



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr K Niles

**Respondent:** Clarify Solutions Selling Ltd

## RECORD OF A PRELIMINARY HEARING

**Heard at:** WATFORD

**On:** 29 April 2019

**Before:** Employment Judge Tuck

### Appearances

For the claimant: Ms R Hodgkins, counsel.

For the respondent: Ms M Tutin, counsel.

## JUDGMENT

The claimant's application to amend his claim is permitted to the extent set out below.

## REASONS

1. This matter came before EJ Bedeau on 1 March 2019 for a Preliminary Hearing, at the conclusion of which he determined that the Claimant's claims of unfair dismissal and disability discrimination as pleaded in the ET1 had been presented within time and could proceed to a Full Hearing. The reasons of EJ Bedeau set out the background to this claim at paragraphs 1 – 7 and are relied upon herein.
2. The issue of whether the Claimant's application to amend, which had been ventilated on 7 August 2018 and then set out in writing (I am told by Ms Tutin in slightly different terms) on 27 September 2018, fell for determination by me today.

3. Both counsel helpfully produced written skeleton arguments which they supplemented by way of oral submissions.

**Claimant's application.**

4. Ms Hodgkins submitted that notwithstanding that the original claim form consisted of just 3 paragraphs, while the Amended Particulars of Claim ran to some 189 paragraphs, this was "fundamentally, simply a clarification and the provision of particulars of his claim as originally pleaded", and as such was a "relabelling exercise" based on the same facts. She stated that it was inevitable that further and better particulars of this claim would have been required, and sought to include claims of direct discrimination, discrimination arising from disability and indirect disability discrimination.
5. Ms Hodgkins set out in her written submissions the balance of hardship which she said was very much in favour of permitting the application to amend.
6. In the course of her submissions, I sought further clarification of the legal basis of the claims.

**Respondent's response.**

7. Ms Tutin submitted that on 7 August 2018 before EJ Vowles, it had been indicated that the claim form contained claims only of unfair dismissal and failure to make adjustments in two regards, firstly in relation to the application of the capability procedure and secondly in failing to take into consideration the OH recommendations.
8. She set out why the amendments in adding new claims under sections 13, 15 and 19 of the Equality Act 2010 could not, considering the case of *Ali v Office for National Statistics*, be re-labelling, and that they required different enquiries and comparators than the existing claims. Whilst she appreciated that the claimant had been acting in person when submitting his ET1, she submitted that he would have been able at the very least to list the factual matters about which issue was taken, but the amendments sought to introduce extensive new factual allegations. The application was being determined some 22 months after the rejection of the claimant's appeal against dismissal, and that the delay was highly prejudicial as memories will inevitably have faded. Clearly, the greater the scope of the amendments and the further they are away from the existing claims of unfair dismissal and failure to make adjustments, the greater the prejudice the Respondent would experience.

**Discussion with ET.**

9. To date substantive preparation for the hearing listed at Reading ET for 1, 2, 3 and 4 July 2019 have not been undertaken (and indeed there have been no orders until today). The parties were informed that if that hearing were to be vacated, a relisted hearing would not be possible prior to Spring 2020. This led to a reflection as to the scope of the amendments being sought. Ms Hodgkins submitted that in addition to considering the claims of unfair dismissal and failure to make reasonable adjustments, the claimant's essential complaint that the process which culminated in his dismissal could be encapsulated by a more

focused application to amend to include solely a claim under section 15 EqA 2010.

**Law.**

10. Presidential guidance on the amendment of claim forms essentially sets out the principles to be drawn from the two seminal cases of **Cocking v Sandhurst (Stationers) Ltd [1974]** ICR 650, and **Selkent Bus Co Ltd v Moore** [1996] ICR 386. The guidance includes the following:
  - a. Para 5.1 – applications vary from the correction of clerical and typing errors to the addition of facts, the addition or substitution of labels for facts already described, and the making of entirely new factual allegations which change the basis of the existing claim. The tribunal must decide whether the amendment applied for is minor or a substantial alteration describing a new complaint.
  - b. Para 6.1 – the tribunal draws a distinction between amendments as follows:
    - i. Those that seek to add or substitute a new claim arising out of the same facts as the original claim; and
    - ii. Those that add a new claim entirely unconnected with the original claim.
  - c. Para 12 – where a party seeks to add a new ground of complaint, the ET must look for a link between the facts described in the claim form and the proposed amendment. If there is no such link the claimant will be bringing an entirely new cause of action. In this case, the Tribunal must consider whether the new claim is in time.
  
