Case No: 3400803/2016

EMPLOYMENT TRIBUNALS

Claimant: KL

Respondent: ST

Heard at: Huntingdon **On:** 3 March 2017

Before: Employment Judge Brown

Representation

Claimant: Ms LL, Lay representative

Respondent: Mr R Lyons, Advocacy Department Manager

RESERVED JUDGMENT

The Claimant was, by 14 March 2016, but not by 30 September 2015, a disabled person within the meaning of s. 6, Equality Act 2010.

ANONYMITY ORDER

This judgment was initially sent to the parties in an un-anonymised form. On 16 November 2017, I decided, pursuant to rule 50 of the Employment Tribunal Rules of Procedure, on my own initiative, to order that the identity of the parties and the claimant's representative should not be disclosed to the public in my Judgment and Reasons, by use of anonymisation. In reaching this decision, I took into account that my reasons must unavoidably address aspects of the claimant's health. There was no way to provide adequate reasons for my decision without addressing these matters. Unless the parties were anonymised, this would result in the publication of personal information about the claimant; Employment Tribunal judgments are now available on-line and can be searched for. In reaching this decision, I gave full weight to the principle of open justice and the Convention right to freedom of expression, but I decided that the claimant's right to respect for her private life outweighed her public identification in connection with the matters contained in my Reasons, and that the making of an anonymisation order was a proportionate

means of providing my Reasons publically without disproportionately interfering in the Claimant's right to respect for her private life.

This order extends only to this Judgment and these Reasons. It will be for an Employment Tribunal which conducts any future hearings to decide whether, and to what extent, there should be any order for privacy or restrictions on disclosure in respect of any future hearing, or written decision, or reasons, because different considerations may arise. The parties should therefore be alive to the prospect that other parts of the claim may not be anonymised, and should prepare in good time to address questions of privacy, if necessary.

Employment Judge Brown
16 November 2017

ANONYMISED REASONS

Introduction

1) On 1 August 2016, the claimant presented a claim to the Employment Tribunals, including complaints of disability discrimination. The respondent, in its response, resisted those complaints. It denied, at paragraph 12 of its grounds of resistance, that the claimant was disabled.

2) At a preliminary hearing before Employment Judge Moore on 21 October 2016, a further preliminary hearing was listed for 3 March 2017 to determine the question whether the claimant was a disabled person at any material time.

3) Notes, appended to the case management orders, made by Employment Judge Moore, said that it had only been possible to identify from the ET1 one clear allegation of disability discrimination, namely that on an unspecified date after 14 March 2016, a new branch manager had said to the claimant 'I used to give care to people like you.'

4) Employment Judge Moore recorded that he had pointed out that the issues were to be determined by what was in the claim form, and that it could only be altered if formal application to amend was made and granted.

5) In respect of the preliminary issue about disability Employment Judge Moore recorded that he had told the parties that the tribunal did not have the ability to interpret medical records made for other purposes, that the question of disability fell to be determined on evidence, and that, if the medical evidence was not agreed then ordinarily the parties would need to call their respective experts to give evidence and be cross-examined.

6) Following that preliminary hearing, the claimant sent to the tribunal, with what I hold was an email amounting to an application to amend, a six-page schedule of matters said to be disability discrimination detriments about which complaint was made. I noted that this schedule included the one clear allegation to which Employment Judge Moore had referred, and, also that the ET1 did include

other text which seemed to invoke, or at least allude to, the tribunal's jurisdiction to consider complaints of disability discrimination, for example, at box 9.2, the claimant says that she is claiming lost pay 'due to no reasonable adjustments being made 29 March 2016 to 12 April 2016,' and the particular complaint to which Employment Judge Moore referred appears to have been part of a broader complaint that, from 14 March 2016, the claimant's new branch manager had bullied, harassed and victimised the claimant. The schedule also included one complaint of disability discrimination in September 2015, relating to working hours, but all other complaints related to the period from 14 March 2016.

7) The respondent resisted that application to amend, but it has not been determined, nor had it been listed for determination by me on 3 March 2017.

8) There would not have been time for me to determine both the preliminary hearing on disability and a substantial, disputed, application to amend the claim. A preliminary question for me, therefore, whether, and, if so, how, to determine the question of disability before resolution of the claimant's application to amend.

9) In deciding whether the claimant was a disabled person at any material time, my focus is on whether she was disabled at the time of any act complained of, not at any other date: *Cruickshank v VAW Motorcast Ltd* [2002] IRLR 24. My focus, therefore, is the time of the alleged events about which the claimant complains, but the scope of those complaints has not yet been decided.

