



EMPLOYMENT TRIBUNALS

Claimant
Ms B Ligudzinska

v **(R1) GI Group Recruitment Limited**
(R2) Boots UK Limited

Respondents

RECORD OF AN ATTENDED PRELIMINARY HEARING

Heard at: **Nottingham**

On: **Wednesday 27 November 2019**

Before: **Employment Judge P Britton (sitting alone)**

Appearances

For the Claimant: **Mrs B Pawlik, Representative**
For the Respondents: **(R1) Mr Gunstone of Counsel**
 (R2) Mr A Graham, Solicitor

JUDGMENT

The Claimant is a disabled person pursuant to s6 and schedule 1 of the Equality Act 2010 for the purposes of these proceedings.

REASONS

The issue and preliminary observations

1. As ruled by Employment Judge Hutchinson sitting at an attended Preliminary Hearing on 31 July 2019 my first task today is to determine whether the Claimant is a disabled person as defined at section 6 and schedule 1 of the Equality Act 2010 (EQA). Of course in dealing with that issue I will have to look at what are the material times in what is a somewhat complicated scenario. I am not dealing with issues at this stage that might go to jurisdiction such as time points.

2. As to what are the disabilities relied upon the first was described in Mr Hutchinson's analysis as low back pain. This stems I think from the ET1 presented on the Claimant's behalf by her then solicitor Mr Tomasz Gracka to the Tribunal on 14 February 2019. He had ceased to represent the Claimant by the time of that first Preliminary Hearing and she has remained thereafter legally unrepresented. She has, however, had the assistance of Mrs Pawlick today. The second condition he set out was migraines. For reasons I come to I do not think that it is engaged as a condition

for the purposes of the definition as a disability in itself. The third condition relied upon was depression. The learned Judge directed that for the purposes of my adjudication the Claimant send what I would describe as the medical library relating to herself to the Respondents and the Tribunal. I have therefore a comprehensive set of medical notes before me including specialist reports on the back issue and as to the depression from a psychiatric counsellor.

3. I read those before the start of this hearing. They are also in the bundle which is before me prepared for the hearing by the Respondents. They have been comprehensively explored during the cross examination of the Claimant by Mr Gunstone. Mr Johnson therefore did not need to further cross examine.

4. I have also asked questions of the Claimant, as I am of course entitled to do, and in particular for clarification looking at the way in which she worked for the respondents. I have also in that respect obtained elaboration of the impact statement that she provided to the Tribunal as directed by Employment Judge Hutchinson and in terms of limitations on her ability to undertake normal day to day activities on both the physical (back and leg) and mental (depression) fronts. As a Judge of longstanding I am extensively experienced in terms of issues relating to disability including mental health issues. It is perhaps a trite observation to make at the onset that mental health conditions tend to be recurring. That is to say they come and go depending on such as circumstances that a sufferer may be facing at any given material time. The second point to make is that being on prescribed antidepressants can be a helpful indicator to showing depression at any material time and of course one has to then discount, which is not always easy, what would be the situation if the individual was not taking their antidepressants. Basically the construct will normally be how well is the individual in question coping when taking the anti depressant and what is he or she like when they are in low mood even when they are on them. Logically it would usually follow that the individual would only be worse if not taking the medication. The Claimant has regularly been prescribed anti depressants and has also attended counselling for depression.

5. As to back issues, one will usually look to see if there is objective medical, organic evidence. For reasons which I shall come to there is in this case. The second point to make is that back conditions can be extremely painful. That does not require much medical knowledge. And so again it frequently will assist the Tribunal to see if the individual concerned has whether continuously or from time to time, because back issues can be recurrent, been prescribed such as painkillers. In this case the Claimant has.

6. I then finally before I deal with these issues remind the parties of the seminal authority on determining issues of disability and impact on such as normal day to day activities which is **Goodwin v The Patent Office** [1999] IRLR 4EAT. In that context I therefore remind myself of the definition of disability at section 6 of the Equality Act 2010, thus:-

“1. 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.”

7. As to what is an impairment, see: **McNichol v Balfour Beatty Rail Maintenance Limited** [2002] IRLR 711 CA.

“The term “impairment” bears its ordinary and natural meaning. Impairment may result from an illness or it may consist of an illness. The essential question in each case is whether on a sensible interpretation of the relevant evidence, including the expert medical evidence and reasonable inferences which can be made from all the evidence, the Claimant can fairly be described as having a physical impairment.