11. Ms Tutin referred me to the cases of:
  - a. **Abercrombie v Aga Rangemaster Ltd** [2013] IRLR 953, and in particular the guidance at paragraph 47 as to common factors relevant to the exercise of discretion as to whether to permit an amendment.
  - b. **Reuters Ltd v Cole** UKEAT /0258/17 which held that where there was a claim under s 15 EqA claim, an amendment to also include direct discrimination under s13 was more than simply re-labelling of existing facts as it required a greater degree of factual inquiry.
  - c. **Ali v Office for National Statistics** [2005] IRLR 201, in which it was held that direct and indirect discrimination are different types of unlawful act, and that a claim for indirect could not be considered to be within the rubric of the original direct discrimination complaint.
  - d. **Gillett v Bridge** UKEAT 0051/17 which noted that ET's make consider whether a new claim has reasonable prospects of success when exercising its discretion, and repeated the relevance of the timing of the application being made.
  - e. **Galilee v Commissioners of Police of the Metropolis** [2018] ICR 634, EAT in which HHJ Hand QC held (at para 109(a)) that "amendments to pleadings in the ET which introduce new claims or causes of action take effect for the purposes of limitation at the time permission is given to amend".

**Conclusions.**

12. I considered it important to start with the ET1 and first determine what claims are set out therein.
- a. The parties agreed that there was a claim of unfair dismissal; the ET3 sets out that dismissal is admitted, and the Respondent relies on the potentially fair reason of lack of capability.
  - b. The parties further agreed that there was a complaint of failure to make reasonable adjustments within the ET1 (to which I return below).
  - c. Nothing within the ET1 could be fairly read as setting out a claims of direct discrimination, discrimination arising from disability or indirect discrimination.
13. If the application to amend involves any 'new' claim, the parties agree that I must have regard to the relevant time limits which apply to the claim in question. All of the applications in this case are made under the Equality Act 2010, section 123 of which provides that a claim may be considered if presented outside the relevant limitation period providing it is just and equitable so to do. It is unfortunate that the written application for an amendment to the ET1 having been presented on 27 September 2018, it is not being determined by the ET until 29 April 2019 some 7 months later. Whilst I accept that I am bound by *Galilee* to consider for the purposes of the limitation period the date on which any application to amend is granted, I do place a heavy emphasis on the fact that the Respondent has had notice and the full details of the application since 27 September 2018, and that it has been completely out of the control of the Claimant as to when thereafter the application has fallen for consideration. It is however inevitable, with an EDT in May 2017, that any 'new' claim, whether one takes the date of the application or of determination, would in either event be significantly out of time.

**Reasonable Adjustments.**

14. Dealing first with the amended particulars in relation to the claim of failure to make reasonable adjustments, at paragraphs 181 – 188 three adjustments are contended for.
- a. Failure to adjust [the] capability procedure, and in particular only giving a month between stage 1 and two meetings whereas the claimant avers that he would have benefited from being given a longer period by the Respondent between each stage. I do conclude that there is a claim concerning an alleged failure to adjust the capability management process in the ET1, and I am satisfied that the amendments sought to clearly set out the legal issues which will have to be determined (see the list of issues below) amount to minor amendments which do not add or substitute new causes of action, but clarify what is a very brief pleading. The Respondent suffers no prejudice by such clarification been given and to the extent that permission is required, it is granted.
  - b. The second adjustment said to be sought is entitled "unfair allocation of projects" and the claimant said that being allocated to projects in a new sector placed him at a substantial disadvantage (though he also cited a

non-disabled employee who had achieved no success in this same area). I did not conclude that this could fairly be read as being within the ET1, and I refuse permission to amend the claim. I accept Ms Tutin's submission that the question of project allocation would raise significant new factual enquiries, and given this matter goes back to 2016, is significantly out of time. I note that the claimant describes his disadvantage in this regard as being "hindered [in achieving] his targets". As the issue of targets will be considered, my assessment is that the claimant will not suffer significant hardship if this new factual allegation is left out of account, whereas the Respondent would suffer significant hardship in having to call further evidence, having had no indication prior to September 2018 that this would be a matter in dispute.