10) After canvassing the matter with the parties, I decided to determine the question of disability by reference to the time periods on which the claimant seeks to rely, that is—by reference to the schedule of detriments that she has produced—September 2015, and then from 14 March 2016 onwards. If the claimant was not a disabled person at any of these times, then any complaints of disability discrimination relating to such times cannot proceed, and any application to amend would be a futile exercise. But, if I found that the claimant was disabled at any time about which she sought to complain, her application to amend would need to be determined.

Evidence

11) In deciding the preliminary issue, I was provided with an agreed bundle, and a bundle of witness statements from:

    a) the claimant;
    b) Ms LL, the claimant's mother (who also represented the claimant, and who I will refer to in these reasons as 'Ms LL');
    c) Mr UU, a director of the respondent; and
    d) Ms PP, a risk assessor employed by the respondent, and a former colleague of the claimant.

12) I heard oral evidence from each of these witnesses (all of whom were cross-examined) and oral closing submissions from the representatives.

13) Ms LL said that she had a witness statement that responded to the respondent's witness statements. Mr Lyons had not seen this witness statement and objected to its admission. I decided, after hearing the parties that, since this was a response to the respondent's witness statements, there ought to be an opportunity for any points to be addressed by the claimant in cross-examination, or re-examination and, if there was not, I said that I would revisit the question of its admissibility. In the event, Ms LL did not apply for it to be admitted in evidence, from which I infer that all relevant matters were covered in the evidence I heard.

After the hearing: admissibility of medical evidence

14) Thirteen days after the hearing, on 16 March 2017, the respondent sent an email to the tribunal, attaching a different version of a letter from Dr Kar Ray which had been in evidence before me as part of the agreed bundle. The email said that the document had just come into 'our possession,' having been 'inadvertently discovered mixed up in a client file that the claimant and Ms LL had access to and control over.' No further details were given of precisely when and how the document had been discovered. Although Mr Lyons' email was copied to Ms LL, it did not appear that the matter had been canvassed between the parties before Mr Lyons had contacted the tribunal. He ought to have raised the matter with Ms LL before sending evidence to the tribunal.

15) Mr Lyons submitted that the lately-sent document was important because it appeared to be 'an earlier' version of the letter from Dr Kar Ray at pages 40B—E of the bundle on which the claimant had placed substantial reliance. Mr Lyons said that the version of the letter in the bundle had been disclosed belatedly. The 16 March 2017 version of that letter contained additional information, he said. Mr Lyons alleged that the claimant or her mother had deliberately altered the document by removing information, without notice to the tribunal or the respondent. This begged the question whether there had been other alterations, and it raised questions about the credibility of the claimant and her mother.

16) Mr Lyons submitted that the provenance and authenticity of the letter were now in doubt, and therefore the tribunal should not rely on it since the burden of proof was on the claimant to prove disability.

17) The claimant addressed the matters raised by the respondent in an email sent later on 16 March 2017. She confirmed that the letter disclosed by the respondent was the original letter written by Dr Kar Ray. She admitted that she had deleted text from the letter. She said that she had learned on 16 March 2017 that she should have used black pen to redact the letter rather than delete text from it. She contended that the deleted passages were irrelevant to the issue that I had to decide and were highly personal to the claimant. She contended that the respondent had seen the letter from Dr Kar Ray before the bundle was submitted to the tribunal. Se said that there had been no attempt to mislead the respondent or the tribunal.

18) On 17 March 2017, Mr Lyons, in response, forwarded to the tribunal an email from Mr CC which said: 'It is an inevitable response from [Ms LL] but yet again all lies. She is fully aware of the redaction process as she was put together [*sic*] a full bundle for a previous tribunal we were involved in. [Ms LL] spent a whole day with us blacking out client sensitive information from hundreds of pages of that particular bundle and so I cannot believe she is claiming to only know about this process [*sic*].'

19) Mr Lyons forwarded to the tribunal a substantial PDF of 'documents actually redacted by [Ms LL].' Those documents related to an entirely different case. There was no information about when this had been done. The documents appeared to date from 2014. Names and signatures had been redacted in them. They were all documents in handwriting.

20) The question for me is whether I can properly place reliance on the letter tendered in evidence on behalf of the claimant from Dr Kar Ray. In the circumstances, I consider that the burden is on the claimant to persuade me that I can, not on the respondent to persuade me that I should not.

