EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Nos: 4104276/2020 & 4104277/2020 (V)
(Multiple 9474)

Remedy Hearing held in Glasgow (by CVP) on 20 November 2020; and Deliberation (in Chambers and with claimants' further written representations) on 10 December 2020

Employment Judge Ian McPherson

(1) Mr Callum Grant Thomson	**First Claimant**
(2) Mr Ryan Whyte	**Second Claimant**
Greystone Carbon Reduction Services Ltd	**Respondents Not present and Not represented: No ET3 response lodged**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Further to the liability only Default Judgment, issued by the Tribunal, in terms of **Rule 21 of the Employment Tribunal Rules of Procedure 2013**, dated 24 September 2020, and issued to parties, and entered in the register on that date, the judgment of the Tribunal, following this Remedy Hearing, having heard evidence from both claimants, and having considered their further written representations, in chambers, is as follows:

(1) The respondents not being present, nor represented, at this Remedy Hearing, despite Notice of this Hearing by CVP having previously been sent to them on 9 October 2020, and they not having lodged any ET3 response to defend the claims, nor sought to invite the Tribunal to reconsider its Default Judgment issued on 24 September 2020, the Tribunal dispensed with the need to make further enquiries about the

reason for the respondents' non-attendance at this Remedy Hearing, to participate to such extent as might be allowed by the Employment Judge, and the two claimants, both being present to give evidence, and represented, and being willing and able to proceed with this listed Remedy Hearing, the Tribunal decided, in terms of **Rule 47 of the Employment Tribunal (Rules of Procedure) 2013**, to proceed with this Remedy Hearing in the absence of the respondents, it being in the interests of justice and consistent with the Tribunal's overriding objective to do so, in terms of **Rule 2**, to deal with the case justly and fairly, in particular to avoid any further, unnecessary delay in these Tribunal proceedings determining the appropriate remedy for both claimants, further to the Default Judgment previously issued by the Tribunal.

(2) The second claimant, Mr Ryan Whyte, having acknowledged at this Remedy Hearing that he is not a disabled person, within the meaning of **Section 6 of the Equality Act 2010**, and that he was not such a person at the material time, being the effective date of termination of his employment with the respondent, on 13 May 2020, the Tribunal, acting on its own initiative, and of consent of Mr Whyte, there being no prejudice caused to the respondents, **revokes**, in terms of **Rule 73 of the Employment Tribunal (Rules of Procedure) 2013**, the Default Judgment in respect of him, but only insofar as it found the respondents had discriminated against him on grounds of disability.

(3) In respect of the first claimant, Mr Callum Grant Thomson, the Tribunal makes the following awards of compensation in his favour, payable by the respondents, to him, as follows:-

a. The Tribunal awards the first claimant a monetary award of compensation for unfair dismissal in the total sum of **£6,995.20,** comprising a basic award of **£720**, and a compensatory award of **£5,975.20**;

b. In respect that the first claimant was in receipt of State benefits after his employment with the respondents ended, the **Employment**

Protection (Recoupment of Benefit) Regulations 1996 apply to this monetary award, and the effect of recoupment is set forth in the schedule attached to this judgment. The prescribed element is **£5,975.20**, and relates to the period from 13 May 2020 to date of this judgment on 8 January 2021. The monetary award exceeds the prescribed element by **£1,020**;

c. In respect of the respondents' unreasonable failure to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures, and, in particular, their failure to give the first claimant an appeal hearing against his dismissal, the Tribunal awards the first claimant a **15%** uplift on the compensatory award element of his monetary award for unfair dismissal, being a further sum of **£941.28**, which amount the respondents are ordered to pay to him, in terms of **Section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992**;

d. The respondents having failed to pay the first claimant one weeks' lying time, due and resting to him from the start of his employment with the respondents, and unpaid as at the effective date of termination of employment, the Tribunal finds that that head of complaint is time-barred and, having regard to **Section 23(4A) of the Employment Rights Act 1996,** as inserted by the **Deduction from Wages (Limitation) Regulations 2014** [SI 2014 No. 3322], the Tribunal has no jurisdiction to consider a complaint relating to a deduction where the date of payment of the wages from which the deduction was made was before the period of two years ending with the date of presentation of the complaint. In these circumstances, the Tribunal has no jurisdiction to consider this part of the claim, and so it is dismissed by the Tribunal.

e. Further, the respondents having failed to pay the first claimant his accrued, but untaken holiday entitlement, outstanding as at the effective date of termination of his employment, the respondents are further ordered to pay to the claimant, in terms of **Regulation 30 of**

the Working Time Regulations 1998, the sum of **£277.20**, being 4.5 days' entitlement;

f. In light of the fact that when the Tribunal proceedings began, the respondents were in breach of their statutory duty as an employer to provide to the first claimant a written statement of employment particulars, in terms of **Section 1 of the Employment Rights Act 1996**, and no such written statement having been issued by them to him during the course of his employment with the respondents, the Tribunal further orders, in terms of **Section 38 of the Employment Act 2002,** that the respondents shall also pay to the first claimant a further sum of **£1,440**, being 4 weeks' gross pay, for that breach; and

g. In respect of the first claimant being a disabled person, within the meaning of **Section 6 of the Equality Act 2010**, by reason of dyspraxia, and being such a person at the material time of his employment with the respondents, and the respondents knowing of his disability, the Tribunal finds that the respondents failed to make reasonable adjustments for the first claimant's disability, contrary to **Section 20 of the Equality Act 2010**, and for that failure, the Tribunal makes a declaration in favour of the first claimant, and awards him compensation, in terms of **Section 124 of the Equality Act 2010**, in respect of injury to his feelings, in the amount of **£1,800**, plus interest of **£95.08**, calculated in accordance with the **Employment Tribunal (Interest of Awards in Discrimination Cases) Regulations 1996.**

h. In summary, and in light of the foregoing individual awards, the respondents shall pay compensation to the first claimant in the total amount of **£11,548.76.**

(4) In respect of the second claimant, Mr Ryan Whyte, the Tribunal makes the following awards of compensation in his favour, payable by the respondents to him, as follows:-

a. The Tribunal awards the second claimant a monetary award of compensation for unfair dismissal in the total sum of **£16,555,**

comprising a basic award of **£720**, and a compensatory award of **£15,835;**

b. In respect that the second claimant was in receipt of State benefits after his employment with the respondents ended, the **Employment Protection (Recoupment of Benefit) Regulations 1996** apply to this monetary award, and the effect of recoupment is set forth in the schedule attached to this judgment. The prescribed element is **£10,157.50**, and relates to the period from 13 May 2020 to date of this judgment on 8 January 2021. The monetary award exceeds the prescribed element by **£6,397.50**;

c. In respect of the respondents' unreasonable failure to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures, and, in particular, their failure to give the second claimant an appeal hearing against his dismissal, the Tribunal awards the second claimant a **15%** uplift on the compensatory award element of his monetary award for unfair dismissal, being a further sum of **£2,375.25**, which amount the respondents are ordered to pay to him, in terms of **Section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992**;

d. The respondents having failed to pay the second claimant one weeks' lying time, due and resting to him from the start of his employment with the respondents, and unpaid as at the effective date of termination of employment, the Tribunal finds that that head of complaint is time-barred and, having regard to **Section 23(4A) of the Employment Rights Act 1996,** as inserted by the **Deduction from Wages (Limitation) Regulations 2014** [SI 2014 No. 3322], the Tribunal has no jurisdiction to consider a complaint relating to a deduction where the date of payment of the wages from which the deduction was made was before the period of two years ending with the date of presentation of the complaint. In these circumstances, the Tribunal has no jurisdiction to consider this part of the claim, and so it is dismissed by the Tribunal.

e. Further, the respondents having failed to pay the second claimant his accrued, but untaken holiday entitlement, outstanding as at the effective date of termination of his employment, the respondents are further ordered to pay to the second claimant, in terms of **Regulation 30 of the Working Time Regulations 1998**, the sum of **£268.87**, being 4.5 days' entitlement;

f. In light of the fact that when the Tribunal proceedings began, the respondents were in breach of their statutory duty as an employer to provide to the second claimant a written statement of employment particulars, in terms of **Section 1 of the Employment Rights Act 1996**, and no such written statement having been issued by them to him during the course of his employment with the respondents, the Tribunal further orders, in terms of **Section 38 of the Employment Act 2002**, that the respondents shall also pay to the second claimant a further sum of **£1,440**, being 4 weeks' gross pay, for that breach.

g. In summary, and in light of the foregoing individual awards, the respondents shall pay compensation to the second claimant in the total amount of **£20,639.12.**

(5) Finally, the Tribunal instructs the clerk to the Tribunal to send a copy of this Remedy Judgment to the Registrar of Companies, at Companies House, 4th Floor, Edinburgh Quay 2, 139 Fountainbridge, Edinburgh, EH3 9FF, for information, and consideration by the Registrar in respect of the respondents' application for strike off from the Register of Companies (company no. SC497661), currently suspended since 21 October 2020, following objection made by the claimants' representative.

REASONS

Introduction

1. This case called before me on the morning of Friday, 20 November 2020, for a three-hour Remedy Hearing by CVP, the hearing taking place by videocall using HMCTS's Cloud Video Platform. Notice of CVP Final Hearing (remedy only) was issued to both the claimants' representative, and the respondents (for information only) on 9 October 2020.