8. Then, **J v DLA Piper UK LLP** [2010] IRLR 936 EAT.

“ In cases where there may be a dispute about the existence of an impairment, it will make sense to start by making findings about whether the claimant’s ability to carry out normal day to day activities is adversely affected (on a long term basis), and consider the question of impairment in the light of those findings. If the tribunal finds that the Claimant’s ability to carry out normal day to day activities has been adversely affected on a long term basis, it will in many or most cases follows as a matter of common sense inference that the claimant is suffering from a condition which has produced that adverse effect – ie, an impairment”. If that inference can be drawn, it will be unnecessary for the tribunal to try to resolve difficult medical issues.”¹

9. Mr Gunthorpe has quite rightly stressed to me the importance of expert medical evidence and cited to his skeleton argument **Morgan v Staffordshire University** [2001] WL UK 258 EAT. But I bear in mind that **McNichol** and **DLA Piper** come after that judgement. Thus it is not a prerequisite that there has to be expert medical evidence specifically addressing disability or not in terms of the condition. The Presidential Guidance to which he has also referred me does not spell that out as an essential. It can be of assistance of course. In this case Employment Judge Hutchinson did not order specific expert medical reports opining on the back or the depression and as to whether either constituted a disability as per the definition. Subsequent to the service upon the Respondents of the medical notes, including specialist reports, neither firm of solicitors required of the Tribunal that it now direct there should be said medical reports. I bear in mind the Claimant was unrepresented before today and has the most limited grasp of English. I therefore find it unfortunate, no criticism of Counsel as he has his instructions, for it be suggested that if this is a shortcoming it must be laid at the door of the Claimant. I look at it like this, and relying on in particular **McNichol** followed by **DLA Piper**; do I have enough evidence before me to enable me to make sensible interpretations of the evidence so as to be able to make a conclusion one way or the other? The answer is manifestly yes. I have very full medical notes. I have an occupational health report obtained by the first Respondent in December 2018. I have “to whom it may concern” letters written by her GP to I assume the first Respondent² during that year. I have the sworn evidence of the Claimant and her impact statement, and also in terms of what she told the occupational health specialist and which is set out in detail in the OH report.

10. Reverting to the definition of disability, as to long-term effects Sch. 1 s2(1) of the EQA states :-

“The effect of an impairment is long term if:-

- a) it has lasted for at least twelve months;*
- b) it is likely to last for at least twelve months; or*
- c) it is likely to last for the rest of the life of the person effected.”*

¹ In fairing this judgment I have provided a fuller extract from this judgment.

² Mr Gunstone has no instructions to the contrary.

11. As to when do I crystallise that effect, see **Richmond Adult Community College v McDougal** [2008] IRLR 227 CA:

“The point in time for determining whether the effect of an impairment is likely to last for at least 12 months is the time of the decision complained of. The Tribunal should make its judgment on the basis of evidence as to the circumstances prevailing at the time of that decision.”

12. So when is it that the primary decision complained of took place? I will return to that in due course.

13. Reverting to **Goodwin v The Patent Office** [1999] IRLR 4 EAT:-

“The act is concerned with the person’s ability to carry out activities. The fact that a person can carry out such activities does not mean that his ability to carry them out has not been impaired. The focus on the act is on the things the Claimant either cannot do or can only do with difficulty rather than on the things that the person can do.”

14. And last that brings me to what is meant by substantial adverse effect. It is again covered by that seminal judgment:

“Substantial means more than minor or trivial rather than “very large”. The Tribunal may take into account how the Claimant appears to the Tribunal to “manage”, although it should be slow to regard a person’s capabilities in the relatively strange adversarial environment as an entirely reliable guide to the level of ability to perform normal day to day activities.”

Findings of fact

15. The Claimant, who is Polish, had a riding accident either in 2010 or 2011 in Poland. As a consequence, she suffered severe back damage and which in turn affected her left leg. This required surgical intervention. As to what was undertaken is set out in particular by Grant Kerr, an Extended Scope Practitioner in Physiotherapy with the NHS in Nottingham, in his report on 27 September 2017. This was in fact a report back to Dr Zawadzka who was at the time the Claimant’s GP; and already by then there had been a first specialist report dated 19 September 2016 by Mr A Kulkani, locum consultant spinal surgery, again with the NHS in Nottingham. These reports confirmed that the operation which had taken place back in 2011 was a spinal decompression.

