EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
KA	v	British Telecommunications plc

Heard at: Watford **On**: 2, 3, 4, and 5 March 2020

Before: Employment Judge Skehan

Members: Mr D Sagar

Mr M Bhatti MBE

Appearances

For the Claimant: Mr N Cooper, Union Representative

For the Respondent: Mr S Hall, Solicitor

ANONYMISATION ORDER

Pursuant to rules 50(1) and (3)(b) of the Employment Tribunals Rules of Procedure 2013, it being in the interests of justice to do so, it is ORDERED that there shall be omitted or deleted from any document entered on the Register, or which otherwise forms part of the public record, including the Tribunal's hearing lists, any identifying matter which is likely to lead members of the public to identify the Claimant as being either a party to or otherwise involved with these proceedings: This order applies to the Claimant only.

JUDGMENT

1. The Claimant's claim for unfair dismissal contrary to section 98 of the Employment Rights Act 1996 is successful.

2. The Claimant's claim for direct disability discrimination contrary to section 13 of the Equality Act 2010 is unsuccessful and is dismissed.

3. The Claimant's claim for a discrimination arising from a disability contrary to section 15 of the Equality Act 2010 is successful, to the extent set out below.

4. The Claimant's claim relating to the Respondent's failure to comply with the obligation to make reasonable adjustments set out within section 20 and 21 of the Equality Act 2010 is successful.

5. This matter is listed for a remedy hearing, to include any Polkey related arguments raised by the parties.

REASONS

1. The Employment Tribunal's reasons were provided to the parties orally at the conclusion of the hearing. These written reasons are provided pursuant to the parties request made at the conclusion of the hearing.

2. At the outset of the hearing, we were informed that unfortunately the counsel retained by the Respondent was ill but expected to be able to commence the hearing on day two. For this reason, the employment tribunal dealt with case management issues on the morning of day one and thereafter took the afternoon to read the documentation. Unfortunately, on the morning of day two of the hearing, counsel's health had deteriorated and he was unable to attend. Mr Hall, the Respondent's in-house solicitor who was familiar with the background of the claim stepped into the breach and presented the Respondent's case. We are particularly grateful to Mr Hall who provided skilled representation on behalf of the Respondent.

3. The Claimant issued proceedings in this matter on 30/04/2018. Two versions of the ET1 were submitted. The Claimant's claims included unfair dismissal and discrimination on grounds of disability. The claim was defended and the Respondents form ET3 was submitted on 06/06/2018 and amended on 13/07/2018. At the commencement of the hearing, the tribunal revisited the list of issues as set out by EJ Bartlett on 14/08/2018 as referred to below within our deliberations.

4. As is not unusual in these cases the parties have referred in evidence to a wider range of issues than we deal with in our findings. Where we fail to deal with any issue raised by a party, or deal with it in the detail in which we heard, it is not an oversight or an omission but reflects the extent to which that point was of assistance. We only set out our principal findings of fact. We make findings on the balance of probability taking into account all witness evidence and considering its consistency or otherwise considered alongside the contemporaneous documents.

5. We heard from the Claimant on his own behalf and were provided with an uncontested witness statement from the Claimant's mother. We heard from Mr Kent and Mr Davis on behalf of the Respondent. All witnesses gave evidence under oath or affirmation. Their witness statements were adopted and accepted as evidence-in-chief. All witnesses were cross-examined.

6. The Claimant is a disabled person at defined within the section 6 of Equality Act 2010 (EQA). The Claimant suffers from bipolar affective disorder.

7. The Claimant first joined the Respondent in September 1996 as a modern apprentice. His apprenticeship lasted for 3 years. He worked in various roles. He progressed quickly becoming a technical officer, working as a switch engineer, operating and maintaining exchanges in north-west London. He first experienced illness in September 2003 and considered that the Respondent supported him very well. His return to work was managed

as well as possible and this contributed to his speedy recovery. He worked for a further 10 years without further episode.

8. The Claimant describes a period of 10 years where there were considerable changes to his role. The Claimant became unwell again in May 2013. When he returned to work, the project in which he was working had ended and 'new work' was found for him. He performed data entry tasks at various exchanges around Greater London until this work finished. There was an adjustments plan agreed between the parties in April 2014. Around this time the Claimant moved to Lea Valley. This involved a long commute. For a short time the Claimant's commute was extended further afield to Eltham. The Claimant considers that this long commute had a serious detrimental impact upon his health and says within his witness statement that he eventually became unwell again in May 2015.

9. We refer to the Respondent's occupational health medical report from Dr Crofts, dated 02/02/2015. This report notes:

    i. The Claimant has bipolar disorder since 2003. He has had two episodes of severe symptoms requiring hospital admissions in 2003 and 2013. Since his episode in 2013 he remains under the care of his psychiatrist who sees him every 3 months.

    ii. The report mentions 2 episodes that occurred while the Claimant was driving on the motorway. This may well be mistaken as the Claimant states that there was one episode in 2013 relating to motorway driving.

    iii. The report notes previous responsibility as a potential trigger for the Claimant's episode in that he put too much into his work and pushed himself to the limit.

    iv. Under the heading of 'current position', the Claimant's workplace of Lea Valley is noted. The drive upsets the Claimant. It was noted that Uxbridge was a simple 30 minute journey for the Claimant. The 66 mile drive is very stressful taking him 3 hours a day travelling to and from work. He gets stuck in heavy traffic and it wears him out. The thought of making the journey daily is tiring and he feels exhausted. Although the distance is twice what he was doing previously takes in 3 times as long to get there.

    v. The report noted that the Claimant appears to have developed a secondary anxiety related travelling/driving on the motorway

    vi. Mention is made of the access to work/enable scheme in relation to transportation to and from work. It is noted that this would not alleviate the location of the office and requirement to go around the M25.

    vii. The Claimant is noted as saying that because of his condition, he does not cope well with change. He likes stability and the recent change of managers and locality have upset his mental health stability. From the Claimant's explanation, it appeared that the changing type of work is not the problem but the training provided.

viii. The Claimant's travel to Lea Valley is identified as the main issue. The Claimant tends to have anxiety and agitation when in heavy traffic. It is noted that the Claimant presented a report that says he should not be forced to undertake a significant amount of motorway driving as this causes anxiety and destabilises his mental health.

