2)If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—
>
> (a)the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,
>
> (b)the employer has failed to comply with that Code in relation to that matter, and
>
> (c)that failure was unreasonable,
>
> the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%.

51. Schedule A2 includes claims of deduction from wages and claims under regulation 30 of the Working Time Regulations 1998.

Findings of Fact

52. The claimants all worked at Botleigh Grange Hotel in a variety of roles. As stated, the claims all relate to non-payment of wages from November 2018 onwards and, in some cases, non-payment of holiday pay. They all resigned between January 2019 and March 2019, largely because of the non-payment of their wages (although nothing turns upon the reason for the resignation).

53. One central issue in this case is who was the claimants' employer at the termination of their employment.

54. On 30th October 2019, the administrators of Botleigh Grange Hotel Ltd wrote to the Employment Tribunal stating *"In regards to your query asking why we haven't supplied information to the redundancy payments office, as I have previously explained to the employees we have been advised that they do not have a claim with the company in administration. We have been advised that the Company over which we are administrators, sold the hotel in 2016 to Botleigh Grange Limited and has effectively been dormant since this time. It therefore appears that they were actually employed by Botleigh Grange Limited (or another trading company), although there appears to have been an error in the name of the company that appeared on the employment contracts. We advised the employees to contact the director as he informed us he would be able to deal with their claims.*

We cannot provide any information to the redundancy payments office in respect of the employees as we are not in receipt of any information."

55. For all of the claimants, up until and including January 2019 their wage slips showed their employer as being Botleigh Grange Hotel Ltd. From (and including) February 2019 the format of the claimants' pay slips altered and they no longer showed the employer as Botleigh Grange Hotel Ltd. Instead they contained the statement "paid by Addison Way Ltd"

56. I was told by all of the claimants that they had been paid by Addison Way whilst employed, in that that was the entity that their bank statements showed had made payment. In bank statements of Mr Pestana a relevant entry shows that payment was made by Addison Way Ltd for 19 December 2018 but the reference was "Botleigh wages". The entry for 11 December 2018 in Miss Tate's bank statement shows a credit from "Addison Way Ltd" but again the narrative states "Wages Botleigh". Similar entries appear in other bank statements.

57. Mr Karaca had a contract dated 1 January 2018 which stated that the other party to the contract was Botleigh Grange Hotel Ltd. Miss Gordon was able to provide a letter containing confirmation of the offer of her position. It is on headed notepaper referring to "Botleigh Grange Hotel & Spa" but that letter did not contain a company name or company number. It is dated 10 March 2017 (supplemental bundle page 44)

58. Some of the claimants had received P45 documents. Mr Galyer's shows his last day of work as being 21 February 2019, Mr Karaca's shows his last day of work as being 31 January 2019, Miss Roe's shows her last day of work as being 31 January 2019 as does Miss Gordon's. Miss Tate's shows her last day of work as being 1st February 2019. In each case the P45 names Addison Way Ltd as the employer. I have not seen any P45 with the name of the employer as Botleigh Grange Hotel Ltd or Botleigh Grange Ltd.

59. Mr Pastana had visited the HMRC website which, in respect of his wages for November and December 2018 and January 2019, stated "taxable income from Botleigh Grange Hotel Ltd" (page 35)

60. The industry of Mr Edwards of Southampton Advice & Representation Centre has revealed certain other documents.

61. One is the Joint Administrators Report in respect of Botleigh Grange Ltd dated 9 March 2020. In the section dealing with Historical Background and Events Leading up to Administration the report states the following.

61.1. In paragraph 3.2 "the company did not trade and employed no staff". In this paragraph as in subsequent ones the reference to the company is to Botleigh Grange Ltd.

61.2. In paragraphs 3.3 and 3.4 the report states "the Company [Botleigh Grange Ltd] was a property holding Company that owned the freehold to the premises at Botleigh Grange Hotel [the Property]… It is understood that following the acquisition of the Property, BGHL [Botleigh Grange Hotel Ltd] continued to trade from the premises until trading was taken over by Addison Way Ltd… in 2018. The Joint Administrators have been provided with a contract for

services between the Company and [Addison Way Ltd]. Pursuant to this contract, [Addison Way Ltd] run the hotel for a commission of 2% of gross revenue."

61.3. In paragraph 4.1 the report states "the company was a non-trading entity and no profit and loss account is available."

