EMPLOYMENT TRIBUNALS

Claimant: Ms Leanna Harriott

Respondent: Lewisham and Greenwich NHS Trust

Heard at: **London South** **On: 23 April 2018**

Before: **Employment Judge Fowell**

Ms P O'Toole

Representation:

Claimant: Mr Brown of Brown & Co. Solicitors

Respondent: Ms S Ramadan of Capsticks LLP

JUDGMENT

The unanimous decision of the tribunal is that:

1. The claimant was unfairly dismissed.

2. The complaint of disability discrimination is upheld.

REASONS

Background

1. Ms Harriott was dismissed from her employment on grounds of her long-term absence in September 2016, having been absent from work for much of the previous three years. The reason relied on by the respondent Trust in its grounds of resistance was capability, alternatively "some other substantial reason", reflecting the statutory wording at section 98 of the Employment Rights Act 1996.

2. A striking feature of the case was that Ms Harriott had made a successful return to work at the time of her dismissal. In the course of the hearing the relevant decision makers were clear that she was dismissed because of her past history of absences rather than the risk that she would fail to maintain a satisfactory level of attendance in future, i.e. it was predominantly a backward-looking rather than a forward-facing process. In view of this

evidence it was accepted on behalf of the Trust that the principal reason for dismissal was this "some other substantial reason".

3. At paragraph 31 of the grounds of resistance the stated alternative reason was the history of absences "and the likelihood that this would recur". Phrased in this way it is difficult to distinguish this reason from capability. Capability is in fact defined at section 98(3) of the ERA as follows:

> '"capability", in relation to an employee, means [her] capability assessed by reference to skill, aptitude, health, or any other physical or mental quality…'

4. Hence, capability relates to the ability of the employee, now and in the future, to carry out the requirements of the role. It is therefore inherently a forward-looking exercise. Ms Ramadan conceded that this had not been the basis on which the decision to dismiss had been taken, which instead related to past absences.

5. The alternative claim put forward by Ms Harriott is of disability discrimination under section 15 of the Equality Act 2010 – discrimination arising from her disability. This is defined as follows:

> 1) A person (A) discriminates against a disabled person (B) if –
>
> a) A treats B unfavourably because of something arising in consequence of B's disability, and
>
> b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

6. The Trust accepted that Ms Harriott had a disability at the time of her dismissal, namely depression and that they were aware of it. It was also common ground, at least by the end of the hearing, that the unfavourable treatment was the dismissal and that the "something arising" was her history of absence. It was then for the respondent show that dismissal was a proportionate means of achieving a legitimate aim. Two legitimate aims were relied on: avoiding financial detriment and operational detriment, i.e. cost and service.

7. Evidence was heard over two days from Ms Harriott herself and, on behalf of the respondent, from

   a. Ms Salvege-Owen, Ms Harriott's line manager at the time of her dismissal and the person who carried out the investigation into her absences;

   b. Ms Lesley Wicks, the General Manager who took the decision to dismiss, and

   c. Ms Brenda Deane, the more senior divisional manager who upheld this decision on appeal.

8. Ms Salvege-Owen is no longer employed by the Trust but nevertheless gave her time on their behalf. We were also assisted by a bundle of about 300 pages. Having heard that evidence, our findings of fact are as follows.

Findings of fact

9. Ms Harriott began work for the NHS in 2008 but transferred to Lewisham and Greenwich NHS Trust in 2013. She had previously been managing a team of about 10 people and her new role was no less important. Her job title was MDT (multidisciplinary team) Co-ordinator. This was, as the name suggests, part of a team, including senior clinicians, charged with the treatment of a particular area of cancer. Her role involved attending the MDT meetings, noting the many action points arising, and ensuring that appropriate action was taken to ensure that the Trust stayed within the 62-week timetable for treating each patient. She was one of five or six such Co-ordinators working for the Trust, either at its hospital in Lewisham or at the Queen Elizabeth Hospital in Greenwich. During her extensive absences her position was covered by a succession of bank or temporary staff or simply covered by her colleagues.

10. Her absences for depression began in July 2013. This followed the death, within a short period of time, of her two grandparents. They had been her main carers as a child. Her initial absence continued until May 2014 when she made a brief but unsuccessful attempt to return to work.