10. The Claimant returned to Lea Valley following this illness in May 2015 and was thereafter transferred to his closest centre of excellence which had been identified as High Wycombe. He did some job shadowing there and started full-time at the end of January 2016.

11. The Claimant was permanently based in High Wycombe form January 2016. The Claimant's role was different from his previous roles. The Claimant said that he preferred an engineer focus to his work however he embraced the office work and viewed this change as a long-term change. He worked in an area of the business called 'Intra Business Loans' (IBL), where human resources within the business were matched to customer need. The Claimant says that there were no formalised working practices or methods created for this role. The work fluctuated between manageable and extreme overload. The Claimant worked alongside one colleague to cover the IBL function. This led to large work imbalances between team members. The Claimant's work became unmanageable and the Claimant describes this as a major contributing factor to his illness. The Claimant became unwell on 30/11/2016 and was absent from work until his dismissal are set out below.

12. We note the home visit by Mr Fisher to the Claimant's parents' home in Canterbury 19/01/2017.

    i. Changes within the structure of the team were discussed with the Claimant. He was told that Mr Fisher would continue to manage his absence and support him through his return to work even though he was no longer the Claimant's direct manager.

    ii. At that point the Claimant was not ready to return from work but they discussed how it would look in the support that would be available to the Claimant. The notes record a discussion relating to phased return. The notes mentions agreed buddying and sitting with experienced team members to support him within his that any relevant training courses will be made available to him

    iii. they spoke about start and finish times and the Claimant explained that these would really help them not to be so affected by the heavy traffic he faces on his current roster pattern times. The Claimant was told that should not be a problem to change on the roster.

13. The Respondent obtained a further occupational health report dated 10/05/2017. This report noted:

    i. The Claimant's background as set out within the previous report referred to above. The Claimant had now had 3 episodes of serious symptoms in 2003, 2013 and 2016 each requiring hospital admission for treatment.

ii. He was at the date of the review living with his parents near Canterbury and remained under the care of his psychiatrist.

iii. References are made to incident at work that occurred on 28/11/2016. The Claimant became unwell and his parents were contacted. His condition deteriorated and he was sectioned under the Mental Health Act and admitted to hospital in December 2016. He was an inpatient for 5 days, his condition stabilised very quickly and he returned to his parents home. The Claimant considered that that was the worst episode that he had experienced.

iv. He was not driving and awaiting assessment by the DVLA.

v. He hoped to return to work in February 2017 but did not feel ready and does not feel ready now. His advisers felt on 12 April that he was not ready to return to work.

vi. The Claimant was not ready to return to work but some recommendations were provided for the return to work when this occurs these included a suggestion that the Claimant should start by visiting the workplace for a day to see what the job involves get to know the team again. This should be repeated with a couple of days in between. He should start working for perhaps a few hours and 2 to 3 days building progressively to his full core hours and duties over several weeks…. Ideally there would be a flexible and dynamic approach to the return to work programme so it could be adjusted on a day-to-day basis….. It was considered important that his regular dialogue with his manager continued.

vii. In response to the question 'is the employee likely to render reliable service and attendance into the future' it is stated that the condition of bipolar disorder is prone to relapse but that is difficult to predict with accuracy. The Claimant has had periods of stability between 3 serious episodes of symptoms and [the author] was optimistic that he would return to his level of functioning prior to this episode……

viii. It is anticipated that once the Claimant is fit to return to work that he could return to a desk and office based role. The writer is optimistic that he would return to the level of function and performance prior to the episode.

ix. There is a reference to travelling [page 137], the Claimant had discussed that his commute takes 30 minutes and driving makes him anxious. Prior to becoming ill the Claimant had repeatedly asked for changes to his working hours to allow him to start a half an hour earlier to avoid heavy traffic.

x. The suggestion is provided to allow the Claimant a mentor in the workplace so that there is someone he could turn to for informal support if required and discussion relating to relapse prevention document.

14. The Claimant recounts the meeting with Mr Fisher and Mr Kent on 04/08/2017 at Bovington telephone exchange. The Claimant's father was in

attendance also to provide support. They discussed the Claimant's driving licence and this was a potential barrier to travelling to and from work at High Wycombe. They discussed the potential return to work date of about September 2017. This seemed entirely achievable and the Claimant was looking forward to getting back to work. Following this meeting the Claimant became seriously unwell again. This had implications with return to work timescales set out in the initial meeting 04/08/ 2017.

15. The Respondent received a further occupational health report dated 18/09/2017. This notes:

    i. The Claimant's background is described as set out within the previous reports.

    ii. The Claimant had a sudden deterioration in his mental health in May 2017 and was again detained under the Mental Health Act. He remained in hospital until 07/06/2017, when he returned to his parents home in Kent.

    iii. The Claimant had a further relapse on 05/08/2017 and remained in hospital as of the date of the report [18/09/2017].

    iv. Reference is made to a long commute causing increased anxiety and stress. When the Claimant has recovered sufficiently and is ready to return to work consideration must be given both by the Claimant and the Employer to addressing this issue.

    v. It is noted that the psychiatrist states that the last relapses over the last year have not been directly as a result of work factors but more likely due to medication levels and possibly poor compliance

    vi. it was too soon to say when the Claimant would be released from hospital but in light of the history over the last year, he will need a considerable period in the community before a return to work could be considered (four months)

16. The Claimant received a letter from Mr Kent dated 23/10/2017 inviting him to discuss the situation surrounding his health. This was the first occasion when the Claimant was informed that a potential outcome could be the termination of his employment.

17. The Respondent's attendance policy as produced within the bundle is relevant. This relevant sections include:

> Where long-term or permanent adjustments are required to prevent persons being placed at substantial disadvantage in relation to maintaining regular attendance ineffective employment, these should be based on an up-to-date OHS capability assessment. Every reasonable effort should be made to accommodate permanent adjustments within the business unit, but where this is not possible a comprehensive search for alternative duties must be undertaken. Details of how to support the individual and conduct an alternative duties search are given in the adjusted job search procedure. [No mention was made of this document during the course of the hearing].

