EMPLOYMENT TRIBUNALS

Claimant: **Mr. J. Parsad**

Respondent: **United Insurance Brokers Limited**

Heard at: **East London Hearing Centre**

On: **Thursday 24 and Friday 25 March 2022**

Before: **Employment Judge Hallen**

Representation

Claimant: Mr. J. McHugh-Counsel

Respondent: Mr S. Purnell- Counsel

RESERVED JUDGMENT

The judgment of the Tribunal is that: -

1. **The Claimant presented his claim for unlawful deductions from wages in paragraphs 19 and 20 pursuant to section 13 of the Employment Rights Act 1996 of his grounds of complaint outside the time limit imposed by Section 23 of the Employment Rights Act 1996 and the Tribunal has no jurisdiction to hear those complaints. These claims are accordingly struck out.**

2. **The Claimant presented his claim for direct and indirect age discrimination pursuant to sections 13 and 19 Equality Act 2010 in paragraphs 14 and 16/17 of his grounds of complaint after the time limit imposed by Section 123 of the Equality Act 2010 had expired and the Tribunal has no jurisdiction to hear those complaints. These claims are also accordingly struck out.**

3. **The substantive hearing listed for 5 days on 6, 7, 8, 9, 13 September 2022 is accordingly vacated.**

4. **The Claimant's claims for breach of contract under paragraphs 18 of the grounds of complaint were withdrawn on 4 January 2022 by way of the Claimant's solicitors' letter of that date albeit they are not dismissed by way of this judgment pursuant to rule 52 (a) of the Tribunals Rules of**

Procedure 2013 as the Claimant wished to preserve his right to sue for breach of contract in the County or High Court at a later date.

REASONS

Background and Issues

1. This matter came before Employment Judge Housego on 7 December 2021 at a preliminary telephone hearing. Following the hearing, Judge Housego listed the matter to be heard before me to consider whether the Claimant's claims for unlawful deductions from his wages under paragraphs 19 and 20 of the grounds of complaint and his claims for direct and indirect age discrimination under paragraphs 14 and 16/17 of his grounds of complaint were out of time so that the Tribunal had no jurisdiction to hear them. In addition, this hearing was listed to consider whether the Claimant's claims for breach of contract in paragraph 18 of his grounds of complaint should be struck out if they were not withdrawn beforehand. By letter dated 4 January 2022 these claims were withdrawn by the Claimant albeit this judgement does not strike those claims out under rule 52(a) as the Claimant wished to preserve his right if so advised to pursue them in a different forum.

2. The substantive hearing was listed by Judge Housego at the East London sitting centre for 5 days on 6, 7, 8, 9, and 13 September 2022 if the Tribunal had jurisdiction to hear the claims. As the Claimants claims are hereby struck out that hearing is vacated.

3. At the hearing before me, the Clamant particularised his claims for discrimination and unlawful deduction from wages as follows: (1) Direct age discrimination (s.13 EqA). The Respondent failed to make sufficient enquiries with Canada Life regarding the Claimant's rights to benefit under the insurance scheme after he reached the age of 60. (2) Indirect age discrimination (s.19 EqA). The Respondent applied a policy amounting to a PCP whereby the Claimant does not benefit from long term sick pay after the age of 60. The alleged PCP put people over the age of 60 at a disadvantage, including the Claimant, as they are unable to benefit from receiving long-term sick pay. (3) Unlawful deduction of wages (S13 ERA). From 24 March 2019, the Respondent unlawfully deducted wages properly payable to the Claimant because the payments he received under the insurance scheme should have been calculated by reference to an increase to his original salary by 5% per annum, prior to the deduction of Incapacity Benefit. From 24 March 2019, the Respondent unlawfully deducted wages properly payable to the Claimant by paying the Claimant holiday pay based on the sick pay he was receiving whereas it should have been based on his pre-sickness absence salary.

4. At the hearing the parties agreed that the issues for the preliminary hearing were that in relation to the unlawful deduction of wages, I had to decide when was the last in the alleged series of unlawful deductions from wages properly payable by the Respondent to the Claimant? If it was on or before 3 November 2020 then the claim was out of time (the Claimant having notified ACAS for the purposes of early conciliation on 3 February 2021). If it was on or after 4 November 2020 then the claim was in time. If the claim was presented out of time, was it reasonably practicable for the claim to have been presented in time (s.23(4) ERA)? If it was not, was the claim presented within such further period as the Tribunal considered reasonable (s.23(4) ERA)?

5. With regard to the Equality Act complaints, I had to decide what were the specific complaints of unlawful discrimination and when did they occur? If they occurred on or before 3 November 2020, would it be just and equitable for the Tribunal to extend time in order to consider them (s.123 ERA)?

6. Produced for me at the preliminary hearing, was a pleadings bundle made up of 85 pages containing the Claim Form, the Response Form, the preliminary orders of Judge Housego, the position statements of the parties and the suggested list of issues prepared by the Respondent. In addition, I had a substantive hearing bundle made up of 275 pages, a witness statement of the Claimant and a witness statement of Nina Nathan called on behalf of the Respondent. I was also provided with a written closing submissions prepared by the parties' counsel and referred to relevant case law cited below. The Claimant gave evidence after adopting his witness statement and was cross examined. Ms Nathan gave evidence on behalf of the Respondent and adopted her statement. She was also cross examined. The parties also had an opportunity of making oral closing submissions and I reserved my judgement.

Facts

7. The Claimant commenced employment with the Respondent on 18 June 2001. His contract of employment provided relevantly: (a) "*2.* Salary – Salaries are paid monthly in arrears…and will be paid on the twenty sixth day of each month, or on the nearest working day prior to the 26th when this day falls on a weekend or bank holiday". (b) "*4* Sickness/Absence from the office – (iii) Subject to any benefits granted under membership of the Company's Staff Benefits Plan, if you have more than 12 months continuous service with the company, your salary (less normal deductions) will be paid up to 6 months from the date when the absence commenced". (c) "*5.* Staff Benefits Plan – The Company operates a Staff Benefits Plan ("the Plan") for its employees which offers the following: From the date of commencement of employment: (1) Permanent Health Insurance; (2) Lump Sum Payment on death prior to retirement. Both these benefits are paid for by the Company and all employees are included under the cover unless stated otherwise in the Letter of Appointment […] **The Company shall be liable under the [Staff Benefits Plan] only to the extent that a claim is accepted by the Administrators or Insurers of any benefit payable hereunder**" [emphasis added].(d) ***Eligibility for Membership*** – "The Company assume that all employees under the age of **sixty** would wish to participate in the [Staff Benefits Plan]. The rules on eligibility and benefits for the [Staff Benefits Plan] are governed exclusively by formal documents which are available for inspection. The Company reserves the right to withdraw or amend any of the rules or benefits of the Plan at any time and also reserves the right to terminate any employee's participation at any time in the Plan" [emphasis added] (e) Retirement Age – "Normal retirement date is on employee's **60th birthday** but employees may continue in employment after that date by mutual agreement between the Company and the Employee concerned" [emphasis added].

