



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100006/2021

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Open Preliminary Hearing Held in person on 16 August 2021

Employment Judge: Russell Bradley

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Kevin Fraser

**Claimant
In person**

NSL Limited

**Respondent
D Campion
Of Counsel**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that: -

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1. The claimant's application to amend his claim by introducing claims under the Equality Act 2010 is refused and;
2. The claimant was not continuously employed by the respondent for a period of not less than two years ending with his effective date of termination as is required by section 108 of the Employment Rights Act 1996 in order to make a claim of unfair dismissal. The tribunal has no jurisdiction to determine this claim which is therefore dismissed.

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E.T. Z4 (WR)

REASONS**Introduction**

1. On 10 June 2021 a notice of hearing was issued fixing this hearing. It prescribed that the hearing was to determine two preliminary issues. First, the
5 “*to be opposed*” application for leave to amend. Second, the challenge to the claimant’s title to present and the tribunal’s jurisdiction to consider the claimant’s complaint of unfair dismissal. It was the claimant’s application for leave to amend.
2. On 2 January 2021 the claimant presented an ET1. He had notified ACAS on
10 11 December 2020. The early conciliation certificate was issued on 24 December. On or about 28 January an ET3 with Grounds of Resistance was lodged. The ET forms agree the claimant’s employment as being between 10 December 2018 and 9 November 2020.
3. The ET1 (box 8.1) indicates a claim of unfair dismissal. It also indicates the
15 “*making of another type of claim which the employment tribunal can deal with.*” In the box immediately following, in the box following 8.2 on the ET1 form and in box 15 (for additional information) the claimant provided narrative. Relevant to the issues for this hearing, a summary of that narrative is; the claimant is exempt from wearing a mask at work due to mental health issues; from about
20 23 October 2020 there was a dispute between the parties on the question of whether the claimant had to provide a doctor’s note to vouch his exemption; he was threatened with suspension and possible dismissal if that vouching was not provided; he had “*since been dismissed over this incident*”; the respondent’s failure to follow government guidelines led to his unfair and
25 constructive dismissal; and the respondent lied about its own policy.
4. No claim is made of discrimination in Box 8.1. Box 9.1 indicates that if claiming discrimination, a recommendation is sought. The claimant’s narrative gives no information as to what that remedy might be. Box 12 indicates that the claimant does not have a disability.

5. For present purposes it is convenient to note that the Grounds of Resistance; rely on gross misconduct as the reason for dismissal; aver that the claimant does not have the required qualifying two years' service to maintain a claim of unfair dismissal in an employment tribunal; note that the claimant asserts that he has another type of claim but does not provide sufficient information to identify what it is; request further and better particulars in relation to it; set out a full explanation of the process relating to the dismissal (including an appeal); explained that the allegations which led to disciplinary action were; idling, taking unauthorised breaks, rude and inappropriate behaviour towards management, insubordination (refusal to return to duties), threatening and aggressive behaviour and a potential breach of trust and confidence; and set out a full explanation of a process arising from a grievance submitted by the claimant on 27 October. The Grounds also explain that within the grievance process there was reference to; the claimant's medical condition and whether he considered it a disability; his assertion that he didn't "*want anything but my face mask exemption letter honoured*"; and the claimant's belief that the respondent had broken the Equality Act 2010 and his statutory rights when his line manager asked him to wear a face covering.

6. On 2 February 2021 the tribunal wrote to the claimant in the following terms:-

"Employment Judge McManus is considering the file with a view to confirming that there are arguable complaints and defences within the jurisdiction of the Tribunal. The Employment Judge requires you to provide the following further information by 16 March 2021: It is noted that in the ET1 the Claimant refers to their mental health being the reason why they are exempt from wearing a face mask. Can the Claimant confirm if they intend to pursue a claim under the Equality Act in respect of this, on the basis that they have the protected characteristic of disability. You must copy your response to the other party(ies) as well as to the Tribunal and state when replying that you have done so."

7. It appears that on 7 March the claimant gave notice of his intention to seek leave to amend his claim to add a complaint of discrimination to that of constructive dismissal.