16. In 2014 the Claimant obtained work with GI Group Recruitment Limited (R1) which is an agency primarily supplying labour for warehousing activities. The Claimant was placed by it at Boots (R2) large site in Nottingham at Beeston as a Warehouse Operative; she worked in a department known as picking. This Judge with his extensive experience is well aware and there are many warehousing operations in the East Midlands, including Boots, and that work in warehousing such as that undertaken by the Claimant can be physically arduous. It will require for instance walking about the warehouse to pick orders. It can require reaching up to pick off a rack. In this case it would involve climbing two flights of metal stairs. It then requires her obviously to pick the items into a receptacle and then place them in boxes in terms of the relevant despatches and so on and so forth. So, twisting, stretching, walking and climbing. The Claimant’s record at work was self-evidently first rate.

17. This brings me back to the medical notes. By 8 January 2016 the Claimant was presenting to her GP with left sided recurrent radicular pain. She had back pain. This was radiating down her left leg. She had some loss of feeling in that limb: see page 8 of 65 of the GP notes. Flowing through to the clinical opinion of first Mr Kulkarni and thereafter the consultant neurologist this was linked with the initial riding injury. The beneficial effect of the surgery was no longer working. That her symptoms were genuine could not be plainer; and it meant, and I come back to her impact statement and what she told me about working, to start with in picking, that therefore this was beginning to have a significant impact on her abilities to be mobile. Thus she can only manage about one hundred metres walking. She cannot get up the stairs with any ease. She was then and still is suffering from chronic pain and was prescribed painkillers starting on 8 January 2016. That is the position she made clear to the occupational health nurse at the end of 2018. Is it something that was continuing prior thereto? Well it is obviously was there on 8 January 2016 as recorded by the doctors. Furthermore it led to the referrals. And in his second report Mr Kulkarni on 19 September 2016 confirmed nothing had changed: there has really been no improvement. He was considering a nerve root block injection. He had looked at the MRI scan. It confirmed “Left sided L5/S1 foraminal and extraforaminal disc **prolapse compressing** (my emphasis) mainly the left L5 nerve root....” Stop there. Think about it. What is the likely impact of pressure on the L5 nerve root? Again it does not need a medical expert to tell any of us, although they do in these reports; the net result will also inevitably be likely to be problems with the left leg as in this particular case. So I have no doubt that in 2016 there was a condition presenting likely to be aggravated or susceptible to such as the arduous working conditions to which I have referred. There is also no doubt on that medical evidence that there was by now a physical condition, forensically provable, and which was impacting upon her ability to do normal day to day activities as I have now described; and as she referred to inter alia to her GP and later on as I have said in the OH report. And I add that I found her evidence extremely convincing. She was tearful from time to time but what she had to say on this topic fits with the medical evidence.

18. We can then see that that position continued through 2016. Of course there will not be daily visits to the doctor; they are busy people. This is the kind of situation where there were repeat prescriptions being given by way of meds, ie painkillers which can be seen and otherwise it is waiting on the specialist reports to come back. I have referred to that of July 2016.

19. That therefore then leads me into 2017. During this period the Claimant had a friendly supervisor namely Keith who put her on light duties in picking. He made her position as comfortable as he could such as providing her with work sitting down by the conveyor checking that the boxes of picked items were neatly packed so that items were not sticking out. So doubtless that explains why up to July 2017 there were not any presentations by her to the GP viz her back or left leg. But in July she slipped getting out of the bath and unfortunately she fell onto her back. It is perhaps not surprising that this had the effect of aggravating the preceding condition to which I have referred. It is perhaps again obvious that it is likely that she would be more vulnerable to an aggravation of the existing condition if she fell in that way. She presented to her GP on 19 July. She had got neck pain. She had “*lower back pain going down to her left leg, left leg getting numb, gives way. Previously left foot drops work, works in a factory, does not want time off. Would like light duties.*” There is then a reference to low mood and not sleeping well to which I shall return.

20. Painkillers were being prescribed. There was discussion about whether she could have any light duties. I have referred to the report of 2 October 2017 of Grant Kerr. In effect it confirms the preceding reports of the neuro specialist. And that is the position through the rest of that year. What does it mean? I have no doubt

whatsoever that the Claimant was continuing throughout that period to suffer from a physical impairment, which absent the medication that she was on would have been so painful from the evidence she had given me that there would have been times she could not move and which she told me was the situation when her back was at its worst. Even if she could move there were the continuing limitations to which I have already described.