8. Upon or shortly after commencing employment, the Claimant was provided with the Respondent's "Retirement Benefits Scheme, Long-term Disability Insurance Plan and Medical Expenses Plan Member Booklet", dated June 2001 ("the Member Booklet"). The Member Booklet provided relevantly: (a) "Terms Used: Normal Retirement Date: Your 60th birthday". (b) "Eligibility: You are automatically covered for the life assurance and long-term disability benefits and are eligible to join the medical expenses plan on the day you join the Company if – You are a permanent employee and You have not reached Normal Retirement Date. […] If you are absent due to illness or injury on the day when your cover for death in

service and long-term disability benefits is due to commence or increase, the change in your cover may not take place until you return to work and have completed a short period actively at work". (c) "Retirement: […] You will normally retire at your Normal Retirement Date but you may retire at any time from age 50 with the Company's consent". (d) "Long-term Disability Insurance Plan: If you become unable to carry out your normal job through sickness or accident then, subject to a claim being admitted by the insurance company, you will be paid an annual benefit equal to 75% of your pre-disability salary less an amount equal to the single person's basic State Incapacity Benefit in force at that date. The benefits payable will increase by 5% per annum during payment. Payment of this benefit will not start until you have been absent for 26 consecutive weeks and it will cease on your recovery, on your reaching Normal Retirement Date (when your retirement benefits would become payable), or on your death, whichever occurs first".

9. Upon commencing employment, the Claimant was also required to complete a nomination of beneficiaries form in relation to the Staff Benefits Plan. It was the Respondent's standard practice to provide employees with the Staff Benefits Plan at the commencement of their employment, although the Claimant could not recall ever having received the document, which was the iteration in force as at February 2003.

10. Nevertheless, that Staff Benefits Plan materially echoed the Member Booklet which the Claimant accepted he had always had a copy of. It provided relevantly: (a) "Normal Retirement Date: Your 60th birthday". (b) "Life Assurance: You are automatically covered for the life assurance and long-term disability benefits and are eligible to join the medical expenses plan on the day you join the Company provided that you have not reached Normal Retirement Date […] If you are absent due to illness or injury on the day when your cover for death in service and long-term disability benefits is due to commence or increase, the change in your cover may not take place until you return to work and have completed a short period actively at work". (c) "Long Term Disability Plan: If you become unable to carry out your normal job through sickness or accident, then, subject to a claim being admitted by the insurance company, you will be paid an annual benefit equal to 75% of your pre-disability salary less an amount equal to the single person's basic State Incapacity Benefit in force at that date. The benefits payable will increase by 5% per annum during payment. Payment of this benefit will not start until you have been absent for 26 consecutive weeks, and it will cease on your recovery, on your reaching Normal Retirement Date (when your retirement benefits would become payable), or on your death, whichever occurs first".

11. The Claimant's job title was Technical Director within the Aviation department. His responsibilities included, inter alia, overseeing all broker-related functions, including slips and endorsements, prior to their submission to the technical staff for processing, management of policy/wording production and issuance and monitoring and assessing conditions in the insurance market. The role required him to have technical expertise and knowledge regarding the insurance industry. He had, prior to becoming employed by the Respondent, been employed in the insurance broking industry for 23 years. His knowledge of the insurance industry and market practice were more sophisticated than the average insured Claimant.

12. In December 2004, the Claimant was diagnosed with chronic fatigue syndrome. He commenced a long-term sickness absence on 17 December 2004, from which he has never returned to work. He was paid contractual sick pay in accordance with clause 4(iii) of his contract of employment for six months until 16 June 2005. On 3 May 2005, the Respondent

submitted an income protection claim to Canada Life on the Claimant's behalf. That claim was accepted by Canada Life on 31 August 2005.

13. At the date the Claimant's income protection claim was accepted, the Canada Life policy which was in force and under which the Claimant was insured had relevant Policy Conditions which provided: (a) Standard acceptance: We will include an eligible employee in the Policy for the scheme benefit as from the normal inclusion date, provided we have received any evidence of insurability necessary to accept such a person for that benefit on our standard terms. (b) Benefit payments in respect of a member's *incapacity*, will end on the last monthly payment date before the earliest occurrence of one of the following events: […] the member reaches the age for termination of membership, set out in your Policy Particulars. (c) Any person or company who is not a party to this Policy shall not have or acquire any rights to enforce any terms of this Policy until a claim has been notified to us after which any individual in respect of whom a claim has been made shall be entitled to pursue that claim as if he were the Policyholder. (d) "Incapacity" was defined as "illness or incapacity, resulting from which the sufferer is totally unable to perform the material and substantial duties of his or her normal occupation and is not engaging in any other gainful occupation, whether as an employee of the employer or otherwise".