61.4. Paragraph 5.3 states "the Joint Administrators were also provided with a copy of a commercial lease (the Lease) between the company and [Addison Way] stated 31 January 2019. Pursuant to the lease, Addison Way was the trading entity that leased the Property for a fixed term of 3 years." The Property is Botleigh Grange Hotel.

61.5. In paragraph 6.2, in respect of the purposes of the Administration, the joint administrators stated that rescuing the company as a going concern was not possible since the company was a non-trading entity.

62. There is, therefore, a conflict between what the administrators of Botleigh Grange Hotel Ltd say (that Botleigh Grange Hotel Ltd sold hotel the in 2016 and has been dormant since then) and what the administrators of Botleigh Grange Ltd say (that Botleigh Grange Hotel traded from the premises until trading was taken over by Addison Way Ltd in 2018).

63. Mr Edwards also has obtained a copy of a contract for the supply of services between Botleigh Grange Ltd and Addison Way Limited (the service agreement). It is undated and only signed on behalf of Botleigh Grange Hotel Ltd (which is not stated to be a party to the agreement). Although it is undated, the space for the date contains the year 2018. Under the agreement Botleigh Grange Ltd purported to agree to engage Addison Way to provide Botleigh Grange Ltd with services for rent collection and management of revenues generated in the operation of the business of the Hotel. The hotel is defined as Botleigh Grange Hotel. The agreement does not state who is operating the business of the hotel. If Botleigh Grange Ltd was doing so, that would be inconsistent with the administrators assertion that Botleigh Grange Ltd has not traded. However, if Addison Way Limited was operating the hotel, there would be no need for the service agreement.

64. I have also seen a lease which has only been signed on behalf of the Landlord (Botleigh Grange Ltd) in respect of Botleigh Grange Hotel, pursuant to which Addison Way Ltd is the tenant at a rent of £25,000 per annum. It was made on 31 January 2020.

65. There is little clear evidence as to which entity employed the claimants and when and I must do the best I can on the documents.

66. I consider that I should give proper weight to the statements made by administrators having regard to their statutory obligations to consider the operation of the companies over which they have been appointed.

67. Having said that, the email from the administrators of Botleigh Grange Hotel Ltd of 30 October 2019, referred to above, does not display any independent investigation on their part. The email simply repeats what they appear to have been told by others. The administrators do not say who those others were.

Moreover, the administrators do not appear to have taken any particular interest in establishing the accuracy of what they were told. I make no criticism of the administrators who were performing a different task to that which I must perform but I give their assertions less weight than I would do if I was confident that a detailed investigation had been carried out.

68. I give more weight to the report of the joint administrators of Botleigh Grange Ltd who do appear to have carried out some investigation. Paragraph 3.3 of that report shows that notwithstanding the sale of Botleigh Grange Hotel in 2016, Botleigh Grange Hotel Ltd continued to trade from the premises until at least 2018. I find that it did so. The next question is whether trading at the Hotel was taken over by Addison Way Ltd in 2018 as suggested in paragraph 3.4 of the joint administrators' report.

69. I find that at the point when the service agreement was entered into[2], Botleigh Grange Hotel Ltd was still operating the hotel, even if by then, the premises were owned by Botleigh Grange Ltd. I also find it continued to do so after any service agreement was entered into with Addison Way Ltd. Addison Way Ltd was clearly involved to some extent in so far as it made payments to the claimants' bank accounts but I am not satisfied that it was running the business of the hotel; indeed I find that it was not and Botleigh Grange Hotel Ltd was doing so.

70. In support of those findings I note that :

70.1. There is no contemporaneous evidence of any kind that Botleigh Grange Ltd was operating the hotel and that is consistent with the report of the administrators, in respect of Botleigh Grange Ltd which states that Botleigh Grange Ltd did not trade and employed no staff and was purely a property holding company.

70.2. The service agreement was signed on behalf of Botleigh Grange Hotel Ltd

70.3. If Addison Way Ltd was operating the hotel there would be no need for the service agreement to have been entered into at all.

70.4. In 2016 or 2018 none of the claimants were told that there was to be a change in their employer or that there had been a transfer of undertaking. There was no consultation under TUPE.

