



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms H Horton

**Respondents:** (1) Poynton Chiropractic Limited  
(2) Ms S A Middleton

**Heard at:** Manchester **On:** 11 and 12 February 2020

**Before:** Employment Judge Porter  
Ms C S Jammeh  
Mrs C A Titherington

## Representation

Claimant: In person

Respondents: Mr N Price of counsel

**JUDGMENT** having been sent to the parties on 24 February 2020 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

### Issues to be determined

1. At the outset it was confirmed that the issues were as set out in the Annex (p40-41) to the record of a preliminary hearing held on 19 July 2019, save that the respondent had conceded that the claimant was at the relevant time a disabled person within the meaning of the Equality Act and that was no longer a preliminary issue.

### Orders

2. A number of orders were made for the conduct and good management of the proceedings during the course of the Hearing. In making the orders the tribunal considered the overriding objective and the Employment Tribunals Rules of Procedure 2013. Orders included the following.
3. The tribunal noted that the claimant had, in correspondence received prior to the hearing, requested adjustments to the hearing to take in to account difficulties she may experience in reading documents and answering questions. The tribunal confirmed that the claimant would be given as much time as she needed, and asked to claimant to alert the tribunal if she needed any more time in the conduct of the proceedings.
4. At the start of the hearing the judge confirmed the procedure for the next two days, and advised the parties that the tribunal would retire to read the witness statements exchanged between the parties in accordance with the previous case management orders, together with any documentary evidence referred to therein. The claimant confirmed that she was happy to proceed and made no reference to having prepared an amended witness statement. The tribunal read the copies of the claimant's witness statement which had been exchanged between the parties in accordance with case management orders. The claimant gave her evidence first and under oath, confirmed the contents of the original witness statement, a copy of which was on the witness table, as true to the best of her knowledge and belief, confirming that she had nothing to add. Cross-examination of the claimant was based on her original witness statement. The claimant did not refer, during the course of cross-examination, questions from the tribunal or in re-examination, to her amended witness statement or her evidence in relation to her conversation with her cleaner, Pam Perris. During the course of cross examination by the claimant of the respondents' third witness, Sarah Middleton, it became clear that the claimant was relying on the contents of a witness statement prepared by her but which had not been disclosed to the respondent prior to the hearing. This amended witness statement contained a new paragraph 19, which included new evidence relating to the claimant's cleaner, Pam Perris. Enquiries revealed that the claimant had handed one copy of her proposed new witness statement to the clerk before the start of the hearing. Unfortunately, the clerk had not brought that to the attention of the respondent or the tribunal, had not copied the amended witness statement for use by the tribunal; one copy had been placed on the front desk but had not been identified. The claimant did not, at the start of the hearing, ask to introduce her amended witness statement. After hearing submissions from both parties it was agreed and ordered that:
  - 4.1. A postponement would not be granted as neither party requested it, bearing in mind the additional costs and/or delay this would incur;

- 4.2. The claimant's amended witness statement would be considered as part of the evidence;
- 4.3. The respondents would be allowed to introduce in to the documentary evidence at pages 355 A to 355E documentary evidence relating to Pam Perris;
- 4.4. The claimant would be recalled to confirm her amended witness statement as part of her evidence and to answer questions on the new evidence;
- 4.5. The respondents would recall Xandra Middleton to provide evidence, and to answer questions, relating to Pam Perris.

### **Submissions**

5. The claimant made a number of detailed submissions which the tribunal has considered with care but does not rehearse in full here. In essence it was asserted that:-
  - 5.1. Pam Perris may well have applied for the position, or been offered an interview for a position in 2019 as well as in 2017. The respondent admits that it shredded relevant documents. It is very convenient that the only documentary evidence they have relating to Pam Perris relates to 2017;
  - 5.2. Mr Lorenzo Camerlingo was offered his job before he was diagnosed with Multiple sclerosis;
  - 5.3. There has been a previous claim of disability discrimination against the respondents;
  - 5.4. It is more likely than not that she was not interviewed because of her disability;
  - 5.5. The respondents were seeking information about disabilities on their application form. This was clearly a relevant criteria for appointment and was separate from the enquiry about arrangements needed for interview. The request for information shows that disability was relevant to the decision making;
  - 5.6. The requirement for medical experience was not in the advert and there is no documentary evidence to support the assertion that this was a requirement or that the other applicants had it;
  - 5.7. After they rejected me they sent the application form to someone else – which shows that a decision had not yet been made on the shortlist.

