EMPLOYMENT TRIBUNALS

Claimant	**Respondent**
Mr L Mbuisa	Care AK Ltd trading as Kare Plus Huddersfield

PRELIMINARY HEARING IN PUBLIC

Heard at: **Leeds** **On: 19 August 2020**

Before: **Employment Judge Davies**

Appearances

For the Claimant: **In person**

For the Respondent: **Ms Rumble (counsel)**

JUDGMENT

1. The Claimant was not an employee of the Respondent as defined in s 230(1) and (2) Employment Rights Act 1996. The Tribunal does not have jurisdiction to hear his claims of unfair dismissal and breach of contract and they are dismissed.

2. The Claimant had a disability as defined in the Equality Act 2010 at all relevant times for the purposes of this claim because of a physical impairment (back pain) and a mental impairment (depression and anxiety).

REASONS

Introduction and issues

1. This was a preliminary hearing in public to decide:
   1.1 Whether the claimant, Mr Mbuisa, was self-employed, a worker or an employee; and
   1.2 Whether he met the definition of disability in the Equality Act 2010 at the time of the events in this claim.

2. The claimant represented himself and the respondent was represented by Ms Rumble (counsel). I had in front of me the agreed preliminary hearing file of documents. I heard evidence from the claimant.

3. At the preliminary hearing, the Claimant's medical records were incomplete. He had had ample time to disclose them. He is an experienced litigant and is well aware that he needs to disclose in full the documents he relies on. They were in his possession, he had simply failed to disclose them comprehensively or to check the hearing file. After the preliminary hearing he sent two emails to the Tribunal attaching additional medical records. No explanation or application was

made. The Respondent objected to the Claimant relying on them, and noted that it had not had the chance to cross-examine him about them. Despite these matters, I have taken some account of the additional documents, simply as a record of when the Claimant consulted his doctors about back pain or mental health, and when he was prescribed particular medications. There are some reasons to approach the Claimant's medical records with caution – see below – but as a factual record of appointment dates, reasons for attendance and medications prescribed I consider it is in the interests of justice to admit the documents in evidence. They are relevant and they help me to understand the sequence of events. It is not proportionate to put the Respondent to the further expense and delay of another hearing to decide about the admissibility of the documents and, if admitted, to hear further evidence from the Claimant. The Claimant was not challenged about the accuracy of the medical records that were in the preliminary hearing file. In respect of the new documents, I have not assumed that what the Claimant told the doctor was accurate, I have simply noted what the doctor recorded and prescribed.

WORKER STATUS

Findings of fact

4. In June 2018 the claimant telephoned Kare Plus Huddersfield on the recommendation of a friend. It appears he spoke to someone called John who filled in a short form. Kare Plus Huddersfield then emailed him on 28 June 2018 thanking him for his interest in their "agency." They invited him for an interview and asked him to complete some forms and bring them with him. The email came from "Kare Plus Huddersfield." At the bottom of the email it said "A Kare Plus Franchise owned and operated under license by Care AK Ltd."

5. The claimant filled in an application form. He went to an interview on 6 July 2018. One of the questions was whether he had worked for an agency before and he said he had. He was told on the day that his application was successful. References were taken up and a DBS check was carried out. The led to a further risk assessment being carried out on 18 July 2018.

6. On 25 July 2018 Kare Plus Huddersfield emailed the claimant to tell him his badge had been issued and that he had been booked on an induction on 31 July 2018.

7. On 1 August 2018 the claimant signed a Kare Plus induction checklist. He confirmed he had received a number of documents including a company handbook.

8. The handbook was the Kare Plus Ltd handbook. It included a blank Agency Worker Declaration. The claimant said in evidence that he looked at the declaration. He said that the handbook talked about both "employees" and "agency workers", which it did. However, it was essentially a handbook about agency work. The section about working for Kare Plus opened by explaining that the process of ensuring compliance with legislation and client requirements was managed by the Kare Plus team who would maintain each "agency worker's" records so that they never found themselves unable to work because of

shortcomings in their file. The handbook told workers to complete timesheets and return them as instructed by their Kare Plus office. Workers were asked to tell Kare Plus office staff of their future availability in advance to ensure a regular supply of work. Under the heading "Tax and National Insurance", the handbook said that although agency workers were self-employed unless registered as a limited company, Kare Plus was required by law to treat them as though they were employed for the purposes of PAYE and Class I National Insurance Contributions only. Many of the other paragraphs also made clear that the workers were regarded as agency workers, for example the section dealing with working time and annual leave. In the section headed "Before You Start Work", a number of general obligations were set out. The first one started, "As an Agency Worker to be deployed in the provision of the Services you need to be aware that at all times whilst on the Client's premises you: (a) are under the direction and control of the Client at all times…" There was a whole section summarising the effect of the Agency Worker Regulations and setting out the entitlements of agency workers under those regulations.