21) I accept Ms LL's submission that the passages that were removed from the letter are highly personal matters. I accept that none of them bear directly on the issues that I have to decide. Whether or not Ms LL had been involved in a redaction process for Employment Tribunal proceedings in the past—something I find it unnecessary to reach findings of fact about—it ought to have been obvious that silently editing someone else's letter was not appropriate in important legal proceedings, because it would mean that the text was not what the author had put his name to. If Ms LL was unsure how to proceed, she could have asked someone. But I am not impressed at the silent emendation of a doctor's letter.

22) That said, nor am I persuaded by Mr Lyon's submission that this means that I can place no reliance whatsoever on Dr Kar Ray's letter. I consider, in the circumstances, that this would be a disproportionate response to Ms LL's conduct in editing it. I have been satisfied that the matters that were deleted were irrelevant to the issues for me to consider. And there were, I find, plausible and understandable reasons for that information not to be publicised, so as to respect the claimant's right to respect for her private life. The criticism that can be made is that it was not apparent to an unfamiliar reader that the text had been changed, as it would have been if parts of it had been blacked out. I conclude that the letter disclosed by the respondent is probably a complete and genuine version of Dr Kar Ray's letter. The respondent has provided no more than the barest of facts about where and when the copy was found by its people. Comparing the two copies of Dr Kar Ray's letter, I conclude that the redacted matters do not alter the substance of the letter, so far as it relates to the preliminary issue as to disability. I consider that it would be draconic to disregard it, in the same way that a witness's evidence should not be disregarded in its entirety because of the mere fact that one answer is untrue. I am satisfied that the Claimant and her mother were not trying to mislead the respondent or me. I am satisfied that the editing of the letter in itself, where the deletions were not of relevant matters, does not undermine the credibility of the

claimant or her mother to a degree which makes it unsafe for me to rely on the letter in the form disclosed by the respondent on 16 March 2017.

Applicable law

23) A person is disabled for these purposes if she has a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on her ability to carry out normal day-to-day activities: Equality Act 2010, s. 6(1).

24) A mental impairment need no longer be clinically well-recognised, as was required until 5 December 2005.

25) An impairment is 'long-term' for these purposes if it has lasted for 12 months or is likely to last for 12 months: Equality Act 2010, Sch1., para 2(1). 'Likely' for these purposes means that it could well happen: *Boyle v SCA Packaging Ltd* [2009] UKHL 37.

26) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if measures are being taken to treat or correct it, and but for that, it would be likely to have that effect: Equality Act 2010, Sch. 1, para 5(1).

27) I am required to have regard to any statutory guidance: Equality Act 2010, Sch 1, para. 12. The applicable guidance is the *Guidance on matters to be taken into account in determining questions relating to the definition of disability*, published by HM Government's Office for Disability Issues in May 2011.

28) Whilst it is essential that a tribunal considers matters in the round and makes an overall assessment of whether the adverse effect of an impairment on an activity or a capacity is substantial, it has to bear in mind that it must concentrate on what the applicant cannot do or can only do with difficulty rather than on the things that they *can* do. This focus avoids the danger of a tribunal concluding that, as there are still many things that a claimant can do, the adverse effect cannot be substantial: *Leonard v Southern Derbyshire Chamber of Commerce* [2001] IRLR 19; *Ekpe v Commissioner of Police of the Metropolis* [2001] ICR 1084.

29) With those legal principles in mind, I turn to my findings of fact.

Impairment

30) Although Mr Lyons disputed the existence even of an impairment, I am comfortably satisfied that the claimant had been experiencing impairments at material times: a consultant psychiatrist, Dr Manaan Kar Ray assessed the claimant on 13 August 2015. The claimant's presenting complaint was low mood in the context of a relationship breakup about six months before, and ongoing instability of mood. Dr Kar Ray took a history, recording low mood starting about six months before. The claimant's concentration was poor and her mind would wander off quite easily. The claimant told Dr Kar Ray that this

was a longstanding issue. During this low phase, the claimant's sleep had increased considerably. Her mood had picked up from her lowest point, but there was still a fair bit of [potential] improvement, particularly regarding stability of mood. The claimant told Dr Kar Ray that there were times when her mood fluctuated quite considerably and she might end up feeling quite happy, singing and dancing, but these periods would be short-lasting compared to low periods. The claimant's happy moods were on the 'high' side but it did not appear that she was completely euphoric. The timescales would not satisfy diagnostic criteria for hypomanic episodes. Dr Kar Ray recorded that the claimant struggled with anxiety and has had frequent panic attacks when she would have a range of symptoms of autonomic arousal. Dr Kar Ray recorded the claimant's psychiatric history: she had mental health issues from about the age of 14. She took overdoses at 14 and in her mid-teens. She saw a psychiatrist. She was prescribed citalopram by her GP, but she did not take this medicine regularly. She had six counselling sessions. The claimant had also had cardiac problems for which she had been prescribed beta blockers. She had asthma but this was reasonably under control.