14. Despite their best efforts to track it down, neither the Respondent, its broker Mercer, nor Canada Life have been able to locate a copy of the 2005 Policy Particulars to which the 2005 Policy Conditions make reference. However, in or around June 2005 the Respondent had asked Mercer to carry out a review of the insurance market to consider: the current insured scheme design, the competitive insurance market and a review of the terms and conditions of the insurance contracts then in force. The Mercer Review made clear the following: (a) As at July 2005 the PHI scheme was insured with Canada Life. The Respondent requested from Mercer quotations on the **current basis**, in other words equivalent to the insurance scheme then in force. Mercer summarised that current coverage as follows: "a claim will be admitted and benefits commence after 26 weeks of satisfying the definition of incapacity, and amount to 75% of salary less the Long-Term Rate of the Single Persons State Incapacity Benefit. Benefits increase in payment at 5% per annum and cease on leaving service, **attaining of age 60**, recovery or death. Insured benefits will be restricted in accordance with the insurer's benefit limitation" [emphasis added]. (b) As Canada Life matched the lowest cost quoted by the market, Mercer recommended to the Respondent that the insurance should remain with them until 30 June 2007 when the Scheme would be next due for review. (c) Mercer explained that Canada Life had an "Actively at Work" requirement. An individual would be considered Actively at Work "when he is working in his normal occupation for the usual number of hours with medical consent. In other words, if medical evidence were obtained, this would support the fact that the individual is fit for his normal occupation. Any individual working in a reduced capacity as a result of incapacity would not be considered Actively at Work". Both Canada Life and UnumProvident had the same Actively at Work requirement which was: "The member must be Actively at Work on either the commencement date of the Scheme or the member's date of joining the Scheme (if later) and on the date of any increase in benefit…**Members who do not satisfy this condition will not be insured for the new or increased benefit until they return to full time active employment"** [emphasis added]. Similarly, Mercer made clear that in the event of a switch of insurer, any existing claimants or individuals not Actively at Work on the last working day prior to the switch date would remain the liability of Canada Life until they resumed normal full-time employment with medical consent. They would then have to satisfy the new insurer's Actively at Work requirements before cover would be granted. (d) Mercer made clear that the existing scheme covered all permanent employees

between the age of 16 and **60** (see "Eligibility". This was reiterated in Appendix B: "The following summary has been taken from the **current basis of insurance**: Eligibility: All permanent employees between the age of 16 and 60. (Regardless of pension scheme membership) Terminal Age: 60th birthday. The data includes two people over NRD [Normal Retirement Date] and we understand cover has been continued for these members".

15. It was clear from the Mercer Review that the 2005 Policy under which the Claimant's claim was accepted by Canada Life on 31 August 2005 provided cover (subject to ongoing satisfaction of the scheme's requirements) until the Claimant's 60th birthday.

16. In October 2006, the Respondent informed Mercer that it wished to increase the Normal Retirement Date from age 60 to age 65 on both its Group Life Assurance and its Group Income Protection schemes. This further demonstrated that the Claimant's claim which had been accepted on 31 August 2005 only provided cover to 60, and not 65, otherwise the Respondent would have had no reason to instruct Mercer to effect this change to the group schemes.

17. On 5 October 2006 Mercer advised the Respondent that Canada Life would require the Respondent to complete "Actively at Work" declarations in order to effect the amendment to the Normal Retirement Date to 65. By signed declaration on 6 November 2006, the Respondent's Sandy Humphrey duly did so, both in relation to the Respondent's Group Life Assurance/Critical Illness cover, and, more relevantly, in relation to the Respondent's Group Income Protection cover.

18. As to the latter, she certified that, with the exception of the Claimant and one other, no employees to be included in the revised GIP Scheme were absent from work on account of illness, injury or disablement on the effective date of cover with Canada Life. Moreover, the Actively at Work declaration made clear on its face that Canada Life would not assume risk for the excepted employees (i.e. the Claimant and the other individual) until they had returned to work and were "Actively at Work".

19. As such, Mercer confirmed by email on 28 November 2006 that for as long as the Claimant was an income protection claimant, his Normal Retirement Date would remain at age 60 (i.e. he would remain covered by the <u>2005</u> GIP Policy) but that if he were to return to work the Respondent should inform Mercer immediately such that they could notify Canada Life. This was more or less contemporaneous documentary evidence (from November 2006) that the GIP Policy under which the Claimant was covered only provided cover to age 60, and would not extend to 65.

20. On 18 February 2010 Canada Life notified Mercer that it proposed to cease the Claimant's income protection cover on the basis that it considered that he no longer satisfied the definition of incapacity. Notably, the definition of incapacity which it cited in its letter – "illness or incapacity, resulting from which the sufferer is totally unable to perform the material and substantial duties of his or her normal occupation and is not engaging in any other gainful occupation, whether as an employee of the employer or otherwise" – was the same as that which appeared in the <u>2005</u> GIP Policy, and differed from that which appeared in the later <u>2007</u> GIP Policy which provided further confirmation that the policy under which the Claimant was insured was, always, the 2005 GIP Policy, such that he was covered only to age 60.

21. Following notification of this decision, the Claimant engaged solicitors to challenge Canada Life's decision with the Financial Ombudsman. During that process, on 22 November 2010, Sandy Humphrey explained to the Claimant that the terms of the Canada Life policy permitted him to take action against Canada Life directly and pointed him towards Section 5C of the Policy Conditions on Third Party Rights. She attached to that email what she described as "a copy of the policy for you to pass on to your solicitors".

22. As it happened, the policy she attached was not the one under which the Claimant was insured. It was a later iteration of the GIP Policy with effect from 18 March 2008, over two and a half years after the Claimant's GIP claim had been accepted by Canada Life on 31 August 2005. While the 2007 GIP Policy was not the correct policy, it did make clear certain generic and immutable features of the Canada Life income protection cover, which were also relevant to the Claimant's cover under the 2005 GIP Policy. For example: (a) That Canada Life would only include an eligible employee in the policy for the scheme benefit provided it had received any evidence of insurability necessary to accept such a person for that benefit on its standard terms. This was the relevance of the "Actively at Work" declarations that the Respondent had been required to complete prior to the inception of the 2007 cover, which the Claimant had not been able to satisfy, and which therefore excluded the Claimant from benefitting under the 2007 Policy. (b) That any person who was not a party to the Policy would nevertheless acquire rights and be entitled directly to enforce any terms of the Policy once a claim had been notified to Canada Life as if that person were the Policyholder.

23. Where the 2007 GIP Policy materially differed from the 2005 GIP Policy (under which the Claimant was actually insured), was in providing cover (subject to ongoing satisfaction of the scheme's eligibility requirements) to age 65, instead of age 60. But, as the Actively at Work declarations made clear, the Claimant had not been entitled to benefit from that extension in cover to age 65 because at the date that cover was incepted, he was not Actively at Work (and nor has he ever been since 17 December 2004 when his long-term sickness absence commenced).