18. Alongside the appeal process the tribunal have noted the Respondent's internal resolution meeting guidance. The relevant parts of this guidance include:

    a. the objective of the meeting is to bring a resolution to the case, which could be a return to work ……..or to make a decision on the individual's future within the company;

    b. Consider any special circumstances and requirements …. disabilities…

    c. Before the meeting you should be satisfied that:

        i. OHS has been consulted…… Adjustments, where necessary have been offered and/or implemented but have not produced either return to work or a sustained return to work;

        ii. alternative duties, where appropriate been explored…….. Where appropriate, and extensive and meaningful search across the whole of BT has been implemented and is thoroughly documented, were searching for an alternative role has been necessary……. Where appropriate impossible, the option of retraining/reskilling has been explored and documented.

        iii. The individual's future ability to give regular and effective service has been taken into account.

        iv. All statutory duties under the Equality Act have been fully addressed and documented where appropriate

        v. individuals have been treated in accordance with the company's equal opportunities policy and there has been no discrimination at all on the basis of disability….

19. The Claimant was accompanied by his trade union representative and we refer to the notes of the meeting held on 01/11/2017. The Claimant says and it is recorded in the notes, that during this meeting he had a return to work date suggested by his consultant psychiatrist of around 15/12/2017. Getting his driving licence back would be important to the Claimant but not essential. The Claimant raised the possibility of moving to another part of the business and Mr Kent explained that – No – 'this is a complex and ongoing case we need to resolve before any consideration to transferring could happen.. '

20. The Claimant agrees at the meeting held with Mr Kent on 01/11/2017 the Respondent had been supportive of his position to date. The Respondent's documentation notes at least 23 occasions where there was continuing contact between the Respondent and the Claimant (or the Claimant's family members) during his last period of ill-health. The Claimant confirmed during the course cross examination that he could not think of anything more the Respondent could have done to assist him as of that date.

21. Mr Kent terminated the Claimant's employment by letter dated 16/11/2017. The Claimant says he was genuinely amazed by the decision as his health had improved considerably and he considered he could return to work on 15/12/2017. Mr Kent's rationale was that the Claimant's case appeared to be in the same place it had been at the start of 2017. He did not have any

confidence that the Claimant would be able to return to work on 15/12/2017 as he had stated. No previous return dates had materialised and Mr Kent was not confident that this occasion would be any different. The Claimant's representations did not appear to fit with the Respondent occupational health report. Mr Kent could not reconcile the Claimant's psychiatrist's current position with the available occupational health evidence. Mr Kent did not believe that the Claimant was keen to return to work. He had not shown an interest in doing so. He had not asked to come in. Suggestions of as little as 4 hours a week had been declined by the Claimant. He was not taking steps to re-engage with the business. It was possible that due to reorganisation within the Respondent that the Claimant's role would be beyond his skill set. Mr Kent thought that:

a. if he agreed to allow the Claimant to return to work on 15/12/2017, and the Claimant did so, then that would be great. Mr Kent did not consider this to be a likely outcome

b. if he sought to postpone the decision this would cause the business further delay in what had already been a long-running matter that was placing increasing strain on the business.

c. If he did not postpone the decision and dismissed the Claimant and the Claimant did not return to work as envisaged on 15/12/2017 then this would have given the same answer, however the Respondent could address the issues of capacity within the team.

22. Mr Kent was aware that if he did not postpone the decision to dismiss the Claimant and the Claimant returned on 15/12/2017, this would have supported the Claimant's argument that he was going to be able to work going forward, provided he could sustain the return. Mr Kent knew that this was a possibility. He considered it unlikely. He considered that if it did happen this would be something that the Claimant could raise as part of an appeal and would be strong evidence to support his case and possibly be reinstated.

23. The Claimant appealed Mr Kent's decision to terminate his employment.

24. Mr Davis dealt with the appeal process. Mr Davis joined the Respondent's employment in May 2017. The Claimant attended a meeting with Mr Davis on 04/12/2017. During this meeting the Claimant provided Mr Davis with a copy of a letter dated 01/12/2017 from the Claimant's psychiatrist Dr Sadler. The This letter stated:

a. This letter follows a review with the Claimant carried out on 30/11/2017.

b. It refers to a complete recovery and decrease of some of the sedating medication that the Claimant no longer requires.

c. It indicates that the Claimant is fit to resume driving and the DVLA have been informed.

d. Dr Sadler has seen Mr Kent's letter of 11/11/2017, is aware of the Claimant's appeal and writes the letter in support of his appeal.

e. It is noted that the Respondent has been supportive of the Claimant in relation to his mental illness in the past.

f. In retrospect is in the opinion of those involved in the Claimant's care that the last year should be considered as an extended illness since November 2016 rather than separate and recurrent events.

g. The Claimant's care plan addresses the factors that led to his illness. Medication has been changed. This is likely to be a significant factor in preventing future relapse and the Claimant is said to have a greater understanding of the importance of his treatment and taking medication.

h. In relation to Mr Kent's criticism that the Claimant has not be willing to work with his employers to begin a greater return to work, Dr Sadler emphasises that this decision was not the Claimant's to make. He was dependent upon his treating doctors sign off on his fitness to return to work as this was not anticipated before 12 weeks post discharge (04/09/2017) given the length of the illness episode.

i. The Claimant has throughout reiterated his commitment to his job and sought a clear answer from his psychiatrist.

j. It is requested that the Claimant the considered for a graded return to work. This is a month sooner than anticipated within the report of 29/08/2017. It is not considered that the Claimant's work has contributed to his illness episodes.

k. It is noted that the Claimant will require some support and help to update and upgrade his skills to meet his evolving job role that the psychiatrist notes the Respondent's good track record of helping disabled employees.

25. Mr Davis says that he identified that the letter from the Claimant psychiatrist indicated the facts had changed significantly Mr Kent had made his decision to dismiss the Claimant in November 2017. Mr Davis identified that a further occupational health report was required by the Respondent. Mr Davis noted that during this meeting the Claimant indicated that he wanted to return to work on 15/12/2017, they discussed working hours and the possibility of making his commute easier. The Claimant indicated that he was willing to get a taxi to work rather than drive should his licence not be returned. They discussed the possibility of the Claimant doing other jobs within the business. It was agreed that the Claimant should return to his role at High Wycombe in the first place and then take things from there.

26. The Claimant felt the meeting went well. He agreed following the meeting to a further occupational health service review, to allow Mr Davis a better idea of the current situation relating to his health.