2. Subsequently, on 9 November 2020, the claimants' representative, was sent CVP case management orders made by Employment Judge Lucy Wiseman, in terms of **Rule 29 of the Employment Tribunals Rules of Procedure 2013**, following which Mr Paul Thomson lodged with the Tribunal, on behalf of each of the claimants, separate, single sets of documents, incorporating documents which both claimants intended to refer the Tribunal to at this Remedy Hearing. Those documents were hand delivered to the Tribunal on 13 November 2020, and they were available to me when I conducted this Remedy Hearing.

3. This Remedy Hearing took place remotely given the implications of the ongoing COVID-19 pandemic. I was present in the Glasgow Tribunal Centre, and it was a fully video (V) hearing held entirely by videoconferencing, and parties did not object to that format. It was listed on the publicly available CourtServe website as a public Hearing that any interested party could join by contacting the Glasgow ET office. In the event, there was no public or Press attendance at this remote Hearing.

4. The claimants' representative, Mr Paul Thomson, hereinafter referred to as "Mr Thomson Snr", and the two claimants, were each dialling in from separate locations. While, for part of this Hearing, we lost video connection with Mr Paul Thomson, who was calling in from a remote site, he remained in audio contact throughout, and there were no other technical issues with use of the CVP platform. The two claimants, and their representative, were all able to , and did, actively participate and engage in this remote Hearing. We could see and hear each other, although joining from separate locations

Background

5. Following ACAS Early Conciliation, between 22 and 23 July 2020, a single ET1 claim form was lodged, on behalf of both claimants, with the Glasgow Employment Tribunal office, on 11 August 2020, by the claimants' representative, Mr Paul Thomson. Employment details were provided for the first claimant, while, for the second claimant, it was stated that all the relevant required information for him was the same as stated in the main claim of the first claimant. The claimants complained of unfair dismissal, that they were discriminated against on the grounds of disability, and that they were owed notice pay, and holiday pay, by the respondents.

6. Whilst, in the ET1 claim form, it was indicated that they were seeking to get their old jobs back and compensation (reinstatement), and that they were seeking a recommendation from the Tribunal, where claiming discrimination, at this Remedy Hearing, it was confirmed to me, by the claimants' representative, and by each of the claimants themselves, that they were not seeking reinstatement, nor reengagement by the respondents, nor seeking any recommendation from the Tribunal, but they were seeking awards of compensation, as per the details of their financial claims, lodged with the Tribunal, on 13 November 2020, in the sum of **£9,040.60** for the first claimant, and **£16,273.33** for the second claimant.

7. The background and details of the claim for the first claimant were set forth in the ET1 claim form at section 8.2, with additional information at section 15, with information about the remedy sought in the event that the claim was successful, at sections 9.1 and 9.2. At section 8.2, with the first claimant setting out the background and details of his claim, it was stated, in respect of the second claimant, Ryan Whyte, that it was "***the same issues and statement as above".***

8. The two claims were accepted by the Tribunal, and copy served on the respondents, on 13 August 2020, by Notice of Claim, sent to them at the address shown on the ET1 claim form, being the company's registered office address at Companies House. The respondents were advised that, as is standard practice, any ET3 response defending the claim must be received within 28 days of service, i.e. by 10 September 2020 and, if they wished to

apply for an extension of time to submit their response, then they must do so, in writing, with copy to the claimants, and if their response was not received by 10 September 2020, and no extension of time had been agreed by an Employment Judge, they would not be entitled to defend the claims.

9. The respondents were advised, in that same letter, as also were the claimants, through their representative, in a letter of even date, that the case would be listed for a telephone conference call Case Management Preliminary Hearing on Thursday, 8 October 2020, at 11.30am, and that they should complete and return a PH agenda to the Tribunal at least seven days before that Preliminary Hearing. The respondents failed to lodge any ET3 response, by the due date of 10 September 2020, or at all. There was no application by them, or on their behalf, for any extension of time to do so.

10. When the case file was referred to me, as duty Employment Judge, I noted that no response had been received or accepted in this case, and, accordingly, I decided to issue a Default Judgment, without a Hearing, under **Rule 21**, dealing with liability only, the Preliminary Hearing listed for 8 October 2020 to be converted to deal with remedy only. That Default Judgment, dated 24 September 2020, was sent to both parties on 24 September 2020. The respondents were advised that they had the right to apply for a reconsideration of that judgment, within 14 days and that, if they now wished to defend the claim, they would also have to apply for an extension of time to submit their ET3 response and any such application must be in writing and copied to the claimants.

11. Further, and again as a matter of standard practice, the respondents were advised that if they believed that the Default Judgment was wrong in law, they might also appeal to the Employment Appeal Tribunal within 42 days of the date of the letter enclosing the Default Judgment.

12. No application for reconsideration, was made within 14 days of 24 September 2020, or at all, and, to the best knowledge and belief of the Tribunal, no application was made by the respondents, to the Employment Appeal Tribunal, seeking to appeal the Default Judgment against them.

Remedy Hearing before this Tribunal

13. When this case called before me, for this listed Remedy Hearing, both claimants were present, albeit at separate locations, dialling in for the videoconference hearing, while they were both represented by Mr Paul Thomson, who is the first claimant's grandfather. I had before me the Tribunal's casefile, and the two bundles of documents, lodged by Mr Thomson, senior, on behalf of both claimants, on 13 November 2020, with relevant documents attached.

14. As the respondents were neither present nor represented, despite having been sent Notice of this CVP Remedy Hearing, I dispensed with the need to make further enquiries about the reason for the respondents' non-attendance at this Remedy Hearing, to participate to such extent as might be allowed by the Employment Judge. The two claimants, both being present to give evidence, and represented, and being willing and able to proceed with this listed Remedy Hearing, I decided, in terms of **Rule 47 of the Employment Tribunal (Rules of Procedure) 2013**, to proceed with this Remedy Hearing in the absence of the respondents.

15. I did so because I decided it was in the interests of justice and consistent with the Tribunal's overriding objective to do so, in terms of **Rule 2**, to deal with the case justly and fairly, in particular to avoid any further, unnecessary delay in these Tribunal proceedings determining the appropriate remedy for both claimants, further to the Default Judgment previously issued by the Tribunal.

16. Within the Tribunal's casefile, I noted that, on 21 September 2020, the claimants' representative, Mr Paul Thomson, had lodged a completed Preliminary Hearing agenda in respect of the first claimant's claim, case number 4104276/2020, stating that he was making a complaint under **Section 20 of the Equality Act 2010** (failure to make reasonable adjustments for the claimant's disability), described in schedule 2 (disability) to that PH agenda, in answer to question D1 (what physical or mental impairment do you consider affects you?), answered as "***dyspraxia***".

17. The completed PH agenda for the first claimant further explained, in answer to questions D2 to D4, that this impairment has a substantial and long-term adverse effect on the first claimant's ability to carry out normal day to day activities, as he had difficulty with both reading and writing, and stating that this was diagnosed at school and on his medical records held at his GP practice, although no copy records were produced to the Tribunal. I accepted the first claimant's oral evidence to this effect given at this Remedy Hearing.

18. It was further stated, in answer to D4, that the respondents knew or could reasonably be expected to know that the first claimant had a disability at the time he alleges he was discriminated against by them, as the first claimant stated that this was explained in detail at his interview for employment with the respondents. Again, I accepted the first claimant's oral evidence to this effect given at this Remedy Hearing. Mr Thomson Snr confirmed, at this Remedy Hearing, that the only disability discrimination complaint being made by the first claimant was under **Section 20 of the Equality Act 2010**, for the respondents' failure to make reasonable adjustments, and not any claim under **Section 15** for discrimination arising from disability.

19. In opening the Remedy Hearing, after introduction of those present, I explained the purpose of the Remedy Hearing, and the consequences of the respondents not being present, nor represented, having failed to lodge any ET3 response previously defending the claims, and equally having failed to apply for any extension of time to defend the claims, or to appeal, or seek reconsideration of the Default Judgment on liability only issued in the claimants' favour

20. In conducting the Remedy Hearing, I stated that, as per the Tribunal's overriding objective, to deal with the case fairly and justly, in terms of **Rule 2 of the Employment Tribunal Rules of Procedure 2013**, it was not for me as the presiding judge to advise, or represent, either of the two claimants, as that was the role for Mr Paul Thomson, as their representative, but I would seek to clarify matters, arising from the sworn evidence which I would take from both claimants, and explain to them, as the Hearing progressed, what

was happening, and give them the opportunity to ask any questions of clarification that might arise.

21. In particular, I explained that while the claims were undefended, as Employment Judge, I would still require to understand the factual and legal basis of each claim, especially considering the second claimant, Mr Ryan Whyte, had not provided further and better particulars of his claim, and his claim was relying on the information provided in the ET1 claim form completed principally for the first claimant, Mr Callum Grant Thomson.

22. As regards the respondents, I stated that there was no ET3 lodged by them, they had made no contact with the Tribunal, and from an online search made of the Companies House website, against the company name (company number SC497661), I could see that the company status was still showing as "***active"***, but with an active proposal to strike off, with the application made on 6 October 2020 by the respondents, having resulted in a first Gazette Notice for voluntary strike off published on 13 October 2020, and, on 21 October 2020, the voluntary strike off action had been suspended by Companies House.

23. At this stage, Mr Thomson Snr, the claimants' representative, advised that he had made objection to Companies House about the company being struck off the register, and, in the circumstances, in issuing this Remedy Judgment, I have instructed that a copy of this judgment be sent to the Registrar of Companies, given the ongoing litigation between the parties at the Employment Tribunal has now resulted in this Remedy Judgment against the respondents being granted in the claimants' favour, with compensation awarded to each of them, as set forth above in my Judgment.