11. She went off sick again from 2 July to 13 October 2014. One of the reasons why she was unable to sustain her attendance was a dispute with her line manager Nicky Bennett. Ms Harriott became aware that her colleagues knew out the reasons for her absence. The only person she had told about this was Ms Bennett. When challenged about this she responded that they must have seen her medical certificates on her desk. Ms Harriott did not accept this, and relations became strained.

12. When she went off sick again her problems worsened. She, her partner and two children - a son of about seven and a daughter of about 18 – were in rented accommodation costing about £1300 per month. Given her long absence, Ms Harriott was on half pay and they were in financial difficulties. Then in October 2014 the landlord proposed to raise the rent to over £1700 per month, which they could not afford. Eviction proceedings were started. It is not clear whether they ran their course but on 8 October Ms Harriott and her family moved out and were left homeless. She had to go to the council with her son to find somewhere to live. The council managed to find accommodation for them in a hostel in Ilford, some way from her work. At about the same time her partner walked out and she was left to bring up the children. Despite this she returned to work on 14 October 2014 although it was a far longer commute from Ilford.

13. Again, her return was not sustained. She was off sick again from November 2014, when she collapsed on the way to work and had to go to A&E for treatment. By this point she had a three-hour commute from her accommodation to work and was simply unable to cope.

14. By 8 December 2014 the occupational health advice was to the effect that Ms Harriott was suffering from a disability – depression – and that remained their view from then on. She remained off work this time until March 2015.

15. Throughout this period the respondent exercised exemplary patience, arranging for regular occupational health appointments, of which there had

been nine by the time of her dismissal. There were also equally regular return to work meetings with her managers.

16. On her return, Ms Harriott had a return to work meeting with Ms Bennett under Stage I of the Trust's Sickness Absence Policy on 8 April 2015, following which she was placed on a three-month monitoring period and advised that if her absences continued during their period she would be moved on to Stage II, with the possibility of dismissal. Ms Bennett also agreed a reduction in her working hours by 10 hours per week to make it easier for her to manage. Ms Harriott was in fact absent during that period, although no steps were taken to escalate the process.

17. Other health problems then made their appearance. She was diagnosed with migraines and prescribed Migralieve, to which she had a severe allergic reaction resulting in her skin peeling from head to toe. Ultimately this had to be treated by specialist and the effects lasted for several months. She also had a cancer scare.

18. At various stages therefore, the Trust could have dismissed Ms Harriott on grounds of capability given the length of her absence and the likelihood of its continuation. In fact, they continued to exercise considerable patience. In January 2016 Ms Harriott was reduced to nil pay. Her position by this stage was particularly difficult as she could not access any benefits since she was still in work.

19. On 4 February 2016 a further misfortune befell her. She was attacked and robbed, with both her earrings ripped out. She was taken to hospital and had to have plastic surgery on both ears, in successive operations. The first took place on 8 February and the second on the ninth. She discharged herself from hospital that day so that she could attend a return to work meeting.

20. She remained signed off sick until 22 May 2016. Her case was that from then on she was anxious to return to work and that the Trust were putting up barriers, insisting on an occupational health report. Her evidence about that period was not altogether consistent, but we accept that she was looking to return to work by that stage.

21. The Trust arranged an occupational health appointment for 1 June 2016. By then Ms Harriott was in a more positive frame of mind and she and the OH adviser agreed on a plan for a phased return to work. This was to begin with 2 ½ days work per week rising to full-time hours over five weeks. There was no very speedy response from the Trust to this proposal and it was not until 27 June that they were in touch to propose a "case conference" for 5 July.

22. The Trust's Sickness Absence Policy does not seem to mention such an arrangement, but it took the form of a meeting between (a) Ms Harriott, (b) her new line manager, Ms Salvege-Owen, (c) someone from HR and (d) the OH Advisor. A detailed programme of training and re-familiarisation was then arranged.

23. Ms Harriott did not find out about this case conference until the day before as the invitation letter was addressed to her mother, the only address which the Trust had for her at that stage. By then Ms Harriott was acutely anxious

about her finances. She wanted to return to work, and her anxiety was increased by the invitation letter, which referred to the possibility of her being dismissed. She emailed back that day making clear that she felt that she was going to be dismissed, that she had no money, and that she would therefore have to walk from Bromley the next day to attend the meeting, ending with a comment to the effect that her depression was at an all-time low.

