



EMPLOYMENT TRIBUNALS

Claimant

Mr H Mansfield

v

Respondent

Shakespeare Lodge TLA Limited

Heard at: Bury St Edmunds

On: 14 July 2020

Before: Employment Judge M Warren

Appearances

For the Claimant: Mr Bussau, Para Legal.

For the Respondent: Mr Goldup, Consultant.

COVID-19 Statement on behalf of Sir Ernest Ryder, Senior President of Tribunals

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was Cloud Video Platform (CVP). A face to face hearing was not held because it was not practicable and no-one requested the same and all issues could be determined in a remote hearing.

JUDGMENT

1. The claimant was not a disabled person as defined in the Equality Act 2010 at the material time and the claimant's complaints of disability discrimination are therefore dismissed.
2. The respondent's application for costs is refused.
3. The claimant's claims for automatic unfair dismissal, for failure to provide written terms and conditions of employment and for unpaid wages or breach of contract in the respondent's failure to pay pension contributions survive and remain to be heard **by an Employment Judge sitting alone** at Watford on 12 and 13 October 2020.

REASONS

Background

1. Mr Mansfield has brought claims of disability discrimination, unfair dismissal and unpaid wages. The matter came before Employment Judge Loy on 10 October 2019. He directed that the matter be listed for an open preliminary hearing today to decide the preliminary issue as to whether or not the claimant was a disabled person at the material time.
2. The issue I was to determine today was therefore whether the claimant was a disabled person at the material time, that being the period of his employment between 5 March 2018 and 8 March 2019.

Evidence

3. The evidence which I had before me today was contained within a pdf bundle provided by the claimant's representative, for which I am grateful.
4. I should record that this hearing was to have taken place I think in Watford but because of the Coronavirus crisis, an attended hearing has not been possible. The hearing has been conducted via the Ministry of Justice's Cloud Video Platform.
5. The claimant has not attended today. I was referred to a letter from his GP at page 124 of the bundle. It is a letter dated 8 June from Doctor G Hopkinson. It tells me that Mr Mansfield is suffering from depression and anxiety, is having regular treatment with anti-depressants, is under regular review and the Doctor writes:

“I feel that the stress of a hearing at present would not be beneficial for his mental health.”
6. What that letter does not say is that Mr Mansfield is not fit to attend a hearing. It does not address the fact this is not an attended hearing but is a video hearing. No application to postpone has been made, nor has any request been made for any form of adjustment to facilitate his attendance.
7. I expressed my surprise at the outset of the hearing that the claimant would not be attending. After a discussion with Mr Bussau, I agreed to allow him 10 minutes to make contact with Mr Mansfield in order to see whether he would decide to attend, which could be arranged either by his logging into the video hearing or his attending Mr Bussau's place of work, which apparently is nearby. After that 10 minute adjournment, Mr Bussau reported that the claimant still chose not to attend and we therefore proceeded in his absence.

The Law

8. For the purposes of the Equality Act 2010 (EqA) a person is said, at section 6, to have a disability if they meet the following definition:

“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.”*

9. The burden of proof lies with the Claimant to prove that he is a disabled person in accordance with that definition.

10. The expression ‘substantial’ is defined at Section 212 as, ‘*more than minor or trivial*’.

11. Further assistance is provided at Schedule 1, which explains at paragraph 2:

“(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 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”.

12. As to the effect of medical treatment, paragraph 5 provides:

“(1) 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 –

- (a) measures are being taken to treat or correct it, and*
- (b) but for that, it would be likely to have that effect.*

(2) ‘Measures’ includes, in particular medical treatment ...”

13. Paragraph 12 of Schedule 1 provides that a Tribunal must take into account such guidance as it thinks is relevant in determining whether a person is disabled. Such guidance which is relevant is that which is produced by the government’s office for disability issues entitled, ‘Guidance on Matters to be Taken into Account in Determining Questions Relating to the Definition of Disability’. Although I acknowledge that the guidance is not to be taken too literally and used as a check list, (Leonard v Southern Derbyshire Chamber of Commerce [2001] IRLR 19) much of what is there is reflected in the authorities, (or vice versa).