24. The claimants' representative confirmed that both claimants had a copy of their statements, and productions, as hand delivered to the Tribunal on 13 November 2020, and they were both ready to give evidence to the Tribunal. It was agreed, as the respondents were not present and not represented, and so there would not be any cross examination of the two claimants, that, as a matter of experience, given Mr Thomson Snr is a lay representative, rather

than a legal representative, I would ask each of the claimants a series of structured and focused questions designed to elicit from them the information I required for the purposes of deciding upon an appropriate remedy for each of them for their successful complaints against the respondents, and then give them the opportunity, if they felt it appropriate, to give me any other evidence they felt relevant which might assist me in my task.

25. As a preliminary matter, I then raised the issue of the second claimant, Mr Whyte's disability status (if any). The Default Judgment had provided that both claimants' complaints of (a) unfair dismissal; (b) discrimination on the grounds of disability; (c) failure to pay notice pay; and (d) failure to pay holiday pay, all succeeded, and that the remedy to which the claimants were entitled would be determined at a Hearing.

26. Having noted the Preliminary Hearing agenda submitted for the first claimant, and that he was a disabled person, by reason of his dyspraxia, I enquired of Mr Whyte as to his position. He stated that he was not claiming to be a disabled person, and that he had not been so at the time of his employment with the respondents terminating, and that he should not therefore have received a Default Judgment in his favour, stating that he had been the subject of unlawful disability discrimination by the respondents.

27. In the circumstances, acting on my own initiative, in terms of the Tribunal's powers under **Rule 73 of the Employment Tribunal Rules of Procedure 2013**, and of consent of Mr Whyte, there being no prejudice caused to the respondents, I decided to revoke the Default Judgment in respect of him, but only insofar as it found the respondents had discriminated against him on grounds of disability. I have so ordered at part (2) of my Judgment above.

Findings in Fact

28. I have not sought to set out every detail of the evidence which I heard, nor to resolve every difference between the parties, but only those which appear to me to be material to the task of determining an appropriate remedy for each of the two successful claimants. My material findings, relevant to the issues before me for judicial determination, based on the balance of probability, are

set out below, in a way that is proportionate to the complexity and importance of the relevant issues before the Tribunal.

29. On the basis of the evidence led before me, from the first claimant, on oath, and the second claimant, on affirmation, and after considering the various documents included in the two Bundles handed into the Tribunal, on 13 November 2020, and the additional documents submitted by the claimants' representative, Mr Thomson Snr, after close of this Remedy Hearing, by emails sent to the Tribunal's CVP team, on 22 November 2020, I have found the following essential facts established:-

    i. The claimants were both formerly employed by the respondents as general operatives, operating, as at the effective date of termination of their employment, on 13 May 2020, out of a site operated by Mitie at 13 Fairfield Place, East Kilbride.

    ii. The respondents are a private limited company, company number SC497661, having a registered office and place of business in Glasgow. The claimants' line manager was Mr Gordon Smith, brother to Craig Smith, the respondents' managing director.

    iii. The first claimant, Mr Callum Grant Thomson, is aged 26 years (date of birth: 19 August 1994) and he started employment with the respondents on 7 May 2018. His employment with the respondents ended on 13 May 2020.

    iv. Following a brief meeting on Monday 11 May 2020, lasting less than 5 minutes, and where they had no witness to accompany them, the two claimants were separately pulled into meetings by Rose Charlton, the respondents' operations director, accompanied by Debbie Irving, operations manager, and, without any prior notice or explanation, simply told they were each being suspended.

    v. Following further separate meetings with each of them on Wednesday, 13 May 2020, with Debbie Irving, accompanied by Clare Charlton Rose's daughter), the two claimants were then summarily dismissed

by the respondents, without following any recognised procedure, for investigation and/or disciplinary meetings, as per the ACAS Code of Practice on Disciplinary and Grievance Procedures. Both claimants produced to the Tribunal a copy of the relevant correspondence received from the respondents, in respect of these meetings, their termination of employment, and their unsuccessful attempts to pursue an internal appeal against dismissal.

vi. According to his ET1 claim form, the first claimant, Mr Thomson, worked 40 hours per week for the respondents, and he was paid £360 per week, gross pay before tax, and £305 per week net normal take home pay. At this Remedy Hearing, he gave evidence that he worked 40 hours per week for the respondents, being 8 hours per day, Monday to Friday, 8am to 4.30pm, with a 1/2-hour lunch break.

vii. He produced some copy payslips and copy bank statements to the Tribunal vouching his earnings from the respondents, including some for the 12 weeks prior to his dismissal. When the first claimant was dismissed by the respondents, on 13 May 2020, he was not paid for any period of notice. While, at the time of lodging his ET1 claim form, on 11 August 2020, he had not found any new employment with a new employer, and he was in receipt of State benefits, through Jobseekers' Allowance, his circumstances had changed by the time of this Remedy Hearing.

viii. Mr Thomson advised the Tribunal that he had started in a new job on 24 August 2020, and he was still in that job as at the date of this Remedy Hearing. He advised the Tribunal that he is now a personal assistant carer for a young boy in East Kilbride, working 5 days per week, Monday to Friday, 9am to 4pm, and he is paid at the rate of £11 per hour, earning around £1450/1460 per month, net, from gross monthly earnings of around £1760. No vouching documents were produced to the Tribunal as regards earnings from this new employment for the first claimant.

ix. The second claimant, Mr Ryan Whyte, is aged 26 years (date of birth: 21 June 1994), and he started his employment with the respondents on or around July 2017. Like the first claimant, his employment with the respondents also ended on 13 May 2020, in identical circumstances, following his meeting with Debbie Irving and Clare Charlton from the respondents.

x. Mr Whyte produced some copy payslips and copy bank statements to the Tribunal vouching his earnings from the respondents, including some for the 12 weeks prior to his dismissal. Some of the payslips produced were from 2017 and 2019, but none from 2020. Some payslips were issued in the name of Jack Watson Ltd, and the first payslip produced in the name of the respondents is dated 5 July 2019. Nonetheless, the second claimant stated that Jack Watson Ltd was the payroll company used by the Greystone Group, and he had continuity of employment with the respondents from around July 2017.

xi. The second claimant, Mr Whyte, confirmed that, when he was dismissed by the respondents, on 13 May 2020, he was not paid for any period of notice. In his evidence to the Tribunal, he stated that he worked 40 hours per week for the respondents, the same as the first claimant, and they usually worked alongside each other, in a group of labourers, perhaps another 5 or 6 guys, plus tradesmen, all in all around 20 people on site in East Kilbride.

xii. Mr Whyte further advised the Tribunal that, as at the date of this Remedy Hearing, he was unemployed, and he had been unemployed since his employment with the respondents ended on 13 May 2020. He has been in receipt of State benefits, through Jobseekers Allowance, which stopped on 18 November 2020, as per copy letter from the Benefit Centre, dated 30 June 2020, showing JSA at £74.35 per week, as from 22 May 2020, as produced to the Tribunal along with his original written statement and bundle of documents lodged on 13 November 2020. He had unsuccessfully applied for other jobs, as per the list produced to the Tribunal.

xiii. Both claimants were, by email sent to them on 11 May 2020 from Rose Charlton, operations director with the respondents, required to attend separate disciplinary interviews on Wednesday 13 May 2020, at which disciplinary action against them, in accordance with the company's disciplinary procedure, was to be considered with regard to alleged gross misconduct. No copy of the respondents' disciplinary procedure was provided to the claimants with that invitation to attend that disciplinary interview.

xiv. It was stated that, after investigation into an incident which was stated to have taken place on Tuesday, 7 May 2019 (sic), their alleged actions had been put forward for further discussion, in light of count (1) failure to report an incident/accident to line management, and count (2) damage to company vehicle due to negligence. No further detail, or supporting documentation, had been provided to the claimants.

xv. Those disciplinary interviews were carried out on 13 May 2020, by Debbie Irving, operations manager with the respondents, accompanied by Clare Charlton, and as per their entitlement to be accompanied at those interviews by another work colleague, both claimants attended their separate interviews with Ms Irving along with Mr Christopher McDermott, another operative. In their evidence to the Tribunal, they recalled these meetings lasting about ½ hour each.

xvi. The claimants were not given an outcome to these disciplinary interviews at the close of their respective meetings, but advised by Ms Irving that an outcome would be sent to them. By email to each of them, on 13 May 2020, from Debbie Irving, further to what she described as the disciplinary hearing that day, Ms Irving wrote to summarise the discussion and confirm her decision which was to summarily dismiss both claimants from the respondents' employment, without notice, and with immediate effect.

xvii. A copy of those e-mail notifications of termination of employment were produced to the Tribunal by both claimants. Both claimants were

advised of their right to appeal against the summary dismissal decision to Mr Craig Smith, managing director of the respondents, within 5 working days.

xviii. Following termination of their employment with the respondents, on 13 May 2020, both claimants sought to appeal internally against their dismissals, by emails to the respondents, not included in the documents provided to the Tribunal, but the respondents acknowledged their appeals, by email of 20 May 2020 from Ms Irving.

xix. However, the respondents did not thereafter provide them with any appeal hearing before Mr Craig Smith, director of the respondents, or otherwise. When there was no appeal hearing provided, the claimants contacted ACAS to start early conciliation.

xx. Ms Irving's email of 29 May 2020, copy provided to the Tribunal by the claimants, refers to the respondents taking advice from their (unnamed) employment lawyer, and Mr Smith's decision to "***postpone***" the appeal hearing until a later date, due to the Covid 19 pandemic restrictions and Government guidelines.