70.5. Wage slips continued to be issued in the name of Botleigh Grange Hotel Ltd throughout 2018 and into 2019

71. However, I also find that there was a clear change in circumstances at the end of January 2019.

72. On 29th of January 2019 Botleigh Grange Hotel Ltd went into administration. On 31 January 2019, a lease in respect of the hotel was granted to Addison Way Ltd. Pay slips from February 2019 stopped referring to Botleigh Grange Hotel Ltd and

[2] If, in fact, it was executed. I repeat that it was only signed by Botleigh Grange Hotel Ltd, not either of the parties who the agreement was supposed to have been between.

started referring to Addison Way Ltd. P45s stated that Addison Way Ltd was the employer of the staff whose contract had terminated.

73. I find that the financial difficulties in which Botleigh Grange Hotel Ltd found itself in 2018 led to it transferring the business of the operation of the hotel in which the claimants were employed to Addison Way Ltd. I find it is likely that happened on the day that Botleigh Grange Hotel Ltd went into administration, that is 29 January 2019. From the perspective of the employees there was no change to the operation between 28 January 2019 and 30 January 2019. The same premises were used, the same staff were employed, residents continue to come to the hotel. The operation continued.

74. In respect of all of the claimants I find that the holiday year ran from 1st April to 31st March.

75. I found all of the claimant's evidence to be credible and I accept it. All of the claimants' employment, except for Mrs Peverelle's, terminated after 29 January 2019. Mrs Peverelle's terminated on 8 January 2019.

Conclusions on the Issue of the Claimants' Employer.

76. Up until Botleigh Grange Hotel Ltd went into administration on 29 January 2019, I find that it was the employer of the claimants. I base that finding, in summary, on;

76.1. the contractual documents which I have seen,

76.2. the wage slips from that period which I have seen,

76.3. my finding that Botleigh Grange Ltd did not trade,

76.4. that it was Botleigh Grange Hotel Ltd who signed the service agreement with Addison Way Ltd,

76.5. that there is no evidence that Addison Way Ltd was running the business of the hotel date,

76.6. that if Addison Way Ltd was running the hotel, the service agreement would be unnecessary.

77. After Botleigh Grange Hotel Ltd went into administration Addison Way Ltd did start running the hotel. I base that finding, in summary, on;

77.1. the wage slips for February 2019,

77.2. the P45s from February 2019,

77.3. my finding that Botleigh Grange Ltd did not trade,

77.4. the lease dated 31 January 2019.

78. I find that, within the meaning of the Transfer of Undertakings Protection Employment Regulations 2006, there was a transfer of a stable economic entity from Botleigh Grange Hotel Ltd to Addison Way Ltd. The stable economic entity was the operation and the running of the hotel.

79. The effect of the transfer of undertaking taking place is that all of the liabilities of Botleigh Grange Hotel Ltd transferred to Addison Way Ltd on that date. Thus, any liability in respect of unpaid wages or entitlement to holiday pay for persons employed at that date transferred to Addison Way Ltd.

80. Miss Powell and Miss Roe's resignation took effect on 30th of January 2019. That requires me to be especially clear as to when I find the transfer of undertaking took place. I find it took place at midnight between 28 January 2019 and 29th of January 2019. Thus, at the point of their resignation, both employees were employed by Addison Way Ltd and it was responsible to them for any liabilities.

81. In summary all of the claimants, except for Mrs Peverelle, were employed by Addison Way Ltd at the date of termination of their employment and it was responsible for any deduction from their wages or non-payment of their holiday pay. Mrs Peverelle was employed by Botleigh Grange Hotel Ltd at the date of her dismissal and it would have been liable for any deduction from wages or non-payment holiday pay. However, the action against it has been stayed and I can give no judgment in that respect. Botleigh Grange Ltd was not, at any point, the claimants' employer.

Additional Findings of Fact/ Conclusions

82. I find the following facts in relation to the individual claimants and have set out my conclusions in respect of each claimant below.

Mrs Peverelle

83. In relation to Mrs Peverelle, her witness statement is at page 72 of the bundle.

84. She states that she was paid an hourly rate and worked for as long as she was instructed to by her manager each week. She worked in housekeeping. The wage slips in the bundle suggest that she worked for between 35 and 50 hours per week. The wage slips describe Botleigh Grange Hotel Ltd as her employer. Tax and national insurance contributions were deducted from her wages by her "employer". Her wage slips show that she was paid holiday pay and she was given an employee number (p76).

85. There is no suggestion that Mrs Peverelle was in business of her own account and she was clearly an integral part of the hotel organisation. She was subjected to instruction by her manager. I am satisfied that she was an employee.