5 8. On 20 March the tribunal directed the claimant to confirm what type of discrimination he seeks to argue (for example direct discrimination, discrimination arising from disability etc). The letter directed the respondent to confirm whether they object to the application to amend and if so the basis of that application.

10 9. On 21 March the claimant emailed the tribunal and the respondent's solicitors. In that email he said

15 *"My employer acted illegally in refusing to accept my verbal exemption which is what is required for face mask exemption. I acted appropriately and followed all guidelines set out by the government my employer did not. They chose to discriminate against myself over a condition I have that has the characteristic of a disability. I believe they directly discriminated against myself and discriminated against myself over a condition that has the characteristic of a disability. I will prove this beyond any doubt if simply given a hearing."*

20 10. On 29 March the respondent's solicitors replied. They; noted his request to amend; confirmed their objection; set out their basis for doing so; sought strike out of the claims in their entirety; and sought leave request further and better particulars of the specific type of discrimination so as to allow a proper response. Their bases for objection were; the claimant did not raise this claim of discrimination in his ET1 form; has "*still*" not confirmed specifically which
25 type of discrimination he is claiming for; it would be out of time and it was not just and equitable to extend time.

30 11. On 12 May the case was considered at a telephone conference closed preliminary hearing. The tribunal made various orders on the making of and answering the amendment in accordance with a timetable. It also ordered parties (in accordance with a timetable fixed by reference to this hearing) to

liaise on documentation relevant to its issues and ordered the respondent to prepared a joint bundle relevant to the issues. Specifically, it was to be “*within the possession of both parties*” 14 days before this hearing, thus by 2 August. The Note which accompanied those Orders includes (1.4 and 1.5) the tribunal’s record that

“The claimant’s initiating Application, ET1 does not contain reference to a complaint of discrimination, either expressly, or through the mechanism of the ticking of an indicative box, rather the narrative set out at both paragraphs 8.1 and 8.2 make reference to the issue of mask wearing in the context of the unfair dismissal complaint/breach of contract. By email dated 7th March 2021 the claimant first gave notice of a desire/intention to incorporate within his claim an additional complaint of Discrimination arising largely out of the same factual matrix and in consequence of the same alleged conduct of the respondents, as that relied upon in respect of the complaint of Constructive Unfair Dismissal. The claimant provided some supplementary information about that intended additional complaint in an email of 21st March 2021.”

12. There then followed an exchange of emails between the parties between 10 and 30 June on the amendment. As per some of the Orders, they included questions asked by the respondent’s solicitors and the claimant’s answers. The appendix to these reasons incorporates the questions and answers. Shortly after the 12 May hearing, the claimant sought advice from the Citizens’ Advice Bureau.

13. On 12 August the respondent’s solicitors sent to the employment tribunal and to the claimant a virtual copy of the bundle. With a letter of 13 August paper copies were sent to the tribunal office. The claimant had not received from the respondent’s solicitors a copy of the joint bundle 14 days prior to 13 August

14. The bundle contained 27 items extending to 331 pages. Its three sections were; Pleadings; Documents; and Grievance/Disciplinary. It appeared to me that the vast majority of the material within sections two and three (from page 92 to page 331) went beyond what was relevant for the issues for this hearing.

Postponement of the hearing

15. At the outset, the claimant said that he had not received the bundle within the time fixed by the tribunal's previous Orders. He had received it only three days before the hearing. He had not had sufficient time to prepare for the hearing on receipt of it. On my invitation he asked to postpone the hearing. He explained that in addition to late receipt of the bundle, his father was dying of cancer. He referred to the tribunal's Orders. He reiterated that he had only had three days to consider the bundle. He appeared agitated. He was upset by his father's health. He said that he was simply not prepared for the hearing. He sought a postponement even of 7 days.