- c. The third adjustment contended for his "failure to adjust targets". This is within the ET1 which sets out a complaint of "failure to make reasonable allowance for underperformance", and failure to consider the OH report which provided "guidance regarding working hours and targets". As with the first adjustment, I am satisfied that the amendments sought to clearly set out the legal issues which will have to be determined (see the list of issues below) amount to minor amendments which do not add or substitute new causes of action, but clarify what is a very brief pleading. The Respondent suffers no prejudice by such clarification been given and to the extent that permission is required, it is granted.

#### **Direct and Indirect discrimination**

15. The claimant withdrew the applications to amend to include direct disability discrimination and/or indirect disability discrimination. It is in any event clear that neither is in the ET1, and that
  - a. the 13 alleged acts of direct discrimination amount to fresh causes of action which even at the date of the application to amend being made (27/9/18) were significantly out of time.
  - b. The claims of indirect discrimination overlap largely with the alleged failure to make adjustments, but are fresh causes of action involving a distinct scope of enquiry.

As the application to amend was altered to be more focused after submissions, I make no further findings in relation to these causes of action.

#### **Discrimination Arising From Disability.**

16. Finally, as to the application to amend the ET1 to include a claim for breach of section 15 EqA, I have considered separately paragraphs 179 and 180 of the Amended ET1.

17. At paragraph 179 of the Amended ET1 the claimant submits that he was:

"treated ...unfavourably by discussing his performance in October 2016, for the months of June to September without considering the time he had taken off work to recovery from his surgery which again had arisen as a consequence of his disability."

This factual complaint is in my judgment within the first paragraph of the ET1 which complains of:

“failure to make reasonable allowance for under performance during my long term recovery from cancer”.

The factual complaint as to how the Claimant’s performance for the period following his surgery for prostate cancer in June 2016, was to be judged, is squarely the matter the claimant sought to put before the ET in his claim form. It is obvious that the claimant was contending in his ET1 that underperformance had arisen from his disability during his recovery period after surgery. I do conclude that to permit a section 15 claim is simply a re-labelling of the (albeit brief) content of the ET1. Alternatively, if this new cause of action necessitates an amendment, I would grant permission for this. Whilst this is undoubtedly out of time, I am satisfied that the prejudice to the Respondent will be minimal as in answering the claim for unfair dismissal and relying on the reason of capability, the contents of the meeting of 3 October 2016 will be within the scope of the Tribunal’s inquiry in any event, and indeed have already been pleaded to in the ET3. On the other hand, there would be prejudice to the claimant if this central complaint as to how his performance was managed in the aftermath of his cancer treatment were not considered as an allegation of discrimination. The question of whether the events of the meeting on 3 October 2016 form part of a course of conduct with the matters that followed will have to be determined by the Tribunal, as will with issue of whether it is just and equitable to extend the time limit.

18. At paragraph 180 of the Amended ET1 it states that the 13 allegations of direct discrimination and the three claims of indirect discrimination are all pleaded alternatively as allegations of breach of section 15 EqA. I have considered carefully each of those 16 factual matters, both separately and cumulatively. I had initially formed the view that none of the matters were within the ET1 such that for any to proceed, it would be necessary to grant an amendment, and the first list of issues I drafted and provided the parties with during the hearing on 29 April reflected that position. However, on further consideration whilst preparing this judgment, I have concluded that it is a more nuanced situation (as set out at paragraph 18(b) below). **The issues listed in the Case Management Summary are therefore amended at paragraphs 3(vi), (vii) and (viii) from the draft which I gave to the representatives on 29 April 2019. The issues as set out in the order below are those to be determined at the final hearing.**

- a. Act number 3 (the meeting of 3/10/16) is within the complaint in the ET1 and in paragraph 179 of the Amended ET1, dealt with in the paragraph above.
- b. To the extent that acts numbered 9, 10 and 11 refer to an allegation that the Respondent failed to consider the OH report of 4 April 2017 at the meetings on 7 and 11 April 2017, in my judgment this is within the ET1 (at paragraph 2 “deliberation failure to allow all relevant information to be considered during the final capability hearing...as the meeting went ahead without the 2<sup>nd</sup> occupational health report being available and submitted as evidence”). This is a matter of re-labelling as discrimination arising from disability the factual matters discernible from the ET1. I permit any formal amendments required to clarify what the “matter arising” from disability is (as set out in the list of issues below), i.e.

arising from having a disability was the fact of the claimant having an OH report with recommendations. The alleged unfavourable treatment of not having that report considered is apparent from the second paragraph of the ET1. If I am wrong and this is more than relabelling, I would have exercised my discretion to permit this amendment (and found that it was just and equitable to extend the time limit for presenting the complaint) because it is so closely linked to the claims raised, and does not put the Respondent at any disadvantage when it was on notice that the evidence relating to the capability of the claimant relied upon prior to termination was squarely in issue.