27. The Claimant was employed as a Resource Planner for the Respondent as of November 2016. Mr Davis told the tribunal that there were major changes to the Claimant's team based at High Wycombe since this time. From the end of 2016 and into 2017 there was a focus on restructuring the setup of operations undertaken by the Claimant's team at High Wycombe. The business increasingly looked to automated processes and there were corresponding role changes within the team. Mr Davis told us that when the Claimant first went on sick leave in November 2016 there had been around 20 employees in the High Wycombe team. This had decreased to 12 employees by the time Mr Davis joined in May 2017 and to 5 employees (including the Claimant) by the end of 2017. There was a fundamental

change in what the team was expected to do. The role of the High Wycombe team had moved away from being admin focused to support the resource allocation processes to be much more complex and analytical job, using tools to interpret data and drawing conclusions that could help more efficient resource allocation.

28. Mr Davis said that the Claimant's role had been ring fenced during the various restructuring proposals due to his health. His actual role would be very different from what he had done before the start of his absence. By the end of 2017 his role has evolved from the original 'Resource Planner' role into 'Resource Dynamics Team Member' role. This role covered the same ground but had important differences. The Claimant would have been given significantly less direct guidance than before and would have had significantly greater accountability and responsibility, given the reduction in the team size and the shift away from administrative tasks. The Claimant was on sick leave when Mr Davis joined the business. Mr Davis was not directly involved in the Claimant's matter until after the Claimant's dismissal.

29. There was some confusion during the course of the hearing as to the Claimant's existing role in reality as of 01/11/2017. The Respondent has shown on the balance of probability that the role of Resource Planner no longer existed at that time. While Mr Davis said that the Claimant's role was that of 'Resource Dynamics Team Member', we note that :

    a. we were not referred to any occasion when the role of Resource Dynamics Team Member discussed with the Claimant. The Claimant had no recollection of ever receiving a job description for this role.

    b. Mr Davis refers to the Resource Dynamics Team Member as the default position. We note the instruction sent to OHS prior to the appeal that stated. 'given the length of absence the role that [the Claimant] previously held is no longer in place and it would be useful to know any guidance on what type of role would best suit [the Claimant] and his condition which needs to be managed on an ongoing basis. It may be possible that there are other roles include fieldwork as well as alternative desk rules that would support a sustained return to work.'

30. The Claimant was 'red circled', as he was absent from work at the time of the restructure. Mr Davis' evidence was that the Claimant's allotted role of Resource Dynamic Team Member was not replaced during this time off sick and his new duties were spread of the management team and particular tasks were not undertaken due to his absence. This oral evidence of the Claimant occupying the role of Resource Dynamic Team Member' was unsupported by any documentary evidence. In considering the entirety of the evidence the tribunal concluded on the balance of probability that while the Claimant's role of 'Resource Planner' no longer existed and the Claimant was accounted for within the Respondent's headcount, the Claimant's allocation to the role of 'Resource Dynamics Team Member' was a paper exercise, with the Claimant's actual role to the clarified when he was well enough to return. The Resource Dynamics Team Member was a default position.

31. On 03/01/2018 Dr Obi produced a further occupational health report for the Respondent. This report records that;

a. The Claimant had a keen interest in returning to work and had a favourable Hospital Specialist's report supporting his return to work.

b. The Claimant had been well and stable for 3 months. He had regained his driving licence to be reviewed in a year.

c. The Claimant was under 3 monthly reviews by his consultant psychiatrist

d. The Claimant was taking a stable dose of his medication and not experiencing any debilitating side-effects

e. Previous issues were raised in relation to safety with respect to a commute

f. Previous triggers of heavy traffic and work overload were raised as possible triggers for a relapse;

g. "I understand that his job role as a Resource Planner is mostly office based between the hours of 7:30AM to 5:10PM working four days a week. I understand that he works with DSE, taking phone calls, attending to emails, preparing reports and that he is also involved with the interaction with other members of his team….

h. Overall the Claimant was functioning well and has made remarkable progress in terms of wellness and stability mentally.

i. The Claimant is medically fit to return to work with some adjustments. These adjustments are set out in points 1 to 6 and can be summarised as:
    i. A phased return;
    ii. A 7am start - to assist with the stresses of traffic
    iii. Engaging with 'enable' that may provide the access to work programme to allow transport. Allowing the Claimant to work flexibly at home on days when he reports symptoms which may suggest early signs of a relapse
    iv. Management should assess the Claimant's workload when he returns to work. It is stated 'I do not recommend new or added duties to his current job description over the next one year'.
    v. Refresher or training within his role
    vi. Regular welfare discussions

32. We were provided with a statement from the Claimant's mother confirming that she received a message from Mr Fisher in December 2017 asking her to pass a message onto the Claimant telling him not to return for work in High Wycombe on 15/12/2017. The Respondent accepts that this message was passed to the Claimant. The Claimant told the tribunal during the course of the hearing that he obtained his fit note covering the period from 15/12/2017 because he had been requested to stay away from work and did not want to be considered as absent without leave. In the circumstances we conclude on the balance of probability that from the Claimant's perspective, he was ready and able to attend work on 15/12/2017, subject to the requested adjustments. The Claimant told the tribunal about the disadvantage he experienced because of his illness. We refer to the medical evidence set out above. The Claimant's illness was mood based and it fluctuated severely. He experienced feelings of uncertainty and extra stress as a result of his disability. Learning was more challenging for him due to his disability.

33. Mr Davis wrote to the Claimant on 05/02/2018, confirming that the Claimant's appeal had been unsuccessful. Mr Davis sent the Claimant a long document setting out the appeal rationale. In particular we note the following:

    a. At this stage the Claimant had regained his driving licence. The tribunal notes that Mr Davis queries the possibility of an altered start time to assist the Claimant with the commute, although this has been deemed a possibility previously and the documentation are set out above.
    b. Mr Davis accepts that the Claimant is fit to return to a workplace and asks whether BT can provide the right environment to ensure that the workplace does not pose a risk to the Claimant's ongoing health and well-being.
    c. He notes, within his summary conclusions that to ensure the Claimant's well-being he must take into account the occupational health advised adjustments. Some of those adjustments as simple and in keeping with normal BT return to work support. Others are more demanding and requires specific consideration.

34. Mr Davis considers that he could meet the requirements in respect of a phased return, and a change to the Claimant's start time. Mr Davis comments that the M25 was likely to be busy regardless of this change. The Claimant says that he did not use the M25 for his commute to work in High Wycombe.

