



## EMPLOYMENT TRIBUNALS

**Claimant**

**Mr M MacKay**

v

**Respondent**

1. Trustees of the North Bank Estate
2. Mr Dov Whittle
3. President of the Methodist Conference

## PRELIMINARY HEARING

**Heard at: Watford**

**On: 20 & 21 June 2017**

**Before: Employment Judge Tuck**

**Appearances:**

**For the Claimant: Mr N Pourghazi, Counsel**  
**For the Respondent: Mr D Northall, Counsel**

## JUDGMENT ON THE PRELIMINARY ISSUES

1. The parties agree that at all material times the claimant was disabled within the definition of s.6 of the Equality Act by reason of attention deficit disorder, anxiety, panic attacks, and agoraphobia.
2. At all material times the legal identity of the claimant's employer has been the first respondent, the Trustees of the North Bank Estate.
3. The third respondent, the President of the Methodist Conference, is dismissed from these proceedings.

## REASONS

### 1. Issue

- 1.1 The one remaining issue for this preliminary hearing is to identify the correct legal entity which employed the claimant. Both parties agree that the claimant is an employee employed under a contract of employment. The employer is said on that contract, dated 21 September 2015, to be "The Guy Chester Centre". Both parties agree that there is no such legal entity.
- 1.2 The respondent frames the question to be answered today as asking who is the current employer? I consider it is appropriate to look at the entire period since the latest contract was issued on 21 September 2015 in circumstances where the discrimination of which he complains took place in the period after October 2015.
- 1.3 The claimant says that he is employed by the Methodist Church in Great Britain. The respondent says that he is employed by the Trustees of the North Bank Estate.

### 2. The law

- 2.1 S.83(2) of the Equality Act 2010 defines employment as being employed under a contract of employment, a contract of apprenticeship or a contract personally to do work. It does not assist at all in relation to how to go about identifying who the employer is.

### 3. Evidence

- 3.1 I have heard evidence on oath from Mrs Wilkins who is the Conference Officer for legal and constitutional practice, employed by, in her words, the "Methodist Church"; and on affirmation from the claimant. I have also been provided with a bundle of documents which runs to 423 pages and have read such documents as I have been referred to. Both counsel very helpfully produced detailed skeleton arguments.

### 4. Facts

- 4.1 The claimant commenced employment at the Guy Chester Centre on 16 May 2011. His employment continues but in his ET1 he explains that whilst he was initially happy in his employment this altered after 1 October 2015 when, following a re-organisation, Mr Dov Whittle, the second respondent, became the centre manager. I understand that Mr Whittle reports to the Trustees of the North Bank Estate. All of the trustees hold this title by virtue of being members of the network committee of the Methodist Church of Great Britain which in turn falls structurally under the Methodist Council which in its turn falls under the Methodist Conference.

- 4.2 The claims being pursued by the claimant are all defended but if they are successful the ET3 records that the first respondent, The Trustees of the North Bank Estate, accept that they are vicariously liable for any act or omission of Mr Whittle. I understand that when the claimant raised a grievance in the workplace about Mr Whittle as centre manager, that was escalated to the Trustees to deal with and indeed his current sickness absence is being managed by the Chair of Trustees.
- 4.3 The ET1 at paragraph 2 states that the Guy Chester Centre is a trading name of the North Bank Estate Trustees. Often in tribunal that is the end of an enquiry as to the identity of an employer and Trustees are frequently held to be employers and are of course capable of being such. However, as is set out in some detail in the claimant's skeleton argument which in turn draws upon the witness statement produced by the claimant, there are numerous reasons why the claimant was unable to accept that statement at face value, not least the very many references to the Guy Chester Centre being part of the Methodist Church. Amongst other factors the claimant's representative points out:
- 4.3.1 The charity number on all documents given for the Guy Chester Centre is the registered charity number of the Methodist Church.
  - 4.3.2 The Guy Chester Centre uses the Methodist Church's VAT number.
  - 4.3.3 They are described in numerous documents as part of the Methodist Church in Great Britain and or ministry of that church.
  - 4.3.4 The residents of the centre are told that it is owned and run by the Methodist Church.
  - 4.3.5 It has two bank accounts, one in the name of the Methodist Church Guy Chester Centre and the other, Mee Church North Bank Trustees.
- Furthermore I have been taken in some detail to the Methodist Church's consolidated reports and accounts for the year ending 31 August 2015 to which I will return later in the judgment, but those accounts include the work of the Guy Chester Centre as part of the return which is made.
- 4.4 If the church is the employer, the correct respondent would be the third respondent, the President of the Methodist Conference by virtue of s.21 of the Methodist Church Act 1976. As it is said that the power of trustees in this case to employ comes from the Methodist Church Act of 1976 it has been necessary to look at the history of Chester House in Muswell Hill and how that property has been held since it was bequeathed to the Methodist Church.