9. On 1 August 2019 the claimant signed a second document, about accepting and cancelling requests to work. The document recorded that Kare Plus would try to find work for the claimant within his capability and noted that they might sometimes ask him to accept work at very short notice. The claimant made a commitment to try to fulfil any work requested of him unless there were good reasons why he could not. The claimant was asked to provide a minimum of 24 hours' notice when cancelling the shift so that it could be reallocated. Failure to follow the guidance might result in Kare Plus declining to offer him further work.

10. The claimant was paid through a payroll company called Kare Pay. I saw a contract for services apparently entered into on 4 October 2018 between the claimant and that company. The claimant said that he had never seen this contract. However, he accepted that Kare Pay had issued his payslips throughout.

11. The Claimant's evidence to me was that he understood at the start of the arrangement that he would be offered shifts and he could choose to accept or refuse them. I was shown extensive evidence of precisely that happening over the coming months by text. There were also examples of the claimant cancelling shifts after he had previously accepted them.

12. The situation was therefore that Kare Plus Huddersfield would offer the claimant shifts by text message and he would either accept or refuse them. If he accepted the shift he would attend for work at the client's premises and would be told where to work and what to do by the client. The claimant only accepted work as the senior in charge of the shift so he would direct the more junior carers in their duties. He has qualifications that allow him to do that work.

13. The relationship appears to have operated as set out in the handbook. The Claimant told me that at the start he thought he fell into the category of agency worker, but that it subsequently changed. The claimant now bases his claim that he was an employee working under a contract of employment on essentially two matters. First, he says that he did not get a wide choice of roles. Secondly, he says that there came a point where he was no longer allowed to refuse shifts

and that he was "dismissed" when he did so. I make the following further findings about those matters.

14. The claimant was asked about the choice of roles when he gave evidence. He appeared to say that his experience with Kare Plus Huddersfield was different from his experience of other agencies because other agencies would tell him about shifts in a range of places and he could choose from those shifts. Kare Plus Huddersfield did not give him a choice: he was told this was the shift he was to do. However, he accepted in cross-examination that he might be offered shifts at White Rose or Tolson Grange. The written evidence showed offers of work being made to the claimant and the other workers at a range of locations. It may be that other agencies he has worked for offered a wider range of shifts but there was quite clearly no difference in principle. Kare Plus Huddersfield were offering shifts at different venues doing a range of roles for the claimant (and others) to refuse or accept; they were not directing or instructing him to attend particular shifts or locations.

15. The second aspect is the claimant's assertion that there came a point he was no longer allowed to refuse shifts. He said that this was in February or March 2019. I note at this stage that the claimant very sadly suffered a bereavement on 2 February 2019, when he lost his daughter. I expressed my sympathy to him at the hearing and I do so again.

16. At the time of his bereavement the claimant continued to receive the generic texts from Kare Plus Huddersfield offering shifts. On 4 February 2019 a text was sent confirming that the claimant was booked on shifts on 5 and 6 February 2019 and the claimant texted to confirm his attendance. Texts offering shifts were sent (to all) between 6 February 2019 and 17 February 2019, to which the claimant did not reply. On 18 February 2019 he was texted a confirmation that he was booked on shifts on 22 February 2019 and 1 March 2019. He replied to confirm. On 19 February 2019 he was asked if he could cover shifts on 20 February 2019 and 2 March 2019. He confirmed he could cover the 20 February 2019 shift. The claimant forgot about the shift on 22 February 2019. He was texted by Kare Plus Huddersfield about an hour after the start time and replied to say that he had forgotten about the shift and would have cancelled it.