35. Mr Davis noted Dr Obi's strong recommendation that each activity in the Claimant's workload be risk assessed and that no new or added duties be made to his pre-absence job description for at least the next year. Mr Davis said that the strong recommendation effectively meant that any thing other than complying with the recommendation would involve an unacceptable risk the Claimant's health. Mr Davis told the tribunal that it was simply not possible to implement this suggested adjustment as the Claimant's old role of Resource Planner and the duties he had previously been required to undertake were now either defunct automated or systemised. The Claimant would inevitably be required to take on new tasks. The Claimant's managers would on his return be based in Bristol, he would not be able to receive the level of support an on-site manager might provide. Further the Claimant's role would be reactive in nature and his workload would be regularly impacted by reactive aspects. Further, the Claimant's role could not remain unchanged for the next year. The role had changed substantially in the past 12 months and Mr Davis considered it likely that more changes were to come.

36. During the course of cross-examination Mr Davis informed the tribunal that Dr Obi's report meant that the Claimant could only return to the role of 'Resource Planner'. This was impossible as the role was defunct and the Claimant could not safely return to any other role.

37. The employment tribunal sought to clarify Mr Davis understanding of Dr Obi's report in that the report clearly anticipated the Claimant being able to return to some role as the proposed adjustments appeared to be designed to allow this conclusion. There appeared to be an obvious error in the report as Dr Obi erroneously referred to the 'Resource Planner' role as the Claimants current role. Mr Davis told the tribunal that he did not rely upon that point

alone. The commute to work was an area of risk and it was not possible for people to remain static for a year in a constantly changing business in any event.

38. The tribunal makes no criticism of Dr Obi and the potential for confusion in respect of the Claimants proposed role is manifest from the letter of instruction provided.

The Law, Deliberations and Findings

Unfair dismissal

39. *Was the Claimant dismissed for a fair reason under s.98(2)(a) of the Employment Rights Act 1996 ('ERA'), namely capability and/or some other substantial reason under s.98(1)(b)?*
At the time of dismissal the Claimant had been absent for work for nearly a year. We heard no evidence whatsoever to suggest that the Claimant's dismissal was for any reason other than that connected with his absence from work and issues relating to a potential return. In taking the entirety of the evidence into account the tribunal concludes that the Claimant was dismissed for a potentially fair reason under section 98(2)(a), namely capability to perform the work he was required to do. If we are wrong, bearing in mind the case of *Ridge v HM Land Registry* (unrep, UKEAT/0485/12/DM) and these particular reasons cannot be classed as capability we conclude that the Claimant was dismissed for some other substantial reason under section 98(1)(b), namely the same reasons as set out above.

40. *Did the Respondent act reasonably in all the circumstances in treating the Claimant's capability and/or some other substantial reason as a fair and sufficient reason for dismissal?*
Has the Respondent complied with the Respondent's procedure and/or the ACAS Code of Practice?
Did the Respondent act reasonably or unreasonably in treating the capability as sufficient reason or dismissal under s.98(4) ERA and was it within the range of reasonable responses?

41. We have addressed these issues together. We acknowledge that we cannot take into account and do not take into account matters which the employer was reasonably unaware of at the time of dismissal and we have taken care and not to assess the case with the benefit of hindsight and to consider only what the Respondent had within its reasonable contemplation at the time of dismissal. We acknowledge that there is no criticism whatsoever of the Respondent's actions prior to the resolution/termination element of the process which commenced with the meeting of 01/11/2017. The Respondent kept in regular contact with the Claimant and consistently obtained occupational health report's as set out above. There is no historic element to the Claimant's allegations within this litigation.

42. An employer who dismisses an employee on the basis of ill health should take appropriate steps to discern the true medical position. As stated in *East Lindsey DC v Daubney* [1977] ICR 566,

    i. "*Unless there are wholly exceptional circumstances, before an employee is dismissed on the ground of ill health it is necessary that he should be consulted and the*

> *matter discussed with him, and that in one way or another steps should be taken by the employer to discover the true medical position……...But if in every case employers take such steps as are sensible according to the circumstances to consult the employee and to discuss the matter with him, and to inform themselves upon the true medical position, it will be found in practice that all that is necessary has been done*." (571H)

43. We also note the old case of *Spencer v Paragon* [1976] IRLR 376. The EAT in that case upheld the Industrial Tribunal's decision and reasoning, noting the factors the Tribunal had taken into account. The EAT stated, referring to the Tribunal, that,

> *"They took into account the nature of the illness, the likely length of the continuing absence, the need of the employers to have done the work which the employee was engaged to do, the circumstances of the case and concluded that the employers had discharged the onus put upon them under sub-para (8) of para 6 of the First Schedule."* [13]

44. In reviewing the entirety of Mr Kent's evidence, we conclude on the balance of probability that he has ignored the likely length of the Claimant's continuing absence, within this he has ignored the express representations from the Claimant that his medical position has substantially changed since the previous OHS report. Although Mr Kent does not have the letter from Dr Sadler, he does have the essence of the information that is subsequently recorded within that letter, yet he has chosen to ignore it. Mr Kent displayed a cavalier attitude towards termination relying upon the possibility of an appeal to rectify the potential unfairness that he had identified in the Claimant's circumstances. Further, because Mr Kent had wrongly discounted the possibility of the Claimant's imminent return to work, he did not go on to look at any potential role available for the Claimant or any potential reasonable adjustment required to allow the Claimant to undertake any such role.
45. In relation to the other points raised by Mr Kent we comment:
    a. Mr Kent's references unwillingness on the Claimant's part to comply with previous return to work plans had not been raised with the Claimant in the meeting on 01/11/2019. Review this comment alongside the Claimant's acknowledged express statements reiterating his desire to return to work. We consider it an illogical suggestion that the Claimant should seek to re-familiarise himself with his team before he has been given the all clear from his medical advisers and his employer. We can find no justification for any suspicion that the Claimant was unwilling to engage with any previous return to work plan.
    b. Mr Kent's comment that the Claimant has essentially refused to use public transport is misleading to the extent that there was no reasonable public transport route available to the Claimant from his home to High Wycombe
    c. Although we were referred to commercial pressures placed on the Respondent and the practical effects of the Claimant's long-term absence, we were not provided with any supporting evidence. We

note the size and resources of the Respondent and our findings above in respect of the ambiguity relating to the Claimant's role in reality.

d. Mr Kent notes that the role would be unrecognisable to the Claimant and could potentially be beyond his skill set. Again we note again our findings in respect of the ambiguity of the actual role, at no time has the Claimant been provided with any details of the role he may return to. At no time has the tribunal in any way been referred to any alleged deficiency within the Claimant's skill set and we heard no evidence to support this comment.