6. Counsel for the respondents made a number of detailed submissions which the tribunal has considered with care but does not rehearse in full here. In essence it was asserted that:-

6.1. in 2016 – 2017 the practice was considerably smaller. It was run by a father and daughter team with one receptionist. It was quiet with between 500 to 100 people on the books. Pam Perris made an application for a receptionist position in 2016 and was unsuccessful because there was a better candidate. In March 2017 the first respondent emailed Pam to see if she was still available to fill a basic receptionist role, which had been advertised in a newsagent's window. Pam Perris was offered an interview but declined. That was no application for a post by Pam Perris in 2019;

6.2. by 2019 the practice had changed. There were now 3 chiropractors in the practice. The office was busy; the requirements for a receptionist had changed. The post was advertised. The claimant applied for the role but was unsuccessful;

6.3. the claimant was aware that there was competition for the post and that there was no guarantee she would get an interview. It is her mistaken belief that her disability was the reason for the respondents' failure to interview her. There were 10 or 12 applicants for the role; the respondents shortlisted four or five. The claimant was rejected without interview. There is nothing sinister in that. The claimant cannot establish any facts to support her assertion that the reason for her rejection was disability;

6.4. paper documentation relevant to the applications for the post was shredded after consultation with GDPR specialists, who expressed concern that the respondents were retaining records with personal information;

6.5. Pam Perris was raised for the first time today and the respondent was able to obtain information and documentation about an application by Pam Perris in 2016/17. The claimant's evidence about a conversation with Pam Perris in 2019 is unsatisfactory: on her own evidence the claimant does not say that Pam Perris had applied in 2016/2017 as well as a further application in 2019;

6.6. the claimant has failed to establish that she was subjected to less favourable treatment because of her disability;

6.7. in relation to the claim under section 15 of the Equality Act, there was no genuine anticipation by the claimant that she would be shortlisted for the post; there is no evidence to support the assertion that the reason the claimant was not shortlisted related to her disability;

6.8. there is no evidence to support the claim of indirect discrimination

## **Evidence**

7. The claimant gave evidence.
8. The respondents relied upon the evidence of:-
  - 8.1. Mr Lorenzo Camerlingo, chiropractic associate;
  - 8.2. Xandra Middleton, chiropractor and director of the first respondent company;
  - 8.3. Sarah Middleton, director of the first respondent and second respondent;
9. The witnesses provided their evidence from written witness statements. They were subject to cross-examination, questioning by the tribunal and, where appropriate, re-examination.
10. The respondents in evidence sought to rely on the written evidence of Paula Harper, contained in an email at page 91 of the agreed bundle. The tribunal notes that the evidence of Paula Harper has been provided by way of an email, has not been signed, and there was no clear indication from the email itself that Paula Harper understood that this information would be used as evidence in tribunal. The tribunal has therefore considered that email as part of the documentary evidence. The claimant did not challenge the veracity of that document, did not challenge its inclusion in the agreed bundle of documents.
11. An agreed bundle of documents was presented. Additional documents were presented during the course of the Hearing, either in accordance with the Orders outlined above or with consent. References to page numbers in these Reasons are references to the page numbers in the agreed Bundle.

## **Facts**

12. Having considered all the evidence the tribunal has made the following findings of fact. Where a conflict of evidence arose the tribunal has resolved the same, on the balance of probabilities, in accordance with the following findings.
13. The first respondent runs a chiropractic practice, in essence a family business. In 2016/7 Xandra Middleton and her father were the only two chiropractors in the practice, working on separate days. The first respondent employed three receptionists at that time, who worked individually on a shift basis. When the practice was open one receptionist would be on duty. The duties of the receptionist included answering the telephone, booking appointments, filing the card of the 5-

10 patients seen in one day, and dealing with the patients. There was only one patient at a time in the practice.