86. She was paid her wages for October on 15 November 2018. She should have been paid the sum of £272.80 for November 2018 and £359.84 for December 2018. She was only paid, in total, the sum of £136.15 and, therefore, her claim in respect of unpaid wages of £495.99 is well-founded.

87. In respect of holiday pay, her schedule of loss sets out a calculation which, on the face of matters, appears to be correct and has not been challenged. The claimant confirmed the accuracy of the statement in her evidence.

88. I accept that Mrs Peverelle was entitled to be paid £256 for accrued but untaken holiday pay at the date of her dismissal.

89. In addition, I accept that Mrs Peverelle raised a grievance before she resigned which was not dealt with. No explanation has been advanced for not dealing with the grievance and, therefore, she would be entitled to seek an uplift to any award under section 207A Trade Union Labour Relations (Consolidation) Act 1992. However, that would only this case if the claim against Botleigh Grange Hotel Ltd had not been stayed. It is not relevant to her claim against the Secretary of State for BEIS

Mr Karaca

90. Mr Karaca raised a grievance on 11 February 2019 in respect of non-payment of his wages however he never received any response. He resigned with immediate effect on the 21 February 2019. The date in the P45 is wrong.

91. His schedule of loss appears at page 65 of the bundle and he confirmed the accuracy of it. I find that he was not paid his basic pay for January 2019 of £2500 and I also find that for the 3 weeks that he worked in February he should have been paid £1875 (being 75% of £2500).

92. Mr Karaca, additionally, worked overtime in January 2019 during the head chef's absence. He has calculated the hours he worked and I find that he was entitled to payment of £1803 in respect of that overtime.

93. I also accept Mr Karaca's evidence that his employer deducted £560 from his wages in respect of employee pension contributions but has not paid them to the pension fund. Having regard to the case of *The Halcyon Skies* I find that was an unauthorised deduction from wages. I would have found that to be the case in any event, based on first principles. The authority of an employer to deduct employee contributions from an employee's pay is based on the consent which the employee gives and which is given on the basis that the monies are paid into the pension fund. If the deduction is not made for the purposes of giving the money to the pension fund, it must be unauthorised.

94. Thus the total claim for unpaid wages is £6738.

95. In respect of holiday pay, the calculation at page 65 which, again, was confirmed by the claimant in his evidence, shows that he had 25 days holiday entitlement up to 21 February 2019. He had taken 9 days and therefore was entitled to a further 16 days holiday at the point when he resigned. He has calculated, based on his annual salary of £30,000 a year that he should have been paid £2060 in respect untaken holiday and I award him that amount.

96. The grievance should have been dealt with when raised. It was not. The grievance appears only to have been raised in respect of pay (not the untaken holiday) and, in those circumstances I consider that there should be an uplift of 25% but only on the claim for pay of £6738 being £1684.50.

97. Although Mr Karaca has brought a claim against the Secretary of State for BEIS, he had only applied for a payment against the Secretary of State if his employer was Botleigh Grange Hotel Ltd or Botleigh Grange Ltd. I have found that it was Addison Way Ltd that owed him wages and holiday pay and that company is not insolvent. Thus his claim against the Secretary of State fails.

Miss Tate

98. Miss Tate adduced a wage slip for December 2018 (page 28) which showed that she should have been paid the gross amount of £1543.75. In January she was only paid half of that sum (net £617.34). That left a gross amount due of £926.40

99. Her wage slip for January 2019 shows that she should have been paid, again, £1543.75. I find that she was not paid that amount.

100. For February, she tells me and I accept, that she should have been paid a payment of £285 in respect of holiday pay together with a tax rebate of £140.60, totalling £425.60. She was not paid those amounts

101. Her claim for wage totals £2895.76.

102. However, Miss Tate also gives credit for the sum of £250 that she was paid in September reducing the value of her claim to £2645.76.

103. Miss Tate's effective date of termination was 1st February 2019 as per her P45.

Miss Gordon

104. The documents relating to Miss Gordon's case are in a supplemental bundle. At page 45 of the bundle she sets out that she was not paid the monies which she was due for January 2019, being a gross payment of £1462.50. There is a pay slip to that effect (page 42). I accept that she was not paid those monies and therefore she is entitled to receive them.