21. Circa 17 February 2018 the Claimant returned to work having previously been off sick post the fall. It appears to that there must have been some discussions with R1 and/or R2. Why do I say that? Because the Claimant returned into a role in what is known as Returns. This is a much lighter task than working on mainstream picking. It meant that she worked in a much more confined space. She did not need to pick items or stretch up onto racks or climb stairs; and most of the time she could sit at a seat by a computer; so this suited her. Doubtless that is why looking at the medical evidence there was no aggravation of her condition and which is why there was no presentation until I get to October 2018. So what happened? On 21 September 2018 a work colleague, albeit employed by Boots, had an altercation with the Claimant and accused the latter of dishonesty in relation to a bottle of perfume. The Claimant was suspended. Cross referencing to the meetings that the Claimant had with the first Respondent starting on 19 February 2019 (Bp³ 148) after a couple of weeks she was exonerated. Turn it round another way having insisted the Respondents look at the CCTV footage and them having done so, it was determined that she was not guilty. She returned to work.

22. On 17 October 2018 she presented back to her GP complaining of problems with her back. She referred to "new job pain getting worse". What is that about? From what I can gather from the evidence before me, when she returned to work Paul, who is a Boots Manager and allegedly a loyalist of Denise, taking the Claimant's case at its highest only for the purposes of today, put the Claimant into repack. That department is one in which on the Claimant's description the work is far harder physically than it is in returns. And within a week or so she found she could not do it. So she went off sick and that is where we get the entry in the GP notes 15/65 inter alia "*new job, pain getting worse*". And the doctor on examination found there was some restriction in movement and a sensation of the left leg and he prescribed painkillers. He also recorded on further presentation on 24 October that she was now very stressed at work. He inter alia recorded: "*heavy job which caused more back pain. Not sleeping, anxious, tearful...*". He issued a sick note. She was also now described Zopiclone which is a sleeping tablet, and from the NHS web site also used for pain relief and to assist with anxiety. On 31 October it was decided to try her on Amitriptyline. I am aware that it is a strong painkiller particularly described inter alia for back and neurological pain. And On 14 November 2018 the dosage was increased. By 23 November she was beginning to present with signs of depression. She was prescribed Citalopram which is an antidepressant. Inter alia ie as at 28 November: "*left foot has dropped. Radiating pain from the L-5 area to the left leg now using a leg support... left leg feels weaker and numb*". And on examination found was "*power reduced in left leg*". So there was another referral to neurosurgery. She was placed on an alternative painkiller, namely Gabapentin. This remained the position into 2019.

23. As to the presentation with depression, it is to be noted that the Citalopram dosage was doubled from 10 mg to 20 mg daily and on 17 April 2019 to 40 mg. This is a continuing scenario by the time of the occupational, health report in December 2018 and with her still off sick from work. I have to try and construct what the Claimant would be like if not on antidepressants. She is still on them. So bearing

³ Bp = bundle page.

in mind that I now have the material event which is the being placed in repack circa October 2018, I am now today hearing this case at the end of November 2019 and she is still being prescribed Citalopram at the high dosage. I then look to the evidence I have as to how this diagnosed depression affects her ability to undertake normal day to day activities. I concentrate on the low mood periods. When she is down she said it was like living in a cave. She does not go out. She does not communicate. She neglects herself. She cannot be bothered to cook. She said how she did not wash or take a bath and she has had suicidal thoughts. Earlier this year, 2019, she had ten sessions of counselling and she was scored on the depression scale and there was some recovery. But of course the counselling is only going to benefit while it is continuing and NHS resources are not available to provide for that on an open ended basis.

Conclusion as to depression

24. I conclude that I have no doubt whatsoever that from at latest this material time commencing at latest on that presentation starting in October 2018, this Claimant is a disabled person for the purposes of a mental impairment namely depression which has now obviously lasted for more than a year and at present is likely to last a lot longer than that.