## 5. Relevant History of Chester House

- 5.1 Chester House is in Muswell Hill, London N10. It is a 159 bed catered student hall of residence and has residential letting properties. It is on land known as the North Bank Estate which was bequeathed to the Methodist Church by Guy Chester in 1947. The property forming the North Bank Estate has been held on trust since this time. Mrs Wilkins, in her witness statement, explains that the Methodist Church Act 1976 allowed property of the Methodist Church to be held upon model trusts. These were subject of managing trusteeships described in part 2 of schedule 2 of that Act. The powers of the managing trustees set out in

clause 16 of schedule 2 include the power to borrow sums, ie to mortgage the property, to sell the property, and include the power to provide facilities of any kind for any tenant or occupant of any land comprising the property and to determine what is necessary or expedient for the purposes of the management of the property. They also permit the managing trustees to bring or defend any action relating to the property.

- 5.2 As set out above, s.21 of the 1976 Act authorises any legal proceedings brought against the Methodist Church to be pursued in the name of the President of the Methodist Conference. I note that s.21(4) of that Act also provides an indemnity in relation to any such action to the President of Conference if any action is brought.
- 5.3 By a declaration in July 1985 Model Trusts were adopted in relation to the North Bank Estate and by virtue of that declaration the North Bank Estate was declared as general property and the Secretary became the managing trustee. That is in accordance with the Methodist Church Act of 1976 which states that in relation to general property, managing trustees would be identified as the secretary of the property division or other person or persons for the time being authorised under standing order to exercise the functions of secretary.
- 5.4 In 1990 changes were made to the managing trusteeship of the North Bank Estate and I have been provided with a formal Direction and Memorandum of Terms of Engagement. At this time the property within the North Bank Estate was split into two with part of the property being within the remit of the Church Council who were to be the managing trustees and another part to be within the category of connectional property as defined in part 1 of schedule 2 of the 1976 Act in respect of which the division should be the managing trustees. The document is signed by those who would be taking on the managing trusteeship responsibilities.
- 5.5 In 1996 the division which had taken on trusteeship responsibility for the part of the property which I understand is in issue in these proceedings, went back to the Methodist Council. That was by virtue of the Conference exercising its powers under s.24 of the Methodist Church Act of 1976 and the Conference directed that this declaration be embodied in a Deed Poll to be executed by the President.
- 5.6 Chronologically the next change which occurred, of which I have been informed, is that in 2005 it was proposed that the employees who worked at the Guy Chester Centre - who were then said to be employees of the Methodist Council - would transfer by virtue of the Transfer of Undertaking Protection of Employment Regulations to "The Guy Chester Centre". None of the formal Deed Poll documentation with which I have been provided in relation to the changes in 1985, 1990 or 1996 have been provided in relation to this alteration. It does, however, seem that from 2005 onwards any contracts of employment provided to members of staff were said to be with "The Guy Chester Centre". Indeed the contract of employment dated September 2015 with which I have been provided for

the claimant notes that his continuous employment began in May 2011 and states:

“No employment with a previous employer counts as continuous employment, with the exception that previous employment with a division, conference office, or press office, or connectional committee of the Methodist Church which is unbroken does count as continuous employment with The Guy Chester Centre.”