14. The business grew and by 2019 there were 3 chiropractors in the practice. 2 or 3 of them were in the practice treating between 100-150 patients every day. The phone rang constantly, there would be between 3 and 5 patients in reception during opening hours. The receptionist now required basic computer skills. There was a business need for two receptionists to be on duty when the practice was open. The first respondent employed a team of 6 receptionists who worked on a shift pattern.

15. The first respondent does employ disabled and other employees who need support and need to attend hospital appointments. For example, Mr Lorenzo Camerlingo notified the respondents of his diagnosis of multiple sclerosis after he had been offered the job but before his contract of employment was signed. Since his appointment in 2018 he has taken several days off to attend hospital appointments and describes Xandra Middleton as supportive of his needs

*[On this the tribunal accepts the evidence of the respondents' witnesses.]*

16. In or around January 2019 the first respondent identified a need for an additional receptionist to add to their team. It placed an advertisement for the part-time position of receptionist. The advertisement stated that:

- the essential requirement was for a proactive attitude
- a good telephone manner and basic computer skills are an advantage

17. The advertisement did not say that previous experience, either in a medical or non-medical environment, was either necessary or an advantage. The advert confirmed that the successful candidate would be fully trained and supported. Application forms could be collected from the office, or requested by email. The closing date for the applications was initially 20 January 2019, but was subsequently extended to 31 January 2019, and again until 5 February 2019.

18. The claimant sent an email requesting an application form. The application form sent included two separate boxes:

18.1. Do you have any disability that may affect your employment with us either in the short term or the long term. Please give details.

18.2. If you are disabled, please give details of any special arrangements you would require to attend for interview.

19. The claimant completed the first box as follows: –

I have osteoporosis, bile acid malabsorption and anxiety and depression, these do not affect my ability but do sometimes require hospital appointments, that is why part-time suits me and I would endeavour (sic) to fit appointments outside work.

20. The claimant did not complete the second box: she did not set out any special arrangements required for interview.

21. The claimant's application form stated that: –

21.1. She had a degree and further qualifications relating to computer literacy and IT;

21.2. From 2011 to the present date she was working in a self-employed capacity as an IT tutor;

21.3. Prior to that, for five years she had held the role of school admin officer;

21.4. In 2005 – 2006 she was employed as a clinic clerk for Eastern Cheshire PCT

22. Prior to 31 January 2019 Xandra Middleton and Sarah Middleton, both directors of the first respondent, reviewed the application forms received by that date from 10 or 12 applicants, including the claimant, for the purpose of shortlisting for interview.

*[On this the tribunal accepts the evidence of Xandra and Sarah Middleton, noting that the position remained advertised after this time and that Sarah Middleton sent out an application form stating that the closing date for applications was 5 February 2019 – p90. The tribunal accepts the evidence of the respondent's witness that a genuine shortlisting exercise was carried out prior to 31 January 2019.]*

23. In selecting the candidates for interview Xandra and Sarah Middleton noted that there were a number of strong candidates and agreed that they should interview those candidates who had shown recent experience in the medical/physio area, as this better suited their business needs. They decided to interview 4-5 candidates for the post. Any applicant for the post in 2019 without recent experience in the medical/physio area was not shortlisted for interview.

*[On this the tribunal, on balance, accepts the evidence of the respondent's witnesses. In doing so the tribunal notes that:*

- *the respondents have not disclosed the documentary evidence relied upon in reaching a decision as to which of the candidates would be interviewed. The evidence of the respondent's witnesses as to the identity of the other*

*applicants for the post and their stated skills/experience has been vague, lacking in precise detail as to the nature and length of each of the candidates' previous experience;*