Further findings on the back issue

25. That brings me again to the back issue. Before I then come to the remainder of the medical notes I need to address there were as is evident from the occupational health report return to work discussions; these were commencing on 6 March 2019 and are in the bundle. The Claimant had not returned to work and was still signed off sick. That brings in a notice that the R1 issued on 25 February 2019. It was to inform the Claimant, and I detect other workers in a similar position deployed by R1 for Boots (R2) in the warehouse that Boots "*no longer require you to work at their site... I am writing to confirm you will be de-assigned... with immediate effect*". What does that mean albeit it is not really for the purposes of today? It is that this is a tripartite arrangement. R1 as a supplier of labour employs such as the Claimant. It then supplies them to end users; in this case Boots. Whilst they are at Boots they are under the day to day control of the latter albeit at Boots R1 has an office and it seems may have its own supervisors. But as is obvious from the discussion that I have already picked up on, and the subsequent one that the Claimant had with another HR person at R1 on 18 April 2019 and thence the third of these with yet another HR person (so that means three different individuals) GR on 29 May 2019, the problem is that R1 has little or no bargaining position with Boots. The latter is the paymaster. So if Boots wants people removed R1 has to do it. Albeit the contract of employment between R1 and the Claimant meant that she remained an employee R1, and who would endeavour to find her an alternative assignment, unless and until that happened there was no requirement for R1 to pay her. So in between assignments she has the continuing status of an employee but no other benefits.

26. Insofar as it matters for the issue today, the Claimant was lobbying that R1 retain her at Boots; and she wanted to know why it was that she was one of those who had been selected to not be retained in Returns whereas others were. So what was the criteria that Boots had put in place for the purposes of who went and who stayed and bearing in mind she by now had over four years' service? That is an observation I make. There appears to have never been a reply to that specific question by R1 ether on its own behalf or that of R2. If there was it is not in the bundle that I have. It will obviously be a significant issue at the main hearing.

27. Cross referenced to the medical evidence in this period, as at 4 April 2019 there

was a further report from Paul Byrne , a consultant neurosurgeon with Nottingham University Hospitals. He confirms that she is genuine. Having confirmed the L5/S1 discectomy in 2010 in Poland, he inter alia wrote: *“she was told at the time that she had multi-level problems. She has been fairly well and working for Boots packing although more recently in a computing area (that is a reference to returns). Since the end of last year she has developed increasing back pain and pain radiating into the left leg down as far as the ankle... On examination she had shaking of her left leg when she tried to move it. She had a decreased power in dorsiflexion and plantar flexion of the left ankle. She about a third to a half of the normal range of movement in her lumbar spine and was very tender even touching the skin”*. He was asking for another MRI.

28. Finally for my purposes on 5 June 2019 he followed up to the GP post the MRI and confirmed possibly an L5 decompression.

Conclusion on the back and leg issues

29. So dealing with the back problem I have this long standing history, and despite the valiant efforts of Mr Gunthorpe I do not see anything that flags any question mark as to a possible break in continuity or differing conditions. The evidence as far as I am concerned is extremely clear. This was a long standing condition stemming from the riding accident, partly assisted by the surgery but which was manifesting itself in terms of resurrection by 2016. Thereafter it never goes away. And there are the prescriptions regularly for a variety of painkillers and sleeping tablets. Finally I have the description of the limitations on what the Claimant can do as per the impact statement and her consistent and compelling evidence during this hearing. So I have no doubt at all that the Claimant is a disabled person not just by reason of her depression but also by reason of the back and the associated left knee problems. Furthermore that this was of long standing by the time of material events: Namely post the lifting of her suspension and her return to work having been moved from a job in returns which was a reasonable adjustment to a repacking job that prima facie was not.

Migraine

30. There are some references in the GP notes. I also observe the Claimant had eye problems which might of course explain severe headaches. Also of course it might be a side effect of the back pain or depression. As it is I have no specialist reports in the medical notes to assist and it is not specifically referred to in the impact statement. Thus I am not persuaded that it in itself constitutes a disability.

Continuing issues post the ET1 and the way forward

31. It became obvious during the day's hearing, and bearing in mind that the claim cut off on presentation of the ET1 on 14 February 2019, that the following is the scenario thereafter. I bear in mind that the Claimant was attending without representation on 31 July at the PH before Employment Judge Hutchinson; and although she had an interpreter, if today is anything to go by and cross referencing her medical notes, it is clear to me that she is a somewhat emotionally fragile person at present. As to whether therefore she would have been able to fully understand or make arguments at the Preliminary Hearing before Judge Hutchinson maybe in doubt. I say no more. Why does it matter? Because going back to those three meetings commencing in February with HR persons from the first Respondent, two issues flag up.

31. First the Claimant was wanting to know whether she could be retained at Boots in a capacity which would adjust for her disability; by that I mean the back. Second, in particular as to why was she selected to not be kept in Returns when on the face of it fifty per cent or more of the R1 workforce used on that work had been retained by Boots. And she was being told by the HR persons that they would investigate those matters with Boots and come back. On the face of it, and no more than that, this never happened and so the Claimant remained in limbo land. And as the weeks went by eventually, because she needed to earn money, when the last sick note ran out she began to make investigations and found work in due course via another agency. She is placed currently with Vision Express in Nottingham and has been there since 4 September 2019.