105. In addition, Miss Gordon was entitled to 6 days accrued holiday at the date of leaving and she calculates her entitlement for payment in lieu of those six days to be £432. I accept her calculations. She was entitled to be paid at a rate of £9 per hour- 6 days and 8 hours per day amounts to 48 hours. 48 hours at £9 per hour amounts to £432.

106. Miss Gordon's effective date of termination was 31 January 2019 as per her P45.

Mr Galyer

107. I allow Mr Galyer's application to amend to add a claim for holiday pay. The respondent has been put on notice that he is claiming that sum and has not objected to him doing so. Whilst the time limit in respect of such a claim has expired, it appears that there is no prejudice to the respondent in dealing with this aspect of his claim since it has not attended the tribunal to say so. I accept Mr Galyer's explanation that he was not aware, until an earlier hearing, that he could bring a claim for holiday pay. While that lack of knowledge might be surprising in, say, a lawyer, it is understandable in somebody employed in a similar role to that of the claimant. I accept his evidence in this respect.

108. Considering the legal test set out above, the importance of the overriding objective and the need to do justice between the parties, I find that the amendment to add a claim for holiday pay should be allowed.

109. Mr Galyer was employed on an hourly rate of £10.50 per hour which amounted to £1872 gross per month. He was not paid for either the months of January or February 2019 and thus is entitled to £3744 in respect of unpaid wages.

110. I also accept that at the date he resigned, he had 5 days holiday which were due to him but which he had not taken. He has worked that out using the government website. Using an hourly rate of £10.50 per hour he has calculated that for 5 days he should be paid £468. That sum seems reasonable to me and I award it to him.

111. Mr Galyer's effective date of termination was 21 February 2019 as per his P45

Mr Pestana

112. Mr Pestana received a pay slip for December 2018 showing that he should have been paid £1284.12 gross. He was not.

113. Although he did not receive a pay slip for January 2019, the HMRC website shows that his employer has told HMRC that he is entitled to £994.41 for that month, which he claims (page 35).

114. For February 2019 Mr Pestana calculates that he was due the sum of £203 which he has calculated by applying his hourly wage of £7.83 to the number of hours which he had kept a record of working. I accept that he was entitled to that sum.

115. Thus the claimant claims the sum of £2481.53 in respect of wages which have been unpaid. I award that amount.

116. In addition, Mr Pestana has used the Gov.uk website and it has calculated that he was entitled to 5.3 days annual leave or 43 hours and 2 minutes at the date of termination of his employment. He claims, in that respect, £336.70. I award that sum.

117. Mr Pestana's effective date of termination is not clear on the evidence, but given that he claims wages for some of February 2019, it is clear that it must be after 29 January 2019.

118. As with Mr Galyer, although Mr Pestana has brought a claim against the Secretary of State for BEIS, he has only applied for a payment against the Secretary of State if his employer was Botleigh Grange Hotel Ltd and Botleigh Grange Ltd. I have found that it was Addison Way Ltd that owed him wages and holiday pay and that company is not insolvent. Thus his claim against the Secretary of State fails.

Miss Powell

Time

119. I accept the date in Miss Powell's ET1 of 30 January 2020 as being her effective date of termination.

120. Miss Powell told me that, initially, she contacted ACAS who told her to make a formal request to a director for the money that she says she was owed. She did so and got nowhere. She then contacted ACAS again.

121. ACAS then told her that she had to pursue the administrators as the company was in administration. I have seen the letter to that effect dated 24 April 2019. The letter states "following your notification for Early Conciliation, it would appear that your former employer has become legally insolvent. In the circumstances it is not appropriate for ACAS to get involved and therefore I will take no further action and close this case… If your former employer is insolvent and money is owed to for items such as outstanding wages… then the Secretary of State for Business Innovation & Skills has power under the Employment Rights Act 1996 to make some of these payments." The letter went on to say how to do that. It said nothing else about making any claims to the tribunal

122. Miss Powell then emailed the administrator of Botleigh Grange Hotel Ltd on 26 April 2019 and she responded to say "We are advised that the Company over which we are administrators, Botleigh Grange Hotel Limited, sold the hotel in 2016 to Botleigh Grange Limited and has effectively been dormant since this time. It therefore appears that you were actually employed by Botleigh Grange Limited, although there appears to have been an error in the name of the company that appeared on the employment contracts. I suggest that you speak to Dan O'Doherty Jnr at the Botleigh Grange who should be able to help you further, his email address is dan@botleighgrange.com." No reference was made to Addison Way Ltd.