- *The respondents have sought to rely upon a written witness statement from one of the successful applicants, Paula Harper, who no longer works for the first respondent. The email at page 91 of the bundle sets out Paula Harper's qualifications and her medical conditions. It does not provide evidence as to Paula Harper's application form. Paula Harper has not been called to give evidence. The respondents have not provided a copy of Paula Harper's application form and/or CV, even though she was employed by them following the interview process;*
- *the respondents have not provided satisfactory evidence about the qualifications and experience of the second unnamed appointment, although she remains in the employ of the first respondent;*
- *these omissions in evidence are surprising, bearing in mind that the respondents are legally represented;*
- *experience in the medical/physio area did not appear in the advertisement either as an essential or advantageous criteria*
- *Sarah Middleton's email dated 31 January 2019, giving the claimant feedback on the reason for non selection is consistent with the respondents' evidence;*
- *The tribunal has given careful consideration to this lack of documentary and other supporting evidence and the claimant's submission that the respondents have failed to disclose relevant documentation detrimental to its case. However, on balance, the tribunal accepts the evidence of Xandra Middleton that the relevant documentation has not been disclosed because it no longer exists.*
- *The tribunal acknowledges that the evidence relied upon by the respondents is incomplete and the tribunal has considered with care the claimant's assertion that the level of evidence relied upon by the respondents is suspicious. However, after careful consideration, on balance the tribunal accepts the evidence of the respondents' witnesses.]*

24. By email dated 31st January 2019 (p86) Sarah Middleton (known as Sally Middleton) informed the claimant that she did not make it through to the second round of the selection process and would not be called for interview.

25. The claimant asked for an explanation and by email dated 31st of January 2019 (page 88) Sarah Middleton replied

There was a big response to our adverts and there were many strong points to your application. However, the ones we have chosen to progress



to the next stage have medical/physio based backgrounds that we feel better suits our needs.

26. The respondents have not provided documentary evidence relating to the applications of the other applicants or the selection process. The respondents have not provided documentary evidence to support their evidence that the other candidates had stronger CV's, had recent medical/physio based experience.

27. The respondents interviewed and appointed 2 of the applicants including Paula Harper, who had 20 years experience as a dental nurse and dental receptionist, and two years experience of patient administration duties working in a private hospital. Paula Harper included in her application form details of her medical history (p91):

27.1. Thyroid cancer thyroidectomy 17 years ago

27.2. Disectomy and disc replacement in the C5/6 cervical spine 3 years ago

27.3. 18 months ago diagnosis of fibromyalgia

28. Paula Harper also commented on her application form that she needed to attend appointments for her thyroid condition

*[On this the tribunal accepts the evidence of Xandra Middleton in part supported by the documentary evidence, namely the email from Paula Harper at page 91]*

29. The name of the other successful candidate, who remains in the employ of the first respondent, has not been provided, she has not been called to give evidence as to the contents of her application form and/or any previous experience in the medical/physio area

30. Prior the presentation of this claim the first respondent obtained advice about the storage of confidential information from a GDPR specialist. The first respondent destroyed all the application forms of the applicants for the position of receptionist after receiving advice relating to the potential serious consequences of storing personal information of the candidates in an unsecure environment.

*[On this, on balance, the tribunal accepts the evidence of Xandra Middleton, bearing in mind that it is unsupported by any other evidence, in particular, evidence from the GDPR specialist.]*

31. Pam Perris, the claimant's cleaner, who did not have any previous experience in the medical/physio area, made an application for a receptionist position with the first respondent in 2016. She was unsuccessful in her application but was invited for interview for a

receptionist post in 2017. She did not apply for the part-time receptionist role for which the claimant applied. She was not invited to apply for that role by the respondent by email.

*[There is no satisfactory evidence that the claimant's cleaner, Pam Paris, applied for the position of receptionist at the same time as the claimant. No witness statement has been provided by Pam Perris. The claimant's evidence as to a discussion she had with Pam Perris in or about March 2019 about an application by Pam Perris for a receptionist job with the first respondent is vague about the date of Pam Perris' application. The claimant did not, prior to the hearing itself, inform the respondent of her intention to rely on the evidence relating to Pam Perris, and did not make any specific request for disclosure of documents relating to Pam Perris. On balance the tribunal accepts the evidence of the respondents' witnesses ]*

32. A claim of disability discrimination and wrongful dismissal was made against the first respondent by a former employee. This claim was dropped without determination by the tribunal. The respondents are unable to recall the precise details of the claim.

*[The tribunal accepts the evidence of the respondents' witness on this. The claimant has provided no details of this claim, no case number, no documentary evidence about the claim. The claimant's assertion about the existence of such a claim was made for the first time in cross-examination of the respondents' witnesses. The claimant has not challenged the evidence of the respondents' witness that this claim was "dropped" without determination by the tribunal.]*

## **The Law**

33. Section 39 Equality Act 2010 provides:-

- (2) An employer (A) must not discriminate against an employee of A's (B)-
  - (a) as to B's terms of employment;
  - (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
  - (c) by dismissing B;
  - (d) by subjecting B to any other detriment

34. Section 136 Equality Act 2010 provides:

Burden of Proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court 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.

