Neutral Citation Number: [2021] EWCA Civ 606

Case No: A2/2020/1782

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE EMPLOYMENT APPEAL TRIBUNAL
LORD SUMMERS
UKEAT/0023/20/AT(V)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/04/2021

Before :

LORD JUSTICE LEWISON
LORD JUSTICE NEWEY
and
LORD JUSTICE LEWIS

- -

Between:

ALL ANSWERS LTD.	**Appellant**
- and -	
(1) MR W	**Respondents**
(2) MS R	

- -
- -

Mr R Kohanzad (instructed by **Peninsula Business Services Ltd**) for the **Appellant**
The respondents in person

Hearing date: 20 April 2021

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Approved Judgment

Covid-19: This judgment has been handed down by Lord Justice Lewis remotely by circulation to the parties' representatives by way of e-mail, by publishing on www.judiciary.uk and by release to Bailii. The date and time for hand down will be deemed to be Friday 30 April 2021 at 10:30am.

Lord Justice Lewis:

Introduction

1. This is an appeal against a decision of the Employment Appeal Tribunal ("EAT") given on 22 May 2020 dismissing an appeal against a decision of an employment tribunal of 5 November 2019. By that decision, the employment tribunal held that both Mr W and Ms R were disabled within the meaning of section 6 and Schedule 1 of the Equality Act 2010 ("the 2010 Act"). I will refer to the parties as the claimants and the respondent as they were referred to in the tribunals below.

2. In brief, the claimants allege that they were the subject of acts on 21 and 22 August 2018 which give rise to claims for disability discrimination or amounted to a failure to make reasonable adjustments. The respondent accepts that the claimants each had an impairment as at those dates. However, it contends that the employment tribunal erred in failing to consider whether the impairment had a substantial and long-term adverse effect, that is an effect which, judged at the date of the alleged discriminatory acts (21 and 22 August 2018), was likely to last for 12 months and, in the case of Ms R, wrongly took into account events occurring after that date. The claimants contend that the employment tribunal did address the relevant issue and did give adequate reasons for its conclusion.

The Legal Framework

3. Section 4 of the 2010 Act identifies certain characteristics as protected characteristics. These include disability. Section 6 of the 2010 provides, so far as material, that:

> "(1) A person (P) has a disability if—
>
> (a) P has a physical or mental impairment, and
>
> (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.
>
> (2) A reference to a disabled person is a reference to a person who has a disability.
>
> (3) In relation to the protected characteristic of disability—
>
> (a) a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;
>
> (b) a reference to persons who share a protected characteristic is a reference to persons who have the same disability.
>
> …..
>
> (5) A Minister of the Crown may issue guidance about matters to be taken into account in deciding any question for the purposes of subsection (1).
>
> (6) Schedule 1 (disability: supplementary provisions) has effect".

4. The circumstances in which an effect is "long-term" are defined in paragraph 2 of Schedule 1 to the 2020 Act in the following terms:

> "2 Long-term effects
> (1) The effect of an impairment is long-term if—
> (a) it has lasted for at least 12 months,
> (b) it is likely to last for at least 12 months, or
> (c) it is likely to last for the rest of the life of the person affected.
>
> (2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.
>
> (3) For the purposes of sub-paragraph (2), the likelihood of an effect recurring is to be disregarded in such circumstances as may be prescribed.
>
> (4) Regulations may prescribe circumstances in which, despite sub-paragraph (1), an effect is to be treated as being, or as not being, long-term."

5. In summary, a person discriminates against another person if (1) he treats that other person less favourably because of a protected characteristic (which includes disability) or (2) he treats the other person unfavourably because of something arising in consequence of that other person's disability and which he cannot show is a proportionate means of achieving a legitimate aim: see sections 13 and 15 of the 2010 Act respectively. A person also discriminates against a person if he applies a provision, criterion or practice which puts a disabled person at a particular disadvantage (as compared with those who are not disabled) and which he cannot show to be a proportionate means of achieving a legitimate aim: see section 19 of the 2010 Act. Further, there is a duty to make reasonable adjustments in relation to disabled persons and a failure to comply with that duty amounts to discrimination: see sections 20 and 21 of the 2010 Act.