123. Miss Powell told me that she was, at that point, quite confused and did not know who to turn to, someone said to her that she should go down the redundancy route, which she investigated, but that was a dead end because she had not been made redundant. Miss Powell told me that she was completely lost. She then did research and then realised that she had to get hold of the employment tribunal. Miss Powell told me, and I accept, that, initially, she believed that notifying ACAS under the Early Conciliation provisions had commenced her claim in the employment tribunal.

124. This is a case where whether by accident or design, the claimant's true employer has obscured its identity. No one told Miss Powell that Addison Way Ltd had become her employer. The way it has gone about dealing with its staff was bound to cause confusion when anyone wished to bring a claim against it. It does not surprise me that the claimant struggled to work out who a claim should be against within the 3-month time limit. Miss Powell is a Spa Therapist and, presumably, not used to the intricacies of insolvency or TUPE legislation.

125. The 3-month time limit expired at the end of May 2019. It does not surprise me that the combination of the letter from ACAS and the email from the administrators of Botleigh Grange Hotel Ltd left Miss Powell in a state of considerable confusion. I do not consider that it would have been reasonably feasible for her to present a claim against Addison Way Ltd (who was her employer) by the end of May 2019.

126. Whilst I am satisfied that it was not reasonably practicable to present the claim within 3 months, I am concerned by the fact that the claim was not, ultimately, presented until 5 October 2019. The extra period is a long one.

127. The test is less stringent in relation to whether the claim was presented within a reasonable period after the expiry of the 3 month period and I remind myself that although I must properly consider the question of jurisdiction I am not required to be a "bloodhound" in circumstances where the respondent has chosen not to attend or make any representations and is not taking the point that the claim is out of time.

128. I see no reason to disbelieve the evidence of Miss Powell that it was not until October that she was able to pull together all of the threads and realised that she must present her claim to the employment tribunal and I find that the claim was presented within such period as was reasonable after the initial 3-month period

129. Miss Powell claims the sum of £1350 which, according to her wage slip, she was should have been paid for January 2019. I accept that she was not paid that amount. That was an unauthorised deduction from her wages.

Miss Roe

130. Miss Roe's pay slips at page 54 show that she was paid a salary of £1300 (gross) per month.

131. She tells me that she was only paid half of her salary for December 2018 and was, therefore, entitled to be paid a further £650. She tells me, and I accept, that she was paid none of her salary in January 2019 and there was, therefore, a total deduction from wages of £1950. That is all that she claims and I award that amount.

132. Miss Roe's effective date of termination was 31 January 2019 as per her P45.

Summary

133. I have set out my conclusions throughout this judgment and I merely summarise them here:

133.1. All of the claims were presented to the tribunal in time for it to consider the claims.

133.2. The application by Mr Galyer to amend his claim to add a claim for holiday pay is permitted.

133.3. The hotel business in which the claimants were employed was an economic entity for the purposes of the Transfer of Undertakings Protection of Employment Regulations 2006.

133.4. Up to 29 January 2019 all of the claimants, except for Mrs Peverelle, who had resigned before that date, were employed by Botleigh Grange Hotel

Ltd. Mrs Peverelle was employed by Botleigh Grange Hotel Ltd until the date of her resignation.

133.5. On 29 January 2019 there was a transfer of undertaking in respect of the hotel business. The contracts of employment of the claimants who were employed by Botleigh Grange Hotel Ltd at that stage, transferred to Addison Way Ltd.

133.6. Therefore

133.6.1. Mrs Peverelle was employed by Botleigh Grange Hotel Ltd at the date of her dismissal and it would have been liable for any deduction from wages or non-payment of holiday pay. However, the action against it has been stayed and no judgment is made against it.

133.6.2. All of the claimants, except for Mrs Peverelle, were employed by Addison Way Ltd at the date of termination of their employment and it was responsible for any deduction from their wages or non-payment of their holiday pay.

133.7. Because Botleigh Grange Hotel Ltd is administration the Secretary of State for Business Energy & Industrial Strategy ought to make a payment to Mrs Peverell under section 182 Employment Rights Act 1996.

133.8. Botleigh Grange Ltd was not, at any point, the claimants' employer and the claims against it are dismissed.

Employment Judge Dawson

Southampton

Dated 26 June 2020

Sent to the parties on 1 July 2020