



## EMPLOYMENT TRIBUNALS

**Claimant**

**Ms L Dawson**

**Respondent**

**v Elior UK plc**

## PRELIMINARY HEARING

**Heard at: London South**

**On: 11 July 2017**

**Before: Employment Judge Elliott**

**Appearances:**

**For the Claimant: In person**

**For the Respondent: Mr R Aston, solicitor**

## RESERVED JUDGMENT

The claimant was not a disabled person at the material time and the claim for disability discrimination is dismissed.

## REASONS

1. By a claim form presented on 9 September 2015, the claimant Ms Lisa Dawson claims unfair dismissal, disability discrimination and holiday pay. The respondent defended the claims. In essence they arise out of the claimant's dismissal on grounds of capability.
2. There have been 2 prior preliminary hearings in this matter. The first was before Employment Judge Martin on 27 January 2016 when she identified the issues and made orders to prepare the case for a four-day hearing commencing on 5 September 2016. The second was before Employment Judge Spencer by telephone on 13 June 2017.

### **The procedural background**

3. The disability relied on by the claimant is that of tendinitis.
4. In the summer of 2016 the claim was struck out for non-payment of the hearing fee. It was reinstated by Employment Judge Baron on 12 September 2016 provided the fee was paid or remission granted by 7 September 2016. It was relisted for a four-day hearing commencing on Monday 22 May 2017.

5. On 21 November 2016 Employment Judge Baron ordered that this case be listed for a preliminary hearing to determine whether at the material times the claimant was a disabled person within the meaning of the Equality Act 2010. That hearing was listed for 24 January 2017.
6. The claimant requested a postponement on medical grounds. The postponement was granted by Regional Employment Judge Hildebrand. Judge Hildebrand ordered that the full merits hearing commencing on 22 May 2017 be postponed and that a new preliminary hearing date be listed to determine disability status.
7. A telephone preliminary hearing took place on 13 June 2017 before Employment Judge Spencer. The claimant made a request that the preliminary hearing be listed on a Tuesday afternoon so that she could be accompanied by a friend who would take notes and support her. This was accommodated.
8. The claimant told the tribunal at the telephone hearing that she has had some mental health and other medical problems but it was confirmed at the preliminary hearing on 13 June 2017 that the disability relied upon for the purposes of these proceedings is tendinitis. The question is whether the claimant was a disabled person with that condition in 2015. This was confirmed to the claimant by letter from the Tribunal dated 21 June 2017. The claimant was subsequently given additional time to produce medical documents to the respondent and the tribunal.

**The issue**

9. The issue for the tribunal was whether the claimant was a disabled person within the meaning of section 6 of the equality act with the condition of tendinitis causing pain in her wrists, during 2015. The claimant was dismissed on 17 June 2015.

**Witnesses and documents**

10. There was a witness statement from the claimant running to 2 pages. The claimant sent medical evidence to the tribunal which arrived by post on 13 February 2017. In addition to a letter from the South West London and St George's Mental Health NHS Trust dated 29 November 2016 there was a letter from the claimant's GP surgery, Dr Elizabeth Mogg dated 19 December 2016.
11. The tribunal heard from the claimant.
12. The hearing bundle of documents comprised 242 pages. The bundle contained the claimant's medical records from July 2014 to February 2016. The period in issue is from 27 August 2014 to her dismissal on 17 June 2015. There was a great deal of medical information pertaining to conditions which were not tendinitis and were therefore not relevant to the issue for determination at this hearing.
13. During the claimant's evidence, her friend who accompanied her, Mr D Austin, wanted to say something "to give clarity". I did not agree to the claimant's evidence being interrupted and reminded everyone that this was the claimant's evidence. After her evidence had completed I asked what the position was in terms of whether Mr Austin was seeking to give evidence. There was no witness statement from him and Mr Aston for the respondent objected to Mr Austin giving any evidence.