24. The Claimant's complaint to the Financial Ombudsman was ultimately upheld and on 22 December 2011 the Financial Ombudsman recommended that Canada Life should reinstate the Claimant's income protection claim in full and reimburse all benefits that were owed under the policy from the date of Canada Life's decision to terminate the cover. Accordingly, Canada Life reinstated the Claimant's benefit under the 2005 GIP Policy and the payments to him resumed.

25. In May 2016, the Claimant was informed in writing by Sandy Humphrey that the Respondent had decided to change some of the staff benefits when they had come up for renewal in October 2015. One of the changes was to limit the period of benefit under the PHI scheme to a maximum of five years and to cancel the escalation of 5% per annum. Ms Humphrey emphasised that these changes would not affect the Claimant who would continue to receive the benefit of the Canada Life income protection policy until the age of 60 and would continue to benefit from the 5% escalation per annum.

26. On 23 May 2016, the Claimant responded, asking whether Ms Humphrey could clarify the end date of his PHI cover as he suggested he had been under the impression it was until his retirement, which he considered was 65 for him, not 60. On 23 May 2016 Ms Humphrey responded in the clearest terms, as follows: "At the time when you went on sick leave, UIB's normal retirement age was 60 and the company's benefits were geared to this.

Therefore, the policy with Canada Life under which you are being paid benefit, provides benefit to age 60. I hope this clarifies the situation for you but let me know if I can be of any further assistance."

27. The Claimant accepted that he did not respond to this email. He contended that on some unspecified date thereafter he had a telephone conversation with Ms Humphrey, but he accepted in cross examination that his recollection of it was not particularly clear, and moreover he did not suggest that she said anything in that conversation which contradicted what she had earlier told him in her emails. The Claimant accepted that he took no further action in relation to these discussions following that telephone call in any of the four years which followed, and did not seek any legal advice, preferring instead to assume – contrary to what Ms Humphrey had clearly communicated to him – that the Respondent was wrong in its interpretation of the policy coverage.

28. The Claimant turned 60 on 19 September 2020. His entitlement to benefit under the 2005 GIP Policy terminated on that date. Nevertheless, on 25 September 2020, the Respondent paid the Claimant via the September payroll in the amount of £4,075.97. On 26 October 2020, the Respondent paid the Claimant via the October payroll in the amount of £4,076.37. On 26 November 2020, the Respondent paid the Claimant via the November payroll in the amount of £4,075.97.

29. On 2 December 2020 Nina Nathan wrote to Canada Life to enquire as to why the Respondent had only received £500 in relation to the Claimant's September 2020 payment and had subsequently received no further payments thereafter. On 3 December 2020 Canada Life informed the Respondent that the Claimant's income protection claim had ceased on 19 September 2020 upon his turning 60. On 4 December 2020 Canada Life confirmed that the Claimant was only covered until the age of 60 as the increase of the retirement age from 60 to 65 in October 2006 had post-dated Canada Life's acceptance of the Claimant's claim in August 2005 and Canada Life had only assumed risk to age 65 from October 2006 in respect of future claimants.

30. On 15 December 2020, the Respondent wrote to the Claimant (by email sent at 15:11) to inform him that his income protection claim had terminated on 19 September 2020 upon his turning 60 and to explain that he had been erroneously overpaid in September, October and November 2020, which had resulted in a total overpayment in the amount of £13,929.75. The Claimant confirmed receipt of the letter by email on 16 December 2020 at 09:45 although he accepted that he received and read it on the afternoon of 15 December 2020.

31. At some point between Tuesday 15 December 2020 and Sunday 20 December 2020, the Claimant drafted a grievance which he sent to the Respondent by hard copy letter, and by email at 11:20 on Monday 21 December 2020. In the grievance he requested any relevant documentation from Canada Life "as I will need to get this information to my solicitors as soon as possible". He also made clear that he had contacted ACAS, who, he said, had advised him to lodge a grievance. Given that ACAS is only open between Monday to Friday 8am to 6pm, he must have done this at some point in the period between 15:11 on Tuesday 15 December 2020 and 18:00 on Friday 18 December 2020, as the Claimant accepted in cross examination. He clarified in oral evidence that the first thing he had done was to speak to a family member who told him to speak to ACAS. He then called the legal helpline to which he had access under his legal expenses insurance and spoke to a lawyer, following which he spoke to ACAS who told him to lodge a grievance and directed him to

their website resources. He then spent significant time reading material on ACAS website which, he accepted, was likely to have informed him about time limits for bringing employment tribunal proceedings. All of this occurred in the period 15-20 December 2020 when he was still in time to bring an unlawful deductions claim. On 23 December 2020 at 21:40, the Claimant wrote another lengthy email to the Respondent in connection with his grievance.

32. On 13 January 2021, the Respondent responded to the Claimant's grievance informing him, consistently with what he had been told by Sandy Humphrey back in May 2016, that at the time his claim had been accepted by Canada Life, the Respondent's Normal Retirement Date was 60, as his contract of employment clearly stated, and that the subsequent extension of the income protection cover to age 65 (in October 2006) did not apply retrospectively to him in circumstances where his benefit had been triggered in August 2005 and he had remained on long-term sickness absence ever since.

33. On 22 January 2021, the Claimant wrote again to the Respondent maintaining his contention that he should be covered to age 65 and requesting further information from the Respondent and Canada Life, to which email the Respondent responded with further explanation of the position on 27 January 2021.

34. On 03 February 2021, the Claimant notified ACAS for the purposes of early conciliation. On 10 February 2021, the Claimant sent a further lengthy email to the Respondent in which he referred to having received further advice from ACAS and from his lawyers regarding the situation.

35. The Claimant did not present his ET1 until 23 March 2021, a further six weeks later.

The Law

36. S.13(3) provides relevantly that "where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion". The words "properly payable" connote some legal (not necessarily contractual) entitlement to the payment "on that occasion". For wages to be "properly payable" by the employer, it must be legally liable to pay them "on that occasion", either under the contract of employment or pursuant to some other legal obligation (e.g. National Minimum Wage) **(New Century Cleaning Co Limited v Church [2000] IRLR 27** at §43 & §62)

37. s.23 ERA 1996 sets out the following: (3) Where a complaint is brought under this section in respect of— (a) a series of deductions or payments, or (b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates, the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received. (3A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2). (4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable. (4A) An

employment tribunal is not (despite subsections (3) and (4)) to consider so much of a complaint brought under this section as relates 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.