32. The Claimant's representative, Mrs Beata Suwalska-Pawlik⁴, argues that this scenario ending with her obtaining work elsewhere could be seen as constructive unfair dismissal. But Mr Gunthorpe, supported by Mr Graham, argue that as the Claimant never resigned, certainly in writing from the first Respondent and in fact remains it seems on its books given the nature of the contract, that how can that be constructive dismissal: I am with him on that submission. However I observe that it could be seen as a continuing act by way of discrimination flowing from that which went before apropos the Equality Act 2010: as to why what engages is obvious:-

32.1 If that which occurred was because the Claimant was a disabled person then on the face of it she has been at least unfavourably treated because of something arising pursuant to section 15; and

32.2 If in fact it turns out that there was no thought in its selection by Boots as to who of the R1 employees in Returns should be retained and thus as to the Claimant any proactive consideration of her retention as a disabled person, given that as there is a duty to positively take steps where reasonably possible to assist the disabled to remain in work⁵, then that could be a failure to make reasonable adjustment pursuant to section 20-22. That then flows over to R1 if it failed to make such representations to Boots. Finally it also could engage s15 in terms of was this by either R1 or R2, or both, unfavourable treatment apropos s15.

32.3 The third limb is this. In the notice whereby the Claimant was informed on 25 February 2019 by R1 that the assignment at Boots was ended there was the reference to "alternative locations". It is not at all clear if that means alternative locations of R1 where work was available or alternative locations other than the Boots office for further discussion. The point then being that prima facie, given the "whom it may concern" letters and the OH report, the R1 had at least constructive knowledge of the disabilities and thus apropos **Archibald** prima facie the duty to proactively assist the Claimant in terms of finding her additional work in relation to itself.

32.4 Finally, as to allowing an amendment, which the Claimant now seeks, to cover this a continuing act scenario up to the Claimant working at Vision Express: see **Prakash v Wolverhampton City Council, EAT 0140/06**.

33. I am now going to make directions.

⁴ She assisted the claimant at the hearing before me and on 28 November came on the record as her representative for the future.

⁵ See *Archibald v Fife Council* (2004) IRLR 65 HL.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. The Claimant will fully particularise those new claims in numbered paragraphs and provide them to the Respondents and the Tribunal by **Friday 20 December 2019** and in so doing may plain that she applies to amend the existing claim. Also by that deadline the Claimant will provide a schedule of loss to the Respondents, copying in the Tribunal.
2. The Respondents will then reply by **Friday 31 January 2020** to the amended claim including if they oppose the same, the grounds for doing so. They can also comment on the schedule of loss, if they so wish,.
3. This Judge is of the opinion that this case would be suitable for Judicial Mediation, and so by the same date the parties will inform the Tribunal as to whether they are prepared to enter into the process. I have explained what Judicial Mediation entails and the nature of the process.
4. Finally, I hereby order a further case management hearing by telephone to take up matters post compliance with these directions. This will take place at **10:00 am on Friday 21 February 2020**. It has been given a time estimate of 90 minutes. To take part you should telephone **0333 300 1440** on time and, when prompted, enter the access code **512292#**.

[Please note that if you intend to dial into the telephone hearing from a mobile phone, higher rates apply and you may wish to check the call rate with your service provider first.]

5. The agenda is as follows:-

- 5.1 If the parties have agreed to Judicial Mediation to discuss arrangements and list the same.
- 5.2 If that is not the case, then to deal with the amendment and thence discuss directions for the main hearing and the current time estimate.

NOTES

- (i) **The above Order has been fully explained to the parties and all compliance dates stand even if this written record of the Order is not received until after compliance dates have passed.**
- (ii) **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.**
- (iii) **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.**
- (iv) **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. Any further applications should be made on receipt of this Order or as soon as possible. The attention of the parties is drawn to the Presidential Guidance on ‘General Case Management’:**

<https://www.judiciary.gov.uk/wp-content/uploads/2013/08/presidential-guidance-general-case-management-20170406-3.2.pdf>

- (v) 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). The Tribunal may order a departure from this rule where it considers it in the interests of justice to do so.*” If, when writing to the tribunal, the parties do not comply with this rule, the tribunal may decide not to consider what they have written.

Employment Judge Britton

Date: 3 December 2019

Sent to the parties on:

.....
For the Tribunal:

.....