17. On 27 February 2019 texts were sent asking if the claimant could do team leader shifts at Tolson Grange on 4, 5 and 9 March 2019. He replied to say he could and was told that his name had been submitted and a confirmation text would be sent if and when the shifts were confirmed. He was also asked if he could do senior carer shifts at White Rose on Thursday, Friday, Saturday and Sunday night that week (28 February and 1, 2, and 3 March 2019). He replied to say that he could not as he was only available "Saturday day." That appears to have prompted a text saying that the claimant's name was still put forward against the team leader shifts for next week at Tolson Grange. The claimant was asked if he wanted his name withdrawing while the bookings were still unconfirmed. He did not reply. The following morning he was texted with confirmation that those shifts were booked. The following day, Friday, 1 March 2019, a text was sent, which noted that the claimant had not texted acknowledgement of those shifts as normal. It said that staff had rung the claimant many times the previous day to make sure he had got the text but there was no answer and the claimant had not

called back. The claimant was told that if they did not hear back by midday they would take it that he was not committed to covering the shifts and he would be replaced on them.

18. On Saturday, 2 March 2019 claimant texted to say that he did not want to argue and asked to be taken off the shifts. He said that he did not want to be spoken to "like that" when he had legitimate reason and complained about being called after his daughter passed away. He said he had been left with no choice but to make a claim for money he was owed and his holiday pay. A reply was sent to him on 4 March 2019 disagreeing with his version of events. It said that the claimant had not been offered any new shift since last Wednesday, they were only checking on the shifts at Tolson Grange that he had agreed to cover prior to his last cancelled shift at White Rose. The text also said that the agency had rung the claimant many times last week but when he did not reply they had sent him an email on Friday saying that they would not be able to offer him any further shifts and that he must return his uniform, badge and timesheets, following which his withheld payment would be released. I was not shown any relevant email.

19. The claimant's evidence to me was that he called the agency sometime between 27 February and 2 March to say that he did not want to take the shifts. He said that he was told he could not cancel shifts. He did not know why he had not simply texted to say he did not want his name withdrawing when asked.

20. I did not hear evidence from Kare Plus Huddersfield about these specific events and it appears the full documentary evidence was not in the file of documents for this hearing. I am conscious that these events form part of the claimant's substantive complaints and I do not want to make findings that are binding on a future tribunal without having heard full evidence.

21. Therefore, for the purpose of this preliminary issue I assume that, as the claimant says, he called the agency some time between 27 February and 2 March 2019 to say that he did not want to take the shifts and was told that he could not cancel them. I also assume, as stated in the text on 4 March 2019, that the agency emailed the claimant on 1 March 2019 having not heard from him to say that they would not be able to offer him any further shifts.

Legal Principles

22. The legal dispute about the claimant's status as a worker or employee is narrow. Kare Plus Huddersfield accepts that it had a contract with the claimant for the claimant to perform work or services personally but it does not accept that this was a contract of employment in the narrow sense. That means:
    22.1 it accepts that the claimant was an agency worker under the Agency Workers Regulations 2010 as defined in regulation 3(1)(b)(ii);
    22.2 it accepts that the claimant was an "employee" within the extended definition in s 83(2)(a) Equality Act 2010; and
    22.3 it accepts that the claimant was a worker within the extended definition in s 43K Employment Rights Act 1996.

23. It does not accept that the claimant was an employee in the traditional, narrow sense in s 230(1) Employment Rights Act 1996. The only question for me is therefore whether the claimant worked under a contract of employment, i.e. a contract of service, rather than a contract personally to do work that was not a contract of employment.

24. The legal principles are well established. The Tribunal must find as a matter of fact whether there was a contract between the parties and, if so, what its terms were. Having done so, the Tribunal must decide whether the contract was a contract of employment. There is no single test for determining whether an individual is an employee within the meaning of s 230(1). Each case depends on its own facts. There is, however, said to be an "irreducible minimum", without which there can be no contract of employment. That minimum comprises:
    24.1 *Mutuality of obligation* - an obligation on the employer to provide work and on the employee to accept and perform the work offered;
    24.2 *Control* – put simply, that ultimate authority over the purported employee in the performance of his or her work must rest with the employer; and
    24.3 *Personal service* - the employee must be obliged to perform the work personally, subject to a limited power of delegation.

    See: *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance* [1968] 1 All ER 433 QBD; *Nethermere (St Neots) Ltd v Gardiner* [1984] ICR 612 CA; *Carmichael v National Power plc* [2000] IRLR 43.