The Factual Background

6. The claimants worked at the material time for the respondent. Mr W brought claims including claims for unfair dismissal and discrimination on grounds of disability, sex, and sexual orientation in relation to various matters occurring during a period from about 2017 to the end of November 2018. Ms R brought claims including claims for unfair dismissal and discrimination on grounds of disability, age, race and sex in relation to events during a similar period.

7. For the present purposes, the relevant claim concerns that for discrimination on grounds relating to disability and relates to events in August 2018. The claimants contend they were both suffering from depression and, in the case of Ms R, post traumatic stress disorder in August 2018 and each met the requirements for being disabled within the 2010 Act. They claim that their seating positions in the office where they worked were changed on 21 August 2018 so that they were no longer seated close to each other and were isolated. They contend that there was a failure to respond to their concerns on 22 August 2018. In addition, the first claimant, Mr W, was the subject of an informal warning issued on 21 August 2018, They claim that the change in the seating arrangements amounted to direct discrimination contrary to section 19 of the 2010 Act,

discrimination involving unfavourable treatment arising in consequence of their disability contrary to section 15 of the 2010 Act, a breach of the duty to make reasonable adjustments and, possibly, indirect discrimination contrary to section 19 of the 2010 Act. Mr W also claims that the giving of an informal warning involved disability discrimination. The substance of those claims has not yet been considered by an employment tribunal.

8. A preliminary hearing was ordered to be heard in October 2019 to deal with the question of what was described as "the claimants' disability status". That hearing took place before Employment Judge Blackwell on 28 October 2019 and judgment was given on 5 November 2019 and sent to the parties on 12 November 2019.

The Decision of the Employment Tribunal.

9. The employment tribunal recorded at paragraph 1 of its judgment that it had received evidence from the two claimants. Each had, in fact, provided a lengthy disability impact statement as ordered by the employment tribunal at the hearing in June 2019. Each claimant also gave oral evidence. There was no evidence adduced on behalf of the respondent.

10. The employment tribunal observed in paragraph 2 of its judgment, under the heading "Issue", that:

> "2. The purpose of the hearing … is to determine whether either or both of the claimants ….. are disabled within the meaning of Section 6 and Schedule 1 of the Equality Act 2010".

11. The tribunal set out the relevant statutory provisions and noted that it had not been referred to any relevant case law. In the light of that discussion of the law, the tribunal said at paragraph 8 of its judgment that:

> "8. The issue before me is therefore limited to determining whether either or both Claimants are disabled within the meaning of the 2010 Act and this decision is entirely limited to that issue. In particular, nothing in this decision should be taken to determine whether the Respondents know or could have reasonably been expected to know that either claimant was disabled. That issue is a matter for the full hearing."

12. The employment tribunal then considered the position of Mr W under the heading "Is Mr [W] disabled?". The decision noted that Mr W "asserts that he suffered from a mental impairment which he describes as a stress and anxiety disorder together with depression". The decision refers to various descriptions in the medical notes between 13 September 2018 and 25 January 2019. It noted that Mr W's evidence was that he began to notice symptoms in April 2018 and that those symptoms included a failure to concentrate, self-destructive thoughts, lack of motivation, tiredness and inability to sleep, and a general inability to cope with life. At paragraph 12, the employment tribunal turned to Mr W's evidence in relation to the effect of the impairment and records that:

> "12. In terms of the symptoms' effects on day to day activities Mr [W's] evidence was that he no longer socialised with friends save for his contact

> with his co-claimant [Ms R] and that contact arose because of his wish to support her in relation to the difficulties that she was encountering at work. He gave up bike riding and he no longer cooked for himself and found it difficult to motivate and to attend to matters such as his own self-care and appearance and to duties on the domestic front."