14. As Sections A3 through to A6 of that guide make clear, in assessing whether a particular condition is an “**impairment**” one does not have to establish that the impairment is as a result of an illness, one must look at the effect that impairment has on a person’s ability to carry out normal day-to-day activities. A disability can arise from impairments which include mental health conditions with symptoms such as anxiety, low mood, panic attacks, phobias, unshared perceptions, eating disorders, bipolar affective disorders, obsessive compulsive disorders, personality disorders, post traumatic stress disorder, (see A5) and can also include mental illnesses such as depression. It is not necessary and will often not be possible to categorise a condition as a particular physical or mental impairment.
15. As to the meaning of ‘**substantial adverse effects**’, paragraph B1 assists as follows:

“The requirement that an adverse effect on normal day-to-day activities should be a substantial one reflects the general understanding of disability as a limitation going beyond the normal differences and ability which may exist amongst people. A substantial effect is one that is more than a minor or trivial effect”.
16. Also relevant in assessing substantial effect is for example the time taken to carry out normal day to day activities and the way such an activity is carried out compared to a none disable person, (the Guidance B2 and B3).
17. The Guidance at B4 and B5 points out that one should have regard to the **cumulative effect of an impairment**. There may not be a substantial adverse effect in respect of one particular activity in isolation, but when taken together with the effect on other activities, (which might also not be, “substantial”) they may together amount to an overall substantial adverse effect.
18. Paragraph B12 explains that where the impairment is subject to **treatment**, the impairment is to be treated as having a substantial adverse effect if, but for the treatment or the correction, the impairment is likely to have this effect. The word ‘likely’ should be interpreted as meaning, ‘could well happen’, (see SCA Packaging below). In other words, one looks at the effect of the impairment if there was no treatment. A tribunal needs reliable evidence as to what the effect of an impairment would be but for the treatment, see Woodrup v London Borough of Soutwark [2003] IRLR 111 CA.
19. A substantial effect is treated as continuing, if it is **likely to recur**, this is explained at paragraphs C5 and C6 by cross reference to Schedule 1, paragraph 2(2) quoted above. However, it is the substantial adverse effect on the ability to carry out day to day activities that must recur, not merely a re-manifestation of the impairment after a period or remission, but to a lesser degree, (Swift v Chief Constable of Wiltshire Constabulary [2004] ICR 909 EAT).

20. Similarly, on the question of whether an impairment has lasted or is **likely to last** more than 12 months, it is the substantial adverse effect which must so last.
21. Amongst the examples given at C6 are certain types of depression, which includes the following:
- “A woman has two discreet episodes of depression within a ten month period. In month 1 she loses her job and has a period of depression lasting six weeks. In month 9 she experiences bereavement and has a further episode of depression lasting eight weeks. Even though she has experienced two episodes of depression she will not be covered by the Act. This is because, as at this stage, the effects of her impairment have not yet lasted more than twelve months after the first occurrence, and there is no evidence that these episodes are part of an underlying condition of depression which is likely to recur beyond the twelve month period.*
- However, if there was evidence to show that the two episodes did arise from an underlying condition of depression, the effects of which are likely to recur beyond a twelve month period, she would satisfy the long term requirement”.*
22. As for what amounts to **normal day-to-day activities**, the guidance explains that these are the sort of things that people do on a regular or daily basis including, for example, things like shopping, reading, writing, holding conversations, using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, taking part in social activities, (paragraph D3). The expression should be given its ordinary and natural meaning, (paragraph D4).
23. The guidance suggests that whilst specialised activities either to do with one’s work or otherwise, are unlikely to be normal day-to-day activities, (paragraphs D8 and 9) some work related activities can be regarded as normal day-to-day activities such as sitting down, standing up, walking, running, verbal interaction, writing, driving, using computer keyboards or mobile phones, lifting and carrying (paragraph D10). That needs to read in light of Paterson v Commissioner of Police of the Metropolis [2007] ICR 1522 EAT and Chacon Navas v Eurest Colectividades SA [2007] ICR 1 ECJ, which are authority for the proposition that normal day to day activities includes activities relevant to participation in professional life, and Chief Constable of Dumfries and Galloway Constabulary v Adams [2009] ICR 1034 EAT which clarifies that does not apply to specialist skills.
24. As to what amounts to a **‘substantial effect’**, the guidance is careful not to give prescriptive examples but sets out in the Appendix a list of examples that might be regarded as a substantial effect on day-to-day

activities as compared to what might not be regarded as such. For example:

- 24.1 *'Difficulty picking up and carrying objects of moderate weight, such as a bag of shopping or a small piece of luggage, with one hand'* which would be regarded as a substantial effect, as compared to, *'inability to move heavy objects without assistance or a mechanical aid, such as moving a large suitcase or heavy piece of furniture without a trolley'* which would not be so regarded.
- 24.2 Also compare, *'a total inability to walk, or an ability to walk only a short distance without difficulty'* which is a substantial effect to, *'experiencing some tiredness or minor discomfort as a result of walking unaided for a distance of about 1.5 kilometres or one mile'*.
- 24.3 Also, *"Persistent difficulty in recognising, or remembering the names of familiar people such as family or friends"* as compared to, *"Occasionally forgetting the name of a familiar person, such as a colleague"*.
- 24.4 And, *"Persistent distractibility or difficulty concentrating"* as compared to, *"Inability to concentrate on a task requiring application over several hours"*.
25. The word, "**likely**" in the context of the definition of disability in the Equality Act 2010, means, "could well happen", or something that is a real possibility. See SCA Packaging Ltd v Boyle [2009] ICR 1056 HL and the Guidance at paragraph C3. This is because we are not concerned here with weighing conflicting evidence and making findings of fact, but are in the realm of medical opinion and assessing risk or likelihood in that sense.
26. A claimant must meet the definition of disability as at the date of the alleged discrimination. That means for example, if the impairment has not lasted 12 months as at the date of the alleged discrimination, it must be expected to last 12 months as at that time, (not the date of the hearing). (Tesco Stores Ltd v Tennant UKEAT0167/19).
27. In Goodwin v Patent Office [1999] ICR 302 the EAT identified that there were four questions to ask in determining whether a person was disabled:
 1. Did the Claimant have a mental and/or physical impairment?
 2. Did the impairment effect the Claimant's ability to carry out normal day-to-day activities?
 3. Was the adverse condition substantial? and
 4. Was the adverse condition long term?
28. In J v DLA Piper UK LLP [2010] IRLR 936 Mr Justice Underhill, President of the EAT at time, observed that it is good practice to state conclusions separately on the one hand on questions of impairment and adverse effect and on the other hand on findings on substantiality and long term effect.

However, Tribunals should not feel compelled to proceed by rigid consecutive stages; in cases where the existence of an impairment is disputed, it makes sense to start by making findings about whether the Claimant's ability to carry out normal day-to-day activities is adversely effected on a long term basis and then consider the question of impairment in light of those findings. It is not always essential for a Tribunal to identify a specific 'impairment' if the existence of one can be established from the evidence of an adverse effect on the Claimant's abilities. That is not to say that impairments should be ignored, the question of impairment can be considered in light of findings on day-to-day activities.

The Facts

29. I will begin with the statement of case for Mr Mansfield in his ET1, the particulars of claim at paragraphs 2 and 3. Here he says that in or about 2011 he developed a life-long mental illness in the form of anxiety and depression, which causes on a daily basis varying degrees of impact upon his personal and working life. Then at paragraph 3 it says that since at least 2014, he has from time to time suffered severe sciatica and chronic back pain, an ongoing problem which during flare ups means he is unable to perform normal day to day duties. No specifics are provided in either case.
30. The matter came before Employment Judge Loy at a preliminary hearing, the hearing summary is at document 6, page 53. At paragraph 15.1 in setting out the issues, EJ Loy records that the conditions the claimant alleges amount to disability are sciatica, depression, anxiety and PTSD. Mr Bussau accepted today after some hesitation, that he had indeed raised the matter of PTSD.
31. Next, I refer to the GP report which Mr Mansfield has produced in evidence in support of his contention that he is a disabled person. This is in the bundle at page 60. It is dated 7 November 2019, some 8 months after dismissal. The author of the report is Doctor Hopkinson. The report purports to answer questions set out in a standard letter written by the Tribunal:
 - 31.1 In answering the question whether the claimant has one or more impairments, the doctor answers yes, that he suffered from depression and back pain. He writes that these have been diagnosed recently, but are long standing.
 - 31.2 Dr Hopkinson writes that Mr Mansfield has had chronic back pain for many years but has worked through it, the pain is intermittent and he is now having physiotherapy.
 - 31.3 As for the depression, this is said to be long standing. Mr Mansfield has not sought help for this in the past. He has now started treatment with anti-depressants, which will be regularly reviewed.