46. On the balance of probability we conclude that, bearing in mind the size and substantial administrative resources of the Respondent, that Mr Kent's failure to take reasonable steps to inform himself of the true medical position prior to taking a decision to terminate the Claimant's employment falls outside the band of reasonable responses of a reasonable employer. .

47. We now turn to consider the appeal as dealt with by Mr Davis and question whether the appeal can remedy the flaws identified within the dismissal. By the time of the appeal the Claimant's potential return date of 15/12/2017 had been confirmed in writing by Dr Sadler. Mr Davis rightly noted that the medical position had changed substantially. He considered that he needed further occupational health input prior to proceeding. We consider the steps to be perfectly logical and reasonable.

48. The occupational health report of Dr Obi is set out above. Mr Davis position was that the occupational health report clearly said that 'I do not recommend new or added duties to his current job description at least over the next one year', and that the only role the Claimant could safely return to was the defunct role of Resource Planner. As the Resource Planner role did not exist, the Claimant could not return to any other role whatsoever. The OHS report refers erroneously refers to the Claimant's current role as a 'Resource Planner'.

49. We also note the emphasis placed by Mr Davis upon the suggestion that the Claimant required risk assessing "every" activity. The tribunal considers that a risk assessment for roles is on the balance of probability likely to be commonplace for all roles. The phrasing of 'every' activity, is not in the tribunal's opinion, indicative of a unreasonable or particularly onerous requirement. We have been provided with no evidence from the Respondent to suggest that this requirement was unworkable or unreasonable to the extent that it could properly prevent the Claimant's return to work.

50. Mr Davis refers to unresolved issues relating to the Claimant's commute. The issues considered by Mr Davies had not been discussed with the Claimant. Mr Davies incorrectly assumes that the Claimant would be required to use the M25. Previous references to the M25 within the medical documentation related to alternative office locations. The change in the Claimant's start time had been agreed with the Claimant previously. We were not provided with any evidence from the Respondent as to why this change could not be accommodated. We were not provided with any evidence as to why working from home on occasion may not be

accommodated. In the event that the commute was considered a real barrier for the Claimant's return to work, We were not provided with any evidence as to why the Claimant could not be provided with an opportunity to contact enable/access to work to seek assistance with transport. Again it appeared to the tribunal that this issue was coloured by Mr Davis' conclusion that the Claimant could not return to any position other than that of Resource Planner.

51. The Respondent's own internal policy refers to a requirement to ensure that alternative duties, where appropriate been explored - it states…….. Where appropriate, and extensive and meaningful search across the whole of BT has been implemented and is thoroughly documented, were searching for an alternative role has been necessary. Mr Davis told the tribunal that certain activities such as external engineering roles had been reasonably discounted by the Respondent on the basis of the occupational health advice. The Respondent's evidence was silence in respect of potential internal engineering roles. The parties agree that the High Wycombe office was the closest Centre of Excellence to where the Claimant lived, however there were references throughout the evidence to 'exchanges' that potentially had more suitable geographical locations for the Claimant. We were not provided with information relating to any consideration by Mr Davis of the existence or appropriateness of any roles within these locations. The Respondent's efforts in relation to searching for alternative roles was limited to Mr Davis identifying two potential alternative roles which the Claimant could possibly return to at the High Wycombe office. This must be viewed in the context of the Respondent's workforce of approximately 75,000 people. Mr Davis' position in relation to the inability of the Claimant to undertake any role other than the disbanded Resource Planner role had an obvious knock-on effect on his search for alternative employment in that in the absence of the Resource planner role any further search was futile.

52. We do not diminish the importance that must be given to the very serious nature of the Claimant's health, his clear vulnerability or the obligation upon the Respondent to provide a safe workplace. OHS medical evidence was obviously vital to allow the Claimant any prospect of returning safely to work. Mr Davis' conclusion that the Claimant could only return safely to a role that no longer existed, was in light of the overall gist of the medical evidence available, illogical. Mr Davies reliance upon this impossible requirement contradicted the gist of the entire OHS report and the letter from Dr Sadler. The tribunal find it difficult to identify any reasonable basis for Mr Davis' conclusion bearing in mind what appears to the tribunal to be a very obvious error within the OHS report. Mr Davies's reliance upon the impossible requirement, of the Claimant returning to the defunct role in turn coloured every other consideration made by Mr Davis in deciding this appeal. In reviewing the entirety of the evidence we conclude that Mr Davis decision falls outside the band of reasonable responses of a reasonable employer. In the circumstances Mr Davis appeal is not capable of remedying the deficiencies identified within Mr Kent's decision above and we conclude that the Claimant was unfairly dismissed.

53. Direct Disability discrimination contrary to section 13 EQA
The Respondent accepts that it subjected the Claimant to the following treatment:

a. *His dismissal on 16th November 2017, on notice, with an EDT of 9th February 2018; and*

b. *The rejection of his appeal against dismissal on 5th February 2018.*

Was the treatment less favourable treatment i.e. did the Respondent treat the Claimant as alleged less favourable than it treated or would have treated others ("comparators") in not materially different circumstances? The Claimant relies on a hypothetical comparator.

54. To establish a claim of direct discrimination, the Claimant must show that he has been treated less favourably in some way than a real or hypothetical comparator. Section 23(1) of the EQA provides that there must be no material difference between the circumstances of the Claimant and the comparator. The tribunal must ensure that it is comparing like with like, except for the protected characteristic of disability. The burden of proof provisions in the EQA 2010 are set out in *section 136(2) and (3)* and states: "(2) If there are facts from which the court [or tribunal] could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred. (3) But subsection (2) does not apply if A shows that A did not contravene the provision." This is effectively a 2 stage approach: Stage 1: can the Claimant show a prima facie case? If no, the claim fails. If yes, the burden shifts to the Respondent. Stage 2: is the Respondent's explanation sufficient to show that it did not discriminate?