- 5.7 The position of the respondent is that from 2005 the employer was in fact the Trustees of the North Bank Estate trading as The Guy Chester Centre (“GCC”) - or something to similar effect. Mrs Wilkin’s evidence was that this this was the true position, and that the 2005 TUPE process demonstrated that the Methodist Council wished to relinquish responsibility for employing staff at the GCC and had no intention of entering into contracts of employment with staff going forward.
- 5.8 The position at that point may have been tolerably clear but what has made it much more opaque, I find, are the events of April 2013. I have been provided with a note which I am told was a resolution before the Methodist Council in April 2013 headed Delegation of Managing Trusteeship. It provided that on “a date to be approved by the Officers of the Council and the Chair of the Strategy and Resource Committee, the Managing Trusteeship and all other governance responsibilities of the North Bank Estate... be delegated to the Network Committee.” There is a manuscript note, I do not know by whom, which states the council previously delegated to the North Bank Estate Management Committee, but were now delegating to the Network Committee. I have also been provided with minutes of a council meeting from October 2013 which states that Managing Trusteeship and all other such governance responsibilities of the North Bank Estate ... would be delegated to the Network Committee with effect from 8 October 2013. The council noted that the delegation did not give the Network Committee the power to sell, lease or incur liabilities in respect of the properties or trusts.”
- 5.9 There are no deed documents, deed polls, or any other formal documents setting out this alteration in Trusteeship as there were in the 1980’s and 1990’s. The purported limit on the delegated power on its face seems to be incompatible with clause 16 of schedule 2 of the 1976 Methodist Church Act. Further it is not clear to me how this is consistent with what Mrs Wilkins told me was the Methodist Council’s wish to relinquish responsibility for the staff at the Guy Chester Centre going forward.

## **6. The Guy Chester Centre – part of the Methodist Church?**

- 6.1 Mrs Wilkins in her statement refers me to the consolidated reports and accounts for the Methodist Church for the year ending August 2015 and the governance structure which is set out on page 205 of my bundle. This shows the basic governance structure consisting of the Methodist Church in Great Britain which I am told is the registered charity and is the entity with a VAT number. Beneath that is the Methodist Conference and there is a bracket (Trustees), and then beneath that, the Methodist Council. There are a number

of committees which seem to report to the Council. The accounts explain that much of the day to day work for which the Methodist Council is responsible is delegated to the Connectional Secretary and other members of the senior leadership group for matters relating to the objectives of the Connectional Team and to local trustees in the case of residential centres. These trustees report to the Methodist Council.

6.2 The network committee is responsible for a number of areas, the accounts document describe it as including having responsibility as the 'local managing trustees for those bodies which report to the council but are not administered by the Connectional Team'. A comprehensive list of the self-accounting entities whose accounts are included in the consolidated accounts is said to be provided at page 45 of that document and local governance committees or groups of Managing Trustees are appointed by Council to oversee the entities within the terms of the responsibility delegated to them by Council. Ultimate control is said to reside with the Methodist Council. Appointments to the Trustee Boards are approved by Council on the recommendation of existing members following a selection process and after advertisements have been placed to attract trustees with appropriate skills and expertise. I also understand that appointments can be terminated by the Council.

6.3 The list of these self-accounting entities which is within the report gives a different type of organogram. It has the Trustees of the Methodist Church and one of the bodies that report to that is the Methodist Council. Reporting to the Council are those activities managed or administered by the Connectional Team and included in Connectional Funds. The Connectional Team is not one of the committees which are included within the basic governance structure unless it is used to describe the Connectional Allowances Committee and Connectional Grants Committee. This organogram seems to indicate that the Guy Chester Centre is an activity managed or administered by the Connectional Team; but I am told by Mrs Wilkins, and accept that that is not the case and that it is not either managed or administered by any of the Connectional Teams, but rather by the Network Committee. I cannot accept the assertion of Mrs Wilkins that the Network Committee is an entity distinct from the Church. It is a committee which reports back to the Council which in turn reports back to the Conference. The Guy Chester Centre does seem to be a self-accounting entity and it appears to be managed or administered by the Network Committee.