- 31.4 The doctor writes that the effect of these problems are that Mr Mansfield has some problems with mobility and lower back pain, but no problems with manual dexterity.
- 31.5 Where he is asked about the physical co-ordination and continence of the patient, Dr Hopkinson writes that Mr Mansfield has some inability to lift heavy items on occasions, that he has no speech, hearing or eyesight problems, his concentration may be affected by his depression on occasions. He says that he thinks the effect of back pain and depression will be ongoing for the next 6-12 months.
- 31.6 The claimant is also said to suffer from hypertension and is on treatment with Amlodipine and Ramipril.
- 31.7 The doctor expressly states that he does not think that Mr Mansfield has a progressive illness.
32. There follows in the bundle the Doctor's handwritten comments to an information document provided with the Tribunal's standard letter. Confirming to begin with that Mr Mansfield has depression and back pain, the following is of note:
- 32.1 Question 4 is 'When was the impairment first diagnosed?' The answer handwritten is, *"diagnosed now – been long standing many years both back pain and depression"*.
- 32.2 Question 5 is 'Please briefly describe usual symptoms of the diagnosed conditions', there is nothing written in answer to that.
- 32.3 Question 6 asks how the impairment affects the claimant's capacity to carry out a list of normal day to day activities and alongside each activity is a handwritten answer from the doctor, as follows:
- 32.3.1 Mobility – *"some effect"*.
- 32.3.2 Manual dexterity – *"nil"*.
- 32.3.3 Physical co-ordination – *"nil"*.
- 32.3.4 Continence – *"ok"*.
- 32.3.5 Ability to lift, carry or otherwise move everyday objects – *"some effect"*.
- 32.3.6 Speech, hearing or eyesight – *"ok"*.
- 32.3.7 Memory or ability to concentrate, learn or understand – *"some problems"*.

- 32.3.8 Perception of risk or of danger – “ok”.
- 32.4 Question 7 asks whether the impairment has lasted or is likely to last for at least 12 months or the rest of the claimant’s life, to which the doctor has written, “*Yes both back pain and depression*”.
- 32.5 Question 8 asks ‘To what extent are you relying on what you are told by claimant?’ If so, is that consistent with your clinical findings? The handwritten answer is, “*What the claimant told me*”.
- 32.6 Question 9 asks ‘If you are not relying on what you are told by the claimant, please explain the basis for your opinions.’ The doctor has struck a line below that not giving any answer at all.
33. The brevity of these answers is unhelpful.
34. Mr Goldup complained to me that the claimant’s representative had not disclosed how the GP had been instructed to provide this report. Mr Bussau responded that the GP was given oral instructions by him, (Mr Bussau) who attended the GP with Mr Mansfield.
35. That is, I have to say, a highly unsatisfactory method to adopt for instructing an expert to provide a report for use in evidence. Such evidence ought to be sought in an open manner if it is to have any cogency. What is more, one might say that as the legal representative gave direct oral instructions to the doctor, the paucity of information in the report provided is all the more surprising.
36. The problem with the evidence provided by the GP, apart from its lack of detail and specific information on matters that I need to know about, is that it is based entirely upon what he has been told by Mr Mansfield. There is no mention in the report of any of this, the history, the diagnosis or the assessment being that of the GP.
37. I turn now to the witness statement which is at pages 119-120:
- 37.1 At paragraph 6 Mr Mansfield tells us that in 2004 he had an accident as a result of which he has since suffered with recurring back pain and sciatica, which has progressively worsened in duration, severity and impact over time.
- 37.2 At paragraph 7 he tells us that in April 2011 his mother, with whom he was close, passed away in his arms, after which he became extremely depressed.
- 37.3 At paragraph 8 he tells us that he did not seek medical support, saying that a man such as himself sees seeking help as a sign of weakness.