55. The tribunal has considered the material circumstances of the hypothetical comparator and concludes that the hypothetical comparator must:
    a. Have had similar absence records to the Claimant, although not for a disability -related reason;
    b. have generated similar confused occupational health medical evidence to the Claimant although again not for a disability -related reason.
56. While we have identified flaws with how the Respondent dealt with the Claimant's dismissal, we were not provided with any evidence whatsoever to suggest that the Claimant was treated less favourably than a hypothetical comparator with the above characteristics. We expressly asked the Claimant representative to clarify this claim however the employment tribunal was unable to identify any prima facie a case for direct disability discrimination in the circumstances. Should we be wrong and a prima facie case exists, we conclude that the Respondent has shown on the balance of probability that the reason for Claimant's dismissal was as a result of the Claimant's absence from work and matters relating to his potential return to work. The Claimant has accepted that throughout his absence, the Respondent provided him with a high level of support, and this was specifically commented on by his treating psychiatrist, Dr Sadler. Nowhere in the documents is there any suggestion that the Respondent's actions were motivated or tainted by the Claimant's disability. In the circumstances we conclude that the Claimant's claim for direct discrimination must fail.

Discrimination Arising from Disability

57. We note the provisions of *O'Brien v Bolton St Catherine's Academy [2017] EWCA Civ 145* were the Court of Appeal expressed the view that, while the test for unfair dismissal and the proportionality test under section 15 of the

EqA 2010 are different, in the context of a dismissal for long-term sickness, the considerations for the tribunal are likely to be similar. Lord Justice Underhill commented, "it would be a pity if there were any real distinction in the context of dismissal for long-term sickness where the employee is disabled within the meaning of the 2010 Act. The law is complicated enough without parties and tribunals having routinely to judge the dismissal of such an employee by one standard for the purpose of an unfair dismissal claim and by a different standard for the purpose of discrimination law. Fortunately I see no reason why that should be so." (*paragraph 53*).

58. Discrimination arising from disability is defined within sections.15 EQA. The Respondent discriminates against the Claimant if the Respondent treats the Claimant unfavourably because of something arising in consequence of the Claimant's disability and the Respondent cannot show that the treatment is a proportionate means of achieving a legitimate aim. The Respondent concedes that it knew that the Claimant had a disability.

59. *Did the following things arise in consequence of the Claimant's disability:*

    a. *His continued sickness absence from 2016 until dismissal;*

    b. *A requirement for additional support in the workplace. On day one of the hearing the Claimant was asked to set out what he meant by 'Support'. It was identified that the 'support' required was reflected generally within the six numbered adjustments as recommended in the OHS report dated 3 January 2018 with the addition of a 'work buddy', – summarised here for ease of reference, as follows:*

        i. *The need for a phased return to work on reduced hours/duties;*

        ii. *The need for early starts of 7am to avoid the stresses of traffic;*

        iii. *Regarding travel to work:*

            1. *The need for the Claimant to be referred to the Enable team to determine if Access to Work might be an option for him, to provide transport between his home and the office.*

            2. *The need to work from home when suffering significant symptoms.*

        iv. *The need to risk assess every duty the Claimant undertakes in the workplace, [it was agreed that the Claimant did not allege that the disbanded Resource Planner role must remain intact]*

        v. *The need for refresher training or retraining in his job role.*

        vi. *The need for regular welfare discussions with the Claimant for at least the next 6 months to 1 year.*

        vii. *The requirement of a work buddy*

60. The Respondent concedes that the 6 recommendations in the January 2018 OHS report arose in consequence of the Claimant's disability but disputes the addition of 'work buddy'. In respect of the 'work buddy', it is noted that this was discussed previously as set out above. Further the work buddy, could potentially play a part within welfare discussions, depending upon the physical availability/unavailability of direct line management. The tribunal

concludes that the Claimant had a need for a mental health 'work buddy' as part of his support and that this was 'something' arising in consequence of disability. The Respondent concedes the unfavourable treatment of :

a. *dismissing him on 16th November 2017, with an EDT of 9th February 2018;*

b. *Not allowing the Claimant to return to work on or around 15th December 2017;*

c. *Rejecting the Claimant's appeal against dismissal on 5th February 2018.*

61. *Can the Respondent show that the treatment is a proportionate means of achieving a legitimate aim?*
To be proportionate, the unfavourable treatment has to be both an appropriate means of achieving the legitimate aim and a reasonably necessary means of doing so (*Homer v Chief Constable of West Yorkshire [2012] UKSC 15*. The tribunal is obliged to conduct a balancing exercise between the disadvantage suffered by the Claimant by Respondent's 3 alleged acts above and the Respondent's legitimate aims.

62. We first look at the alleged unfavourable treatment of not allowing the Claimant to return to work on or around 15/12/2017. At this time Mr Davis had realised that the medical situation had changed from the previous OHS report and that he reasonably required the assistance of a further OHS report before allowing the Claimant to return to the workplace. The Respondent relies upon the legitimate aim of ensuring that employees are not exposed to working conditions which would present a risk to their health. In this part in the process we consider Mr Davis' actions to be entirely appropriate and reasonable. It was necessary to obtain up-to-date occupational health medical evidence to assist the Respondent with the Claimant's possible return to work following a period of serious ill-health. We conclude that Mr Davis actions in postponing the Claimant's return subject to his consideration of the medical evidence was a proportionate means of achieving the legitimate aim of protecting the health and safety of employees within the workplace. This part of the Claimant's claim is unsuccessful and dismissed.

63. We now turn to the Claimant's dismissal on 16 November and the rejection of the Claimant's appeal on 05/02/2018. The Respondent relies upon the legitimate aim of (a) ensuring effective and regular service by its employees (i.e. for employees to be able to attend at work and to being capable of carrying out their duties once at work) and allow the Respondents to meet the demands of its customers as well as ensuring that employees are not exposed to working conditions which would present a risk to their health and wellbeing.

64. The tribunal concludes that:
    a. referring to the flaws was identified within Mr Kent's decision is set out above and repeating the comments made under that section, that the Respondent's action cannot be said to be appropriate or proportionate means of achieving the legitimate aim. Appropriate and proportionate means would involve Mr Kent obtaining accurate medical evidence prior to terminating the Claimant's employment. The Respondent's actions were not in the circumstances proportionate to the Respondent's legitimate aim;

b. similarly referring to the flaws identified within Mr Davis' decision to reject the Claimant's appeal, again the tribunal repeats its comments under the unfair dismissal Section above. In essence Mr Davis' actions in concluding that the Claimant could not return to any position (as Resource Planner no longer existed) resulted in a lack consideration being applied to the entirety of the Claimant's circumstances and his ability to return to work. These actions fall outside the band of reasonable responses from a reasonable employer. We conclude that the rejection of the Claimant's appeal in those circumstances cannot be said to be proportionate to the Respondent's legitimate aim.