- c. As to act 10, dismissal - reading the ET1 as a whole, the claimant does clearly complain of his dismissal and he ticked the box that he was discriminated against due to his disability. The ET1 describes failures to make adjustments and failure to consider his OH report as leading to a “deliberate” aim of “achieving a dismissal outcome”. On balance however I do not consider it is possible to read the ET1 as including a claim that his dismissal was discriminatory. This amounts to a new cause of action. It is however one which is linked extremely closely to the existing causes of action of unfair dismissal and failure to make reasonable adjustments. Whilst out of time, I do consider that, in circumstances where the Respondent will be setting out in detail its reasons for dismissal, and permitting this as an additional head of claim will not add significantly to the factual enquiry which will have to be undertaken, it is appropriate to grant the application to amend.
- d. The remain factual allegations are not within the ET1. They would constitute wholly new claims – even though they arose at the time of the complaints which will be determined (and will no doubt be set out in witness statements as background material), the more detailed enquiry required to consider each and every factual allegation and to determine what is said to have arisen from the disability and how it has led to unfavourable treatment would place the Respondent at a significant disadvantage. The claims are out of time, and I consider the balance of hardship to fall in the respondent’s favour, in circumstances where the claimant’s fundamental complaint that his dismissal was discriminatory will be determined.

## CASE MANAGEMENT SUMMARY

### Final hearing

- (1) All issues in the case, including remedy, will be determined at a final hearing before an Employment Judge sitting with Members at the **Reading Employment Tribunals, 30-31 Friar Street (entrance in Merchants Place, Reading RG1 1DX)** on **1, 2, 3 and 4 July 2019**, starting at 10 am or as soon as possible afterwards. The time estimate for the hearing is four ] days, based on the claimant’s intention to give evidence and the respondent’s to call up to five witnesses, and on the following provisional timetable:

- (i) maximum 2.5 days for oral and other evidence on liability;
- (ii) a maximum total of 2 hours (half each) for submissions on liability;
- (iii) approximately 1 day for the Tribunal to determine the issues which it has to decide, reach its conclusions and prepare its reasons, give judgment and to go on to deal with remedy, including hearing further evidence if appropriate, reaching conclusions and giving judgment, if the claimant succeeds in whole or part.

### **The claim**

- (2) The claimant presented claims of unfair dismissal and disability discrimination following the termination of his employment with the Respondent as a business development manager.

### **The issues**

- (3) The issues between the parties which potentially fall to be determined by the Tribunal are as follows:

#### *Time limits / limitation issues*

- (i) Were all of the claimant's complaints presented within the time limits set out in sections 123(1)(a) & (b) of the Equality Act 2010 ("EQA")? Dealing with this issue may involve consideration of subsidiary issues including: whether there was an act and/or conduct extending over a period, and/or a series of similar acts or failures; whether it was not reasonably practicable for a complaint to be presented within the primary time limit; whether time should be extended on a "*just and equitable*" basis.

#### *Unfair dismissal*

- (ii) What was the principal reason for dismissal and was it a potentially fair one in accordance with sections 98(1) and (2) of the Employment Rights Act 1996 ("ERA")? The respondent asserts that it was a reason relating to the claimant's CAPABILITY.
- (iii) If so, was the dismissal fair or unfair in accordance with ERA section 98(4), and, in particular, did the respondent in all respects act within the so-called 'band of reasonable responses'?

#### *Remedy for unfair dismissal*

- (iv) If the claimant was unfairly dismissed and the remedy is compensation:



- a. if the dismissal was procedurally unfair, what adjustment, if any, should be made to any compensatory award to reflect the possibility that the claimant would [still have been dismissed had a fair and reasonable procedure been followed / have been dismissed in time anyway]? See: Polkey v AE Dayton Services Ltd [1987] UKHL 8; paragraph 54 of Software 2000 Ltd v Andrews [2007] ICR 825; [W Devis & Sons Ltd v Atkins [1977] 3 All ER 40; Crédit Agricole Corporate and Investment Bank v Wardle [2011] IRLR 604].

*Disability*

- (v) The Respondent admits that the claimant was disabled by reason of cancer at all material times.