- 37.4 At paragraph 9 he says that in 2014 he was a passenger in a car involved in a road traffic accident, which exacerbated his back pain.
- 37.5 There is further tragedy and sadness at paragraph 10, where he tells us that in March 2017 his 27 year old son died unexpectedly in his sleep.
- 37.6 At paragraph 11 he says that at the beginning of 2018, he was suffering from severe anxiety which significantly affected his sleep, causing fatigue. He also says that he was suffering from sciatica attacks every 3-4 months.
- 37.7 At paragraph 14 he says that his back pain or sciatica has inhibited his ability to undertake physical tasks to the extent that he used to or would otherwise like to do.
38. The problem with this witness statement is that there are serious issues of credibility which Mr Mansfield ought to answer:
- 38.1 He has never sought medical advice about any of the matters to which he refers. Why is that one might ask? He ought to answer that question and give oral evidence as to why it is, if he has suffered in the way that he says he has, that he has never sought medical advice or assistance. It seems improbable.
- 38.2 The answer I am given by Mr Bussau is that this is a typical ex-military person toughing it out, but the respondent is entitled to test that evidence and has not had the opportunity to do so.
- 38.3 Why is there no detail and no examples of the impact of his alleged impairments on his day to day activities, just generalisations? Is that because in truth there is no substantive impact?
- 38.4 There is also the business of PTSD being raised as a condition relied upon as amounting to a disability at the preliminary hearing. PTSD is a very serious condition and there is no evidence of it before me at all. Why has Mr Mansfield put forward that he suffers from PTSD and relies upon that as amounting to a disability? Is it because he is prone to embellishment and exaggeration, or worse, fabrication?

Conclusions

39. The burden of proof lies with the Mr Mansfield and I have highlighted the paucity of his evidence. Mr Bussau criticises the respondent for not producing any counter evidence. Well in a disability claim where disability is an issue, it is frequently the case that the respondent does not and cannot produce evidence, all that it can do is put the claimant to proof, see what evidence the claimant produces and test whether such evidence is sufficient to satisfy the burden of proof.

40. I am sorry to say that the evidence from Mr Mansfield here is woeful. The GP appears to be merely reciting what he has been told by Mr Mansfield. Mr Mansfield's own evidence in the witness statement is untested and there are serious questions that he would have had to answer had he attended today. Maybe he would have been able to answer them satisfactorily, but he did not attend and has not therefore done so.
41. Mr Mansfield's reliance on fit notes post dismissal simply is not helpful to me in deciding whether he was disabled at the material time, i.e. during his employment.
42. The GP refers to anxiety, depression and back pain. He refers to "some effect on certain day to day activities"; that does not help me with whether that effect is substantial, does not tell me what that the effect is, it does not tell me whether the effect is more than trivial or not, whether it is anything more than the normal differences that people usually experience in life. The GP's report does not help me with whether at the material time during Mr Mansfield's employment, which was 8 months and more earlier, his conditions had lasted at that point more than 12 months or at that time could have been expected to last more than 12 months.
43. I am afraid I have to conclude that these conditions do not meet the definition of disability:
 - 43.1 Dr Hopkinson has said that Mr Mansfield has back pain and recently diagnosed depression. I find that he has those impairments.
 - 43.2 Those impairments are likely to have an impact on one's day to day activities and Dr Hopkinson has said that they have had, "some" such impact.
 - 43.3 However, I am not satisfied that such impact has been substantial. I have no information on what the detail of the impact is, nor its extent. That Mr Mansfield has not sought medical help until 8 months after his employment has ended, makes it more likely than not that the impact is not more than trivial, not any more than the normal differences that may exist between people.
 - 43.4 I am not satisfied that Mr Mansfield had back pain or depression that at the time his employment ended, or if he had, that it had lasted at least 12 months, was likely to last 12 months, or was likely to last the rest of his life, nor in so far as he experienced either thus far at that time, that it could have been said at the time that it was likely to recur.
44. Mr Bussau has made references to a progressive condition, but as I have noted, the doctor expressly stated there was no progressive condition.

45. I heard no evidence about PTSD and no evidence about hypertension, (which had not been hitherto mentioned as a condition relied upon as amounting to a disability).
46. For these reasons I am afraid I conclude that Mr Mansfield was not a disabled person at the material time.