65. Reasonable Adjustments – ss.20 & 21 EQA

The obligation on an employer to make 'reasonable adjustments' arises under section 20 of the EQA. The requirement is, where there is a 'provision criteria or practice' (PCP) of the Respondent's that puts the Claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage. The EAT has commented that the reasonable adjustments duty is "primarily concerned with enabling the disabled person to remain in or return to work with the employer", or "to enable disabled people to play a full part in the world of work" (see, for example, *Salford NHS Primary Care Trust v Smith UKEAT/0507/10*. The two-stage burden of proof as referred to above applies. In a claim for failure to make reasonable adjustments, the burden does not pass to the employer until:

a. The tribunal is satisfied that on the balance of probabilities the Claimant was substantially disadvantaged within the meaning of the reasonable adjustment provisions
b. The Claimant has suggested an adjustment that it is alleged the employer should have made, in sufficient detail to enable the employer to deal with it.
c. There is evidence that is at least capable of leading a tribunal to conclude that the proposed adjustment would be reasonable and would eliminate or reduce the disadvantage.

If the burden shifts, the employer must prove that the proposed adjustment was not reasonable

66. It is accepted by the Respondent that it had a PCP of:

a. requiring staff to be adequately fit for work;

b. *requiring staff to maintain an acceptable level of attendance;*

c. *normally requiring staff in his role to attend and present for work at a particular office, irrespective of how they arrive there.*

67. *The Respondent does not accept the PCP of '-staff in the High Wycombe offers need to be able to work without on-site management. We note that Mr Davis expressly states in the appeal outcome letter to* 'the remote management approach employed across BT…..' We consider that the PCP in this case exists and is best expressed as, 'the application of a remote management approach'

68. 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?

69. In relation to the disadvantage suffered by the Claimant we were provided with detailed OHS evidence together with direct evidence from the Claimant in relation to the disadvantage he experienced due to his bipolar condition.

70. It can be seen from the medical evidence that the Claimant was disadvantaged by the requirement to be adequately fit for work or maintain an acceptable level of attendance because he could not do so due to the effects of his disability in the absence of the jigsaw of adjustments he had requested. The Claimant was unable to attend or be present for work at the High Wycombe office location at the designated time due to the stress caused by his commute. This in turn acted as a potential trigger for a relapse of his condition. The Claimant was unable to work under a remote management approach due to the effects of his disability. The disadvantage suffered by the Claimant is apparent to the tribunal from the large volume of medical evidence available set out above. The tribunal is satisfied that on the balance of probabilities the Claimant was substantially disadvantaged within the meaning of the reasonable adjustment provisions

71. The Respondent concedes that it knew or could reasonably have been expected to have known that the Claimant was likely to be placed at such a disadvantage.

72. If so, were there steps that were not taken that could have been taken by the Respondent to avoid any such disadvantage? At the outset of the hearing we were informed that the wording of the proposed reasonable adjustments by the Claimant were roughly equivalent to the six numbered adjustments as identified within the OHS report dated 3 January 2018 but the Claimant's claims were in no way narrowed by this cross-reference. There was no suggestion that the impossible requirement of returning to a defunct resource planner role was required by the Claimant. The proposed reasonable adjustments are summarised as

    a. Phased return to work on reduced hours/duties;

    b. Early starts of 7am to avoid the stresses of traffic;

    c. Regarding travel to work: a

        i. Referring the Claimant to the Enable team to determine if Access to Work might be an option for him, to provide transport between his home and the office.

        ii. Work from home when suffering significant symptoms.(Homeworking)

    d. Risk assessing every duty the Claimant undertakes in the workplace. A programme of management support and supervision with an initial period of face to face support but reducing to include more remote support e.g. through video conferencing or telephone support;

    e. Refresher training or retraining in his job role. A period of training to allow the Claimant to understand the new duties, including allowing

a longer period to achieve competence that might normally be permitted;

f. Regular welfare discussions with the Claimant for at least the next 6 months to 1 year.

g. Assisting the Claimant to identify what support might be available through Access to Work in terms of workplace support and commuting.

h. Providing the Claimant with a mental health buddy (not necessarily his line manager) to monitor his wellbeing on a day to day basis;

73. The tribunal concludes on the balance of probabilities by reference to the OHS report that the Respondent is aware of the adjustments it is alleged it should have made, in sufficient detail to enable the Respondent to deal with it. The question as to whether or not the adjustments would have avoided any substantial disadvantage is disputed by the Respondent and not considered straightforward by the tribunal. The adjustments in isolation for example a phased return to work, would not have avoided the substantial disadvantage experienced by the Claimant. The Claimant's required a jigsaw of adjustments to have had a reasonable prospect of avoiding the substantial advantage and being able to return to work. We cannot say with any certainty that the proposed adjustments would have avoided the substantial disadvantage. However, all of the medical evidence available, ignoring obvious contradictions classed as errors, suggests to the tribunal that the Claimant was at the relevant time, fit to return to work subject to the above adjustments being made. We conclude, taking the entirety of the evidence into account that these adjustments would, on the balance of probability have avoided the substantial disadvantage caused to the Claimant and allowed the Claimant to have returned to employment with the Respondent and it would have been reasonable for the Respondent to make those adjustments at the relevant time.

74. In the circumstances the burden of proof shifts to the Respondent to show that the adjustments as identified were not reasonable. We refer to our various comments in relation to Mr Davis decision and they are repeated herein. Taking the entirety of the evidence into account we conclude that the Respondent had not shown that the identified adjustments were not reasonable. The Claimant's claim for breach of the statutory obligation to make reasonable adjustments contrary to section 20 and 21 EQA is successful.

75. The employment tribunal heard evidence in relation to liability only. This matter was listed for a remedy hearing as set out separately. The parties will have the opportunity at the forthcoming remedy hearing to make submissions in relation to Polkey arguments.

76. Finally, the employment tribunal has on its own initiative made an Anonymisation Order in this matter. This order is made due to the detailed nature of medical evidence relating to the Claimant contained within this judgement and it is considered in the interests of justice with a view to protecting the convention rights of the Claimant to make this order.

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Employment Judge Skehan

Date: 13 April 2020
Sent to the parties on: 21 April 2020.....

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For the Tribunal Office

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