14. The claimant asked what the position was given that she has a disability and it is difficult for her to prepare a statement. I said that in those circumstances she needed to inform the tribunal that she wished to call another witness and explain the circumstances. She had not said that she wished to call another witness and it was only during her evidence that Mr Austin said he wanted to say something. As there was no statement from him, the respondent objected and the claimant had not personally asked that he give evidence, I did not give leave for Mr Austin to give evidence.
15. There was an expert medical report contained within the hearing bundle from Dr DM McCarthy, a consultant orthopaedic surgeon at the Homerton Hospital in East London, based on the joint instruction of the claimant and the respondent. There was a first report followed by a second report as the respondent's solicitors took the view that the first report had not addressed all the relevant questions. Both reports were in the bundle.
16. Sixty pages of the bundle comprised the Guidance on Matters to be Taken into Account in Determining Questions Relating to the Definition of Disability referred to below.

### Findings of fact

17. The claimant's evidence as to the effect upon her of her wrist condition was put in her witness statement as follows:

*Since the injury, I can't put much pressure or weight on my wrists without severe pain and spasms and also find it difficult to grip items. My personal life has been [severely] affected to a degree that I can no longer carry out basic day-to-day tasks, examples being that it is impossible to get in or out of the bath, washing certain areas has become difficult. I can't carry saucepans, kettles, anything heavy, household chores, shopping, gardening, even preparing food and cooking meals has become problematic without experiencing severe pain which inhibits me from living my life and this was severe enough for the council to issue a disabled parking badge as I am unable to carry much or drive for any great distance, without extreme discomfort.*

.....

*I have always been an outgoing person and enjoyed socialising.....now I feel isolated and withdrawn, which has caused a loss of confidence, travel is limited and visiting family and friends is extremely difficult due to the distances involved.*

*I used to enjoy knitting and sewing, now it's all but impossible due to pain and discomfort, even typing this statement has taken two evenings to complete.*

*In summary my quality of life I believe, has deteriorated greatly, due to my injuries.*

18. I asked the claimant to clarify in relation to the above evidence, the date from which she said she started experiencing problems with her wrists. She said it was from 27 August 2014. The claimant's case is that on that date when she was at work, she was filling a shopping trolley with stock for the bar and restaurant, the trolley was on uneven ground, it moved and hit her on the thigh. She says her wrist was also impacted by her efforts to stop the trolley from falling over. I make no finding of fact on this incident.
19. In oral evidence in answer to cross-examination, the claimant gave more detail on the effects of her condition of tendinitis. She said that she used to be able to drive for long distances, but with the onset of this condition, she can no longer do so. She said she had to avoid driving in the rush hour and organised her shifts so that she did not need to drive in rush hour.

20. I found her evidence on this unconvincing as one of her shift patterns was a six-hour shift commencing at 11am with a finish time of 5pm. This necessarily involved the claimant driving home from her workplace in Roehampton to her home in the Raynes Park area in the rush hour, a distance of about 6 miles. The claimant said that she knew all the back routes, so that it did not matter that it was rush hour. However, I find that taking back routes increases driving pressure as it involves more turns and junctions than driving along the more established routes. I find that the claimant was able to drive in the rush hour from August 2014 to her dismissal in June 2015 because she did so. She accepted that she had not been advised by her doctor not to drive in the rush hour.
21. The claimant currently has a disabled badge for parking. She referred to this in her witness statement. The claimant was asked when this was issued to her and she was very uncertain as to when this was. She had the original with her which was produced to the respondent during the hearing. It was issued on 17 February 2017, a year and eight months after the date of dismissal and I find that it therefore has no bearing on the period under consideration.
22. The claimant was asked about her ability to cook and prepare meals. She said she could not prepare food, and she got take-aways "all the time" which caused her to gain weight. She said she could no longer prepare food from scratch. She was asked in cross-examination for how long this had been the case and she said "*probably shortly after the injury to my wrist*" referring to 27 August 2014. She said that because of this "*I lost a lot of weight*". This contradicted her earlier evidence that she had gained weight due to the reliance on take-aways.
23. The claimant went on to clarify in her evidence that she did not start having take-aways until after her dismissal on 17 June 2015 because she ate at work. She initially said that when she was not at work she "did not eat" which I found hard to accept. She then said she ate very little because she was not a big eater.
24. I found that the claimant's evidence on this issue of food preparation changed during her cross-examination and I found her equivocal on the issue. This may in whole or in part be due to other medical conditions the claimant is dealing with (which are not relied upon as the disability in question in these proceedings) and I do not criticise the claimant for this.
25. I find that the claimant was able to perform her work duties until she went off sick in March 2015 until she was certificated for a phased return on 1 June 2015. Her work involved serving meals and drinks to customers. She had the benefit of being able to eat meals at work and I find that because of this she did not have the need to carry out much in the way of food preparation prior to the date of dismissal. Her wrist condition did not prevent her from serving meals and drinks. On her own evidence it was only after dismissal that she began to rely on take-aways. The period under consideration is the period up to the date of dismissal.
26. The uncertainty in the claimant's evidence was highlighted when she was asked if she lived alone. She initially said that she did but later said that she had 2 adult children aged in their mid-twenties. At one point she said that her son moved out completely in March 2015 and alternatively said that he lived with