xxi. Having considered the copy correspondence produced by each of the claimants to this Tribunal, as part of their additional documents supplied on 22 November 2020, including emails from Debbie Irving, on 29 May 2020, and response by Paul Thomson, on 31 May 2020, as well as the claimant's oral evidence to this Tribunal, the Tribunal finds that continuing failure to provide an internal appeal against dismissal was unreasonable, in circumstances where the respondents had stated they would contact the claimants as regards a date, but then they did not do so.

xxii. Further, having regard to the ACAS guidance to employers, during the ongoing COVID-19 pandemic, issued in or around May 2020, which has been to try and arrange meetings by remote means, if physical meetings in the employer's premises are not appropriate, it was unreasonable of the respondents not to so arrange to hear the

claimants' appeals against dismissal. The meetings held with both claimants, on 11 and 13 May 2020, had, of course, been held within the respondents' premises, and not remotely.

xxiii. In their evidence to this Tribunal, the first claimant described the suspension on Monday, 11 May 2020, as a "***shock to the system***", and he further described the lack of an appeal hearing as a significant feature of his case, and the second claimant stated that they had never been offered an appeal hearing by Zoom, or the like.

xxiv. Mr Thomson spoke of being thrown out the door, and despite time and effort to appeal, he stated that he felt that the request for an appeal was ignored by the respondents. He stated that things had been tough, especially during a pandemic, and he had had to get money from his parents to help him out paying his bills for things.

xxv. He further stated that getting a new job had given him confidence, but he had not forgotten what had happened to him, and its impact on his mental health, with lock down, and being unsuccessful in job applications, during a time of pandemic, until he secured his new employment.

xxvi. Both claimants advised this Tribunal that they did not receive from the respondents, at any time during the course of their employment with them, written particulars of employment, or a copy of the company's disciplinary procedures. In these circumstances, the Tribunal finds that the respondents were in breach of their statutory duty, as an employer, to provide the claimants with written statements of their employment particulars.

xxvii. The first claimant, Mr Callum Grant Thomson, is a disabled person, within the meaning of **Section 6 of the Equality Act 2010**, by reason of dyspraxia, and being such a person at the material time of his employment with the respondents, his disability of dyspraxia was known to the respondents, he having informed them of it when he was recruited and joined their workforce.

xxviii. Notwithstanding the respondents' knowledge of his disability, they failed to make reasonable adjustments for that disability and, on that basis, the respondents discriminated against the first claimant on grounds of disability. In his evidence to this Tribunal, Mr Thomson also spoke of being dyslexic, and having been so since high school, where he required a reader and a scribe for exams.

xxix. As a result of the respondents' discrimination against him, on grounds of disability, the first claimant suffered injury to his feelings. In his evidence to the Tribunal, Mr Callum Grant Thomson spoke of the impact on him, and that, in doing jobs, he needed to get somebody else to explain things to him, as he felt that his line manager, Gordon Smith, was too busy to tell him what equipment to take to a job, and he also felt as he and Ryan Whyte were the youngest in the squad, the others being in the 30 to 40 age group, they often got in to trouble, and they were given the blame for other people's mess.

xxx. Mr Thomson described Gordon Smith as a bad communicator, who rarely talked things through with him, and who was always telling people to get out to their jobs. While others could wing it, the first claimant stated that he was not comfortable with that, as he needed to fully understand what, where, and how, with more detail than Mr Smith was providing. He stated that Mr Smith knew he was dyslexic, as he had made him aware of that when he started his employment with the respondents.

xxxi. After losing his job with the respondents, Mr Thomson stated that he found it hard to be motivated, living through a pandemic, and he described himself as still vulnerable and hurt, and needing to gain trust in an employer. He described it as having been not great, but a hard, stressful and strained position to be in at age 26.

xxxii. Both claimants produced to the Tribunal their bundles hand delivered to the Glasgow Tribunal office on 13 November 2020. The first claimant, Mr Callum Grant Thomson, provided evidence, within that

one page, type written statement, of his attempts to secure new employment, after being sacked by the respondents on Wednesday, 13 May 2020, up to and including his application for a support worker job on 27 July 2020. The Tribunal is satisfied that he made reasonable attempts to mitigate his losses following termination of his employment with the respondents.

xxxiii. As per that written statement, Mr Thomson further advised that following an interview for that job, on 18 August 2020, he was offered the job the following day, and started on 24 August 2020. His first week was lying time, then he worked all of September 2020, and got his first pay from that new employer on 25 September 2020. He applied for Jobseekers Allowance on 7 August 2020, got an early pay off them to help him pay his bills on 11 August 2020, which was in the sum of £400, and then he got his final payment off them of 25 September 2020, and that was his last payment from Jobseekers now that he is back in full time work with his new employer.

xxxiv. As at the effective date of termination of employment with the respondents, on 13 May 2020, both claimants assert that they were each due one week's lying time, due and resting to them from the start of their employment with the respondents, and unpaid as at the effective date of termination of employment, and they both asserted accrued, but untaken holiday entitlement, outstanding as at the effective date of termination of their employment, each being due 4.5 days' holiday pay.

xxxv. The first claimant, Mr Thomson, spoke of having an entitlement to 28 days holiday per year, with 19 days to take as holiday leave, and the balance bank holidays, being what he calculated as 1.5 days per month, with the respondents' holiday year being the calendar year. In the period from 1 January to 13 May 2020, he stated that he had taken 3 days' leave, to go on holiday to Prague, leaving him with a balance of 4.5 days, accrued but unused as at the date of his dismissal.

xxxvi. The second claimant, Mr Whyte, spoke in his evidence to the Tribunal in the same terms about holiday entitlement from the respondents being on a calendar year basis, and he having 4.5 days' accrued balance as at 13 May 2020.

xxxvii. By way of the compensation sought from the respondents, the first claimant, Mr Callum Grant Thomson, stated as follows, as per his written statement lodged with the Tribunal on 13 November 2020:

"Compensation claimed equates to lost salary from 13th May until 25th September.

£308 per week, 19 weeks + 2 days = £5,975.20.

£308 1x week lying time unpaid £308

£277.20 holiday pay unpaid x 4.5 days £277.20

Total claimed wages = £6,560.40

In addition, I seek further compensation regards failure to follow ACAS guidelines regarding disciplinary procedural failure. An additional 25% of the above amount. £1,640.10.

Also in addition I am claiming an additional sum of 25% with regards to my disability discrimination claim £1,640.10

Total compensation claim is as above £9,840.60.

Minus payments received from JSA £800.00

Total claim £9,040.60.

xxxviii. For the second claimant, Mr Ryan Whyte, his written statement to the Tribunal, as lodged on 13 November 2020, stated as follows:

"Sacked Wed 13th May

13th May to date 12th November

= 26 weeks £7,767.50

1 x Week lying time unpaid £298.75

Holiday pay unpaid x 4.5 days £268.87

Total of claim £8,335.12

In addition I seek further compensation regards failure to follow ACAS guidelines regards Disciplinary procedural failure. An additional 25% of the above amount.

Additional 25% £2,083.78

Total of Claim ***£10,438.90.***

Minus JSA Payments of 25 weeks of £74.35

Minus £1,858.75

Total amount of claim minus JSA £8,580.15.

As included my JSA expires on 18th Nov and given the current economic climate I am unfortunately not confident of obtaining further employment in the near future.

Therefore I am seeking the weekly difference from my projected earnings until May 2021.

One year in total which equates to 26 weeks at £5,834.40 this takes account of continual JSA at the above rate for the 26 weeks i.e. £298.75

Minus £74.35

Total weekly continuation of £224.40 x 26 weeks

Additional 26 weeks £5,834.40

Above added to £10,438.90

Grand Total of compensatory claim £16,273.33.

Tribunal's assessment of the evidence

30. In considering the evidence led before the Tribunal, and the various documents produced to me, both before, and after this Remedy Hearing, I have had to carefully assess the whole evidence heard from both claimants, and assess it.

31. I found both claimants to be credible and reliable witnesses, as to the essential facts, and I was satisfied that they did not embellish, or exaggerate, any of the matters about which they gave evidence to this Tribunal. Indeed, it is to the credit of Mr Ryan Whyte, the second claimant, that he readily acknowledged that the Default Judgment liability finding that he had been the subject of unlawful disability discrimination by the respondents was unfounded, and required, in the interests of justice, to be revoked by me, which is exactly what I did, with his consent.

32. Both claimants were clearly aggrieved at their treatment at the hands of their former employers, the respondents, and about the way in which they had been treated in such a shabby, and unprofessional way, basically ignoring their statutory employment protection rights, and not offering them any appeal hearing against their summary dismissals from employment with the respondents.

Reserved Judgment and Issues for the Tribunal

33. At the close of this Remedy Hearing, where evidence, and short closing submissions by Mr Thomson Snr, as the claimants' representative, lasted around 2 hours, I advised the claimants, and their representative, that I would await the further additional documents to be produced by the claimants, as discussed with them during the course of their evidence, where they referred to documents which were not in the bundles previously provided to the Tribunal, on 13 November 2020, and I stated that, after private deliberation, in chambers, in due course, I would write up to the Tribunal's reserved judgment and reasons, which I would hope to try and issue to them within 4 weeks.

34. On account of other judicial business, I only managed to consider this case, in chambers, on Thursday, 10 December 2020, when I took into account not only the evidence led during the CVP hearing, but also both claimants' further written representations and documentation. I apologise for the delay in issue of this judgment, caused by other judicial business, delay in typing up of my draft, and the recent festive holiday breaks.