35. Section 13 Equality Act 2010 provides:

“A person (A) discriminates against another (B) if, because of a protected characteristic A treats B less favourably than A treats or would treat others.”

36. Section 23 Equality Act 2010 provides:-

(1) On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case;

37. When considering the appropriate comparator we note that like must be compared with like. Previous case law is of assistance in this exercise. Relevant circumstances to consider include those that the alleged discriminator takes into account when deciding to treat the claimant as he did. **Shamoon v Chief Constable of the Royal Ulster Constabulary (2003) ICR 337**. If no actual comparator can be shown then the tribunal is under a duty to test the claimant's treatment against a hypothetical comparator. **Balamoody v United Kingdom Central Council for Nursing Midwifery and Health Visiting (2002) ICR 646**.

38. We have considered the decision of the EAT in **Barton v Investec Henderson Crosthwaite Securities Ltd [2003] IRLR 332**, and its observations on the correct approach to the burden of proof in discrimination cases. We note the Court of Appeal's decision in **Igen Ltd v Wong [2005] IRLR 258** where the Barton guidelines were amended and clarified and it was confirmed that the correct approach, in applying the burden of proof regulations, is to adopt a two stage approach namely (1) has the claimant proved, on the balance of probabilities) the existence of facts from which the tribunal could, in the absence of an adequate explanation, conclude that the respondent has committed an act of unlawful discrimination? and, if so, (2) has the respondent proved that it did not commit (or is not to be treated as having committed) the unlawful act? The Court of Appeal in **Ayodele v CityLink Ltd and anor 2018 ICR 748, CA** confirmed that at the first stage of this two stage approach the burden remains on the claimant to prove facts from which

the tribunal could, in the absence of an adequate explanation, conclude that the respondent has committed an act of unlawful discrimination.

39. Section 15(1) Equality Act 2010 provides:

A person (A) discriminates against a disabled person (B) if-

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

40. To succeed in the claim under section 15 the claimant must establish that she has suffered unfavourable treatment and that that treatment is because of something arising in consequence of her disability.

41. Indirect discrimination. Section 19 Equality Act 2010 provides:

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

42. The tribunal has considered and where appropriate applied the authorities referred to in submissions.

### **Determination of the Issues**

43. This includes, where appropriate, any additional findings of fact not expressly contained within the findings above but made in the same manner after considering all the evidence.

### **Direct discrimination**

44. The claimant suffered detrimental treatment in that she was not shortlisted for interview and thereby lost the chance of being appointed to the post of part-time receptionist.
45. The question is whether the respondents treated the claimant less favourably than the respondents treated or would have treated an actual or hypothetical comparator. On such a comparison of cases there must be no material difference between the circumstances relating to each case.
46. There is no actual comparator as there is no satisfactory evidence that any applicant with the same or similar qualifications and experience as the claimant was shortlisted. The tribunal accepts the evidence of the respondents' witnesses and finds that any applicant for the post in 2019 without recent experience in the medical/physio area was not shortlisted for interview. The tribunal does not accept the claimant's evidence that Pam Perris was offered an interview in this round of appointments in 2019. The fact that Pam Perris was interviewed for a post as a receptionist in 2016, and was offered an interview in 2017 for the same post, does not make Pam Perris an actual comparator in the exercise which took place in 2019.
47. In identifying an appropriate hypothetical comparator the tribunal notes that the respondents have not disclosed the documentary evidence relied upon in reaching a decision as to which of the candidates would be interviewed. The evidence of the respondent's witnesses as to the identity of the other applicants for the post and their stated skills/experience has been vague, lacking in precise detail as to the nature and length of each of the candidates previous experience.
48. The tribunal notes in particular that the respondents have not provided satisfactory evidence about the qualifications and experience of the second unnamed appointment, although she remains in the employ of the first respondent.. The tribunal has given careful consideration to this lack of documentary and other supporting evidence and the claimant's submission that the respondents have failed to disclose relevant documentation detrimental to its case. However, on balance, the tribunal accepts the evidence of Xandra Middleton that the relevant documentation has not been disclosed because it no longer exists. The tribunal acknowledges that the evidence relied upon by the respondent is incomplete and the tribunal has considered with care the claimant's assertion that the level of evidence relied upon by the respondents is suspicious. However, after careful consideration, on balance the tribunal accepts the evidence of the respondents' witnesses and finds that a decision was made to interview those candidates whose applications demonstrated recent experience in the medical/physio area. In reaching this decision the tribunal notes that this criteria did not appear in the advertisement either as an essential or advantageous criteria. However, the tribunal notes and accepts that it was open to the respondent, after