her “on and off”, that he “comes and goes” and sometimes stayed with a girlfriend. This evidence was most unclear. The claimant was clear that her daughter had not lived with her for years and that when her son was present he did not help her out. I find that for the most part during the material time the claimant lived alone. She did not seek help for matters such as shopping, cleaning or personal care.

27. On the issue of shopping the claimant says she uses home shopping which I understood to be on-line shopping and that she can purchase small amounts of shopping for herself.
28. In her witness statement the claimant said she found it impossible to get in or out of a bath. She was asked how she dealt with bathing. She said she had a fully tiled bathroom which acts as a “wet-room” and she showered using a hand-held shower attachment. The claimant was therefore at the material time able to attend to her personal washing as she was able to shower with a hand-held shower.

#### GP records

29. The claimant said that she first mentioned to her doctor problems with her wrist on the morning of 28 August 2014 and that her doctor’s “*inability to record this was not [her] fault*”. In her medical records there were two entries for 28 August 2014 at page 56 and 57 with no mention of her wrists. There is a reference on that date to the claimant mentioning bruising on her right thigh from loading stock into a trolley which “rebounded back on to her”.
30. The first reference to wrist joint pain in the claimant’s GP records was on 16 January 2015 stating “*Problem. Wrist joint pain. (First)*” (page 55). It said: “*History. Works in catering. Had a heavy weekend last weekend, lots of heavy lifting overlong hours. Developed wrist pain and indeed ached all over by Monday. Wrist pain has worsened over the week and is associated with numbness to her little fingers. Symptoms worse at night when lifting heavy items – has continued to work this week. Has a run of 7 shifts coming up. Has bandaged her wrists*”.
31. I find that even if the claimant mentioned wrist pain to her doctor on the morning of 28 August 2014 it was not sufficiently serious for her to seek treatment for it. I find that the condition was not sufficiently serious for the claimant to refer it to her doctor for the purposes of advice or treatment until 16 January 2015 being the first reference in the medical records. The claimant was not prevented from working at this time. The joint medical expert Dr McCarthy reports at paragraph 4.11 of his report (page 202) that the claimant started on naproxen and paracetamol on 16 January 2015. I find that it was not until 16 January 2015 that the claimant’s condition was sufficiently serious for her to seek treatment from her doctor.
32. By 23 January 2015 the claimant told her GP that the wrist pain was better (medical records bundle page 55). The claimant was examined by her GP on that date who found no evidence of any wrist or hand swelling over her joints and there was some tenderness over the third metacarpal. The claimant was bandaging her hands and found this helped her. This was commented upon by the jointly instructed medical expert at paragraph 4.11 of his report on page 202.