38. S.23(1) ERA expressly gives the right to complain to a Tribunal only if the employer "has made a deduction". The statutory wording makes it clear that a claim under s.23 will only arise once the disputed deduction has actually occurred. As such, it is only when an employer has actually failed to pay a sum legally due that a claim for an unlawful deduction can arise. Where an employer pays too little, such that the deduction is essentially the shortfall, time for any complaint under s.23 starts to run from the moment the reduced payment is made. Where, on the other hand, the employer pays nothing at all, time starts to run at the time when the legal obligation to make the payment arose, as it is only at that point that the employer can be said to have failed to pay that which was "properly payable…on that occasion" within the meaning of s.13(3) ERA (**Arora v Rockwell Automation Ltd UKEAT009706ZT, unreported**, 12/04/06 at §12).

A two-stage test

39. Where a claim is presented outside the period of 3 months it is necessary to ask firstly whether it was not reasonably practicable to present the claim in time and, only if it was not, go on to consider whether it was presented in a reasonable time thereafter. The two questions should not be conflated. There is no general discretion to extend time and the burden of proof rests squarely on the Claimant to establish that both limbs of the test are satisfied.

The meaning of "reasonably practicable"

40. The expression "reasonably practicable" does not mean that the employee can simply say that his/her actions were reasonable and escape the time limit. On the other hand, an employee does not have to do everything possible to bring the claim. In Palmer and **Saunders v Southend-On-Sea Borough Council [1984] IRLR 119** it was said that reasonably practicable should be treated as meaning "reasonably feasible".

41. **Schultz v Esso Petroleum Ltd [1999] IRLR 488** is authority for the proposition that whenever a question arises as to whether a particular step or action was reasonably practicable or feasible, the injection of the qualification of reasonableness requires the answer to be given against the background of the surrounding circumstances and the aim to be achieved.

"Reasonable ignorance".

42. The question of whether it is open to an employee ignorant of her rights to rely upon that ignorance as a reason why it was not reasonably practicable to present a claim in time has been the subject of a number of decisions of the higher courts. **In Dedman v British Building and Engineering Appliances Ltd [1973] IRLR 379** Scarman LJ said the following: *"Does the fact that a complainant knows he has rights under the Act inevitably mean that it is practicable for him in the circumstances to present his complaint within the time limit? Clearly no: he may be prevented by illness or absence, or by some physical obstacle, or by some untoward and unexpected turn of events. Contrariwise, does total ignorance of his rights inevitably mean that it is impracticable for him to present his*

complaint in time? In my opinion, no. It would be necessary to pay regard to his circumstances and the course of events. What were his opportunities for finding out that he had rights? Did he take them? If not, why not? Was he misled or deceived? Should there prove to be an acceptable explanation of his continuing ignorance of the existence of his rights, it would not be appropriate to disregard it, relying on the maxim "ignorance of the law is no excuse." The word "practicable" is there to moderate the severity of the maxim and to require an examination of the circumstances of his ignorance. But what, if, as here, a complainant knows he has rights, but does not know that there is a time limit? Ordinarily, I would not expect him to be able to rely on such ignorance as making it impracticable to present his complaint in time. Unless he can show a specific and acceptable explanation for not acting within four weeks, he will be out of time."

43. In **Wall's Meat Co Ltd v Khan [1978] IRLR 499** Brandon LJ dealt with the issue of ignorance of rights as follows: *"The impediment may be physical, for instance the illness of the complainant or a postal strike; or the impediment may be mental, namely, the state of mind of the complainant in the form of ignorance of, or mistaken belief with regard to, essential matters. Such states of mind can, however, only be regarded as impediments making it not reasonably practicable to present a complaint within the period of three months, if the ignorance on the one hand, or the mistaken belief on the other, is itself reasonable."*

44. In those and in subsequent cases it has been held that the question of whether bringing proceedings in time was not reasonably practicable turns, not on what was known to the employee, but upon what the employee ought to have known **Porter v Bandridge Ltd [1978] ICR 943, Avon County Council v Haywood-Hicks [1978] IRLR 118**. A further proposition can also be gleaned from those authorities. Where an employee is aware that a right to bring a claim exists it will be considerably harder to show that they ought not have taken steps to ascertain the time limit within which such claims should be presented.

Causation and "reasonable practicable".

45. In **Palmer v Southend-On-Sea Borough Council [1984] IRLR 119** following a review of the earlier authorities including Dedman and Wall's Meat May LJ concluded that the question of whether a step was or was not reasonably practicable would include the advice given, or available, but that was a material consideration which would have to be taken into account along with all of the other circumstances.

46. In **Northamptonshire County Council v Entwhistle [2010] IRLR 740** after an extensive review of the authorities the then President of the EAT said that the question posed under Section 111(2) of the Employment Rights Act 1996 "is not one of causation as such". In that case an earlier error by the employer has led to a negligent assumption by the Solicitor retained by the Claimant. The EAT overturned the decision of the Employment Judge that it was not reasonably practicable to bring the claim in time.

A reasonable period thereafter

47. The question of whether an employee has presented their claim within a reasonable time of the original time limit is a question to be determined objectively by the employment tribunal taking into account all material matters see **Westward Circuits Ltd v Read [1973] ICR 301, NIRC**.

48. In **Cullinane v Balfour Beatty Engineering Services Ltd UKEAT/0537/10** the then president of the EAT said: *"Ms Hart pointed out that the question which arises under the second stage in s 139(1)(b) is couched simply in terms of what further period the tribunal would regard as "reasonable", and not, like the question under the first stage, in terms of reasonable practicability. She submitted that it followed that the "Dedman principle" – namely that for the purpose of the test of reasonable practicability an employee is affixed with the conduct of his advisers (see, for the most recent review of the case law, Entwhistle v Northamptonshire County Council (2010) UKEAT/0540/09/ZT, [2010] IRLR 740) – does not fall to be applied. She pointed out that that principle is a consequence of the ultimate test being one of practicability (not even, be it noted, when the test was first formulated, reasonable practicability), and that the consideration of what further period was "reasonable" did not require so strict an approach. She made it clear that she was not saying that the fact that a Claimant had been let down by his advisers was decisive of the question of reasonableness at the second stage, but she submitted that it must be a relevant consideration. [16] I accept the validity of the formal distinction advanced by Ms Hart, but I do not believe that it makes any real difference in practice as regards the question of the relevance of the culpability of the Claimant's legal advisers. The question at "stage 2" is what period – that is, between the expiry of the primary time limit and the eventual presentation of the claim – is reasonable. That is not the same as asking whether the Claimant acted reasonably; still less is it equivalent to the question whether it would be just and equitable to extend time. It requires an objective consideration of the factors causing the delay and what period should reasonably be allowed in those circumstances for proceedings to be instituted – having regard, certainly, to the strong public interest in claims in this field being brought promptly, and against a background where the primary time limit is. If a period is, on that basis, objectively unreasonable, I do not see how the fact that the delay was caused by the Claimant's advisers rather than by himself can make any difference to that conclusion."*