16. On balance, I did not postpone the hearing. Looked at in the context of the overriding objective, the issue of whether a claim of discrimination was to be made had been first raised in the letter from the tribunal of 2 February. Both issues for this hearing had therefore been known to the parties for about 6 months. Both were, primarily, issues for the claimant to address. It was for him to be prepared for the issues for the hearing irrespective of the timing of receipt of the joint bundle. While the claimant had not received the bundle within the time required by the Orders, three factors were relevant. First, it was likely that only pages 1 to 91 were of relevance for this hearing. Second, in any event, the claimant was aware of (he had been party to or at least had seen before) the vast majority of the material within the third section, pages 125 to 331. Third, the Orders had anticipated his involvement in the collation of the bundle in the period prior to it being finalised. Postponing the hearing to another day would inevitably incur a delay and further cost to the respondent. Instead, I postponed the start of the hearing by about an hour until 11.45am so as to allow the claimant to consider the bundle.

The issues

17. Reflecting the purpose of the hearing, and the relevant legislation, the issues for this hearing were:-
1. Should the claimant's application to amend his claim be allowed, the amendment being to introduce claims of unlawful discrimination?

2. Does the employment tribunal have jurisdiction to hear the claim of unfair dismissal?

Evidence

18. I heard evidence from the claimant. To the extent that reference was made in his evidence or where both parties made reference to them in submissions, I took account of material within the bundles.

Findings in Fact

19. From the evidence, the early conciliation certificate and the Tribunal forms, I found the following facts admitted or proved.
20. The claimant is Kevin Fraser. He was employed by the respondent as a parking attendant between 10 December 2018 and 9 November 2020.
21. The claimant began early conciliation on 11 December 2020. ACAS issued a certificate on 24 December. On 2 January 2021 the claimant presented an ET1. It does not contain reference to a complaint of discrimination, either expressly, or through the mechanism of the ticking of an indicative box. On 7 March the claimant gave notice of his intention to seek leave to amend his claim to add a complaint of discrimination. On 21 March and in reply to questions from the tribunal the claimant said; the respondent had acted illegally in refusing to accept his "*verbal exemption*" which was what he said was required for face mask exemption; he had acted appropriately and followed all guidelines set out by the government; the respondent had not done so; the respondent chose to discriminate against him over a condition which has the characteristic of a disability; he believed the respondent directly discriminated against him and discriminated against him over a condition that has the characteristic of a disability; he would prove this beyond any doubt if simply given a hearing. On 11 June the claimant provided answers to questions posed by the respondent's agents in relation to the claim of discrimination. Those answers are incorporated in the appendix.

22. On 26 October 2020 the claimant was invited to attend a disciplinary hearing convened for 28 October (**pages 154 to 155**). The letter notified him that the reason for the hearing was to discuss five allegations:-

- 5 1. *“Idling, taking an unauthorized break. More specifically, on 15th October 2020 you were seen smoking and idling whilst you were on duty.*
- 10 2. *Rude and inappropriate behaviour towards management on 15th October 2020. Namely you were shouting at Bruce Knowles, Team Leader and Graham Dow, Senior Team Leader when they were attempting to establish if you were idling.*
- 15 3. *Insubordination-You were instructed by Graham Dow to return to your duties but refused to do so.*
4. *Threatening and aggressive behaviour towards Graham Dow, Senior Team Leader on 15th October 2020. Namely, it is alleged that you told Graham that you would “take him to the cleaners”*
5. *A potential breach of the trust and confidence of the Company”*

23. By letter dated 27 October, the claimant gave notice of his wish to raise a formal grievance *“on the grounds of disability discrimination in the workplace.”* (**pages 156 to 159**). In that letter the claimant alleged that; at lunchtime on 22
20 October he understood that the respondent was making mandatory the wearing of facemasks from the next day; he was told that if he came to work on 23 without a facemask he would be suspended with the potential of losing his job if he could not prove his exemption; the respondent expected that proof to be in the shape of a doctor’s note; he got that note at about 2pm on 23
25 October; as soon as he got it he handed it in to work. In the letter he said that he felt that; the respondent had failed in its duty of care to him in not making reasonable adjustments to protect his health and wellbeing; the respondent had breached the Equality Act 2010 in regards to disability discrimination; the respondent had breached employment legislation in not accepting his verbal
30 exemption; been forced to supply medical information to prove his exemption

which he believed he was not required to do. The letter incorporated hypertext links to; a webpage on reasonable adjustments from ACAS' website; a webpage on the site www.legislation.gov.uk and a webpage on the website www.gov.uk. In his letter he sought; the disciplinary process brought to an end;
5 reasonable adjustments so as to avoid other employees not having to go through the same stress as he had done. The letter had been based on the claimant's own work and research and some advice that he took at the time. By 25 November the claimant had been to ACAS. They had told him that anxiety is a disability. By that date, his doctor had advised him that he did not
10 require a diagnosis for there to be a disability. A hearing on 2 November was fixed to hear his grievance on disability discrimination in the workplace.