31) Dr Kar Ray's impression was that the claimant had had moderate to severe depressive episodes. The proper diagnosis might be a mixed affective state, but it seemed more to be in the realms of affective instability that is seen in patients with borderline personality disorder. It was possible that the claimant was on the bipolar spectrum. Dr Kar Ray's provisional diagnosis was depression and anxiety in the context of borderline personality disorder. The claimant's presentation in August 2015 did not warrant the use of anti-depressant medication; a structured cognitive behaviour therapy approach would be of benefit.

32) I note that this letter was written to the claimant's GP, Dr Ansah. Dr Ansah wrote a letter, included in the bundle, addressed 'to whom it may concern,' dated 30 January 2017, in which he referred to Dr Kar Ray's diagnosis. The letter appears to be addressed in particular to an employer or prospective employer, since it asks for all necessary support to be given to the claimant especially at her workplace. I give little weight to Dr Ansah's letter on the statutory questions for me to determine—I will explain why later—but what I do note here is that Dr Ansah had probably seen Dr Kar Ray's letter, and has not taken issue with any of the history given to Dr Kar Ray by the claimant. I therefore find that it is more likely than not that the history given to Dr Kar Ray by the claimant is consistent with Dr Ansah's understanding of the claimant's history. I therefore reject Mr Lyon's challenge, on behalf of the respondent, that there was nothing to support the account given by the claimant to Dr Kar Ray; it has been implicitly affirmed by Dr Ansah.

33) Dr Kar Ray wrote another letter to Dr Ansah, dated 13 November 2016. He demonstrated that he was aware of legal proceedings under the Equality Act. Dr Kar Ray confirmed a diagnosis of borderline personality disorder with previous episodes of depression and prominent anxiety. He noted that one of the cardinal systems of borderline personality disorder is affective instability. Thus, the claimant's mood could change on a day-by-day basis, and sometimes

even from hour to hour. Dr Kar Ray acknowledged that his 'letter would not stand adversarial scrutiny in a court case.'

34) Evidence in the bundle from the NHS Choices website says that borderline personality disorder is a disorder of mood and how a person interacts with others. In general, someone with a personality disorder will differ significantly from an average person in terms of how she thinks, perceives, feels or relates to others. The symptoms are: emotional instability, disturbed patterns of thinking or perception, impulsive behaviour and intense but unstable relationships with others. The symptoms may range from mild to severe and usually emerge in adolescence, persisting into adulthood.

35) The bundle included an undated print out defining borderline personality disorder at page 40A. I gave this document no weight in reaching my decision, because its provenance is unstated, and I am not, therefore satisfied that it is from an authoritative source.

36) The bundle included correspondence relating to investigations of the claimant's sleep (in particular sleep disturbance) between July and November 2016. These letters substantially post date the period about which the claimant complains in these proceedings, but they reflect Dr Kar Ray's account in August 2015 that during the claimant's low phase, her sleep increased quite considerably. I note that the claimant's evidence was that she had attended at this clinic in 2014 and 2015 as well. There was no documentary evidence to this effect, but I am satisfied, on balance, that this is credible evidence.

37) On the evidence, I am easily satisfied that it is more likely than not that the claimant was experiencing an impairment, namely borderline personality disorder and depression, both in September 2015 and between March and April 2016 and that this impairment itself had lasted some time. I will return to a more careful consideration of the long-term criterion below in the context of my consideration of the effects of the impairment, because it is long-term effects that matter, not a long-term impairment.

Were there substantial adverse effects on the claimant's ability to carry out normal day-to-day activities?

38) There was a stark difference in the evidence before me from, on the one hand, the claimant, and from the respondent on the other: the evidence called by the claimant tended to suggest substantial adverse effects on her ability to do normal day-to-day things: her concentration was poor and her mind would wander easily; she had periods of extreme physical exhaustion; she experienced panic attacks; she struggled—and was sometimes unable to cope—with changes to ways of doing things; she had to put every task in a process format in her head. On 'high' days, the claimant would have an overwhelming need to organise everything and was very easily distracted. She would speak too quickly, switching topic and making it difficult for others to follow her train of thought. The claimant would get extremely agitated, distressed and panicky if she had decided to do something at a moment and was told she could not.