33. The claimant saw her GP again on 3 February 2015. She told her GP that she was being “*forced to do heavy lifting*” and that she was having problems with the naproxen. She wanted the doctor to advise reduced hours, but the GP would only give instructions that directly related to the activity or injury (page 54-55). A decision was made to refer the claimant for physiotherapy. It appears from the medical records and Dr McCarthy’s report that the claimant continued working on lighter duties.
34. The first medical certificate in the bundle for wrist joint pain was issued by the claimant’s GP on 27 March 2015 when she was signed off work for one month. This was followed by a certificate on 24 April 2015 for wrist joint pain; the claimant was certificated as unfit for work due to wrist joint pain to 7 June 2015 (pages 44 to 46 of the bundle). On 1 June 2015 her GP gave a further certificate (page 47) stating that the claimant may be fit for work with a phased return.

The report of Dr R Mason

35. There was report provided to the respondent by Dr Rachel Mason from the claimant’s GP surgery dated 22 April 2015, page 83-83a. This said that the doctor had provisionally diagnosed the claimant with tendinitis. The doctor said that it caused pain when there was weight bearing on the wrists which she understood to be a large part of the claimant’s duties. She said the condition varies from person to person but the claimant had described quite severe pain which had been quite busy persistent and easily reproduced. Dr Mason said “*so it is currently affecting her ability to carry out normal day-to-day activities*”.
36. Dr Mason made some general observations about the condition. She said that the condition’s duration can be quite variable and repeated injury can prolong the recovery time quite considerably. She said often 6 to 8 weeks can be enough to see improvement but sometimes these conditions cause ongoing pain for months. She said that the claimant had presented quite early on with her symptoms and was referred promptly to physiotherapy but the waiting time in that locality was 10 to 12 weeks so that the claimant was not currently (at that time) receiving physiotherapy treatment. Dr Mason said that the claimant was prescribed strong painkillers at the onset of the problem in January, which I understood from the medical records to be January 2015. The doctor did not know if the claimant was using any tablet pain relief.
37. Dr Mason said that in theory the condition is fully treatable but the longer it goes on the longer it takes to recover. She hoped that the claimant would be able to return to her duties at some point but said: “*Given that we are 3-4 months into symptoms and she has not yet received physiotherapy, it may be quite some time before she is able to resume her normal duties. This partly depends on when she sees a physiotherapist for the first time and what their specialist assessment is of the problem and its prognosis.*”
38. Dr Mason also said “*I am satisfied that physiotherapy is likely to be all the treatment that she needs alongside pain relief*”. The doctor said that the claimant should not be asked to do heavy lifting and if she could not be put on a shift with someone who could assist her with heavy lifting then she must not be put on shifts.

39. Dr Mason outlined some adjustments that she thought might be appropriate for the claimant. She said that she was hoping that as the claimant started work with the physiotherapist the extent of what she would be able to do and the speed with which she was able to get back to fitness would start to become clear. She did not consider the problem would make the claimant permanently unfit for work. Dr Mason concluded the letter by saying "*I would not consider her to be disabled when she does return to work*".
40. On 1 June 2015 the claimant was seen by her GP who gave her a certificate stating that she may be fit for work with a phased return (page 46).
41. I saw a letter from a locum physiotherapist Shakira Garrett dated 16 June 2015 page 84, saying that the claimant's symptoms had improved significantly and the claimant had been discharged from their service. The date of this letter was the day before the claimant's dismissal.

The expert report of Dr DM McCarthy

42. I saw the joint expert's report of Dr McCarthy dated 8 July 2016 and a second version dated 29 July 2016 because the respondent's solicitor took the view that he had not answered all the questions put to him. The claimant was only seen once by Dr McCarthy.
43. Dr McCarthy is a consultant orthopaedic surgeon at the Homerton Hospital appointed as a consultant in 1994. He also practices privately at the London Independent Hospital and in Harley Street. He is a specialist in upper limb surgery.
44. The relevant paragraphs of Dr McCarthy's report to which the parties took me were as follows. He notes at paragraph 4.10 that there was little in the claimant's medical records until 16 January 2015 when it states that she developed wrist pain and ache. It also says that she "*started on Naproxen and paracetamol*". In paragraph 4.11 Dr McCarthy notes from the medical records that on 23 January 2015 it was noted that her wrist pain was better but she was now reporting bruising in her left hand and pain over the third metacarpal bilaterally and was bandaging her hands and found that this helps. On assessment there was no evidence of any wrist and hand swelling over her joints and there was some tenderness over the third metacarpal.
45. In paragraph 4.12 Dr McCarthy noted that when the claimant was seen on 3 February 2015 she made reference to wrist strain. He notes that the claimant was requesting reduced hours and reporting numbness in her left thumb and index finger. In paragraph 4.13 he notes that there was a referral to physiotherapy and that on 26 February 2015 the claimant was suggesting that she may be fit for work and was reporting bilateral wrist sprains but had not yet started physiotherapy.
46. At paragraph 4.23 Dr McCarthy noted that on 1 June 2015 the claimant's medical certificate stated that she was now fit to return to work with a phased return (page 47). He noted from the letter from the physiotherapist of 16 June 2015 (the day before the claimant's dismissal) that her symptoms had improved significantly and she had been discharged from the service.
47. The claimant told Dr McCarthy at her examination with him in July 2016 that she had significant impairment in her left wrist at that present time and was