35. The issues for the Tribunal were to determine the appropriate remedy for each claimant, following the previously liability only Default Judgment issued on 24 September 2020. With the revocation of part (b) of that Default Judgment, finding discrimination on the grounds of disability, as regards the second claimant, Mr Whyte, that matter no longer fell for consideration by me in writing up this judgment. The matter of compensation for unlawful disability discrimination only now arises in regard to the first claimant, Mr Callum Grant Thomson.

36. In his brief, oral closing submissions to me, at the close of the Remedy Hearing, Mr Thomson Snr, stated that he was asking me, as the presiding judge, to apply the relevant law to the facts, and that I should take into particular account that the claimants had tried to engage the respondents in exercising their internal appeal rights, and he had emailed them in that regard, yet the respondents had not provided any appeal hearing to the claimants, nor indeed offered them even a virtual, video conference type appeal hearing.

37. He stated that he sought the awards of compensation, set forth by both claimants, in their written statements lodged with the Tribunal, and when I enquired of him about the additional sum of **£1,640.10**, referred to in Mr Thomson Jnr's written statement, being "***an additional sum of 25% with regards to my disability discrimination claim"***, Mr Thomson Snr stated that was not to do with the failure to follow the ACAS Code of Practice, but it was to be regarded as a claim for injury to his grandson's feelings caused as a result of the respondents' unlawful discrimination against him on the grounds of disability, and he invited me to make an appropriate award to the first claimant in that regard.

38. As a lay representative, Mr Thomson Snr did not have any legal submissions to make to me, nor any case law authorities, or statutory provisions to cite, and nor did I expect him to do so. He simply invited me to apply the relevant law to the facts of the case, as I would find them to be having heard evidence from both claimants, and considered their various documents, and to thereafter make appropriate awards of compensation to each of the claimants.

Relevant Law

39. I have required to give myself a self-direction, in the following terms, as regards the relevant law on remedy for each of the successful heads of claim. For the unfair dismissal head of claim, **Section 94 of the Employment Rights Act 1996** provides that an employee has the right not to be unfairly dismissed by his employer. In the present case, it is clear that both claimants were summarily dismissed by the respondents, on 13 May 2020, and I have already made a declaration, in the original Default Judgment, that they were both unfairly dismissed by the respondents.

40. The respondents failed to lodge an ET3 response defending the claim and, as such, the reason, or if more than one, the principal reason, for the dismissal of each claimant has not been shown by the respondents and, for that reason, applying the test of fairness, in **Section 98 of the Employment Rights Act 1996,** the Tribunal in its previous Default Judgment made a finding of unfair dismissal in favour of both of the claimants.

41. Remedies for unfair dismissal are set forth in **chapter II of part X of the Employment Rights Act 1996**, in particular at **Sections 112 to 126 of the Employment Rights Act 1996.** In the present cases, both claimants confirmed that they were not now seeking an order for reinstatement, or reengagement, by the respondents, and accordingly my focus has been on what sums to award to them by way of compensation for unfair dismissal, being both a basic award, and a compensatory award.

42. As regards unlawful deduction from wages, the relevant law is to be found in **part II of the Employment Rights Act 1996.** **Section 13** provides the right not to suffer unauthorised deductions from wages, and an employee may

present a complaint to an Employment Tribunal, under **Section 23**, which the Tribunal can then determine under **Section 24**. By virtue of **Section 27**, wages means, in relation to any worker, any sums payable to the worker in connection with their employment, including holiday pay. The Default Judgment contained no declaration that the claimant's complaints of unlawful deduction from wages succeeded.

43. In respect of one week's lying time, claimed by both claimants, due and resting owing since start of their employment with the respondents, but unpaid as at their summary dismissal on 13 May 2020, as per section 9.2 of the ET1 claim form, it appears that their claim in that regard has been presented out of time, and so the Tribunal has no jurisdiction to entertain this head of complaint, having regard to **Section 23 of the Employment Rights Act 1996**, in circumstances where the claim is made well after 3 months from the date of the alleged unlawful deduction from wages, where they have not shown that it was not reasonably practicable to present this complaint before the end of the relevant period of 3 months and where, even if they could show it was not reasonably practicable to do so, the date of presentation of this claim to the Tribunal some years later falls well outwith such further period as a Tribunal might consider reasonable, to grant them an extension of time to pursue that complaint.

44. Further, and in any event, in terms of **Section 23(4A)**, inserted by the **Deduction from Wages (Limitation) Regulations 2014** [SI 2014 No. 3322] an Employment Tribunal is not to consider a complaint relating to a deduction where the date of payment of the wages from which the deduction was made was before the period of two years ending with the date of presentation of the complaint. In these circumstances, the Tribunal has no jurisdiction to consider this part of the claim, and so it is dismissed by the Tribunal.

45. Further, rights and obligations concerning working time, and entitlement to annual leave, are set forth in the **Working Time Regulations 1998**. In terms of **Regulation 30,** a worker may present a complaint to a Tribunal that their employer has failed to pay them the whole or any part of any amount due to them under **Regulation 14 or 16** for compensation related to entitlement to

leave, and payments in respect of periods of leave. The Default Judgment contained a declaration that the claimant's complaints of failure to pay holiday pay succeeded.

46. In section 9.2 of the ET1 claim form, it was stated that they both were due "***approx. 2 days' holiday not paid***." In their evidence at this Remedy Hearing, they both spoke of 4.5 days' holiday paid accrued and unpaid, and I have awarded compensation on that basis, being satisfied, on their sworn evidence, that that is the balance outstanding to them both as at the effective date of termination of employment.

47. In terms of the **Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994**, an employee may bring a contract claim before an Employment Tribunal if such a claim arises or is outstanding on the termination of the employee's employment. Failure to pay notice pay, when terminating an employee's contract of employment, is generally pursued before the Employment Tribunal as a claim for breach of contract. In their ET1 claim form, the claimants stated that they were owed notice pay, although the amount owed was not specified.

48. While, in terms of the Default Judgment, there is already a liability finding that there was a failure by the respondents to pay notice pay, the matter of remedy does not now arise, in respect of any additional compensation, as I have taken that notice period into account in assessing the compensation awarded to both claimants for their unfair dismissal. I refer to later in these Reasons, at paragraph 81 below. In the absence of any contractual provision, and the claimants stated they had received no written terms and conditions of employment from the respondents, the statutory minimum periods of notice apply, as per **Section 86 of the Employment Rights Act 1996**.

49. Finally, I turned to the relevant law on remedy for a successful discrimination complaint. The Default Judgment, as varied, in light of the revocation as regards the second claimant, has already made a finding that the first claimant was discriminated against by the respondents on grounds of disability. **Section 124 of the Equality Act 2010** makes provision about remedy in a

discrimination complaint. In terms of **Section 124 (2)**, a Tribunal may (a) make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate; (b) order the respondent to pay compensation to the complainant; and (c) make an appropriate recommendation, which is defined (at **Section 124 (3)**) as being a recommendation that within a specified period, the respondent shall take specified steps for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the proceedings relate.

50. While, in the ET1 claim form, the claimants indicated that they were seeking a recommendation from the Tribunal, in the event of success, Mr Thomson Snr confirmed, at this Remedy Hearing, that that was not now the case. That was an appropriate concession to make, as for a recommendation to be made by the Tribunal, the claimants would require still to be in the employment of the respondents, and that is clearly not the case, and it has not been the case since they were summarily dismissed by the respondents on 13 May 2020.

51. Further, in terms of the Tribunal's powers, under **Section 124 (6) of the Equality Act 2010**, I note and record that the amount of compensation which may be awarded under **Section 124 (2) (b)** corresponds to the amount which could be awarded by the Sheriff Court under **Section 119. Section 119 (4)** provides that an award of damages may include compensation for injured feelings, whether or not it includes compensation on any other basis.

52. Further, and because they are also relevant to remedy, I have considered the specific terms of **Section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992,** and **Section 38 of the Employment Act 2002.** I consider their respective provisions later in these Reasons when awarding compensation to the two claimants, so I simply signpost that fact here, and refer to the further detail below.

53. Finally, while not raised by the claimants, or their representative, I have had cause to reflect, in private deliberation, in writing up this reserved judgment, whether or not this is an appropriate case to consider making a financial penalty order against the respondents, in terms of **Section 12A of the**

Employment Tribunals Act 1996 as amended by the **Enterprise and Regulatory Reform Act 2013, Section 16**, in circumstances where, in determining a claim involving an employer and a worker, the Tribunal concludes that the employer has breached any of the worker's rights, and the Tribunal is of the opinion that the breach has one or more "***aggravating features".***

54. As, however, the matter was not raised by the claimants, or their representative, and the respondents are, in any event, not likely to have anticipated being required to address such a penalty, as having been within the contemplation of the Tribunal, I have decided that it is not appropriate to consider that matter any further, and accordingly I have restricted my judgment to remedy on the various basis sought by the claimants. Further, and in any event, as any financial penalty , if ordered by the Tribunal, is paid to the Secretary of State, I would be concerned that, even if I were to make any such an order, the respondents might well give priority to paying that amount to the State, rather than paying the claimants the various amounts I have ordered in this Remedy Judgment. As such, I need not discuss this matter any further.

Discussion and Deliberation

55. In carefully reviewing the evidence led in this case, and making my findings in fact, and then applying the relevant law to those facts, I have had to consider the appropriate remedy for each of the claimants' successful heads of claim against these respondents.