Application of the legal principles in this case

25. I have no hesitation whatsoever in finding that the Claimant was not an employee of Kare Plus Huddersfield in the narrow sense as defined in s 230(1) Employment Rights Act 1996. The written terms of the contract, which were reflected in the actual practice of the parties, did not give rise to the mutuality of obligation that is required in a contract of employment. Kare Plus Huddersfield was not obliged to provide work and the claimant was not obliged to accept and perform work that was offered. The handbook did not contain any term requiring the Respondent to offer work or the Claimant to accept it. This was dealt with in the Acceptance and Cancellation of Requests to work document signed on 1 August 2018. That recorded that Kare Plus Huddersfield agreed that it would endeavour to find the Claimant work and the Claimant agreed that he would attempt to fulfil any work requested unless there was a good reason. That is not an obligation to provide or to accept work. The extensive documentation showed work being offered to the Claimant, which he sometimes accepted and sometimes refused. It showed him cancelling shifts after he had accepted them on occasion. It was consistent with the written agreement.

26. Even assuming the Claimant's version is accurate, the events of February-March 2019 do not change that. First, I am concerned with the terms of the contract as agreed at its outset (or as subsequently varied if that happened). The terms of the contract as agreed and as performed from August to February did not provide for mutuality of obligation. The events of February-March 2019 do not affect the terms agreed in July 2018 and there is no suggestion that they gave rise to or reflected any variation of the contract.

27. Further, the events of February to March 2019, even as described by the Claimant, do not seem to me to indicate that the Claimant was now being told that he was obliged to accept shifts generally (still less that the Respondent was obliged to offer them to him). Rather, there was a specific issue, arising because the Claimant did not acknowledge confirmation of a booking and did not respond to texts or phone calls. I assume that in the course of those events he was told that he could not cancel shifts and that he was subsequently told he would not be offered any more shifts and asked to return his uniform and other items. If that happened, it might have been a breach of contract, but it did not and could not change the terms of the contract as agreed at the outset and operated at all times up to that point.

28. The suggestion that this could not be an agency worker's contract because the Claimant was not offered a choice of shifts was plainly misconceived. The Claimant was offered a choice of shifts, as the documents clearly showed.

29. Therefore, there was no mutuality of obligation. Kare Plus Huddersfield was not obliged to offer the Claimant work and the Claimant was not obliged to accept or perform work that was offered. The contract between them cannot therefore have been a contract of employment for the purposes of s 230(1) Employment Rights Act 1996.

30. This means that the Claimant cannot bring a claim of unfair dismissal or a claim for notice pay.

DISABILITY

Findings of fact

31. The claimant confirmed that he is making two disability discrimination complaints. First, he says that he was forced to take 12-hour long carer shifts, which he says was disability discrimination because of a back condition. Secondly, he says that he was pressured to take shifts during his bereavement, which he says was disability discrimination because of a mental health impairment of anxiety or depression.

32. I was provided with some of the claimant's medical records but not all of them. My attention was drawn to previous Tribunal proceedings brought by the claimant against a different employer. The proceedings included claims of disability discrimination in which the disability relied on was a back condition. In written reasons promulgated on 23 January 2020, EJ Wade set out the unanimous findings of the tribunal that the claimant did not have a disability by virtue of that condition at the relevant period in those claims (March to May 2017). The Tribunal in that case made a finding that the claimant's GP records could not be relied on as accurate, because it was clear that he had reported to his GP that he was unfit for work because of his back condition and obtained a fit note signing him off work with one employer on that basis, while at the same time he was participating in physically demanding training for a different employer and explicitly signing that he was fit to do so each day. Ms Rumble drew my attention to the written reasons provided by EJ Wade, but she did not cross-examine the claimant about them, nor did she cross-examine him about the accuracy of the GP notes relied on in this claim. Nonetheless, in view of the

findings of EJ Wade's Tribunal, I approach the Claimant's medical records with a degree of caution.

33. It was agreed that in these proceedings the disability discrimination complaints relate to the period October 2018 to February 2019.

34. The Claimant's back was injured in April 2013 when some glass sheets fell on him at work. He experienced some assaults at work in 2017, which led to further back pain. The GP records do refer to complaints of back pain during 2017 and the Claimant was signed off with back pain at points in 2016 and 2017 (though I note again the findings of EJ Wade about that period).