6.4 The claimant having worked in the Guy Chester Centre for a number of years and having seen the numerous references to the Guy Chester Centre being part of the Methodist Church when he found himself in dispute with the respondent sought clarification from the chair of the Management Committee specifically asking what the legal structure of the GCC was. He was told that the Guy Chester Centre is "a Ministry of the Methodist Church in Great Britain and the registered charity number is then set out". Having done further research and been told in the course of his grievance that his stated employer, the Guy Chester Centre, doesn't exist as a legal entity, the claimant was then told by a legal advisor appointed by GCC, Nicola Goodridge, that he was employed by the Trustees of the North Bank Estate. Ms Goodridge contended that the Trustees constituted an unincorporated association. That

the trustees were an unincorporated association was the contention in the respondent's skeleton argument prepared for today and in Ms Wilkins' evidence although in closing submissions Mr Northall retreated and retracted that assertion.

6.5 I note that the Guy Chester Centre has no access to central support from the Methodist church in relation to matters such as human resource advice unless it contracts with the Council or a body of the Council and pays for those services. Indeed the appointment of Nicola Goodridge, who is not part of the Methodist Conference or Council indicates that that is the case because the Trustees of the North Bank Estate seem to have gone elsewhere for their advice.

6.6 The claimant was left, very understandably, in a very confused situation.

## **7. Analysis**

7.1 The Guy Chester Centre situated on the North Bank Estate has since 1985 been a Model Trust Property within the Methodist Church Act 1976. A Model Trust Property is defined in s.2 of that Act as being any Model Deed Property and any other property which after the commencement of this Act will be held upon Model Trusts. The Act provides for Model Trust Properties to be held by the Board as custodian trustees. The Board is defined in the Act as the Trustees of the Methodist Church, that Board it seems is now what is known as the Conference. The power of the Trustees are listed in clause 16 of schedule 2 and I interpret those powers, and in particular the power to provide facilities for tenants or occupants of the land in determining what is necessary or expedient for the purposes of the management of the property as encompassing a power held by Trustees to employ and engage staff. As noted above, when the Trusteeship lay with the Board, if there was to be any legal action against the Board that should be brought according to s.21(1) against the President of the Methodist Conference and s.21(4) gives a full indemnity to that post holder.

7.2 The position is tolerably clear through changes which occurred in 1985, 1990 and indeed until 2005 when the division which had taken on Trusteeship ceased to exist in 1996 the Deed Poll executed by Council made it clear that they adopted the responsibilities.

7.3 The 2005 note discusses transfer of employment, not transfer of property. I can see no provision for indemnities for trustees in 2005 or indeed 2013, and whereas earlier alterations referred to having sought and received the authority of the Charity Commission for any changes, there is no mention of that in 2005.

7.4 The 2013 resolution I find to be a very confused and confusing one, conflicting as it does with the provisions of the Methodist Church Act. As stated above, I do not accept that the Network Committee is an entity distinct from the Conference or Council. However, I do not find that that answers the question as to whether it is a body which can or does employ.

I note in particular the provisions in relation to continuity of employment, which envisage that employment could have been with a Division or a Conference Office or a Connectional Committee indicating that each of those constituent bodies might well be a separate employer.