review of all applications, to shortlist on different criteria. The tribunal accepts the evidence of the respondents and finds that recent experience in the medical/physio area could be beneficial to the respondent's business.

49. There is no satisfactory evidence that a hypothetical comparator, a non-disabled applicant with the same or similar qualifications and experience of the claimant, would have been treated any differently, would have been shortlisted for interview. The hypothetical comparator is a nondisabled applicant whose most recent experience was as a self-employed IT tutor, with no relevant recent experience in the medical/physio area. The tribunal finds that the hypothetical comparator would not have been treated differently, would not have been shortlisted.
50. There was no difference in treatment.
51. In any event, if there was a difference in treatment, the tribunal has considered whether there are any facts from which the tribunal could infer that the reason for any such difference in treatment, the reason for the failure to shortlist the claimant for interview, was the claimant's disability. The tribunal has considered the claimant's assertion that the respondents have had a previous claim of disability discrimination against them. The claimant has provided no details of this claim, no case number, no documentary evidence about the claim. This assertion was made for the first time in cross-examination of the respondents' witnesses. In these circumstances the fact that a claim was made against the respondents is not a fact from which the tribunal could infer that the reason for the treatment of the claimant was her disability.
52. The tribunal has considered with care the fact that the application form required the applicant's to disclose details of any disability. The tribunal accepts the claimant's submission that the request for such information suggests that this information was relevant to the decision to interview and appoint. However, the tribunal also notes that the first respondent did shortlist and appoint an applicant who disclosed a disability on her application form, that is, Paula Harper, and that the first respondent does employ other disabled employees, who are given support. In all the circumstances, the tribunal finds that there are no facts from which the tribunal can draw the appropriate inference.
53. Further, and in any event, if the tribunal is wrong on that, the tribunal has considered and accepts explanation put forward by the respondents: the claimant was not selected for interview because there were other stronger candidates who had recent relevant experience in the medical/physio area. The claimant's experience in a medical setting took place in 2005/6. In all circumstances the tribunal accepts the explanation and finds that the claimant's disability played no part in the decision-making process. It is clear that the respondent is happy to employ disabled persons who need adjustments, or support, who need continuing hospital treatment. There is no satisfactory evidence to

support the claimant's assertion that her declared disability, her declared need for hospital appointments, affected the respondent's decision-making process. The tribunal is satisfied and finds that it did not. Although the claimant has a degree and considerable experience in IT her completed application form does not indicate, as she suggests, that she was ideally suited for the job, that she had the necessary skills. To the contrary, the claimant's most recent experience was as a self-employed IT tutor – she had no recent experience as a receptionist, no recent experience in customer care.

54. The claim of direct discrimination is not well founded and is hereby dismissed.

**Claim under section 15 Equality Act**

55. The respondents did not shortlist the claimant for interview because the claimant did not have recent experience in the medical/physio area. The respondent did not fail to shortlist the claimant because of her declared need to attend medical/hospital appointments. The decision not to progress the claimant to the next stage of the selection process did not relate to or arise from the claimant's disability.

56. The claim of discrimination under section 15 Equality Act is not well founded and is hereby dismissed

**Claim under section 19 Equality Act**

57. The respondents did not apply a provision criterion or practice of not shortlisting people who have to attend medical appointments. The respondents shortlisted and appointed Paula Harper.

58. The claim of indirect discrimination under section 19 Equality Act is not well founded and is hereby dismissed.

Employment Judge Porter  
Dated: 21 May 2020

Reasons sent to the parties on:  
14 July 2020

For the tribunal