13. The employment tribunal summarised the cross-examination of Mr W by the respondent's representative. It expressed its conclusions in relation to Mr W at two paragraphs in the following terms:

> "**Conclusions**
>
> 15 I am satisfied that Mr [W] has established that he suffers from a mental impairment and it is unnecessary for me to put a precise label on that condition. I am further satisfied that on the basis of Mr [W's] evidence and the medical records that impairment is long term.
>
> 16. Has the impairment had a substantial, ie more than minor trivial adverse effect on Mr [W's] ability to carry out day to day activities? I accept Mr [W's] evidence that it has, particularly in the sense that he has lost motivation and confidence, he has for many months been unfit for work, he ceases to have an active social life and physical life in the sense of exercise. There is also supporting contemporaneous evidence in the record of "chats" in the bundle. On balance, therefore, I am satisfied that Mr [W] has since April 2018 been disabled within the meaning of the 2010 Act and remains so."

14. The employment tribunal then dealt with Ms R's case under the heading "Is Ms [R] disabled?". The decision recorded that Ms R "states that she is suffering with severe depression, anxiety and PTSD". The decision records Ms R's description of the symptoms. It summarised the medical evidence noting that there was no relevant record until 11 September 2018 when she was suspended from work. Ms R was then diagnosed as having a depressive disorder and the medical records disclosed repeated visits to a general practitioner and the prescription of various anti-depressant drugs. The tribunal recorded Ms R's evidence on the effect on day to activities at paragraph 19 in the following terms:

> "19. As to the effect on day activities Ms [R's] evidence was that she had ceased to take care with her personal appearance, sometimes not washing her hair for over a week. She had ceased to socialise with all but Mr [W] and that in the context of their joint claim. She had postponed her wedding but continued to be supported by her fiancé and her mother. She had given up dancing which she both enjoyed and had reached a high standard. She no longer goes out on her own, always being accompanied either by her fiancé or her mother".

15. The employment tribunal's decision then dealt with the cross-examination of Ms R and recorded that, despite the respondent putting alleged inconsistencies to Ms R about her disability impact statement, the tribunal saw no inconsistency. The conclusions are expressed in one paragraph in the following terms:

> "21. In conclusion I am satisfied both on her own evidence and that contained in the "chats" that Ms [R] suffers from a mental impairment and again it is unnecessary to put a label on that impairment. It is clearly long term and in my view has a substantial, ie more than minor or trivial, adverse effect on her day to day activities, in particular that she has lost confidence, she has effectively ceased to socialise outside the inner circle of her fiancé, her mother and Mr [W]. She has given up dancing and has ceased to take care of herself. On balance therefore, I am satisfied that Ms [R] is disabled within the meaning of the 2010 Act and that she has been so from April 2018 and remains so."

16. The judgment of the employment tribunal is recorded in the following terms:

> "Both Claimants are disabled within the meaning of Section 6 and Schedule 1 of the Equality Act 2010."

The Decision of the EAT

17. The respondent appealed to the EAT. The EAT referred to the decision of the Court of Appeal in *McDougall v Richmond Adult Community College* [2008] EWCA Civ 4, [2008] ICR 431, as authority for the proposition that the employment tribunal should have determined whether the impairment existed at the time of the acts of alleged discrimination, here 21 and 22 August 2018. The EAT noted that the employment tribunal did not refer to the decision in *McDougall* and "does not focus on whether there was a qualifying impairment on 21 and 22 August 2018". As regards Mr W, the EAT inferred from the decision of the employment tribunal that it accepted that an impairment existed on those dates. The EAT accepted that the employment tribunal had not focussed on the date of the relevant acts when deciding whether the effect of the impairment was long term, i.e. was likely as at that date to last for 12 months. Nonetheless, the EAT inferred, it seems, that the employment tribunal had considered that question. As regards Ms R, the EAT noted that it had been argued that the employment tribunal had failed to explain whether Ms R's mental impairment had a substantial adverse impact and whether the effects were long term or likely to recur. The EAT noted that there was "little by way of supporting reasoning in paragraph 21" of the employment tribunal's decision and that "more could have been done to explain the reasoning". Nonetheless, the EAT decided not to remit the matter back to the employment tribunal largely, it seems, because it would be difficult for an employment tribunal to articulate reasons for its decision and, therefore, no purpose would be served by doing so. It therefore dismissed the appeal.