*EQA, section 15: discrimination arising from disability*

- (vi) Did the following thing(s) arise in consequence of the claimant's disability:
  - a. Having a reduced cognitive ability
  - b. Absence from work to recovery from surgery
  - c. Having an OH report dated 4 April 2017 setting out adjustments which would be reasonable to be made.
  - d. Inability to meet targets as to the required number of sales leads to be generated.
- (vii) Did the respondent treat the claimant unfavourably as follows:
  - a. Reviewing the claimant's performance during the period of June -September 2016, on 3 October 2016, without regard to the claimant's absence from work whilst recovering from surgery and without regard to the physical and psychological side effects of his surgery.
  - b. Failing to consider the OH report of 4 April 2017 at the meetings of 7 and 11 April 2017.
  - c. Dismissing the claimant for lack of capability.
- (viii) Was the Respondent's treatment of the Claimant in the meeting of 3 October 2016, the allegation of not considering the 4 April 2017 OH report or in dismissing him because of those things which arose in consequence of his disability?
- (ix) If so, has the respondent shown that the unfavourable treatment was a proportionate means of achieving a legitimate aim? The

respondent will by **13 May 2019** set out any legitimate aim on which it relies.

*Reasonable adjustments: EQA, sections 20 & 21*

- (x) Did the respondent not know and could it not reasonably have been expected to know the claimant was a disabled person?
- (xi) A “PCP” is a provision, criterion or practice. Did the respondent have the following PCP(s):
  - a. A capability policy
  - b. A requirement that business development managers reach a target of generating a set number of sales opportunities per month (this was four in the period from December 2016 to the Claimant’s EDT, having been higher previously).
- (xii) Did any such PCP put the claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled at any relevant time, in that he was unable to meet the standard monthly targets for generating the required number of sales leads, and was unable to demonstrate improvement within the periods set out in the capability policy?
- (xiii) If so, did the respondent know or could it reasonably have been expected to know the claimant was likely to be placed at any such disadvantage?
- (xiv) If so, were there steps that were not taken that could have been taken by the respondent to avoid any such disadvantage? The burden of proof does not lie on the claimant, however it is helpful to know what steps the claimant alleges should have been taken and they are identified as follows:
  - a. Providing longer periods than those set out in the capability policy to demonstrate improved performance.
  - b. Reducing the target of sales opportunities to be generated (as indeed the OH reports had suggested).
- (xv) If so, would it have been reasonable for the respondent to have to take those steps at any relevant time (i.e. in the period after the Claimant’s absence for cancer treatment in June 2016, until his EDT)?

*Remedy*

- (xvi) If the claimant succeeds, in whole or part, the Tribunal will be concerned with issues of remedy and in particular, if the claimant is

awarded compensation and/or damages, will decide how much should be awarded.

### Other matters

- (4) The attention of the parties is drawn to the Presidential Guidance on 'General Case Management', which can be found at:  
[www.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions/](http://www.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions/)
- (5) The parties are reminded of rule 92: "*Where a party sends a communication to the Tribunal (except an application under rule 32) it shall send a copy to all other parties, and state that it has done so (by use of "cc" or otherwise)...*". **If, when writing to the tribunal, the parties don't comply with this rule, the tribunal may decide not to consider what they have written.**
- (6) The parties are also reminded of their obligation under rule 2 to assist the Tribunal to further the overriding objective and in particular to co-operate generally with other parties and with the Tribunal.
- (7) The following case management orders were [*uncontentious and effectively made by consent / largely made by consent. Insofar as they are not made by consent, reasons, to the extent not set out below, were given at the time and written reasons will not be provided unless they are asked for by a written request presented by any party within 14 days of the sending of this written record of the decision*].

## ORDERS

### Made pursuant to the Employment Tribunal Rules of Procedure

#### 1. Amendment

- 1.1 Permission to amend the ET1 to the extent set out above was granted.

#### 2. Statement of remedy / schedule of loss

- 2.1 The claimant must provide to the respondent by **13 May 2019** a document – a "Schedule of Loss" – setting out what remedy is being sought and how much in compensation and/or damages the tribunal will be asked to award the claimant at the final hearing in relation to each of the claimant's complaints and how the amount(s) have been calculated.
- 2.2 If any part of the claimant's claim relates to dismissal and includes a claim for earnings lost because of dismissal, the Schedule of Loss must include the following information: whether the claimant has obtained alternative employment and if so when and what; how much money the claimant has

earned since dismissal and how it was earned; full details of social security benefits received as a result of dismissal.