35. The Claimant had an MRI scan in November 2017, which was clear. He was advised to focus on improving his general mobility and strength. He requested a referral to pain management and was referred to the Pain Management Service in January 2018. He reported a five-year history of thoracic and lower back pain following an accident at work. He reported that the pain had gradually improved but flared up following 3 assaults in 2017. He said he had been managing with pain relief and that the pain was aggravated by walking and sleeping. He reported that the pain was also affecting his mood. The treatment plan was for the Claimant to access CBT for pain management.

36. The Claimant reported to his GP that he had suffered a further assault at work in February 2018 and the GP noted that he was mainly complaining of back pain. The GP recorded that his "aches and pains should settle." He was signed off work until 4 March because of the assault.

37. From 7 April 2018 to 29 June 2018 the claimant was signed unfit for work because of a stress related problem. He was already taking amitriptyline and was started on mirtazapine. In May he switched back to amitriptyline because the mirtazapine was causing joint pain.

38. He left his previous employment and applied to Kare Plus Huddersfield at the end of June 2018 as indicated above.

39. There is no record of any visit to the GP because of back pain during whole period the Claimant worked for Kare Plus Huddersfield. The Claimant saw the GP with shoulder pain in September 2018 and was signed off work for two weeks.

40. The Claimant told me that he takes co-codamol and naproxen for back pain. The available GP records refer to prescriptions for co-codamol and naproxen in (at least) March 2015, June and August 2017 and April 2018. His evidence was that he started taking these medications in April 2013 and is still taking them. The available GP records support that evidence. So does a letter from the Claimant's GP dated October 2019. The Claimant was also able to give a clear explanation of what each medication was and why he was taking it. I accepted his evidence that he has been taking co-codamol and naproxen since April 2013.

41. There is no record of any visit to the GP with anxiety or depression during the period he worked for Kare Plus Huddersfield. He told me that he has been taking

amitriptyline since April 2013, fluoxetine (on and off) since 2017 and mirtazapine for a period. The evidence included a record of a psychological assessment in March 2014, recording that the Claimant had been experiencing symptoms of anxiety and depression since the accident at work in 2013. He said he was in pain almost every day, had disturbed sleep and nightmares and low mood. He had started on sertraline. He also took co-codamol and amitriptyline for pain relief. The available GP records indicate that the Claimant was prescribed fluoxetine and amitriptyline in (at least) March 2015, between August 2017 and April 2018 and in 2020. The GP's letter of October 2019 talks about depression starting in 2014 and notes the referrals to IAPT and the Richmond Fellowship. Again, I accept the Claimant's evidence about when he has been taking these medications.

42. There is evidence that the Claimant was referred to IAPT in July 2018. That appears to relate to the recommendation that he access CBT for pain management. The Claimant attended one session of the "Living well with pain" course but was not sure why he was attending. It was agreed that he might benefit from accessing the Richmond Fellowship and he was referred to them in November 2018.

43. As indicted, the Claimant's GP wrote a letter in October 2019 summarising the Claimant's injuries and medical conditions (as reported to the GP). He said that the Claimant had suffered injuries to his back and both legs in April 2013 in an accident at work. He was put on pain killers "which he is still on." In 2014 he suffered from depression and was put on antidepressants, namely sertraline, mirtazapine and fluoxetine. He has been referred to IAPT and the Richmond Fellowship. He had reported further back injuries in March and May 2017 and February 2018. He remains in ongoing back pain and takes moderately strong medication for it.

44. The Claimant's own witness statement is in some respects unsatisfactory. It does not give clear examples or evidence about the dates relevant to this claim. It does not read as if it has been prepared specifically for these proceedings and seems in some respects formulaic. Nonetheless, the Claimant describes impacts on his day to day activities caused by back pain and depression/anxiety.

45. I found his oral evidence more persuasive. He was asked specifically about the time he worked for Kare Plus Huddersfield. He said that when he applied to work for Kare Plus Huddersfield he was suffering from back pain but he would work with it as he had done before. He specified that he would only work as a senior carer because he could not do the duties an ordinary carer did. He couldn't bath somebody, make a bed, change bed sheets, dress or undress somebody or do their shopping. As a Senior Career he would have to go up and down the stairs and walk but there was no other way he could earn a living. He had sometimes carried out personal care activities because he had found somebody in need and would not leave another human being in that state so he did the best he could.