24. Ms Harriott was in some difficulties explaining this statement given her general position, and the one certainly advanced at the case conference, that her problems were now behind her and she was in a much better mental position. We conclude that this remark reflected her anxiety and concern about the meeting rather than being an accurate reflection of her mental state at the time.

25. Ms Salvege-Owen was in fact very supportive at that meeting and made clear that Ms Harriott would no longer be reporting to Ms Bennett. She described this arrangement in her witness statement as a fresh start for Ms Harriott. They also discussed the location for her return, which was to be at the Queen Elizabeth Hospital in Greenwich. This meant that she would not have to go back to work with her old colleagues and the change was to be permanent. Ms Harriott preferred this option, although Greenwich meant a longer commute, and Ms Salvege-Owen provided her with information about the shuttle bus service she could take from Lewisham.

26. The medical advice given by the OH Advisor at that case conference was a key aspect of the evidence. According to the minutes prepared by the HR adviser her history of absences indicated a 50% chance of a relapse, but given that she had overcome the problems causing her absence, OH were hopeful that she would now make a successful return.

27. Following this case conference Ms Harriott duly made her return to work on 28 July 2016. She completed her phased return over the next five weeks without any further absences, and no concerns were raised about her work.

28. During this phased return period Ms Salvege-Owen was requested by the HR Department to prepare a report into Ms Harriott's history of absences, with a view to holding what is described in the Sickness Absence Policy as a Final Long-Term Sickness Absence Review. It took a few weeks to prepare what became an extensive report with 61 appendices, documenting all of the absences and exchanges over the previous three years or more.

29. Ms Salvege-Owen reported to a Mr Odewale, an interim General Manager. For some reason he was not appointed to carry out the Final Review, which was instead allocated to Ms Wicks from a different department.

30. In the management report Ms Salvege-Owen struck a rather critical tone, which she may well have felt was appropriate given the length of the absences in question, and her overall conclusion was that the present level of absences was unsustainable.

31. On the specific issue of the risk of a relapse, the comment made in the case review conference was summarised, but presented merely as a 50% risk of a relapse, rather than adding the context that this figure was merely what might be expected from her history of absences without considering that the

causes had now been resolved.

32. Curiously, she failed to make any mention of the fact that Miss Harriott had returned to work, although we concluded that this was either an oversight or she thought it was obvious. Her own evidence was that she thought that the whole process "a formality", a phrase she used several times in her evidence, adding that she had expected Ms Harriott to receive a further monitoring period.

33. That belief was reflected in arrangements for the Review Meeting. She took advice from HR about when and how to notify Ms Harriott, who was unaware that any further threat hung over her employment, and was advised to give her the report and covering letter at 5pm on Friday, 9 September 2016. She did so at the end of their one-to-one meeting, in which they had been discussing her progress. It was therefore simply given to her as she was leaving for the weekend.

34. The Trust's Sickness Absence Policy requires seven working days' notice of any such hearing, which was to take place the following Thursday. In fact Ms Harriott had two days' holiday booked for her birthday the following week, so this only left her with one clear working day's notice. However, happened to see Mr Odewale the following week, who told her that it was a formality now that she was back at work. This reassured her, and as a result she did not have any trade union representative or work colleague with her at the hearing. She had not in fact been able to keep up with her trade union dues and so could not get any representation from them, but she was not concerned about the outcome and so did not raise any complaint about the lack of notice either.

35. The hearing was held by Ms Wicks. We accept that she went through with Ms Harriott in detail the reasons for each of her absences to date. However, she accepted in her evidence to us that she was not aware when she started the meeting that Ms Harriott was back at work at all. She had understood that her role was to review Ms Harriott's absences, largely in the manner of a disciplinary hearing, and if they were unjustifiably large, to dismiss. This was in accordance with the advice she had received from the HR Department. Approaching the matter in that way, the fact that Ms Harriott had returned to work was not of overriding importance.

36. So, although Ms Harriott said that her problems were behind her, and that it was unlikely she would suffer any further blows of the kind described, Ms Wick felt that she could have no such confidence. She also took into account that Ms Harriott had made previous attempts to return to work which had been unsuccessful. Accordingly, she concluded that the appropriate course of action was dismissal.

37. This was recorded in her dismissal letter of 23 September 2016 which gave the reasons as (a) the history of absences to date and (b) the likelihood of further absences in future, reflecting the order in which these reasons were ultimately advanced at the hearing.