- 7.5 The authority the respondent relies upon for the first respondent to employ staff, is that set out in the 1976 Act. There are of course numerous other sources of both powers and responsibilities of Trustees. I note that there is no express indemnity given to the First Respondent, although as trustees of what must be a very valuable property, they are empowered by the 1976 Act to either mortgage or sell a property if liabilities are incurred.
- 7.6 The manager of the Guy Chester Centre reports to these Managing Trustees who are appointed at present by virtue of their sitting on a Network Committee. I note that when the claimant's grievance was escalated beyond centre management it went to these Trustees. He has no further right of appeal beyond these Trustees to the Council or to the Methodist Conference. The claimant's sickness absence, he has told me, is currently being managed by the Chair of Trustees. When the Trustees need legal or HR advice and support they have to purchase it. They cannot call upon Council or Conference and indeed there are numerous instances of them entering into contracts, for example contracts of insurance on their own behalf.
- 7.7 I do not consider this to be a straightforward question but on the balance of probabilities on the facts presented to me I am satisfied that the employers are the Trustees of the North Bank Estate.

## **CASE MANAGEMENT SUMMARY**

### **Listing the hearing**

1. The listing of this case which is currently listed for five days from 4-8 September 2017 has been extended to a listing of **six days, 4-8 September 2017 inclusive and Monday 11 September 2017.**

### **The issues**

- 1.1 The claimant prepared his ET1 with the assistance of professional advice; it sets out a narrative and from paragraphs 51 onwards it sets out the causes of action relied upon. The claimant in compliance with a direction of Employment Judge Smail on 20 January 2017 produced a list of issues. The parties have not been able to agree a list of issues for the substantive hearing.



- 1.2 The respondent contended that the claimant in his draft list of issues impermissibly sought to introduce new causes of actions and complaints which were not within the ET1. The majority of matters complained of were, Mr Northall stated, set out in the narrative of the ET1 but not within the pleadings section found at paragraphs 51 onwards. In circumstances, he said, where the ET1 was clearly professionally drafted, the scope of the pleaded case from paragraphs 51 onwards ought not to alter unless there is a formal application to amend. In relation to that he directed me to the test in Selkent and said that there were new claims being pursued and new causes of action and that in circumstances where the claimant does not accept the need to make an application that in itself weighs heavily against granting such an application.
- 1.3 He contends that the goalposts are moved, in particular in setting out in paragraph 4 as allegations of direct discrimination, a clear desk policy, removal of the use of the ASM desk, creation of the accommodation duty desk, undermining and micromanaging the claimant (all of which are set out in paragraph 27 of the ET1) and denying the claimant input into the accommodation team rota. These he said are not complaints of direct discrimination on the pleaded case but are requests to make adjustments.
- 1.4 He also contends that setting out PCPs under s.20(4) and 20(5) mark additions to the claim, albeit that it is accepted that the adjustments which are then sought to alleviate the substantial disadvantage that those PCPs placed the claimant at on his case are within the ET1. Finally, he says that adding the events of 30 August and the respondent's refusal to hold a grievance meeting with the claimant unless Mr Whittle's legal representative was present as acts of victimisation when they were pleaded on his acts of harassment mark a shift in the goalposts.
- 1.5 Finally he contends that in relation to the timing of this application, although the respondent has had the disputed list of issues since January 2017 because there has been no formal application made it is being considered in June 2017 with a substantive hearing listed in September 2017.

## 2. The law

- 2.1 The tribunal may permit amendments to claims and the leading case for advising on this remains that of Selkent Bus Company Ltd v Moore [1996] ICR 836 as endorsed by the Court of Appeal in Ali v Office for National Statistics [2005] IRLR 201. Essentially if there is an application to amend the tribunal should consider the nature of the amendment, applications ranging on the one hand from the correction of clerical and typing errors to the addition of factual details to existing allegations, to the additional substitution of other labels for facts already pleaded to on the one hand and making entirely new factual allegations which changed the basis of the existing claim on the other.
- 2.2 The second factor to be borne in mind is the applicability of time limits as the new claim or cause of action is proposed to be added by way of

amendment is essential for the tribunal to consider whether the claim or cause of action is out of time and if so, whether that limit should be extended and thirdly the timing and manner of the application. An application should not be refused solely because there has been a delay in making it as amendments can be made at any stage of the proceedings but delay is a discretionary factor. It is relevant to consider why the application was not made earlier, why it is now being made. For example, a discovery of new facts or information appearing from documents disclosed.