24. In the course of his grievance being considered the claimant asked for the word "*disability*" to be removed. He did so because he believed what he had been told by employees of the respondent that to be disabled required a diagnosis.
15 Those employees included Gerry Rooney, Assistant Client Account manager. That belief was wrong. He had been foolish to believe the respondent's employees.

25. At the point in time when the claimant completed the ET1 form he made a mistake in not making a claim of disability discrimination. In particular, it was
20 his belief that issues to do with facemasks did not fall within any of the boxes within 8.1 of the ET1 form as a disability. He did not look at the correct information at the time he completed the form. When he did not tick the ET1 box at 12.1 do say that he had a disability that was a mistake.

26. The claimant asserts that he has a mental disability. It is personal. He does
25 not wish to give details of exactly what it is or why it is a disability. If his claim proceeds from this hearing, he is willing to disclose it.

27. The claimant believes that the respondent lied to him. He believes that it lied to him by stating that it was its policy that a doctor's note must be provided for a facemask exemption. He believed that the respondent chose to lie in that
30 way.

28. The claimant believes that the respondent has unlawfully discriminated against him in making its statement on its policy and as a result requiring him to provide a doctors' note vouching his exemption from wearing facemasks when there was no requirement on him to provide that note.

5 **Comment on the evidence**

29. The claimant's demeanour was of someone who was agitated. Even allowing for the environment of an "*in person*" hearing, he was noticeably animated. He frequently apologised where none was necessary. On the other hand on several occasions he interrupted either Mr Campion or me. I had to remind him several times to wait before offering an answer to questions from Mr Campion. He gave the impression of believing passionately that the respondent had wronged him by asking him to produce written evidence of his exemption from the requirement to wear a mask at work. His belief in that "*wrong*" was a central feature of the argument that he sought to advance before this tribunal.

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Submissions

30. The claimant made an oral submission. He began by asking that his stressed state be taken into account. He described himself as being "*all over the place*." He reminded that he was conducting the case as a party litigant who could not afford legal representation.

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31. On the issue of his amendment, he acknowledged that he had made mistakes in his ET1. His plea, however, was to get to a final hearing with evidence where he believed he could show discrimination. He wanted a chance to put forward his case. On the issue of the respondent's knowledge of his disability and of face mask exemption he referred to pages **290 to 292** of the bundle. He asserted that if the respondent had followed its own policy and had thus followed Government guidelines he would have remained in the respondent's employment and that, he said, proved discrimination.

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32. On the issue service to bring a claim of unfair dismissal, he accepted that his continuous service was of one year and eleven month. He said that for that

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whole time he had only received good feedback, had received six awards and was seen as an exceptional worker. He said that it was his “whole intention” to claim discrimination. He believed that he had been discriminated against but his employer led him to believe that he had not. Now, he said, he knew that his employer was not correct and he had the claim.