- 2.3 The parties are referred to: the Presidential Guidance on pension loss at [www.judiciary.gov.uk/wp-content/uploads/2013/08/presidential-guidance-pension-loss-20170810.pdf](http://www.judiciary.gov.uk/wp-content/uploads/2013/08/presidential-guidance-pension-loss-20170810.pdf);

If the claimant is claiming for loss of pension, the Schedule of Loss must include the following information:

- 2.3.1 precisely how much is being claimed and on what factual and arithmetical basis.

### **3. Documents**

- 3.1 On or before **20 May 2019** the claimant and the respondent shall send each other by list and copy, all documents that they wish to refer to at the final hearing or which are relevant to any issue in the case, including the issue of remedy.

### **4. Final hearing bundle**

- 4.1 By **27 May 2019**, the parties must agree which documents are going to be used at the final hearing. The respondent must paginate and index the documents, put them into one or more files (“bundle”), and provide the claimant with a ‘hard’ and an electronic copy of the bundle by the same date. The bundle should only include documents relevant to any disputed issue in the case [that won’t be in the remedy bundle referred to below] and should only include the following documents:

- the Claim Form, the Response Form, any amendments to the grounds of complaint or response, any additional / further information and/or further particulars of the claim or of the response, this written record of a preliminary hearing and any other case management orders that are relevant. These must be put right at the start of the bundle, in chronological order, with all the other documents after them;
- documents that will be referred to at the final hearing and/or that the Tribunal will be asked to take into account.

In preparing the bundle the following rules must be observed:

- unless there is good reason to do so (e.g. there are different versions of one document in existence and the difference is relevant to the case or authenticity is disputed) only one copy of each document (including documents in email streams) is to be included in the bundle
- the documents in the bundle must follow a logical sequence which should normally be simple chronological order.

### **5. Remedy bundle**

- 5.1 The claimant must prepare a paginated file of documents (“remedy bundle”) relevant to the issue of remedy and in particular how much in compensation and/or damages they should be awarded if they win their claim and provide

the [respondent] with a 'hard' and electronic copy of it by **27 May 2019**. The documents must be arranged in chronological or other logical order and the remedy bundle must have an up to date schedule of loss at the front of it.

## 6. Witness statements

- 6.1 The claimant and the respondent shall prepare full written statements containing all of the evidence they and their witnesses intend to give at the final hearing and must provide copies of their written statements to each other on or before **14 June 2019**. No additional witness evidence will be allowed at the final hearing without the Tribunal's permission. The written statements must: have numbered paragraphs; be cross-referenced to the bundle(s); contain only evidence relevant to issues in the case. The claimant's witness statement must include a statement of the amount of compensation or damages they are claiming, together with an explanation of how it has been calculated.

## 7. Final hearing preparation

- 7.1 ***On the working day immediately before the first day of the final hearing (but not before that day), by 12 noon,*** the following parties must lodge the following with the Tribunal:
- 7.1.1 four copies of the bundle(s), by the respondent;
  - 7.1.2 four hard copies of the witness statements (plus a further copy of each witness statement to be made available for inspection, if appropriate, in accordance with rule 44), by whichever party is relying on the witness statement in question;
  - 7.1.3 three hard copies of any written opening submissions / skeleton argument, by whichever party is relying on them / it;
  - 7.1.4 three hard copies of the following, agreed if possible, a neutral chronology, a 'cast list', and a reading list.

## 8. Other matters

- 8.1 The above orders were made and explained to the parties at the preliminary hearing. All orders must be complied with even if this written record of the hearing is received after the date for compliance has passed.
- 8.2 Anyone affected by any of these orders may apply for it to be varied, suspended or set aside. Any further applications should be made on receipt of these orders or as soon as possible.
- 8.3 The parties may by agreement vary the dates specified in any order by up to 14 days without the tribunal's permission except that no variation may be agreed where that might affect the hearing date. The tribunal must be told about any agreed variation before it comes into effect.
- 8.4 **Public access to employment tribunal decisions**

All judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

- 8.5 **Any person who without reasonable excuse fails to comply with a Tribunal Order for the disclosure of documents commits a criminal offence and is liable, if convicted in the Magistrates Court, to a fine of up to £1,000.00.**
  
- 8.6 **Under rule 6, if any of the above orders is not complied with, the Tribunal may take such action as it considers just which may include: (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.**

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**Employment Judge TUCK**

30 April 2019

Sent to the parties on:

10 May 2019

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For the Tribunal:

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