- 2.3 Overriding all of these is the importance of the tribunal considering the overriding objectives and the need to ensure that a fair and just hearing can take place.
- 2.4 The Court of Appeal in Abercrombie and others v Aqa Range Masters Ltd [2013] IRLR 953 made it clear that the headings in Selkent are not to be applied as an act of legislation would be; they are important but it is vital to weigh all the factors in the balance in considering the exercise of any discretion. In Abercrombie v Aqa an amendment was sought to add to a case for unlawful deduction from wages, a complaint of failing to pay the whole or part of the guaranteed payment under a difference provision of the Employment Rights Act. The conditions of liability were identical, the only difference was in the statutory gateway chosen, this, the Court of Appeal said, should have weighed heavily in favour of giving permission to amend. Only if there is a weighty reason, such as an amendment for some reason causing unfair prejudice to the other party, should the court expect permission to be refused in such circumstances. This approach has been adopted by the EAT since.

### **Analysis.**

- 2.5 Considering the list of issues drafted on behalf of the claimant, as annotated on behalf of the Respondents:
  - 2.5.1 The first matter said to be in issue between the parties is whether the claimant was disabled. That has now been conceded by the respondent and is therefore to be removed from the list of issues.
  - 2.5.2 In relation to the question of direct discrimination, eight matters are said to constitute direct discrimination. Of those, five were not pleaded as being direct discrimination but were said to be instances of failure to make adjustments or PCPs which caused substantial disadvantage. The facts which are set out in relation to the direct discrimination claim are clearly within the narrative of the ET1. If a formal application to amend to plead those facts under a different statutory gateway is required, then I grant that permission. The respondent has shown no prejudice that it would suffer by dealing with the factual allegations relating to clear desk policies, removal of the use of the ASM desk, creation of the accommodation desk duty and so forth.

2.5.3 In relation to the way in which the claim for reasonable adjustments was pleaded in the original ET1 it was said that a claim was made under s.20 of the Equality Act, that the respondent failed to provide the claimant with reasonable adjustments to accommodate his disability. In particular all the adjustments contended for are set out in paragraph 31 of the particulars of claim. (The parties both agree that that sentence of the ET1 needs to be amended because the reference to paragraph 33 was a typographical error and therefore the amendment ought clearly to be permitted to cross-refer to paragraph 31.) What the respondent takes issue with are five of the seven ways in which the PCP is formulated within s.20(3) of the Equality Act. The requirement said to constitute PCPs - of being expected to be punctual without exception, not permitting the claimant's input into the rota and/or having a regular evening off or not giving notice of performance management meetings or notes of those meetings - are matters which clearly are within the narrative of the ET1. Again if permission is needed to formally amend the pleading to set those out as PCPs then I grant that application. I will return below to the requirement to work in an office environment and requirements to complete working office hours.

2.5.4 The next two complaints made of the list of issues is that there is complaint in relation to physical features under s.20(4) of the Equality Act and auxiliary aids and/or other services under s.20(5) of the Equality Act. The adjustments sought to alleviate the substantial disadvantage said to have been caused by the physical feature / lack of auxiliary aid, are clearly within the ET1. Indeed they were the adjustments that were contended for by the Claimant as long ago as June 2016.

2.5.5 The formal pleading at paragraph 53 did not set out which subsection of s.20 of the Equality Act was being relied upon.

I have no hesitation in saying that framing complaints about not being provided with a desk in the back office to permit the claimant to focus on work with minimum distractions, as a compliant under s20(4) / (5), does not take the respondent in any way by surprise or move the goalposts.

What has been complained about is a desk being provided in a front office, particularly when the narrative of the ET1 makes it clear that there is a complaint that three members of staff were expected to share one desk in a front office area. I have no doubt that the substance of all of these matters are squarely in issue between the parties. If formal permission is needed to amend, I grant it and I can see no prejudice whatsoever resulting to the respondent from that.