56. On the first question, what are each of the two claimants entitled to, by way of compensation for unfair dismissal by the respondents, I start by making a few general observations.

57. The claimants have indicated that they seek an award of compensation only. Compensation, in terms of **Section 118 of the Employment Rights Act 1996** is made up of a basic award and a compensatory award. A basic award, based on age, length of service and gross weekly wage, in terms of **Section 119 of the Employment Rights Act 1996,** can be reduced in certain defined

circumstances. **Section 122 (2)** states that where the Tribunal considers that any conduct of a claimant before the dismissal was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the Tribunal shall reduce or further reduce that amount accordingly. Further, **Section 123 (1)** provides that the compensatory award is such amount as the Tribunal considers just and equitable having regard to the loss sustained by the claimant in consequence of dismissal insofar as that loss is attributable to action taken by the employer.

58. Subject to a claimant's duty to mitigate their losses, in terms of **Section 123 (4)**, this generally includes loss of earnings up to the date of the Final Hearing (after deducting any earnings from alternative employment), an assessment of future loss of earnings, if appropriate, a further figure representing loss of statutory rights, and consideration of any other heads of loss claimed by a claimant from the respondent employer.

59. Where, in terms of **Section 123 (6)**, the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the claimant, then the Tribunal shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.

60. There being no resistance by the respondents to both of these claims, nor in relation to the remedies being sought by the claimants from this Tribunal, on the information available to me, from both claimants, I do not consider it just and equitable that I should reduce, on account of any contributory conduct by either, or both of them, the amount of the basic or compensatory award otherwise payable to each of the claimants for their unfair dismissal by the respondents.

61. Further, both claimants provided the Tribunal with evidence as regards their attempts to mitigate their losses, following summary dismissal from the respondents' employment. Having regard to the relevant legal principles established by the Court of Appeal, in **Wilding v British Telecommunications plc [2002] IRLR 524**, which were reaffirmed by Mr Justice Langstaff, then President of the Employment Appeal Tribunal, in

Cooper Contracting Limited v Lindsey [2015] UKEAT/0184/15, now reported at **[2016] ICR D3**, and more recently by the Scottish EAT Judge, Lady Wise, in **Donald v AVC Media Enterprises Limited [2016] UKEATS/0016/2014**, the burden of proof is on the wrongdoer; a claimant does not have to prove that they have mitigated loss, and the standard of proof on mitigation of loss is that of a reasonable person and the Tribunal must not apply too demanding a standard on the victim; the claimant is not to be put on trial as if the losses were their fault when the central cause is the act of the wrongdoer; and the test may be summarised by saying that it is for the wrongdoer to show that a claimant has acted unreasonably in failing to mitigate.

62. On the evidence before me, I am satisfied that each of the claimants has taken reasonable steps to mitigate their losses. The first claimant has been fortunate in that he has managed to secure new employment, a situation unfortunately not shared by the second claimant, who remains unemployed. The issue which now arises is what is the appropriate amount of compensation that the Tribunal should order the respondents to pay to each of the claimants for their unfair dismissal from employment.

63. I have carefully considered the facts, as per my findings in fact detailed above, and I have come to the conclusion that both claimants should receive the appropriate basic award, and the appropriate compensatory award for their unfair dismissal, and that without any reductions or deductions.

64. For the first claimant, Mr Callum Grant Thomson, he was employed by the respondents from 7 May 2018 until 13 May 2020, a period of two continuous years' employment with the respondents. Taking that length of service, together with his age at effective date of termination, being then aged 25 (date of birth : 19 August 1994), that produces a basic award of 2 weeks' gross pay at **£360** gross per week.

65. For the second claimant, Mr Ryan Whyte, he was employed by the respondents from around July 2017 until his dismissal on 13 May 2020 and so that too is a period of two continuous years' employment with the

respondents. Taking that length of service, together with his age at effective date of termination, again being aged 25 (date of birth: 21 June 1994), that produces a basic award of 2 weeks' gross pay at **£360** per week. Accordingly, and on that basis, I have awarded **£720** as a basic award payable by the respondents to each of the claimants.

66. Next, I turn to the compensatory award for unfair dismissal. Although not included in either claimant's details of financial loss, I am satisfied that an award of **£300** is appropriate for loss of each of their statutory employment rights, following termination of their employment with the respondents, and to recognise that they will each have to work two years with a new employer to regain protection from unfair dismissal.

67. As such, and as an award at that level is within generally recognised bounds for an Employment Tribunal to make such an award, I have no difficulty with awarding that amount to each of them as part of their compensatory award.

68. Turning then to look at their loss of earnings, I require to consider that having regard to past loss of earnings, to date of this Remedy Hearing, and any future loss of earnings from date of this Remedy Hearing, going forward. The Tribunal's duty, under **Section 123 of the Employment Rights Act 1996**, is to assess the amount of the compensatory award as being such amount as the Tribunal considers just and equitable in all the circumstances, having regard to the loss sustained by the claimant in consequence of dismissal insofar as that loss is attributable to action taken by the respondents as the former employer.

69. In determining the compensatory award, the Tribunal must proceed on the basis of each claimant's **weekly net pay** when employed with the respondents. In his written statement, the first claimant**, Mr Thomson Jnr**, had calculated his losses on the basis of **£308 net per week**, while the second claimant, **Mr Whyte**, as per his written statement, had drafted his losses on the basis of a net week's pay @ **£298.75**. It was clear from the payslips provided that the **gross weekly pay** for both claimant, on the basis of a 40-hour week, was **£360** each.

70. However, having considered the documents lodged on 13 November 2020, and heard their oral evidence, where it appeared net wages varied from week to week, I had intended, using the claimant's calculations, and the copy payslips and bank statements provided by both claimants after the close of the Hearing, to assess the amount of a week's pay, having regard to the provisions of **Sections 221 to 223 of the Employment Rights Act 1996,** and having considered that documentation, I had then intended to calculate the average net weekly wages for each claimant, over the 12 week period prior to the effective date of termination on 13 May 2020.

71. In that regard, the exercise as I had intended it to be, did not go according to my plan. There was incomplete information provided, or data had been redacted / unclear on the documents provided. I did not consider it appropriate to request further documentation, as I knew both claimants were keen to get a remedy judgment in early course, and a referral back to them would simply cause further delay. However, from the copy payslips and / or bank statements provided to the Tribunal, the following information has been extracted:-

First claimant: Callum Grant Thomson

Date	**Tax Period (week)**	**Net pay**
22/05/20	Week 7	£217.18
15/05/20	Week 6	£328.69
8/05/20	Week 5	£310.10
1/05/20	Week 4	£310.29
24/4/20	Week 3	£310.10
17/4/20	Week 2	£310.29
10/4/20	Week 1	£310.30
3/4/20	Week 52	£308.05

27/3/20	Week 51	£308.25
20/3/20	Week 50	Not vouched
13/3/20	Week 49	£308.25
6/3/20	Week 48	Not vouched

Second claimant: Mr Ryan Whyte

Date	**Tax Period (week)**	**Net pay**
22/05/20	Week 7	Not vouched
15/05/20	Week 6	Not vouched
8/05/20	Week 5	Not vouched
1/05/20	Week 4	Not vouched
24/4/20	Week 3	Not vouched
17/4/20	Week 2	Not vouched
10/4/20	Week 1	£301.99
3/4/20	Week 52	£302.20
27/3/20	Week 51	£396.87
20/3/20	Week 50	£249.79
13/3/20	Week 49	£298.76
6/3/20	Week 48	£298.75

72. As such, in assessing past loss of earnings, I have not been able to calculate the average weekly net wage, as I had hoped to do, and, in these circumstances, I have had no alternative but to use the claimant's figures of **£308 net per week for Mr Thomson Jnr**, the first claimant, and **£298.75 net**

per week for Mr Whyte, the second claimant. Those figures produce a daily rate of **£61.60** for Mr Thomson, and **£59.75** for Mr Whyte, which figures they have both used to calculate their holiday pay, where I have awarded them the amounts claimed for 4.5 days' each. I refer to paragraph 88 of these Reasons below.

73. The period between effective date of termination, being 13 May 2020 and the date of this Remedy Judgment (being 8 January 2021) is **34 weeks**. The first claimant, Mr Callum Grant Thomson, has received earnings in that period, paid on 25 September 2020, from his new employment since 24 August 2020, and he has claimed **19 weeks, 2 days @ £308 net per week**, equalling **£5,975.20** in that regard. It is appropriate that I award him that sum for past loss of earnings.

74. For the second claimant, Mr Ryan Whyte, he has not obtained any new employment, post termination of employment with the respondents, so he is entitled to past loss of earnings based on the whole period from effective date of termination to date of this Remedy Judgment, being **34 weeks**, at **£298.75 per week net,** producing the sum of **£10, 157.50** for his past loss of earnings award.

75. The first claimant made no application to this Tribunal for future loss of earnings. While no vouching was produced to this Tribunal, he spoke in evidence of his net earnings now being **£1450/1460 per month**, which multiplied by 12, and divided by 52, gives **£334.61 / £336.92** per week, thus being more than when he was employed and paid by the respondents, when he received **£308** per week net. However, the second claimant, Mr Whyte, did so, seeking **26 weeks** future loss of earnings, as per his written statement, given his evidence that, with the current economic climate, he was not confident of obtaining further employment in the near future, and he felt he should be awarded a sum representing his projected earnings until May 2021, being 1 year since his dismissal by the respondents.