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33. Mr Campion had lodged a written Note dated 13 August. He spoke to it. This is a basic summary of his submission drawn from both.
34. On the question of the claimant’s amendment, he referred to the cases of ***Selkent Bus Co Ltd v Moore*** [1996] ICR 836 (EAT), ***Amey Services Ltd v Aldridge*** UKEATS/0007/16, ***Galilee v Commissioner of Police of the Metropolis*** [2018] ICR 634 (EAT) and ***Reuters Ltd v Cole*** UKEAT/0285/17 under a heading of broad legal principles.
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35. He set out five objections which I summarise as; (i) delay and limitation, (ii) failure to particularise the claim, (iii) wholly new cause of action, (iv) prejudice and (v) prospects of success.
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36. On the first he supplemented his Note by submitting that; there was evidence that by 27 October 2020 the claimant was already presenting to the respondent sophisticated arguments on disability discrimination and reasonable adjustments; by 25 November he had spoke to ACAS and his GP by which date he had had advice that he did not require a diagnosis for there to be a disability; and it was incorrect for the claimant to assert that the respondent had misled him. On the second, he added that there had not been a huge amount of co-operation from the claimant in setting out his case, it still did not contain a large amount of information and it was, he said, difficult to understand; if the amendment was allowed the respondent would struggle to respond meaningfully to it as it stands. On the fourth, the respondent would likely be put to significant expense in revising its pleadings, going through a process of questioning whether the claimant had a disability (which would include a review of his medical records and might include a preliminary hearing with expert evidence), as well as ultimately delaying a final merits hearing which delay could prejudice a fair hearing. On the fifth, he reinforced the point
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that not only would the claimant require to show he was disabled at the material time but also the fact of knowledge of it by the respondent. On the third, he noted that if allowed the various claims would open up whole new lines of enquiry on assertions of breaches of legislation which were unclear and difficult to understand. He made the point that there is disconnect between the claims of discrimination and the reason for dismissal.

37. On the question of length of service, his short point was that the claimant did not have the necessary two years' service and the tribunal had no discretion to allow the claim to proceed in the face of that fact.

10 The law

38. *"There is no specific provision in the Employment Tribunals Rules of Procedures 2013 (as amended) which governs amendments, but the Employment Tribunal is required by rule 2 to seek to give effect to the overriding objective of dealing with the case fairly and justly."* (**Pontoon (Europe) Ltd v Sinh** UKEAT/0094/18/LA UKEAT/0213/18/LA. The decision of the EAT in **Selkent** (cited by the respondent) contains general guidance to employment tribunals in relation to amendments (recognised as such in the Court of Appeal in **Ali v. Office of National Statistics** [2005] IRLR 201). I refer to that guidance below.

39. Section 94 of the Employment Rights Act 1996 provides for the right of employees not to be unfairly dismissed. Section 108 of the Act provides that Section 94 does not apply to a dismissal unless the employee has been continuously employed for a period of not less than two years ending with the effective date of termination.

25 Discussion and decision

40. On the application to amend, it is convenient to set out the guidance from the EAT in **Selkent**.

Whenever the discretion to grant an amendment is invoked, the tribunal should take into account all the circumstances and should balance the injustice and hardship of allowing the amendment against

the injustice and hardship of refusing it. What are the relevant circumstances? It is impossible and undesirable to attempt to list them exhaustively, but the following are certainly relevant. (a) The nature of the amendment. Applications to amend are of many different kinds, ranging, on the one hand, from the correction of clerical and typing errors, the addition of factual details to existing allegations and the addition or substitution of other labels for facts already pleaded to, on the other hand, the making of entirely new factual allegations which change the basis of the existing claim. The tribunal have to decide whether the amendment sought is one of the minor matters or is a substantial alteration pleading a new cause of action. (b) The applicability of time limits. If a new complaint or cause of action is proposed to be added by way of amendment, it is essential for the tribunal to consider whether that complaint is out of time and, if so, whether the time limit should be extended under the applicable statutory, e.g., in the case of unfair dismissal, section 67 of the Employment Protection (Consolidation) Act 1978. (c) The timing and manner of the application. An application should not be refused solely because there has been a delay in making it. There are no time limits laid down in the Regulations of 1993 for the making of amendments. The amendments may be made at any time — before, at, even after the hearing of the case. Delay in making the application is, however, a discretionary factor. It is relevant to consider why the application was not made earlier and why it is now being made: for example, the discovery of new facts or new information appearing from documents disclosed on discovery. Whenever taking any factors into account, the paramount considerations are the relative injustice and hardship involved in refusing or granting an amendment. Questions of delay, as a result of adjournments, and additional costs, particularly if they are unlikely to be recovered by the successful party, are relevant in reaching a decision.

