



EMPLOYMENT TRIBUNALS

Claimant: Paul Michaels

Respondent: London Fire Commissioner

RECORD OF A PRELIMINARY HEARING

Heard at: London South

On: 11 November 2022

Before: Employment Judge Cheetham KC

Representation

Claimant: in person

Respondent: Mr Ben Amunwa (counsel)

JUDGMENT

1. The Claimant lacks the capacity to participate in these proceedings, as defined in the Mental Capacity Act 2005 ss.2, 3.

REASONS

1. At a Preliminary Hearing on 17 July 2022, EJ Smith ordered the Respondent's solicitors to prepare a letter of instruction for a consultant psychiatrist to provide an opinion as to whether the claimant lacks capacity within the meaning of the Mental Capacity Act 2005. That letter was drafted and then approved by the Judge and led to Dr Amir Bashir being instructed to provide that opinion.
2. Dr Bashir interviewed the Claimant on 24 September and prepared a report on 6 October 2022. It is a detailed report, which provides a full history, a diagnosis and prognosis and which addresses the issue of mental capacity.

3. In the report, Dr Bashir diagnoses the Claimant as suffering from a psychotic illness called Persistent Paranoid Delusional Disorder, which is a serious mental illness requiring psychiatric treatment. As a result of that illness, in Dr Bashir's expert opinion, the Claimant does not have the capacity to participate in the employment tribunal proceedings. That is because, "*(he) lacks capacity due to his judgment being seriously affected by his delusions and hallucinations. So, he is unable to weigh the relevant information as a part of the process of making the decision*".
4. In the Tribunal's judgment, the Claimant does lack capacity, as defined in the Mental Capacity Act 2005 ss. 2 and 3. Under s. 2, "*a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain*".
5. Under s3:
 - (1) *For the purposes of section 2, a person is unable to make a decision for himself if he is unable—*
 - (a) *to understand the information relevant to the decision,*
 - (b) *to retain that information,*
 - (c) *to use or weigh that information as part of the process of making the decision, or*
 - (d) *to communicate his decision (whether by talking, using sign language or any other means).*
6. The expert opinion makes clear that the Claimant is unable to make a decision for himself as he is unable to weigh the information relevant to the decision as part of the process of making the decision. There is no challenge to that expert opinion and no reason to doubt its reliability.
7. The Claimant at this hearing accepted Dr Bashir's findings and understood the consequence of that, which is that he will need the help of a litigation friend or to obtain representation in order for there to be a fair hearing of his claim. Those matters are dealt with in the Case Management Order accompanying this Judgment.

Employment Judge Cheetham KC

Date 9 November 2022