39) The detailed evidence of Mr UU and Ms PP, for the respondent, painted a picture of the claimant as an extremely capable, sociable, colleague who functioned without any apparent difficulties or impairments in work and social settings, and about whom there were essentially no concerns.

40) I have not found it easy to address the divergent accounts of the claimant and her mother on the one hand, and the respondent's two witnesses on the other. It would be wrong in law for me to focus on what the claimant could do, or to draw up a balance sheet of what the claimant could and couldn't do and see where the balance lay. To some extent, Mr Lyons was inviting me to do this by focusing on what the claimant could do. My focus must be on what the claimant *cannot* do, although I have to consider the evidence in the round, in reaching a decision about whether any adverse effects are more than minor or trivial. Mr Lyons also relied on the evidence he called to support a submission that the claimant was exaggerating the effect on her of any impairment. I had very limited evidence of what the claimant could and could not do other than the oral evidence of the four witnesses. I had a large number of photos from the claimant's facebook account, but I did not find these very helpful in deciding, objectively, the scope of the claimant's abilities because it is easy, and common, for Facebook to be used to portray an idealised life, the snap shots which Facebook captures are not a reliable indicator of day-to-day life, and the claimant took issue with the characterisation of her life by Mr Lyons based on these Facebook photos.

41) In reaching my conclusion about whether the claimant's ability to carry out normal day-to-day activities was substantially adversely affected (as she claims) or not (as the respondent claims), and bearing in mind the burden on the claimant to prove her contention of fact, I considered it significant that the claimant said at para 15 of her witness statement that her lack of energy and her mental health issues meant that her professional world had consumed her energies and gradually her social world became smaller until she had little left but work. It had been her choice to put her energies into this area, but it meant that all she could do most evenings was to sleep. When the claimant did go out, this would drain her further and impact on her work concentration levels, so she sacrificed her personal world. I have been satisfied that this is a credible account from the claimant. It was written before the claimant had seen what the respondent's witnesses would say in their statements and, in my judgment it plausibly reconciles the evidence of the respondent's witnesses that the claimant was able to perform well at work, with the claimant's evidence about the affect of her impairment on her ability to carry out normal day-to-day activities.

42) The claimant was able to answer each of the matters put to her in cross-examination by Mr Lyons which related to her activities outside of the workplace, and she was able to explain how it was that she was able to work effectively while suffering substantial adverse effects outside of work (and to some extent while at work). The claimant's account had the support of the medical opinion of Dr Kar Ray and some support from the claimant's GP.

43) However, I have given no weight at all to Dr Ansah's contentions that the claimant's condition:

a) is a long-term condition, since this is not the question; the issue is whether any impairment has long-term *effects*;
b) has a substantial impact on her daily life, since this is a matter for me to decide on the basis of evidence of fact; or
c) 'can be classed as a disability,' since this is the ultimate question for me to determine.

44) I have reminded myself of paragraphs B9 and B10 of the statutory Guidance. I consider that the fatigue that the claimant suffered outside work, as a result of aiming to work as competently as the respondent says she did shows a more than minor or trivial effect on the claimant of carrying out normal day-to-day activities. I also give weight to the fact that the claimant relies on a mental impairment which had unseen effects on her, which the respondent's employees and directors were not looking out for, and which the claimant sought to compensate for by putting her energy into her work, at the expense of her energy outside of work. Not everyone who is disabled is 'obviously' disabled, and disability need not involve an inability to do something major, since 'substantial' in this context means only more than minor or trivial. I was not impressed to the challenges to the claimant's case by reference to evidence that the claimant had been on holiday, or that she had gone out to socialise. A disability, to be such, need not be so extreme that it prevents a person from going on holiday or going out, and it was not the claimant's case that she was so disabled that she could not go out at all.

45) I am therefore satisfied that the claimant had a mental impairment which had a substantial adverse effect on her ability to carry out normal day-to-day activities.

Long term?

46) The next question, therefore, is whether, as at September 2015 or March 2016 the substantial adverse effects of the claimant's impairment had lasted, or could well last, for 12 months.

47) I have found that that, as at 13 August 2015, the claimant had given an account to Dr Kar Ray of low mood for six months, and a history of depression and anxiety stretching back to when she was 14 years' old. I have found that the claimant had been attending a sleep clinic since 2014. On 9 September 2015, she wrote to Mr SU, saying that she had been under investigation at Papworth Hospital *until* February 2015 due to excessive exhaustion and had gone back to her GP in late August 2015. I have noted above the evidence from the NHS Choices website which says that the *symptoms* of borderline personality disorder usually emerge during adolescence.