38. Ms Harriott had not been expecting this. It was another considerable blow, and when she set out her appeal against this dismissal she made clear that she had suffered again with depression. For that reason the appeal hearing

took some time to arrange and was the subject of two further adjournments. It was eventually heard in March 2017 by Ms Deane. As before, Ms Deane received the same advice that it was appropriate to dismiss in accordance with the Trust's policy if there had been an unacceptably high level of previous absences, and she relied as before on the information provided in the management report. Essentially therefore, for the same reasons as found by Ms Wicks, the decision was upheld. Ms Deane in fact felt that the figure of 50% was surprisingly low and that in such cases it would be usual to have a much more robust assessment from occupational health, at about 80 or 90%.

Applicable Law

39. The test of unfair dismissal is set out in section 98 of the Employment Rights Act 1996:

> (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—
>
> (a) the reason (or, if more than one, the principal reason) for the dismissal, and
>
> (b) that it is either [capability] or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held. …
>
> (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—
>
> (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
>
> (b) shall be determined in accordance with equity and the substantial merits of the case.

40. The basis of the Trust's that they were entitled to dismiss for past absences, arose from the terms of the Sickness Absence Policy itself, and in particular the opening words of paragraph 5.5.2 headed Final Long-Term Sickness Absence Review. This provided:

> "If an employee's overall attendance record is not satisfactory **or** a return to work within a reasonable timescale cannot be established, a hearing will be chaired by an appropriate designated officer with authority to dismiss." [emphasis added]

41. Particular emphasis was laid on the word "or" in this sentence, to the effect that it was not necessary for Ms Harriott to be off work for there to be a dismissal. We did not accept this view for a number of reasons.

42. Firstly, on its literal terms, it simply means that there could be such a review meeting where an employee *had* a fixed return to work date. It is difficult to imagine many circumstances in which it would be appropriate to conduct

such a final review where there was such an end in sight, but it may arise in cases where an employee is expected to return to work on that date but where medical advice is to the effect that this is unlikely to be successful. That would still be an inherently forward-looking and capability-based assessment, and crucially it is a situation in which the employee is still off sick.

43. Secondly, this is the Trust's Sickness Absence Policy. It deals with employees on long-term sickness absence, for whom the legal basis for dismissal would be capability. The Trust accepts that Ms Harriott was not dismissed primarily for capability, so it is difficult to see how it can justify dismissal for another reason by relying on this capability policy.

44. Thirdly and most significantly, the construction contended for by the Trust is entirely at odds with the context of the rest of that section, and indeed the policy as a whole. It goes on to state:

> "A medical report will be obtained from the Occupational Health Department before the hearing and this will also be discussed."

45. The reason for the up-to-date occupational health report is clearly to consider the likelihood of the employee making that successful return to work. Indeed, the next section of the policy deals with the return to work and it was accepted by Ms Wicks that the purpose of the policy was to achieve this end. This was therefore a situation which the policy had already served its purpose.

46. Further, the policy provides:

> "Before deciding on the appropriate course of action the designated officer will discuss with the employee and take into account:
>
> - The long-term prognosis, expected length of sickness absence (likely return to work date)
> - The wishes of the employee
> - The opinion of occupational health on the fitness of the employee to undertake the work for which he/she is employed; including consideration of ill-health retirement if appropriate
> - The needs of the surface in terms of the capacity in which the individual is employed, the particular requirements of the department and the impact the absences having other members of the department
> - The length of service, previous health record and attendance record.

47. Various alternative outcomes are then set out including rehabilitation/phased return, and subsequent sections deal with each alternative. It seems to us that the context of this policy must therefore be to consider the likelihood of the employee making a return to work. Although previous attendance record as a relevant consideration, that will inevitably be the case for a long-term absentee who has not yet made a return to work, in assessing the likelihood of them doing so.

48. We did not therefore accept that the Trust's policy, fairly interpreted, allowed for dismissal on this basis at all. It follows that the reason given for the dismissal – i.e. the history of absences - is not in fact a fair reason. We were not referred to any authority to the effect that dismissal for previous absences alone could be a fair reason.

49. In our view, although the Trust could have terminated Ms Harriott's contract of employment on a number of earlier occasions, there was something peculiarly unfair about staying its hand for so long, going to such lengths to arrange for her return to work, with all the attendant management attention and training that involved, overseeing her successful return to work, with Ms Harriott having put behind her all the serious and long-standing problems which had beset her, only then for her to be dismissed.