41. By 11 June the claimant had answered the various questions asked of him. By that time, his claim was as particularised as he had been able set it out. The amendment seeks to introduce claims of discrimination under sections 13, 15, 19 and 20/21 of the Equality Act 2010, albeit the basis of those complaints is very similar. The factual basis of those claims would require an enquiry into facts which are new and different from the claim of unfair dismissal. Given my decision on the unfair dismissal claim, were the amendment to be allowed the essential facts in issue would change and be very different. It would be a substantial alteration both of the factual and legal bases of the claims. On the question of time limits and using 7 March as the relevant point in time to consider the question of time bar, I agree with the respondent that that date is “*out of time.*” Such a claim (as the respondent accepts) should have been presented by 21 February. The claimant did not seek to persuade me otherwise. In ***Morgan*** (cited by the respondent) the Court of Appeal held that the employment tribunal has the widest possible discretion under section 123(1) of the Equality Act 2010 to allow proceedings to be brought within such period as it thought just and equitable; that factors which were almost always relevant to consider when exercising any discretion whether to extend time were the length of, and reasons for, the delay and whether the delay had prejudiced the respondent; that there was no justification for reading into the statutory language any requirement that the tribunal had to be satisfied that there was a good reason for the delay, let alone that time could not be extended in the absence of an explanation of the delay from the claimant, although whether there was any explanation or apparent reason for the delay and the nature of any such reason were relevant matters to which the tribunal ought to have regard. On my findings, the reason relied on by the claimant on the question of why he sought to introduce these claims in March 2021 (as opposed to when he presented the ET1) was that he was mistaken. The mistake, he said, was his misapprehension that issues to do with facemasks did not fall within any of the boxes within 8.1 of the ET1 form as a disability. He did not look at the correct information at the time he completed the form. With respect to the claimant, I did not accept his evidence that he had indeed made that mistake. By 27 October, at the time of his grievance the claimant expressly

asserted claims of disability discrimination. In that letter he linked his disability with his exemption from wearing a face mask. He said in it that he felt that the respondent had breached employment legislation in not accepting his verbal exemption from wearing it. In my view it is not a credible position for the claimant to have asserted his grievance on the grounds that he did and at the same time say he misunderstood his right to bring the claims in the ET1 at the time that he presented it. On the question of the timing, it appears to me that the claimant was prompted to write on 7 March by questions posed by EJ McManus on 2 February. In my opinion, nothing turns on the fact that what ultimately led to the amendment was the letter of 2 February.

42. I am required to balance the hardship and injustice to the claimant in refusing his amendment and the injustice to the respondent in allowing it. I accept that if allowed the respondent would require to answer (including in all likelihood at a final hearing with evidence) a number of statutory claims. I also accept that it could be put to significant costs in doing so. The obvious injustice and prejudice to the claimant is the loss of his claim. In that context, however, my view is that I can take into account both the likely prospects of success and (linked to them) what is crux of the claimant's complaint about the way he was treated. That crux is his assertion that he was lied to by the respondent about the need to vouch (by a letter from his GP) that he was exempt from wearing a facemask at work. Two points are relevant. First, the treatment complained of was nothing to do with his dismissal. Second, any connection between the alleged disability and the alleged treatment (being lied to) is weak. There is little hardship to the claimant in the loss of a claim which has little prospect of success.

43. In my view therefore the proposed amendment should not be allowed and it is therefore refused.

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44. On the question of jurisdiction to consider the claim of unfair dismissal, the finding in fact on the period of service is not in dispute. The claimant does not

have the requisite period of service. The tribunal has no jurisdiction to consider this claim. Section 108 disapples the right to make the claim. There is no discretion to allow it to proceed in those circumstances. It is dismissed.

5 Employment Judge: Russell Bradley
Date of Judgment: 28 September 2021
Entered in register: 29 September 2021
and copied to parties

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APPENDIX

Regarding your claim for disability discrimination, please confirm the following to determine whether you have a disability in line with the Equality Act 2010:

- 20 1. Do you have a physical or mental impairment? If so, what is it?
- a. I would say I have a mental disability. It is personal and I do not wish nor need to give details of exactly what or why.
2. Is the impairment long term (lasting more than 12 months)? How long have you had it?
- 25 a. Yes. I have been freaked out about having my face covered since I was 8 years old.
3. Has the impairment been diagnosed?
- a. No!
4. Does your impairment affect you in your daily life? If so, please explain how it affects you.
- 30 a. It never affected me until I started wearing a mask. I took advice from my doctor and followed that advice and government advice. My employer was more than aware of my exemption pass that I carried. Wearing a mask for periods of time causes me to panic.