49. What I take from these authorities is that, in assessing whether proceedings have been brought within a reasonable period after the expiry of the original time limit, it is necessary to have regard to all relevant matters including, where appropriate, the factors that made it not reasonably practicable to present the claim in time. Whether they remained operative may be an important matter.

Discrimination.

50. s.123 EqA 2010 sets out the following: 123 Time limits (1) Subject to section proceedings on a complaint within section 120 may not be brought after the end of— (a) the period of 3 months starting with the date of the act to which the complaint relates, or (b) such other period as the employment tribunal thinks just and equitable. (3) For the purposes of this section— (a) conduct extending over a period is to be treated as done at the end of the period; (b) failure to do something is to be treated as occurring when the person in question decided on it.

51. Section 33(3) of the Limitation Act 1980 (power to extend time in personal injury actions) specified a number of factors that a court is required to consider when balancing the prejudice which each party would suffer as a result of granting or refusing an extension, and to have regard to all the other circumstances, in particular: (a) the length of and reasons for the delay; (b) the extent to which the cogency of the evidence is likely to be affected by the delay;(c) the extent to which the party sued had co-operated with any requests for information; (d) the promptness with which the claimant acted once he or she knew of the

facts giving rise to the cause of action; and (e) the steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.

52. In **British Coal Corporation v Keeble [1997] IRLR 336**, it was held that the Tribunal's power to extend time was similarly as broad under the 'just and equitable' formula. However, it is unnecessary for a tribunal to go through the above list in every case, 'provided of course that no significant factor has been left out of account by the employment tribunal in exercising its discretion'(**Southwark London Borough v Afolabi [2003] IRLR 220).**

53. The Court of Appeal in **Robertson and Bexley Community Centre (trading as Leisure Link) 2003 IRLR 434CA** made it clear that there is no presumption that time should be extended to validate an out of time claim unless the Claimant can justify the failure to issue the claim in time. The Tribunal cannot hear a claim unless the Claimant convinces the Tribunal that it is just and equitable to extend time, so the exercise of the discretion is the exception rather than the rule.

54. In **Abertawe Bro Morgannwg University v Morgan [2018] EWCA Civ 640** the Court of Appeal however stated that the "such other period as the employment tribunal thinks just and equitable" extension indicates that Parliament chose to give the tribunal the widest possible discretion. Although there is no prescribed list of factors for the tribunal to consider, "factors which are almost always relevant to consider are: (a) the length of, and reasons for, the delay and (b)whether the delay has prejudiced the respondent". There is no requirement that the tribunal had to be satisfied that there was a good reason for the delay before it could conclude that it was just and equitable to extend time in the claimant's favour.

55. There are two types of prejudice which a respondent may suffer if the limitation period is extended: (i). The first is the obvious prejudice of having to meet a claim which would otherwise have been defeated by a limitation defence. This is "customarily relevant" to the exercise of the discretion. (ii). The second is the forensic prejudice which a respondent may suffer if the limitation period is extended by many months or years, which is caused by such things as fading memories, loss of documents and losing touch with witnesses. Forensic prejudice is "crucially relevant" in the exercise of the discretion, telling against an extension of time. It may well be decisive. (iii). By contrast, the converse does not follow. In other words, if there is no forensic prejudice to the respondent that is (a) not decisive in favour of an extension, and (b) may well not be relevant at all (**Miller v Ministry of Justice UKEAT000315LA, unreported, 15/03/16, per Laing J at §10(ii))**

56. As part of the exercise of its overall discretion, a tribunal can properly take into account the fact that, although the formal delay may have been short, the consequence of granting an extension may be to open up issues which arose much longer ago. The fact that the grant of an extension will have the effect of requiring investigation of events which took place a long time previously may be relevant to the tribunal's assessment even if there is no reason to suppose that the evidence may be less cogent than if the claim had been brought in time (Adedeji). Accordingly, the Tribunal is required to consider as part of its exercise of discretion whether allowing an extension of time would result in the tribunal having to make determinations on matters that happened many years ago **(Secretary of State for Justice v Johnson [2022] EAT 1 per HHJ James Tayler at §23)**.

Conclusion and Findings

Unlawful deduction of wages

57. I find that under the terms of the Claimant's contract of employment, the Respondent's liability regarding the provision to the Claimant of the benefit of income protection insurance under its Staff Benefits Plan was specifically limited to the extent that a claim to benefit was accepted by an insurer.

58. The Claimant's contractual Normal Retirement Date was his 60th birthday and the Member Booklet and Staff Benefits Plan clearly stated that payment of the benefit would cease on his Normal Retirement Date, which was specifically and clearly defined in both documents to be his 60th birthday. The Claimant accepted in cross examination that as someone with technical experience in the insurance industry he understood that capitalised terms in policy documents which were specifically defined elsewhere have that definitional meaning. He stated, in my view unconvincingly, that he considered that Normal Retirement Date as defined in the Member Booklet had been "qualified" elsewhere. It is my finding that his interpretation of the definition in the Member Booklet was contrived, particularly for a man with a more sophisticated understanding of policy wording than the average, and his reliance in this regard upon company pension correspondence from Scottish Life and Aviva was illogical. This correspondence involved a completely different scheme, subject to a completely different contractual framework, provided by completely different corporate entities, as the Claimant accepted he appreciated in cross examination.