50. If we are wrong about that conclusion for any reason, and the real reason for dismissal was capability, we would nevertheless find that the dismissal was unfair, for three principal reasons.

51. Firstly, the Sickness Absence Policy required an up-to-date occupational health report before any decision to dismiss was taken. The importance of up-to-date medical information in such cases has been emphasised repeatedly and is a fundamental aspect of fairness when dismissing on grounds of absence. For example, In *East Lindsey District Council v Daubney 1977 ICR 566,* Mr Justice Phillips stated that "In one way or another steps should be taken by the employer to discover the true medical position" prior to dismissal. The most recent OH report was on 1 June 2016, and even the case conference was about two and a half months before the dismissal. On both those occasions, the OH Advisor was addressing the steps needed to make a return to work and assessing the probability of doing so. That assessment would normally be based heavily on the employee's own view of the situation, which by that time was much more positive. There ought therefore to have been a fresh assessment after her return to work. Any such assessment made at that stage, when the considerable step of returning to work and meeting some of her former colleagues had been achieved, and all the practical training and immersion in the role had been completed, would in all probability have been even more positive about her prospects of continuing. But whatever the case, that fresh assessment ought to have been carried out. It seems to us that it was probably overlooked for the simple reason that Ms Wicks was not aware that Ms Harriott had returned to work and so she did not address her mind to the need for a fresh report at the meeting.

52. The second procedural unfairness is apparently more minor, but the lack of notice of the hearing struck us as significant. The approach adopted in simply handing the report over on a Friday afternoon was remarkably casual and Ms Harriott had no real opportunity of disputing it. She was also given to understand that it was a formality. Had she been properly informed and given the opportunity to address the concerns she could have, for example, raised this with HR, sought extra time, or a further occupational health report for herself or asked her own GP for a report. She might also have been able to organise a companion for the hearing.

53. Thirdly, for the reasons already given, we do not accept that the Trust Sickness Absence Policy does allow for dismissal on grounds of capability

in the circumstances.

54. Since the dismissal was not for a fair reason, we nevertheless have to consider the prospect that Ms Harriott might have been fairly dismissed on grounds of capability in due course. We have very little evidence on which to base such an assessment but in our view even the original occupational health assessment cannot properly be interpreted as giving only a 50% chance of continuing employment. Fairly construed, the position in early July 2016 was considerably more positive. Those reported comments also indicated that the longer her return to work lasted the more likely the return was to become permanent. It is certainly the case that all of the life events which had so affected Miss Harriott were behind her and none did in fact recur – the only setback was her dismissal. Nevertheless, we could not altogether discount the possibility of some further absence on grounds of depression which would have led the Trust to dismiss, and so we make a 10% deduction to reflect this policy applying the well-known decision in *Polkey v A E Dayton Services Ltd 1988 ICR 142 HL*

55. Returning to the claim for disability discrimination, as already identified the only issue here is one of justification i.e. whether dismissal was a proportionate means of achieving a legitimate aim. Ms Ramadan accepted, as she had to, that this had to be a forward-looking exercise. In order to *achieve* a particular aim, the step taken had to go some way towards it. It could not therefore be a backward-looking process. It follows automatically that to dismiss purely because of the history of absences, rather than the likelihood or propensity for further absences, cannot in our view be justified.

56. The Supreme Court in *Chief Constable of West Yorkshire Police v Homer [2012] ICR 704* held that to be proportionate a measure must be both an appropriate means of achieving the aim and reasonably necessary in order to do so. But it will not be proportionate it if there is a less discriminatory means which would achieve the same aim. In our view, the aim of achieving a satisfactory level of overall attendance, and hence avoiding any impact on cost or service, could equally have been achieved by imposing a further monitoring period, and in the circumstances of her successful return to work that was in our view the clear and obvious alternative, with a much less discriminatory impact. Indeed, Ms Salvege-Owen gave evidence of this was the outcome she had been expecting. Both Ms Wicks and Ms Deane accepted that they had the power to give that alternative sanction and a three-month monitoring period had been introduced on a previous occasion. They also accepted that if Ms Harriott had been back at work for six months it would have been inappropriate to dismiss her on grounds of her previous absences, as opposed to the seven-week return she had accumulated. It follows that had she managed to achieve a further three-month period she would essentially have been out of the woods. If she had gone off sick in that period she could have had little or no complaint about being dismissed and would have had fair warning of the possibility. The Trust could then have gone about recruiting a replacement. (We heard no evidence about what steps were taken following Ms Harriott's dismissal to recruit a replacement).