The Appeal to the Court of Appeal

18. The employer appealed to this Court. Permission was granted and an order granting anonymity for each claimant was made. The claimants filed respondents' notices seeking to uphold the decision of the EAT on additional grounds. We were provided with a core bundle and a supplementary bundle which included each claimant's disability impact statement, medical records, and instant messaging chats. Following the hearing, the claimants realised that more chats had been provided to the employment tribunal than were included in our supplementary bundle and Mr W helpfully supplied those to us. In addition, we were provided before the hearing with the case management order made by Employment Judge Clark in June 2019 and the list of issues provided in

accordance with that order. I am grateful to all the parties for the helpful and efficient way in which they ensured that we had all the material necessary to deal with the appeal.

The Grounds of Appeal and the Respondents' Notices

19. The respondent advanced three grounds of appeal although these were subdivided. For ease of understanding, I have re-ordered the matters raised in the grounds. First, in ground 1 in relation to Mr W, the respondent contended that the employment tribunal:

    (1) failed to ask whether on 21 and 22 August 2018, the effect of Mr W's mental impairment was likely to last for 12 months or likely to recur; and

    (2) erred in concluding that Mr W became disabled within the meaning of the 2010 Act at the moment he started to experience depressive symptoms in April 2018 or failed to give adequate reasons for that conclusion or that that conclusion was perverse.

20. Secondly, in grounds 2 and 3 in relation to Ms R, the Respondent contended that the employment tribunal:

    (1) failed to ask whether on 21 and 22 August 2018, the effect of Ms R's mental impairment was likely to last for 12 months or was likely to recur and/or failed to give adequate reasons as to why it considered in April 2018 that the effects were likely to last long term (ground 2); and

    (2) erred by taking into account matters that occurred after the 21 and 22 August 2018 (ground 3).

21. The claimants relied upon the reasoning of the EAT and contended in addition that:

    (1) the reasoning of the employment tribunal on the various issues was adequate (that is, it complied with the requirements set out in the judgment in *Meek v City of Birmingham District Council* [1987] IRLR 250 and *English v Emery Reimbold & Strick Ltd.* [2002] EWCA Civ 605, [2002] 1 WLR 2409) and the EAT did not have doubts as to the adequacy of the employment tribunal's reasoning;

    (2) remitting the case to an employment tribunal would only lead to the same determinations being made and any failings in the judgment of the employment tribunal were not significant enough to be likely to lead to any material changes in the findings by the employment tribunal;

    (3) at the time of the preliminary hearing to determine disability, there was further evidence, namely various Microsoft Teams chats, which existed but had not been disclosed to the claimants by the respondents. Those chats were disclosed after the preliminary hearing and would have provided further support for the submission that the claimants were disabled.

Submissions

22. Mr Kohanzad for the respondent accepted that each of the claimants had a mental impairment as at 21 and 22 August 2018 and that it had a substantial adverse effect on their ability to carry out day to day activities. However, he submitted that that was not sufficient to establish that the claimants were disabled within the meaning of the 2010 Act. The effect had to be long-term, that is, likely to last for 12 months (or, if the impairment ceases to have a substantial adverse effect, that the effect is likely to recur). The employment tribunal had not assessed whether that was the position either in Mr W's or Ms R's case as at the date of the alleged discrimination. Further, in relation to Mr W, he submitted that it could not be assumed that the fact that a person had symptoms of depression in April 2018 meant that he was disabled or, alternatively, the employment tribunal had not given adequate reasons for such a conclusion. Further in relation to Ms R, the employment tribunal had had regard to events occurring after 21 and 22 August 2018 when it should have been assessing whether, on the facts as existing at that date, it was likely that the effect of the impairment would be long term, that is would last for 12 months.