59. It was a term of the Canada Life GIP Policy under which the Claimant's income protection claim was accepted on 31 August 2005 that the benefit to claim would cease on attaining the age of 60, as the Mercer Review unequivocally demonstrated. Accordingly, I find that it was unarguably correct that as a matter of contract law i) the Claimant was insured by Canada Life under the 2005 GIP Policy, and not the 2007 GIP Policy; and ii) his entitlement to benefit under the 2005 GIP Policy ceased in accordance with its terms on his 60th birthday on 19 September 2020.

60. I find that the Claimant's unlawful deductions of wages claims were premised on alleged errors by the Respondent in calculating correct amounts of pay due under the GIP Policy by which he was covered (i.e. the 2005 GIP Policy). His legal entitlement to payments under that Policy ceased on 19 September 2020. Taking the Claimant's case at its highest, it followed that the last alleged deduction can only have applied to the final payment made pursuant to that Policy, which was made on 25 September 2020. The further payments made to him on 26 October 2020 and 26 November 2020 were irrelevant to, and did not in my view form part of, his unlawful deduction of wages claim because they were payments to which he had no legal entitlement (his contractual sick pay having been exhausted on 16 June 2005). They were therefore not payments of wages which were "properly payable…on that occasion" within the meaning of s.13(3) ERA. As such, time began to run from the date of the final payment of wages to which the Claimant was legally entitled, which was on 25 September 2020 (per *Arora v Rockwell Automation Ltd*, *supra*) and the three-month time limit for an unlawful deduction of wages claim expired on 24 December 2020.

61. It is my finding that it was plainly reasonably practicable for the Claimant to have presented his claim in time because there was no physical impediment to his so doing. Notwithstanding the various ailments connected to his medical condition, the Claimant accepted that he had carried out the performance appraisals of the nine head teachers in

the Diocese of Brentwood in the period October to December 2020 on behalf of the Assisi Catholic Trust (his evidence was that he did not stop doing this until 2021). More specifically, it was clear that the Claimant was able to read and understood the Respondent's notification to him on 15 December 2020 of the termination of his GIP claim. He was able to acknowledge receipt of the Respondents' letter on 16 December 2020, to contact ACAS at some point in the period 15-18 December 2020, to draft a detailed grievance on or before 20 December 2020 in which he referred to taking legal advice, and a follow up email on 23 December 2020. At all of those times, he was still within time to bring an unlawful deduction of wages claim arising out of the cessation of his GIP benefits on 19 September 2020 but failed to do so. Indeed, the Claimant accepted in cross examination that there was no physical impediment that prevented him from bringing a claim at that time.

62. In addition, there was no mental impediment to his so doing either for the following reasons: (i) The Claimant's reliance on Sandy Humphrey emailing him the wrong policy on 22 October 2010 was ill-founded in circumstances where he was subsequently clearly informed by Ms Humphrey of the correct contractual position five and a half years later in May 2016. Notably, when asked in cross examination whether Ms Humphrey had informed him back in August 2005 when his claim was accepted whether it would confer benefit until 60, he said he could not recall but he did not think so because "if that had been said, I would have done something about it". And yet he elected to do <u>nothing</u> about it when Ms Humphrey told him precisely that in May 2016, preferring instead unreasonably to assume (contrary to what his contract of employment and the Member Booklet made tolerably clear), that the Respondent was wrong in its interpretation of the GIP scheme coverage as it pertained to him (c/f his engagement in 2010 of a solicitor (Brian Barr) to whom he had recourse through his membership with the ME Association when Canada Life terminated the payments). When asked in cross examination why he did not take legal advice following the May 2016 correspondence his response was that he did not know, and he acknowledged that perhaps he should have. (ii) His reliance on not being informed by the Respondent until 15 December 2020 that his GIP benefits had ceased on 19 September 2020 was, it is my finding similarly misconceived. Firstly, he had been unequivocally notified by Sandy Humphrey in May 2016 as to the correct position (as he was able to recall sufficiently clearly in his grievance because he retained and had access to that correspondence in his email inbox). Secondly, what Ms Humphrey informed him would happen back in May 2016 was consistent with the contractual employment documentation he had at all material times possessed (his contract of employment and Member Booklet). Thirdly, once he had been informed by the Respondent on 15 December 2020 that his GIP benefits had ceased on 19 September 2020, he was at that point still in time to bring an unlawful deduction of wages claim arising out of the cessation of his GIP benefits – or to stop the clock running for limitation purposes by notifying early conciliation to ACAS – for a further nine days until 24 December 2020. The fact that he did in fact contact ACAS at some point in the period 15-18 December 2020 demonstrated that there was no mental impediment to his bringing a timeous unlawful deductions claim. By that date he was cognisant of all the necessary factual details to enable him to bring a claim arising out of the cessation of his GIP benefits on 19 September 2020 because the Respondent had explained them to him in its 15 December 2020 letter. Insofar as he remained under any misapprehension about his entitlement to bring unlawful deductions claim, or about the time limit in which to do so do, that misapprehension was unreasonable and arose from his own default in not making reasonable and timeous enquiries of the legal advisers to which he had recourse at all material times under the terms of his legal expenses insurance. I find that the mere fact that a course of action might be difficult, or daunting does not render it

not reasonably practicable and the fact that there was no discernible prejudice to the Respondent caused by the delay beyond having to defend an out-of-time complaint is irrelevant to the application of the reasonable practicability test and must be left out of account.

63. Furthermore, if I am wrong in my finding that it was not reasonably practicable for the Claimant to have timeously notified his unlawful deductions claim, I find that the Claimant did not present his claim within a reasonable further period. He did not notify early conciliation to ACAS until 3 February 2021, over seven weeks after he had received the Respondent's letter of 15 December 2020, and over five weeks after the relevant time limit had expired on 24 December 2020. He did not ultimately present his ET1 until 23 March 2021, over 12 weeks after the relevant time limit had expired, notwithstanding that he was in receipt of legal advice at the latest by 10 February 2021 as his email of that date made clear. He did not present his ET1 for a further six weeks beyond that date. The Claimant was not able to give any explanation whatsoever for this delay in cross examination other than that he had to produce all the paperwork for his lawyers and was then working to their time constraints. But that comes nowhere near a reasonable excuse for delay. I note that hundreds of litigants in person across the country issue timeous Tribunal claims every month without the benefit of professional legal assistance. Furthermore, the Claimant clarified in cross examination that before he had engaged the lawyers provided under his legal expenses insurance, he had in fact spoken to another lawyer, locally, who he had found on the internet, who gave him advice.