76. In terms of **Section 227 of the Employment Rights Act 1996**, the maximum amount of a week's gross pay, for the purpose of calculating the basic award

of compensation for unfair dismissal, shall not exceed **£538 per week,** for dismissals after 6 April 2020, as per the **Employment Rights (Increase of Limits) Order 2020**. As both claimant's weekly gross pay was **£360** that provision is not applicable in the present cases.

77. Further, **Section 124 of the Employment Rights Act 1996** makes provision for limits on the amount of a compensatory award, and, in particular, as per **Section 124 (1ZA),** the amount specified is the lower of £88,519, or gross annual pay, 52 x a week's pay of the person concerned, whichever is the smaller. Accordingly, as regards the second claimant's claim for future loss of earnings, the terms of **Section 124 (1ZA)(b)** bring in a 52-week cut off.

78. From the Tribunal's understanding of the current jobs market locally, in this time of a global pandemic, the Tribunal regards it as being appropriate to award the second claimant an award for future loss of earnings, thus taking him up to the limit of 52 weeks. Given the 34 weeks' past loss already awarded to him, the future loss element is therefore **18 weeks, @ £298.75 net per week**, producing a further sum of **£5,377.50,** which is therefore the sum that I order the respondents to pay to him in that regard.

79. Neither claimant made any other claim for loss of any employment benefits, or pension loss, so taking all of the above matters into account, as detailed earlier in these Reasons, the Tribunal orders that the respondents shall pay the following monetary awards to each claimant, calculated as per this summary breakdown:

First Claimant: Callum Grant Thomson

Basic award: **£720.00**

Compensatory award:

Past loss of earnings: £5,975.20

("prescribed element")

Future loss of earnings: - £NIL

Loss of statutory rights:	£300.00	
Sub-total:		**£6,275.20**
Grant Total Monetary Award=		**£6,995.20**

Second Claimant: Ryan Whyte

Basic award:		**£720.00**
Compensatory award:		
Past loss of earnings:	£10,157.50	
("prescribed element")		
Future loss of earnings: -	£5,377.50	
Loss of statutory rights:	£300.00	
Sub-total:		**£15,835.00**
Grant Total Monetary Award=		**£16,555.00**

80. As both claimants were in receipt of State benefits, post termination of employment with the respondents, the recoupment provisions apply, and their effect is set forth in the attached schedule to this judgment, and relevant detail is given in parts 3 (b) and 4 (b) of the above judgment of the Tribunal.

81. As per my findings in fact, both claimants were summarily dismissed by the respondents, on 13 May 2020, without notice and, for that reason, they were not paid notice pay by the respondents. Given their two continuous years employment with the respondents, they would have been entitled to the statutory minimum notice of two weeks, as per **Section 86 of the Employment Rights Act 1996.** As I have awarded them compensation for loss of past earnings, post termination of their employment with the respondents, it is not appropriate to make any separate award to them for the respondents' failure to pay notice pay, although that failure has been reflected in the declaration made in the liability only Default Judgment issued by the Tribunal on 24 September 2020.

82. **Section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992** provides that if, in the case of proceedings to which the statutory provision applies, which includes an unfair dismissal complaint, it appears to the Tribunal that the claim concerns a matter to which a relevant Code of Practice applies, and the employer or employee has unreasonably failed to comply with the Code in relation to that matter, then the Tribunal may, if it considers it just and equitable in all the circumstances, increase, or decrease as the case may be, the compensatory award it makes to the employee by no more than a 25% uplift, or downlift. The ACAS Code of Practice on Disciplinary and Grievance Procedures is a relevant Code of Practice.

83. On the evidence available to the Tribunal, I am satisfied that there was an unreasonable failure by the respondents to comply with the ACAS Code of Practice. In this regard, I have considered the Employment Appeal Tribunal's judgment in **Allma Construction Limited v Laing [2012] UKEATS/0041/11**, an unreported judgment by Lady Smith, the then Scottish EAT judge in the Employment Appeal Tribunal, on 25 January 2012, at paragraph 29, and the more recent judicial recognition of Lady Smith's guidance provided, at paragraphs 51 and 54 of Mr Justice Langstaff, President of the EAT's unreported judgment of 21 October 2015 in **Bethnal Green & Shoreditch Education Trust v Dippenaar [2015] UKEAT/0064/15**.

84. In **Allma,** Lady Smith stated that : "…***an employment tribunal requires to ask itself: does a relevant Code of Practice apply? Has the employer failed to comply with that Code in any respect? If so, in what respect? Do we consider that that failure was unreasonable? If so, why? Do we consider it just and equitable, in all the circumstances, to increase the claimant's award? Why is it just and equitable to do so? If we consider that the award ought to be increased, by how much ought it to be increased? Why do we consider that that increase is appropriate?"***

85. Having carefully considered the facts of the present case, the Tribunal has decided that it is just and equitable in all the circumstances to increase the compensatory award for both claimants, made under **Section 118 (b) of the Employment Rights Act 1996**, by **15%,** and accordingly I have ordered the

respondents to pay to the first claimant the further sum of **£941.28**, being 15% of £6,275.20, and to the second claimant, the further sum of **£2,375.25,** being 15% of £15,835.00.

86. It is appropriate to do so, at that 15% level, rather than the maximum 25% uplift, because while the failure to provide an appeal hearing is unreasonable, and a serious breach of the Code's provisions about what is expected of the reasonable employer, the respondents did initially offer an internal appeal in the dismissal letter, but failed to follow through with that offer, but they did conduct a disciplinary hearing, even if there was no prior investigatory stage, prior to that, or prior to suspension of both employees. Some credit must be given for those acts of the respondents, as it evidences some compliance with some aspects of the Code.

87. As discussed earlier in these Reasons, at paragraph 43 above, I have dismissed, as outwith the Tribunal's jurisdiction, the claims by each claimant for one week's unpaid lying time. As regards unpaid holiday pay, the respondents having failed to pay the claimants their accrued, but untaken holiday entitlement, outstanding as at the effective date of termination of employment, on 13 May 2020, it is appropriate that the respondents are further ordered to pay to the claimants, in terms of **Regulation 30 of the Working Time Regulations 1998**, the sums payable for **4.5 days' unpaid holiday pay**.

88. The first claimant quantified this, in his statement provided to the Tribunal, as **£277.20**, while the second claimant quantified it as **£268.87**. Having reviewed my findings in fact, I find that the appropriate **net daily rate** was **£61.60** for the first claimant, and **£59.75** for the second claimant, based on net earnings of **£308** and **£298.75** respectively. Multiplying those rates by 4.5 days, that produces the amounts sought by the two claimants, and so these are the amounts which I have ordered the respondents to pay to them.

89. In light of the evidence before the Tribunal, it is clear that neither claimant received from the respondents, as their employer, any statutory written particulars of employment, in terms of **Section 1 of the Employment Rights**

Act 1996, nor any applicable discipline/grievance procedure for the respondents. No copy of the company's disciplinary procedures was provided to the claimants in the letter of invite to their disciplinary hearings. As the claimants did not expressly complain of this failure by their employer in their ET1 claim form, on one view, there is no such complaint formally pled before this Tribunal, and further as they did not include it in their details of compensation sought from the respondents, it could be thought that it is a matter that the Tribunal should not consider any further.

90. However, I reject that highly technical approach, because the Employment Tribunal does not operate on the basis of formal legal, written pleadings, but in terms of its overriding objective, under **Rule 2 of the Employment Tribunal Rules of Procedure 2013**, to act fairly and justly in dealing with any claim.

91. The Tribunal must avoid unnecessary formality, and be flexible in its procedure, so far as compatible with a proper consideration of the issues before it and so, in the same way as the higher courts, such as the Employment Appeal Tribunal in **Langston v Cranfield University [1998] IRLR 172,** have allowed Employment Tribunals to consider as a matter of course certain standard points in an unfair dismissal claim, whether or not specifically pled by a claimant, I take the view that a similar, pragmatic approach should be taken here where, on the clear and unequivocal evidence before this Tribunal, the respondents, as an employer, have failed to address a basic statutory duty to provide written particulars of employment to not just one, but two specific employees.

92. To fail to take this significant breach of employment law into account will result in a windfall saving to the respondents, and no additional award for the claimants. That is both unjust and inequitable, and it does nothing to address the statutory mischief that Parliament clearly intended, in enacting the **Employment Act 2002,** that Employment Tribunals should be able to address in cases before these Tribunals.

93. As the claimants have both been successful before this Tribunal on their principal head of claim, for unfair dismissal, an award of additional compensation is open to this Tribunal, under **Section 38 of the Employment Act 2002.** Accordingly, acting on my own initiative, and because the Tribunal considers it to be in the interests of justice to do so, the Tribunal has decided to make an additional award in favour of each of the claimants. On the evidence before the Tribunal, there are no exceptional circumstances which would make such an award unjust or inequitable.

94. Specifically, I have decided to award **4 weeks' gross pay** to each of the claimants for that failure, being satisfied that, as that is the statutory maximum sum that can be awarded, it is just and equitable for the Tribunal to make such an additional sum in favour of both claimants. I do not regard the statutory minimum amount of 2 weeks' gross pay as being at all appropriate in the circumstances of this case, as the respondents' breach here is not minor or trivial, but serious and flagrant disregard of a fundamental aspect of employment law for all employers. Their gross pay being **£360** per week each, that produces an additional award of **£1,440** to each claimant, payable by the respondents.

95. As, from the evidence heard, I understand that the respondents continue to employ other staff, the Tribunal trusts that, in light of their failures in this case as regards these two ex-employees, the respondents will take steps to review their employment practices and procedures, and ensure proper and timeous compliance with issuing all employees with statutory particulars of employment, as well as perhaps reviewing how they conduct investigatory, disciplinary, and appeal hearings.