Costs Application

47. Having given my decision, the respondent has made an application for costs. Mr Goldup has referred to the claimant's non-attendance. He says that Mr Mansfield has been given opportunities to attend. There is no medical evidence, says Mr Goldup, that Mr Mansfield could not attend. There was no application for a postponement. No application for any adjustments. He quoted my comment that the medical evidence in support of Mr Mansfield's assertion that he is a disabled person as being woeful and he referred to the fact that no evidence has been produced as to his claim that he suffers from PTSD. The respondent seeks £425 as the costs of preparing and attending this hearing.
48. Rule 76 of the Employment Tribunal's 2013 Rules of Procedure provide that a costs or time preparation order may be made and a tribunal shall consider whether to do so, where it considers that:
 - (a) *a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or*
 - (b) *any claim or response had no reasonable prospect of success.*
49. In *Gee –v- Shell UK Limited* [2003] IRLR82 Sedley LJ said:

“It is nevertheless a very important feature of the employment jurisdiction that it is designed to be accessible to ordinary people without the need of lawyers and that in sharp distinction for ordinary litigation in the United Kingdom losing does not ordinarily mean paying the other side's costs”.
50. There are many authorities that repeat those sentiments.
51. In *Millan v Capsticks Solicitors LLP & Others* UKEAT/0093/14/RN the then President of the EAT, Langstaff J, described the exercise to be undertaken by the Tribunal as a 3 stage exercise, which I would paraphrase as follows:
 1. Has the putative paying party behaved in the manner proscribed by the rules?
 2. If so, it must then exercise its discretion as to whether or not it is appropriate to make a costs order, (it may take into account ability

to pay in making that decision).

3. If it decides that a costs order should be made, it must decide what amount should be paid or whether the matter should be referred for assessment, (again the Tribunal may take into account the paying party's ability to pay).

52. In my view, the conduct of the claimant cannot properly be described as unreasonable. There is no doubt from the letter produced by his doctor in the last few days, that he is suffering from mental illness. So, there is no doubt in my mind that he may have had some anxiety about attending and there is no obligation of course on a party to attend and give evidence. A witness statement has been offered up. He has simply taken the risk that the witness statement will not be sufficient when a Judge is weighing the cogency of evidence and that has come back to bite Mr Mansfield, but I do not think one can say that his non-attendance today was unreasonable.
53. As for the evidence offered up, he did produce a letter from his GP which attempted to answer the questions posed in the Tribunal's standard letter. A claimant is entitled to argue that he or she is a disabled person and look to the Tribunal for a decision. Whilst I think the evidence offered up has not been good enough to cross the balance of probabilities threshold, and I used the throw-away line, "woeful", I think it goes too far to describe arguing that he is disabled as amounting to unreasonable conduct. The threshold has not been crossed and I therefore I refuse the costs application.

Further conduct of the case

54. In discussion with the representatives and by way of cross reference to the preliminary hearing summary of Employment Judge Loy on 10 October 2019, we identified that the claimant's surviving claims are of automatic unfair dismissal, failure to provide written terms and conditions of employment and a wages or breach of contract claim in relation to the respondent's alleged failure to pay pension contributions. The case is listed for 2 days at Watford on 12 and 13 October 2020. I decided that it would be prudent to leave the matter listed for those two days, although it may be that it will be completed in one. That hearing shall now be before a Judge sitting alone. Employment Judge Loy made case management orders in respect of the final hearing and they remain effective.
55. I was told that Regional Employment Judge Foxwell had caused a letter to be written to the parties, (although the respondent has not received it) asking them whether they would like the case transferred to Bury St Edmunds. Both parties' answer to that is that they would be, but only if the current listing date could be preserved. I was unable to answer whether or not that would be so. In the circumstances, the parties agreed that it would be prudent to leave the matter listed as it is.

56. Mr Bussau raised the outstanding matter of his application to strike out parts of the respondent's amended response. Today's hearing had not been listed to deal with that application and in any event, there was insufficient time to do so.
57. The grounds of resistance should be revisited anyway, given that the disability discrimination claim no longer survives.
58. Mr Goldup told me that there was also an application from the respondent and a wasted costs application. I was unaware of that, but again, there was not sufficient time to deal with it.
59. I suggested the parties revisit their applications and I reminded the representatives of their obligations to assist the Tribunal in furthering the overriding objective.

Employment Judge M Warren

Date: 20 July 2020

Sent to the parties on: .28/08/2020

.Jon Marlowe
For the Tribunal Office