57. It follows therefore that even if dismissal on the grounds given could be regarded as a step towards the legitimate aims in question, it was not proportionate and so it must also amount to disability discrimination.

58. It was not possible in the time available to consider remedy and so a separate remedy hearing with a time limit of one day was arranged for **Friday 23 November 2018**.

We then made the following case management orders by CONSENT in order to make arrangements for that remedy hearing. Insofar as they were not made by consent, reasons were given at the time and are recorded above.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. Disclosure of documents

1.1. The parties are ordered to give mutual disclosure of documents relevant to the remedy by list and copy documents so as to arrive on or before **22 June 2018**.

1.2. Documents relevant to remedy include evidence of all attempts to find alternative employment: for example a job centre record, all adverts applied to, all correspondence in writing or by e-mail with agencies or prospective employers, evidence of all attempts to set up in self-employment, all pay slips from work secured since the dismissal, the terms and conditions of any new employment.

1.3. 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.

1.4. 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.

1.5. The claimant is also ordered to disclose by list and copy so as to arrive with the respondent by **22 June 2018** all medical records held by the claimant's GP and/or Consultant for the period from 1 September 2016 to date, including notes, whether manual or on computer, of attendances by the claimant, referrals to other medical or related experts, reports back from such experts and so on.

2. Schedule of Loss

2.1. The claimant is ordered to provide to the respondent and to the Tribunal, so as to arrive on or before **7 September 2018**, a properly itemised Schedule of Loss which is a summary calculation showing what financial sums of loss she claims to have suffered as a result of the matters complained of reflecting, if appropriate, earnings in any employment since the date of her dismissal. The claimant is also ordered to include information relevant to the receipt of any state benefits.

2.2. In the event that the claimant is seeking compensation for injury to feelings arising out of alleged acts of discrimination, the claimant is also asked to specify what figure she believes should be awarded in that respect. She is referred to paragraph 14 of the section of the Presidential Guidance on General Case Management headed 'Remedy' and the guidelines in the case of Vento-v-Chief Constable of West Yorkshire Police, as recently updated by the President;

https://www.judiciary.gov.uk/wp-content/uploads/2018/07/vento-consultation-response-20180904.pdf (see also the hyperlink for the Guidance at the bottom of this Order).

2.3. As the claimant will seek to recover losses within reference to pension entitlement, she is referred to the Presidential Guidance on the Principles for the calculation for pension loss;

https://www.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions (for England and Wales).

2.4. The respondent shall, on or before **5 October 2018**, serve a Counter Schedule which will identify the arguments that it will seek to raise in relation to the claimant's calculations and the extent to which the arithmetic within it is agreed or disputed.

3. Bundle of documents

3.1. It is ordered that the respondent has primary responsibility for the creation of the single joint bundle of documents required for the hearing.

3.2. To this end, the parties are ordered to co-operate over the preparation of a joint, agreed bundle of documents for the hearing, the index for which should be agreed on or before **6 July 2018** and which should include only documents to which they intend to refer, either by evidence in chief or by cross-examining the witnesses, during the course of the hearing.

3.3. The claimant is then ordered to provide to the claimant a full, indexed, page numbered bundle to arrive on or before **20 July 2018**.

3.4. The respondent is ordered to bring sufficient copies (at least three) to the Tribunal for use at the hearing, by 9.30 am on the morning of the hearing.

4. Witness statements

4.1. It is ordered that oral evidence in chief will be given by reference to typed witness statements from parties and witnesses.

4.2. 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.

4.3. The facts must be set out in numbered paragraphs on numbered pages, in chronological order.

4.4. If a witness intends to refer to a document, the page number in the bundle must be set out by the reference.

4.5. It is ordered that witness statements are exchanged sequentially, with the claimant's provided by **7 September 2018** and the respondent's by **5 October 2018**.

Note; For further assistance in relation to the requirements of these directions and in order to prepare themselves for the final hearing, the parties are referred to the *Presidential Guidance - General Case Management* which can be found at;

http://www.justice.gov.uk/downloads/Tribunals/employment/rules-legislation/presidential-guidance-general-case-management.pdf

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 Fowell

_____

Date 18 June 2018