23. Mr W and Ms R both relied upon the reasoning of the EAT. They further submitted that the decision of the employment tribunal did satisfy the requirements set out in the decision in *Meek*. In each of their cases, it contained an outline of the story giving rise to the complaint, a summary of the basic factual conclusions reached and the reasons for the conclusions and told the parties why they had won or lost. Further, the employment tribunal had heard evidence about the position prior to April 2018 in both cases, and heard how events were building up, and had considered all the evidence. Ms R also submitted that she had given oral evidence which indicated that the matters to which the employment tribunal referred had, in fact, occurred prior to 21 and 22 August 2018 not after September 2018 as her written disability impact statement might suggest. These included the losing of confidence, ceasing to socialise, giving up dancing and ceasing to take care of herself. Furthermore, the claimants reminded us that the court was not required to remit a matter if the error could not affect the result (see *Jafri v Lincoln College* [2014 EWCA Civ 449, [2014] ICR 920). Here, even if the matter were remitted to the employment tribunal, the overall finding of disability would remain the same so that there was, in fact, no purpose to be served by remitting the matter. Finally, Mr W and Ms R reminded us that the respondent had not disclosed "chats" prior to the preliminary hearing in October 2019 and those could have supported their case.

Analysis and Decision

24. A person has a disability within the meaning of section 6 of the 2010 Act if he or she (1) has a physical or mental impairment which has (2) a substantial and (3) long term adverse effect on that person's ability to carry out day to day activities. In the present case, the respondent accepts that, as at 21 and 22 August 2018, each claimant had a mental impairment which had a substantial adverse effect on that claimant's ability to carry out day to day activities. The only issue in this case is whether the impairment had a "long term" substantial adverse affect.

25. Paragraph 2(1)(b) of Schedule 1 to the 2010 Act defines long term, so far as material to this case, as "likely to last at least 12 months". "Likely" in this context means "could well happen": see *Boyle v SCA Packaging Ltd.* [2009] UKHL 37, [2009] ICR 1056, per Lord Hope at paragraph 4, and Lord Rodger at paragraph 42, Baroness Hale at paragraphs 70 to 72 (with whom Lord Neuberger agreed at paragraph 81), Lord Brown at paragraph 77.

26. The question, therefore, is whether, as at the time of the alleged discriminatory acts, the effect of an impairment is likely to last at least 12 months. That is to be assessed by reference to the facts and circumstances existing at the date of the alleged discriminatory acts. A tribunal is making an assessment, or prediction, as at the date of the alleged discrimination, as to whether the effect of an impairment was likely to last at least 12 months from that date. The tribunal is not entitled to have regard to events occurring after the date of the alleged discrimination to determine whether the effect did (or did not) last for 12 months. That is what the Court of Appeal decided in *McDougall v Richmond Adult Community College*: see per Pill LJ (with whom Sedley LJ agreed) at paragraphs 22 to 25 and Rimer LJ at paragraphs 30-35. That case involved the question of whether the effect of an impairment was likely to recur within the meaning of the predecessor to paragraph 2(2) of Schedule 1 to the 2010 Act. The same analysis must, however, apply to the interpretation of the phrase "likely to last at least 12 months" in paragraph 2(1)(b) of the Schedule. I note that that interpretation is consistent with paragraph C4 of the guidance issued by the Secretary of State under section 6(5) of the 2010 Act which states that in assessing the likelihood of an effect lasting for 12 months, "account should be taken of the circumstances at the time the alleged discrimination took place. Anything which occurs after that time will not be relevant in assessing this likelihood".