once again attending physiotherapy (page 206). This was the status of the condition a year post-dismissal. Dr McCarthy said that after 16 June 2015 the medical records were "quite limited". He noted in his report a number of other conditions for which the claimant has received treatment.

48. Under the heading "Opinion and Prognosis" (page 209 onwards) Dr McCarthy said at paragraph 7.3 that there was certainly documentary evidence of the claimant reporting pain and discomfort in her wrist. He said that the GP recorded a diagnosis of tendinitis and this was not an unreasonable suggestion "*though to be honest her symptoms and atypical presentation does not quite fit a pattern of tendinitis*".
49. The respondent submitted that this should be read as Dr McCarthy saying that he did not think the claimant had tendinitis. Dr McCarthy said at paragraph 7.7 of his report "*It is my view that it is uncertain what problem she has got in the wrist, but in my view there is a significant psychological component to her persisting problems and intensive physiotherapy treatment along with counselling would be an important avenue of treatment*".
50. Dr McCarthy's comment on the definition of disability was: "*her presentation today would suggest the same [ie July 2016] but the medical records made available to me would certainly refute the same as it is clear that whatever problem she has in her wrists was resolved by June 2015 and there is nothing in her medical records to suggest that she suffered from the same after that*". He also said in his conclusions (paragraph 7.15 page 212) that the claimant's symptoms were vague and non-specific and "*no clear diagnosis had been made*".
51. Dr McCarthy confirmed in answer to questions from the respondent's solicitors that "*these problems had resolved by June 2015 suggesting that they had lasted for less than 12 months*" (page 211).
52. Dr McCarthy's conclusions state that the claimant made a good recovery at physiotherapy and was fit to return to work (page 209). He reported that the claimant's condition then got worse particularly on the left side.
53. The claimant's GP Dr Elizabeth Mogg provided a report in a letter dated 19 December 2016 which said as follows:

*Ms Dawson has requested that I write to detail her medical problems. She is currently awaiting treatment for carpal tunnel syndrome which is giving her problems in both wrists and hands, the left is worse than the right and is due to be treated first. She also has problems with the pain in her neck and a recent MRI scan has shown that she has a narrowing C5/6 level which is giving her pain in her neck and arm on the left side.*
54. This letter details the claimant's condition as it stood in December 2016, which was a year and a half after her dismissal. I find based on Dr McCarthy's report of the claimant's condition when he saw her in July 2016 and on Dr Mogg's report of December 2016 that the claimant's wrist condition has worsened since her dismissal and presents her with more difficulty as at the date of this hearing than it did during the material time.
55. The claimant told the tribunal more than once that she had difficulty remembering things. She said she had difficulty retaining information. Therefore, where there is a discrepancy between what the claimant said orally and a written record, such as the medical records, I prefer the written record.



For example, I find that the first time the claimant mentioned her wrist condition to her GP for the purposes of treatment was on 15 January 2015 and not 28 August 2014.

56. The claimant told the tribunal she had difficulty using a computer and it had taken her two days to prepare her two-page witness statement. She also said that she could not sign her witness statement because she could not hold a pen. I find that this was her condition as at July 2017 and not at the material time.