46. The Claimant said that he was particularly struggling with his mental health after he was assaulted again. He found it difficult to go to work. It was difficult to look after himself, to bath and cook for himself. That lasted until around May 2019. A

number of days his sisters would visit him and prompt him to look after himself. He had good days and bad days.

47. His back pain made it difficult for him to walk, cook while standing up, take a shower and walk up and down stairs. Things were difficult and painful for him but he did them because he had no choice. For example, he had travelled to London for a legal hearing. It was difficult for him to sit on the coach but he had no alternative.

48. The Claimant's evidence was that he always takes co-codamol 4 times per day. If he did not take it he would not be able to sit at the Tribunal. He knew that because he started to feel the pain if he went too long before taking his medication. He takes naproxen twice per day. It is an anti-inflammatory for his back. If he does not take it his back becomes stiff and painful. If he ever forgot to to take it the pain was too much. Most recently that had happened in April this year and he had to leave work early.

49. He has been on anti-depressants since 2013. When his symptoms worsen his medication can be changed or increased.

50. Drawing all of the evidence together, while I approach both the GP records and the Claimant's witness statement with some caution, I do find that at the relevant times he had a physical impairment (back condition) and a mental impairment (anxiety and depression). Those conditions seem to me to be linked. The Claimant's pain has given rise, in part, to his poor mental health, but also his mental health affects his ability to manage the pain.

51. Further, at the relevant time, those conditions affected the Claimant's ability to do normal day to day activities. His back pain limited the distance he could walk. It made it difficult for him to cook, take a bath or shower, and use the stairs. He chose to limit the type of roles that he would accept, so that he did not have to provide personal care for others, which he was unable to do. He performed the senior carer role in full, but could be in pain while doing so. That was the position when he was taking his medication. Without the medication, the pain would make it very difficult for him to do anything at all. This was the position throughout the relevant period and had been for a long time prior to that.

52. The Claimant's depression and anxiety also affected his ability to do normal day to day activities. He struggled with going to work in the period before he joined Kare Plus Huddersfield. Even after that, he had good days and bad days and sometimes struggled with personal care, such as bathing and cooking for himself. Again, that was the situation with medication. Without the medication his mental health was likely to be worse. This was the position throughout the relevant period and had been for a long time prior to that.

Legal Principles

53. Claims of discrimination are governed by the Equality Act 2010, s 4 of which provides disability is a protected characteristic. By virtue of s 6, a person has a disability if he has a physical or mental impairment that has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities. Section

6 is supplemented by schedule 1 of the Equality Act 2010, and by Guidance made by the Secretary of State pursuant to those provisions: "Guidance on matters to be taken into account in determining questions relating to the definition of disability (2011)" ("the Guidance"). The Tribunal is obliged to take the Guidance into account.

54. Paragraph 5 of schedule 1 makes clear that an impairment is to be treated as having a substantial adverse effect on a person's ability to carry out normal day to day activities if the person is taking medical treatment and, but for the treatment, the impairment would be likely to have that effect.

55. The Tribunal must focus on what the person cannot do, or can only do with difficulty, not on what he can do: see *Goodwin v Patent Office* [1999] ICR 302. A substantial adverse effect is one that is more than minor or trivial.

Application of the legal principles in this case

56. In the light of the findings of fact above, I find that at the relevant times the Claimant did have a disability because of a physical impairment - back pain - and a mental impairment - depression/anxiety.

57. Each of those conditions had a more than minor or trivial impact on his ability to do normal day to day activities, even disregarding the effects of his medication. Although he had good days and bad days, throughout the period his back pain made it difficult for him to walk any distance, use stairs, take a bath and cook. There were things he could only do with difficulty, and the fact that he sometimes provided personal care to a patient in need, used the stairs at work or travelled on a long journey to London does not mean that there was not a substantial adverse effect on his ability to do normal day to day activities. His depression/anxiety made it difficult for him to look after himself properly, for example cooking for himself and washing himself when he was having a bad day.

58. Without his medication, those substantial adverse effects would, in each case, have been likely to be significantly worse. In each case the substantial adverse effects had lasted more than 12 months at the relevant time.

59. All elements of the definition of disability were therefore met with respect to both conditions.

Employment Judge Davies
21 September 2020