27. Against that background, the central issue in the present case is whether the employment tribunal did assess whether the effect of the claimants' mental impairment, assessed as at 21 and 22 August 2018, was likely to last for at least 12 months. In my judgment, the employment tribunal did not ask that question. I reach that conclusion for the following reasons.

28. First, the employment tribunal identified the issue, both in paragraphs 2 and 8, as whether either or both of the claimants "are disabled". That indicates that the tribunal was looking at the position as at the date of the preliminary hearing, that is 28 October 2019. That is reflected in its judgment where it says both claimants "are disabled". The language does not suggest that the employment tribunal regarded itself as considering whether, as at the material date (the alleged acts of discrimination on 21 and 22 August 2018) the claimants were disabled.

29. Secondly, the judgment is expressed in the present tense, that is, it appears to be looking at matters as at the date of the preliminary hearing not at the date of the alleged discrimination. That appears throughout the judgment. The headings, for example, are "Is Mr [W] disabled?" and "Is Ms [R] disabled". At paragraph 15, the employment tribunal records that it is satisfied that Mr W has established that "he suffers" from a mental impairment and that the medical evidence records that impairment "is long term". The same is true in relation to Ms R where, at paragraph 21, the employment tribunal records that it is satisfied that Ms R "suffers from a mental impairment" and it "is clearly long term". The only two sentences which are not expressed in that way are the final sentence of paragraphs 16 and 21 where, in respect of each claimant, the employment tribunal records that it is satisfied that each claimant respectively, "has since April 2018 been disabled within the meaning of the 2010 Act and remains so". Those sentences look back to the position in April 2018 and the position at the time of the hearing ("remains so"). Reading the judgment as a whole, the clear impression is that the employment tribunal is considering the current position, that is, as at the date

of the hearing in October 2019, whether the claimants had established that they were disabled.

30. Thirdly, there is the marked absence in the employment tribunal's decision of any reference to the dates of the alleged discriminatory acts. There is no specific reference to the need to assess whether, as at that date, the effect of the impairment was likely to last at least 12 months. Nor is there any attempt to relate the evidence or conclusions on whether the effect of the impairment was likely to be long term to the facts and circumstances existing as at the date of the alleged discriminatory acts. All of that is simply absent from the judgment. All that the judgment says on this matter in relation to Mr W is that "impairment is long term" and in relation to Ms R the impairment "is clearly long term".

31. Reading the judgment fairly and as a whole, it is clear that the employment tribunal did not address one of the relevant issues in relation to whether each claimant satisfied the test for being a disabled person within the meaning of the 2010 Act. The employment tribunal did not ask whether, as at the date of the alleged discriminatory acts on 21 and 22 August 2018, the substantial adverse effect of the mental impairment that they suffered from was likely last for at least 12 months. As such, the conclusion of the employment is legally flawed as it failed to address one of the relevant requirements of the definition of disability under the 2010 Act, i.e. that the substantial adverse effect had to be "long term". For those reasons, I would allow the appeal on grounds 1 and 2 (the matters set out in paragraph 19(1) and (2) above).

32. In relation to the other part of ground 1, the assessment of the position in relation to Mr W as at April 2018, that issue is not, in my judgment, relevant to the outcome of this appeal. The respondent accepts he had a mental impairment as at 21 and 22 August 2018 which had a substantial adverse effect. The real issue is whether the effect was long term, i.e. whether as at that date, it was likely to last at least 12 months. For completeness, if it had been relevant, I would not have been minded to find that the decision that Mr W had a mental impairment as at April 2018 was perverse or inadequately reasoned.