2.5.6 Finally, the respondent says that there are two complaints of harassment, one arising from 30 August 2016 and the other in relation to not having meetings without permitting Mr Whittle to have a legal representative present. The claimant now seeks to rely upon these additionally and alternatively as acts of victimisation.

This is clearly an instance of putting a different label on facts which are already pleaded. This does require an amendment, but in circumstances where it creates no prejudice to the Respondent, I do permit that amendment to be made.

2.5.7 The one matter which I do come back to is said to be the PCP under s.23 of requiring the claimant to work in an office and requiring him to complete work within office hours. I do not see either of those matters to be on the fact of the ET1 and indeed given that the adjustments contended for are working in a back office and working with greater flexibility I do not see, as was contended on behalf of the claimant that this is something which can be implied from the gist of the ET1. I do not think that those are claims which the respondent ought to have to meet and I direct that the second and third bullet points in paragraph 10 of the list of issues, requirement to work in an office and requirement to work within office hours, be deleted. Similarly under the indirect discrimination heading in paragraph 17 I direct that those two requirements are not within the pleaded case and should be removed.

2.5.8 In any event, the requirement to work in an office and the requirement to complete work within office hours are in my judgment unnecessary as distinct PCP's, because what the claimant was complaining about was the requirement - as set out at the first bullet point under paragraph 10 - to work in an open plan office with all three staff sharing one desk. What it clearly said on 1 June, as is set out in paragraph 31 of the ET1, is that one of the ways in which the substantial disadvantage to which that arrangement put him, could have been alleviated by providing him with a laptop. This would have enabled him to complete work at home when he could not finish work due to distractions and anxiety in the office. Therefore in my judgment these two iterations to the PCP do not add to the broader way in which it is put in the first instance of working in an open plan office with all three staff sharing one desk.

3. I made the following case management orders by consent.

## ORDERS

### Made pursuant to the Employment Tribunal Rules 2013

1. The claimant is to prepare a definitive list of issues and send to the respondent and to the tribunal by not later than **Monday 25 June 2017** to reflect the determination today.
2. The respondent made an application that the £1,200 incurred to obtain a medical report which exceeded the amount awarded by the Tribunal Service ought to be

split between the parties in the sum of £600 each. That application fails and the £1,200 incurred, above the sum of £1,200 paid by HMCTS is to be paid by the respondent.

3. **Disclosure of documents**

- 3.1 The parties are ordered to give mutual disclosure of documents relevant to the issues identified above by list and copy documents so as to arrive on or before **31 July 2017**. This includes, from the claimant, documents relevant to all aspects of any remedy sought.
- 3.2 This order is made on the standard civil procedure rules basis which requires the parties to disclose all documents relevant to the issues which are in their possession, custody or control, whether they assist the party who produces them, the other party or appear neutral.
- 3.3 The parties shall comply with the date for disclosure given above, but if despite their best attempts, further documents come to light (or are created) after that date, then those documents shall be disclosed as soon as practicable in accordance with the duty of continuing disclosure.

4. **Bundle of documents**

- 4.1 The respondent will provide to the claimant on or before **4 August 2017** an index to a joint bundle of documents. Bundles are to be prepared by **11 August 2017**.

5. **Witness statements**

- 5.1 It is ordered that oral evidence in chief will be given by reference to typed witness statements from parties and witnesses.
- 5.2 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.
- 5.3 The facts must be set out in numbered paragraphs on numbered pages, in chronological order.
- 5.4 If a witness intends to refer to a document, the page number in the bundle must be set out by the reference.
- 5.5 It is ordered that witness statements are exchanged so as to arrive on or before **21 August 2017**.

6. **Other matters**

- 6.1 A cast list and a chronology are to be brought to the first day of the hearing. The first draft of the chronology will be prepared by the claimant. The first draft of the cast list will be prepared by the respondent.

6.2 These documents should be agreed if possible.

**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.

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**Employment Judge Tuck**

Sent to the parties on:

.....3 August 2017

For the Tribunal:

.....5 August 2017