96. Finally, I turn to compensation for the first claimant's successful complaint of unlawful disability discrimination.

97. The principles to be determined when assessing awards for injury to feelings for unlawful discrimination are summarised in **Armitage & Others v Johnson [1997] IRLR 162.** Awards for injury to feelings are compensatory. They should be just to both parties. They should compensate fully without punishing the

wrongdoer. Feelings of indignation at the wrongdoer's conduct should not be allowed to inflate the award.

98. Citing from **Vento v Chief Constable of West Yorkshire Police (No. 2) [2002] EWCA Civ 1871 / [2003] IRLR 102**, I remind myself that an award of injury to feelings is to compensate for "***subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, stress, depression."***

99. Lord Justice Mummery said (when giving guidance in **Vento**) that "***the degree of their intensity are incapable of objective proof or of measurement in monetary terms. Translating hurt feelings into hard currency is bound to be an artificial exercise…… tribunals have to do their best that they can on the available material to make a sensible assessment." In carrying out this exercise, they should have in mind the summary of general principles of compensation for non pecuniary loss by given by Smith J in Armitage v Johnson".***

100. In **Vento**, the Court of Appeal went on to observe there to be three broad bands of compensation for injury to feelings (as distinct from compensation for psychiatric or similar personal injury). The top band should be awarded in the most serious cases such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race. Only in the most exceptional case should an award of compensation for injury to feelings exceed the normal range of awards appropriate in the top band. The middle band should be used for serious cases which do not merit an award in the highest band. The lowest band is appropriate for less serious cases such as where the act of discrimination is an isolated or one-off occurrence.

101. The appropriate sum for each band has been up rated in cases subsequent to **Vento** to take account of inflation, see **Da'Bell v NSPCC [2010] IRLR 19 (EAT)**, and also to take account of the 10 per cent uplift for personal injury awards based on the Court of Appeal decision in **Simmons v Castle [2012]**

EWCA Civ 1039. Therefore, until ET Presidential Guidance was issued, the amount appropriate for the lower band was then £660 to £6,600 and the amount appropriate to the middle band was then £6,600 to £19,800. The amount appropriate for the top band was then £19,800 to £33,000.

102. More recently, in **De Souza v Vinci Construction (UK) Ltd [2017] EWCA Civ 879**, the Court of Appeal in England & Wales ruled that the 10% uplift provided for in **Simmons v Castle** should also apply to ET awards of compensation for injury to feelings, but it expressly recognised that it was not for it to consider the position as regards Scotland. However, account has now been taken of the position in Scotland by Employment Judge Shona Simon, the Scottish ET President, when formulating Guidance published jointly with Judge Brian Doyle, then President of ET(England & Wales), issued on 5 September 2017, and updated by annual addenda, most recently by the third addendum issued on 27 March 2020.

103. For claims presented on or after 6 April 2020, and taking account of the 10% **Simmons** uplift, the third addendum to the ET Presidential Guidance provides that the **Vento** bands shall be as follows: **a lower band of £900 to £9,000** (less serious cases); **a middle band of £9,000 to £27,000** (cases that do not merit an award in the upper band); and **an upper band of £27,000 to £45,000** (the most serious cases), with the most **exceptional cases capable of exceeding £45,000.**

104. In deciding upon an appropriate amount, I first of all have had to address the appropriate band as per **Vento.** It is my judgment this is a case that appropriately falls into the lower band. In his statement provided to the Tribunal, Mr Thomson Jnr stated that : ***"Also in addition I am claiming an additional sum of 25% with regards to my disability discrimination claim £1,640.10."***

105. As recorded earlier in these Reasons, at paragraph 37 above, Mr Thomson Snr stated that was not to do with the failure to follow the ACAS Code of Practice, but it was to be regarded as a claim for injury to his grandson's

feelings caused as a result of the respondents' unlawful discrimination against the first claimant on the grounds of disability, and he invited me to make an appropriate award to the first claimant in that regard. He did not suggest any amount as being an appropriate award, and left it to me, in the exercise of my judicial discretion, having regard to the relevant law.

106. I have to say that the first claimant did not produce any independent vouching, from a family member, friend, treating physician or other medical practitioner, about the nature and extent to which his feelings were injured by the respondents. Accordingly, on the limited evidence provided by only him to this Tribunal, I have considered an award at the lower end of the **Vento** lower band, currently £900 to £9,000.

107. In that regard, I refer to the unreported EAT judgment of His Honour Judge David Richardson, in **Esporta Health Clubs & Anor v Roget [2013] UKEAT 0591/12,** which makes it clear that a Tribunal has to have some material evidence on the question of injury to feelings. Here, I had the first claimant's limited evidence, no GP's medical report, nor any evidence from any other person with knowledge of the first claimant's case about the nature and extent of his injured feelings, so it has been difficult for me to differentiate between any stressors caused by the respondents, any other stressors, and any stressors caused by the first claimant's decision to prosecute this claim before the Tribunal.

108. I find credible and reliable the first claimant's account of the impact of the respondents' conduct towards him. As the claimant described it to me, and as recorded in my findings in fact above, to add insult to his hurt, whether by design or default, although the former seems more likely, the respondents never, at any later stage, sought to remedy their failure to provide the claimants with an opportunity to exercise their right of internal appeal against dismissal. Consequently, after ACAS early conciliation, the claimants were obliged to lodge the ET1 claim form in order to pursue this claim against the respondents before this Tribunal.

109. However, I have already awarded him a 15% uplift to his compensatory award for unfair dismissal, and I do not wish to give him a double recovery in that regard. What I have to assess here is the injury to his feelings caused by the respondents' failure to make reasonable adjustments for his disability. In deciding this matter, I have borne in mind the judicial guidance given by Her Honour Judge Stacey (as she then was, now Mrs Justice Stacey) in the Employment Appeal Tribunal, in **Komeng v Creative Support Ltd [2019] UKEAT/0275/18**, that the Tribunal's focus should be on the actual injury to feelings suffered by the claimant and not the gravity of the acts of the respondent employer.

110. Injury to feelings awards are designed to be compensatory, not punitive, and the Tribunal needs always to bear in mind that injury to feelings awards compensate for non-pecuniary loss, but while available in discrimination and detriment cases, injury to feelings awards are not available for unfair dismissal, as per the well-known judgment of the House of Lords in **Dunnachie v Kingston upon Hull City Council [2004] UKHL 36.**

111. The first claimant provided credible and reliable first-hand evidence about his treatment by the respondents, and the manner of it, and how that had affected him, as a disabled person, and I found his testimony in that regard compelling and convincing. I have no doubt , having heard Mr Whyte's evidence, that he too felt, and still feels, equally hurt about the respondents' treatment of him, summarily dismissing him, and providing no appeal hearing.

112. Accordingly, my judgment is that this is a less serious case and it clearly falls within the lower **Vento** band. In this case, there was not any concerted campaign against the first claimant, but equally it was not an isolated incident, as the failure to make reasonable adjustments for his disability continued throughout his employment with the respondents. Applying a broad brush, I assess the amount payable to the first claimant for injury to feelings for the unlawful disability discrimination that he suffered as **£1,800** in today's money,

and so that is the amount which I have ordered the respondents to pay to the first claimant, as per paragraph (3) (g) of my Judgment above.

113. I now turn to the question of interest. The Tribunal is empowered to make an award of interest upon any sums awarded pursuant to the **Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996.** The rate of interest prescribed by **Regulation 3(2)** is the rate fixed for the time being, currently an amount of 8 *per cent per annum* in Scotland.

114. By **Regulation 6**, in the case of any injury to feelings award, interest shall be for the period beginning on the date of the contravention or end of discrimination complained of and ending on the day of calculation. In the case of other sums for damages or compensation and arrears of remuneration, interest shall be for the period beginning with the mid-point date and ending on the day of calculation. For these purposes, the day of calculation is today's date, that is to say, 8 January 2021 being the date of this Judgment. The only award is for injury to feelings. Financial losses have been assessed in the separate awards made for compensation for unfair dismissal.

115. Where the Tribunal considers that a serious injustice would be caused, if interest were to be awarded for the periods in **Regulation 6(1) and (2),** it may, under **Regulation 6(3),** calculate interest for a different period, as it considers appropriate. I received no submission to that effect from either claimant, and , in any event, I do not consider it appropriate to do so. I cannot, of course, alter the interest rate of 8%, as that is prescribed by law, and it is a matter in respect of which I have no judicial discretion to vary the interest rate, only the period to which that rate refers.

116. Accordingly, the appropriate interest rate is 8%. Further, I also order that the respondents shall pay to the first claimant the appropriate sum of interest upon the injury to feelings award of **£1,800** calculated at the appropriate interest rate of 8% p.a. for the period between 13 May 2020, being the date the first claimant's employment with the respondents ended, and thus the end

date of the discrimination complained of, and 8 January 2021, being the date of this Judgment, a period of **241 days.**

117. I considered making the interest payable from the start of the first claimant's employment with the respondents, on 7 May 2018, but decided that it was not appropriate to do so, as there was no evidence before me that he had, at any stage, complained to the respondents about their failure to make reasonable adjustments for his disability.

118. My calculation of interest payable is **£1,800 x 0.08 x 241 / 365 days** = **£95.08**, as per paragraph (3) (g) of my Judgment above.

G. Ian McPherson
Employment Judge

8 January 2021
Date of Judgment

Date sent to parties **26 January 2021**