33. In relation to ground 3, it is unclear from the employment tribunal's judgment whether it took into account events occurring after 22 August 2018. The fact is that the employment tribunal does not explain why it considered that, as at the 21 and 22 August 2018, the effect of the impairment was likely to last 12 months. That is unsurprising as it never addressed that issue. The tribunal was not referred to any relevant case law and, had it been referred to *McDougall v Richmond Adult Community College*, it would have considered the issue. I understand the argument that some of the matters referred to in the judgment appear, if one were to read only Ms R's disability impact statement, to have occurred after August 2018 (for example, stopping dancing, and being unfit for work) and other events are undated (ceasing to take care with her personal appearance, not washing her hair, and ceasing to socialise with all but Mr W). It is unclear, however, whether those events were taken into account in reaching the conclusion that the effect on Ms R was "clearly long term". It is also right to note that Ms R gave oral evidence at the preliminary hearing and it is possible that she may (as she submitted before us she did) have given further details of those events including that they occurred before 21 and 22 August 2018. We cannot resolve those issues of fact on this appeal. We can only read the judgment of the employment tribunal to see what it said about the factual issues. The error that appears from the employment tribunal's judgment is that it did

not consider whether, as at the date of the alleged discriminatory acts, the effect was likely to be long term having regard to the facts and circumstances existing at that date. It is not necessary to resolve the factual issues arising in relation to ground 3, in my judgment, as the appeal has to be allowed on ground 2.

34. None of the arguments made by the claimants casts doubt upon that conclusion. First they rely on the reasoning of the EAT. The difficulty is, however, that the EAT accepted that the employment tribunal did not, in the case of Mr W, focus on whether there was a qualifying impairment on 21 and 22 August 2018 but the EAT considered that that was not fatal as it had focussed on the position before and after those dates. That, however, is not an answer to the difficulty. The employment tribunal had to address the question of whether, as at 21 and 22 August 2018, the effect of the impairment was long term. It did not do so. The EAT was wrong to overlook that error. In relation to Ms R, the EAT accepted there was little by way of supporting reasoning as to whether the effect was long term. For the reasons given, the EAT should have found that read fairly, there was an error on the part of the tribunal as it failed to address that issue.

35. Secondly, the claimants contend that the reasons given were adequate and satisfied the requirements in the decisions in *Meek* and *English.* The logically prior problem, however, is that the employment tribunal did not, in fact, address a relevant issue in deciding whether they were disabled as at the date of the alleged discriminatory acts. The employment tribunal did not, thereafter, give any explanation as to why it considered that, as at 21 and 22 August 2018, the effect of the impairment in each claimant's case was long term, i.e. likely to last 12 months. While the judgment refers to the impairment being "long term" or "clearly long term", that conclusion is not explained by reference to what facts or circumstances it considered existed as at 21 and 22 August 2018 and demonstrated that it was likely that the effect would be long term, i.e. likely to last at least 12 months.

36. Thirdly, it is not correct, as the EAT said, and the claimants submitted, that this Court can be satisfied that there would be no purpose in remitting the matter back to the employment tribunal. This Court cannot be sure whether the employment tribunal would decide whether, assessing matters by reference to the facts and circumstances existing as at the date of the alleged discriminatory acts on 21 and 22 August 2018, the effect of the impairment was likely to be long term. I do not accept the EAT's observation that such a finding may not be susceptible of explanation. It is the duty of a judicial body, such as an employment tribunal, to identify the relevant issues, to make findings of fact relevant to those issues, to reach conclusions on the issues and give adequate reasons for its conclusions.

37. Finally, the fact that the respondent may or may not have given adequate disclosure of all material at the time of the preliminary hearing does not avoid the fact that, ultimately, the employment tribunal failed to address one of the relevant issues it had to consider when deciding whether each of these claimants was disabled within the meaning of the 2010 Act.

38. For those reasons, I would allow the appeal on grounds 1 and 2. The employment tribunal erred in failing to consider whether, as at the date of at the time of the alleged discriminatory acts on 21 and 22 August 2018, the substantial adverse effect of each claimant's mental impairment was long term, that is, was likely to last at least 12 months. I would remit that issue to the employment tribunal to determine.

Lord Justice Newey

39. I agree.

Lord Justice Lewison

40. I also agree.