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Disability Discrimination

You have confirmed in your email dated 7th March 2021 that you intend to pursue a claim of disability discrimination. In terms of your disability, can you please respond regarding the following:

1. Did the Respondent treat you unfavourably?
 - 5 a. Yes
2. If yes, in what way?
 - a. They lied about their own company policy stating a doctors note must be provided for face mask exemption. This is and was untrue. There lies regarding company policy are what caused a back and fourth to ensue.
- 10 3. Do you have any evidence of this?
 - a. Yes. I have it on paper with their names signed to the lies they made.
4. Did the Respondent give you a reason why they required you to wear a mask despite having an exemption?
 - a. No!
- 15 5. If yes, please provide details
 - a. N/A
6. Did you have sight of the Company policy you refer to?
 - a. Yes. Company policy is and was to follow government guidelines which they did not.
- 20 7. How would your impairment affect your ability to wear a face mask?
 - a. It causes me to panic.

Direct Discrimination

This is where someone is treated less favourably because of a protected characteristic of age, gender, race, disability, religion, pregnancy and maternity, 25 sexual orientation, gender reassignment and marriage and civil partnership.

1. Did the Respondent subject you to less favourable treatment compared to others?
 - a. Yes!
- 30 2. If so, how? Can you provide details?
 - a. I was told I had to provide a doctors not yet others who never wore a mask were not.
3. If so, do you believe the treatment was because of a disability? Why?

a. Yes. Because I took advice from my doctor regarding the way masks were making me feel which was to stop wearing a face mask and to follow government guidelines regarding this.

4. Is there someone who doesn't share your disability but has the same abilities and skills as you, and who was treated differently to you?

a. Yes. The others who were not told to provide a doctors note.

Indirect Discrimination

This is when a rule, policy or practice at work puts you at an unfair disadvantage because of a protected characteristic. Generally, it occurs when a rule or plan of some sort is put into place which applies to everyone and is not in itself discriminatory, but it could put those with a certain protected characteristic at a disadvantage. This is known as a provision, criterion or practice (PCP). This is permitted if the Company can justify it is a legitimate business need.

1. Do you feel that the Respondent applied a provision, criterion or practice i.e. a rule applied to all which put you at a disadvantage?

a. Yes

2. Can you describe the details of this?

a. They went against government guidelines which is and was to accept verbal exemption and lied to me stating company policy was to provide a doctors note.

3. Was this discriminatory in relation to your disability? Why?

a. Yes. Because doctors do not give notes for face mask exemption. Government also created a statute where by verbal exemption must be accepted and again, they lied to me. They chose to lie. I followed guidelines and company policy. My employer did not.

4. Were you put at a disadvantage?

a. Yes

5. Did the Respondent explain why they had this policy?

a. No. They lied to me about their policy and I have it on paper signed by them.

Failure to make reasonable adjustments

1. Did the PCP put you at a disadvantage when compared with persons who did not have a disability?
 - a. Yes
2. If so, was it a substantial disadvantage? Why?
 - 5 a. Yes and Yes. Because mask wearing causes me to panic.
3. Do you consider that there was a reasonable adjustment that could have been made? Can you provide details?
 - a. Yes. They could have simply followed their own company policy which was to follow government guidelines. They should have accepted my verbal
10 exemption.
4. Was there any discussion regarding reasonable adjustments?
 - a. No.
5. Could you have carried out a different role where you didn't need to wear a mask?
 - 15 a. There was no need for this.
6. Did you state that you would wear a mask in a shop but not at work?
 - a. I stated that I would follow government guidelines and when I felt it would not cause me too much distress I may wear one for a minute or two to go into a shop. It is down to the wearer to make that decision.