### The law

57. Section 6 of the Equality Act provides that a person has a disability if that person has a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.
58. I considered the Guidance on Matters to be Taken into Account in Determining Questions Relating to the Definition of Disability (2011) issued under section 6(5) of the Equality Act. (D2 is day to day activities)
59. Paragraph D3 of the Guidance assists with the meaning of normal day-to-day activities.

*In general, day-to-day activities are things people can do on a regular basis, and examples include shopping, reading and writing, having a conversational using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities. Normal day-to-day activities can include general work-related activities, and study in education related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or a shift pattern.*

60. While the view of doctors on the nature and extent of a claimed disability is relevant, the issue is one for the tribunal to decide on all the evidence - **Abadeh v British Telecommunications plc 2001 IRLR 23 EAT** (Nelson J).

### Conclusions

61. The respondent accepts that the claimant had and has a wrist condition. The respondent disputes that it is tendinitis and that the condition amounted to a disability at the material time both as to duration and on its effect upon the claimant's ability to carry out normal day-to-day activities.
62. I have found above that even if the claimant mentioned her wrists to her doctor on 28 August 2014, it was not sufficiently serious for her to seek treatment until 16 January 2015. By 23 January 2015 the claimant was reporting that it was feeling better. She subsequently required further treatment. She was referred to physiotherapy. By 16 June 2015 the condition had significantly improved and she was discharged from physiotherapy.
63. The period under consideration is from 27 August 2014 to 17 June 2015. The jointly instructed medical expert Dr McCarthy could not be certain as to the nature of the claimant's condition (his conclusions paragraph 7.7). He did not diagnose tendinitis.
64. Dr McCarthy took the view that on the issue of disability, the medical records refuted disability and he concluded that whatever condition the claimant had in

her wrists was resolved by June 2015. I remind myself following **Abadeh** (above) that the decision on disability lies with the tribunal and not with the medical expert. Nevertheless I have taken account of his view and his expert opinion that the condition had resolved by June 2015. The letter from the physiotherapist reporting significant improvement and discharging the claimant from their service the day before the date of her dismissal supports this.

65. On 22 April 2015 Dr Mason, in a report to the respondent, said that she would not consider the claimant disabled once she returned to work. The claimant was certified for a phased return from 1 June 2015. Again, the decision on disability does not lie with the doctor, but I have taken her views into account.
66. I have found above that the condition did not affect the claimant's ability to drive in the rush hour as she contended. I have also found that it did not affect her ability to prepare and cook food in the period under consideration, namely from August 2014 to June 2015.
67. In her evidence the claimant was required to think back as to what was the status of her condition over two years ago. The claimant has poor recollection and admits she has difficulty retaining information. I have therefore preferred the medical records where such uncertainty exists. I find that the claimant's condition as it stands now was uppermost in her mind, but this was not the status of her condition at the material time.
68. I find based on the above that the claimant had a wrist condition that was sufficiently serious for her to consult her GP in mid-January 2015 and that it had resolved by mid-June 2015. It lasted for 5 months. The medical expert cannot place a definite diagnosis upon the condition and takes the view that there is also a psychological component.
69. On the issue of whether it was likely to recur, this is difficult to assess when there is no firm diagnosis from the medical expert. In fact a wrist problem has recurred and the claimant is currently experiencing problems with her wrist.
70. The claimant's evidence as to the effects of her condition upon her at the material time (2014/2015) was unclear. She had difficulty remembering the dates upon which circumstances and situations occurred or applied. As stated above, I do not criticise the claimant for this. For most of the material time, she lived alone and did not receive any help with her personal care, shopping or cleaning. She was able to drive to and from work and carry out her work from August 2014 to 27 March 2015. Her work involved serving meals and drinks to clients. She could not do heavy lifting but I find that heavy lifting is not a normal day to day activity. Using or lifting everyday objects is not the same as heavy lifting.
71. The claimant's condition had resolved by the date of her dismissal.
72. I find that the condition did not have a substantial adverse effect on her ability to carry out normal day to day activities. If I am wrong about this, I also find that it was not a long-term condition. It subsisted for 5 months and then resolved.
73. The condition does not have a firm diagnosis. I find that without a diagnosis I cannot find that the condition was likely to recur. Dr McCarthy did not find details of any recurrence in the medical records under his consideration,

although the claimant was then (July 2016) reporting a significant impairment in her left wrist.