<u>Equality Act claims</u>

64. With regard to the Claimant's Equality Act claims, I find that they were presented several years out of time. The act of providing the Claimant with the benefit of income protection insurance which, subject to him continuing to satisfy the policy's eligibility criteria, would cease on his 60th (and not 65th) birthday occurred on 31 August 2005 when Canada Life accepted the Claimant's claim. This was not a continuing act, but the quintessential example of a discrete and one-off act with continuing consequences of which the Claimant was at all material times aware. Once he was "in claim", unless and until he returned to work such as to satisfy the insurer's "Actively at Work" requirements, he was locked into the 2005 GIP Policy and unable to benefit from any more beneficial coverage in the 2007 GIP Policy. That was not the Respondent's decision, but Canada Life's. It was also entirely standard practice in the income protection insurance market and any departure from that industry standard would have made no logical or commercial sense. As such, the Claimant's indirect age discrimination claim was presented well over 15 years out of time.

65. The Claimant's direct age discrimination claim was specifically limited to the allegation that the Respondent failed to make sufficient enquiries with Canada Life regarding his rights to benefit under the insurance scheme after he reached the age of 60. According to the contractual employment documentation which he had at all material times in his possession (contract of employment and Member Booklet) the Claimant was or ought reasonably to have been aware that his entitlement to benefit under the GIP claim which Canada Life accepted on 31 August 2005 would end on his 60th birthday. If he was left in any doubt about this following Sandy Humphrey erroneously sending him the wrong GIP Policy on 22 November 2010 that doubt was, or ought reasonably to have been, removed in May 2016 when he was informed unequivocally of the contractual position as it pertained to him, and specifically, when the cover would cease. Beyond querying this in a further telephone call with Ms Humphrey, the Claimant made no further complaint about the

Respondent's stated position (or that of Canada Life) at the time or in any of the four years which followed, preferring instead to assume that he was right, and Ms Humphrey was wrong. I find that on any view, that was not a reasonable approach to take in the circumstances.

66. As a failure to do something is to be treated as occurring when the person in question decided on it (s.123(3)(b) EqA), I accepted the Respondent's primary case which was that time began to run on 31 August 2005 when Canada Life accepted the Claimant's claim. Beyond that date, unless and until the Claimant returned to work such as to satisfy Canada Life's "Actively at Work" requirements, coverage until the Claimant's 60th birthday (subject to ongoing satisfaction of the other eligibility requirements) was set in stone and there was nothing that the Respondent could do to alter that position. In October 2006, the Respondent was informed clearly by Canada Life by way of the "Actively at Work" declarations that Canada Life would not assume risk for excepted employees under the revised policy (including the Claimant) until those employees were able to satisfy Canada Life's "Actively at Work" requirement. That position was reiterated to the Respondent by Mercer on 28 November 2006 and as a consequence the Respondent did not (and could not) challenge the position at that stage or at any time thereafter. This rendered the Claimant's direct age discrimination claim over 15 years out of time.

67. I also find that in the circumstances where the Claimant's GIP benefit terminated upon his reaching the age of 60 on 19 September 2020, as the Claimant had clearly been informed by the Respondent in May 2016 that it would, time began to run from that date, requiring the Claimant to commence Early Conciliation on or before 18 December 2020, which he did not do until 03 February 2021, over six weeks later.

68. I find that it would not be just and equitable to extend time to consider the Claimant's Equality Act complaints for the following reasons: (a) For the reasons set out at length above, there was no physical or mental impediment preventing the Claimant from bringing a timeous discrimination claim concerning his entitlement to benefit under the GIP Policy. He was at all material times aware, or ought reasonably to have been aware, of the relevant facts giving rise to his putative claims but he failed to act on them. His failure to take any action after the May 2016 correspondence was particularly damning in my view and the Claimant had no explanation for it in cross examination beyond accepting that "I did not do anything about it and perhaps I should have". (b) The length of the delay and the reasons the Claimant stated in aid for that long delay were, in the circumstances, entirely unsatisfactory and not at all compelling. The Claimant was aware, or reasonably ought to have been aware, of the facts giving rise to the causes of action he relied upon by 23 May 2016 at the latest and yet took no action whatsoever to enforce the rights he believed he had in any of the four and a half years which followed. Even when he received the 15 December 2020 letter notifying him of the termination of his GIP benefits on 19 September 2020 he did not act promptly, taking a further seven weeks to notify early conciliation to ACAS and a further seven weeks beyond that to present his ET1 on 23 March 2021 despite having initially contacted ACAS and spoken to lawyers at some point between 15-18 December 2020. (c) The Claimant's assertion that failing to extend time to consider his complaints would result in "a windfall for the Respondent" failed to comprehend that the prejudice to the Respondent of having to defend an ostensibly out-of-time complaint was "customarily relevant" to the exercise of the discretion (*Miller*, *supra*). Further, there was obvious forensic prejudice to the Respondent in having to defend a complaint arising from a decision which was taken in August 2005. It was notable that each of the examples of prejudice posited in *Miller* – "fading memories, loss of documents and losing touch with

witnesses" – feature heavily in this case. The relevant claim was incepted on 31 August 2005 under policy particulars which nobody has been able to retrieve. Ms Humphrey retired from the Respondent's employment in 2016. Even if the relevant protagonists from the Respondent, Mercer and Canada Life could be identified, they would be required to speak to matters which occurred by now over 16 years ago. As the authorities make clear, that is crucially relevant, perhaps even decisively so, in favour of refusing to extend time. (d) Moreover, the Claimant would not lose the opportunity to challenge the cessation of his GIP benefits, as he contends, because he is able to challenge Canada Life's decision to cease those benefits directly, as Ms Humphrey clearly advised him as far back as 22 November 2010 that he was able to do, but which to date he has elected, not to do. He could provide no explanation in cross examination as to why he has not done so.

69. In conclusion, the Claimant's claims for unlawful deduction of wages were presented out of time and the Tribunal has no jurisdiction to hear them. The Claimant's Equality Act complaints were presented several years out of time, and it would not be just and equitable to extend time to consider them. Accordingly, the claims must be struck out.

Employment Judge Hallen
Dated: 31 March 2022