48) I have taken into account the relatively narrow window of time for which medical information about the claimant is available, but I have noted that Employment Judge Moore's observations about medical evidence may have led the claimant reasonably to believe that expert evidence, and only expert evidence was

relevant to the question of disability. I have taken into account the fact that, as at August and September 2015, there was no dispute between the claimant and the respondent, and, therefore, there is no obvious reason to think that the claimant, in communication with others, was being self-serving by exaggerating adverse effects of her state of mental health on her ability to carry out normal day to day activities, or the time for which these had lasted.

49) I consider the matter to be finely balanced, but I have ultimately not been satisfied by the claimant, on the evidence before me, on the balance of probabilities, that as at September 2015, which is the first of the times about which the claimant seeks to complain of disability discrimination, she had been experiencing substantial adverse effects on her ability to carry out normal day to day activities for 12 months (i.e., since September 2014). Nor am I satisfied, on the evidence before me, that, considered in September 2015, such adverse effects could well last for 12 months. As at September 2015, there is insufficient evidence before me that there had been substantial adverse effects for a period of 12 months, in other words, since September 2014 and there is no medical evidence on the basis of which I could properly conclude that at this date substantial adverse effects could well last for 12 months.

50) However, the claimant has satisfied me that, by February 2016, the effects of anxiety and depression related to borderline personality disorder which she had experienced from February 2015, and the tiredness and exhaustion that the claimant had been experiencing since before February 2015, and the difficulties that the claimant experienced in concentrating, gave rise to substantial adverse effects on her ability to carry out normal day-to-day activities which had by then in fact lasted for 12 months.

51) It follows from this conclusion of fact that, as a matter of law, in my judgment, the claimant was a disabled person from the end of February 2016 because she met each of the constituent factual elements of the statutory definition of disability.

52) I have, therefore, been satisfied that, from 14 March 2016, which is the next of the times about which the claimant complains, it is more likely than not that she had a mental impairment which had a long-term substantial adverse effect on her ability to carry out normal day-to-day activities.

Knowledge of disability is not a matter for me to decide

53) During the course of evidence before me, there was some exploration, with both the claimant and Mr UU of what was communicated by the claimant, or known by the respondent, about the claimant's health and abilities in the period before her employment ended. The question what, if anything, the respondent knew or ought to have known about whether the claimant was a disabled person was not an issue for me to decide at this preliminary hearing. I express no view on it, and I encouraged the parties not to focus on this issue in the abstract, although, given the respondent's case, there was inevitably some (legitimate) focus on what the respondent knew and believed about the claimant's abilities at the time by reference to what she could do. Nothing that I

have said, in this judgment should be taken to affect the way that the parties run their cases on any issue relevant to knowledge, nor should any tribunal considering that issue in due course feel that any deference need be paid to any observations which I have made about knowledge because, so far as my decision is concerned, that is a peripheral issue, I did not have all of the relevant evidence about it before me, and I discouraged the parties from focusing on it.

Next steps

54) As a result of my decision, the next hearing, on 27 April 2017, which was listed for the parties' convenience at the conclusion of the hearing before me will be a further preliminary hearing, for the purposes of determining the claimant's application to amend her claim, and any ancillary matters of case management. That hearing, which had been listed for a day should now not need to exceed 3 hours, and, therefore I will therefore revise it to that duration. A notice of hearing will be sent out accordingly. The parties must work to this 3-hour timescale, allowing for the need for a judge to give a decision and reasons on the application to amend on the day; the hearing length does not represent the time available for the parties to make submissions, but for everything to be completed. They must liaise with one another, and plan accordingly. They are reminded of their obligations to help further the overriding objective.

55) The claimant has already produced a schedule of the matters on which she seeks to rely. In light of my conclusions above, there could be no basis to allow an amendment in respect of the September 2015 complaint, but the remaining matters which are not contained in the claim as presented, for the period from 14 March 2016 will need to be considered.

56) I do not consider that there are any other directions which I can make now, but if either of the parties believe that there are, they should apply on paper. It ought to be possible for any judge to consider such an application, but if either party believes that there is a particular need for me to consider an application, they should so indicate and give reasons why.

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Employment Judge Brown

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28 March 2017

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

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FOR EMPLOYMENT TRIBUNALS