74. The claimant now has problems with her wrists and the effects she is dealing with now may be more serious than in the period from January to June 2015. It may be that the claimant meets the definition of disability as at today's date but that is not the issue for my consideration.
75. I find that at the material time between August 2014 and June 2015 the claimant did not meet the definition so as to be a disabled person with the condition of tendinitis for the purposes of section 6 of the Equality Act 2010.
76. Accordingly the disability discrimination claim must fail and is dismissed. The claim for unfair dismissal and holiday pay proceeds to a full merits hearing.
77. At the close of the hearing, the respondent said that its time estimate for a full merits hearing if disability was no longer included was 2 days. The tribunal will write to the parties separately regarding this. The orders made at the conclusion of the hearing, when judgment was reserved, are set out below.

## **CASE MANAGEMENT SUMMARY**

### **Listing the hearing**

1. After all the matters set out below had been discussed, we agreed that the hearing in this claim would be completed within four days. It has been listed at London South Employment Tribunal, Croydon to start at 10am or so soon thereafter as possible on **25 June 2018**. The parties are to attend by 9.30 am.

### **The issues**

2. The issues for the full merits hearing are set out in Employment Judge Martin's Case Management Order of 27 January 2016, save that disability discrimination is no longer in issue.

### **Judicial mediation**

3. I raised the possibility of this case being considered for an offer of judicial mediation. The respondent was not interested in judicial mediation so this could be taken no further.

### **Other matters**

4. I asked the parties where they had got to in terms of compliance with the orders made by Judge Martin in January 2016. Neither party sought any further orders for disclosure of documents and it therefore appeared that what was required were orders for a bundle, exchange of witness statements an updated schedule of loss. The claimant has already served a schedule of loss.

# ORDERS

## Made pursuant to the Employment Tribunal Rules 2013

### 1. Updated schedule of loss

- 1.1. On or before **4 June 2018** the claimant is ordered to provide to the respondent an updated schedule of loss. The claimant is ordered to include information relevant to the receipt of any state benefits.

### 2. Bundle of documents

- 2.1. It is ordered that the respondent has primary responsibility for the creation of the single joint bundle of documents required for the hearing.
- 2.2. The respondent is ordered to provide to the claimant a full, indexed, page numbered bundle to arrive on or before **22 January 2018**.
- 2.3. The respondent is ordered to bring sufficient copies (at least five) to the Tribunal for use at the hearing, by 9.30 am on the morning of the hearing.

### 3. Witness statements

- 3.1. It is ordered that oral evidence in chief will be given by reference to typed witness statements from parties and witnesses.
- 3.2. The witness statements must be full, but not repetitive. They must set out all the facts about which a witness intends to tell the Tribunal, relevant to the issues as identified above. They must not include generalisations, argument, hypothesis or irrelevant material.
- 3.3. The facts must be set out in numbered paragraphs on numbered pages, in chronological order.
- 3.4. If a witness intends to refer to a document, the page number in the bundle must be set out by the reference.
- 3.5. It is ordered that witness statements are exchanged so as to arrive on or before **4 June 2018**.

### 4. Cast list and chronology

- 4.1. The respondent is ordered to prepare a cast list, for use at the hearing. It must list, in alphabetical order of surname, the full name and job title of all the people from whom or about whom the Tribunal is likely to hear.
- 4.2. The respondent is also ordered to prepare a short, neutral chronology for use at the hearing.
- 4.3. These documents should be agreed if possible. If they are not agreed, the party preparing the document shall state within it the items that are not agreed. The parties do not have leave to submit separate documents.

## CONSEQUENCES OF NON-COMPLIANCE

1. Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.
2. The Tribunal may also make a further order (an “unless order”) providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.
3. An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.

**Employment Judge Elliott**

**13 July 2017**