



EMPLOYMENT TRIBUNALS

Claimant

Mr B Johns

v

**(1) London
University**

(2) Prof J Jones

(3) Prof P Bailey

(4) Mr C Elliott

Respondents

South Bank

PRELIMINARY HEARING

Heard at: London South

On: 1 November 2017

Before: Employment Judge Elliott

Appearances:

For the Claimant: Ms A Patel, employment lawyer

For the Respondents: Mr R Gray, solicitor

JUDGMENT ON PRELIMINARY HEARING

The claimant is and was at the material time a disabled person under section 6 Equality Act with the condition of Optic Neuritis.

REASONS

1. This decision was given orally on 1 November 2017.
2. By a claim form presented on 11 December 2016 the claimant Mr Benjamin Johns claims disability discrimination. The claimant worked for the first respondent University from 1 September 2015 until 31 August 2016 as a Senior Lecturer in Film Practice. The respondents defended the claim.
3. A preliminary hearing took place on 5 April 2017 before Employment Judge Baron at which the claimant was ordered to set out further particulars of his claim. At this hearing Judge Baron identified that the claim consisted of a claim

for direct disability discrimination, discrimination arising from disability, indirect disability discrimination, a failure to make reasonable adjustments and disability-related harassment.

4. A further preliminary hearing took place on 26 June 2017 before Regional Employment Judge Hildebrand. It was ordered that in the event that disability was conceded the hearing listed for 3 October 2017 for four days was to stand and case management orders were made.

The issues for this preliminary hearing

5. As disability was not conceded, the October 2017 hearing was vacated. This preliminary hearing was listed to deal with (a) the issue of disability, (b) the claimant's application to amend and (c) if appropriate the respondent's strike out and deposit applications and (d) any necessary case management.
6. The claimant found the lighting in the tribunal difficult so with the agreement of both parties we turned the lights off and relied on the daylight from the windows. The parties confirmed that they could still read their papers and this was checked with them during the hearing.

Witnesses and documents

7. The tribunal heard from the claimant. A disability impact statement was filed with the tribunal on behalf of the claimant dated 18 May 2017.
8. There was a bundle prepared by the respondent of around 100 pages. It included a report from a jointly instructed medical expert Dr Matthew Starr who provided his opinion on the claimant's condition. The impairment upon which the claimant relies is Optic Neuritis.
9. There was a written submission from the claimant to which his representative spoke. I had an oral submission only from the respondent. Both sets of submissions were fully considered even if not expressly referred to below. Neither side relied upon any case law.

Findings in relation to the issue of disability

10. The claimant had a weak left eye since childhood with a strong prescription for that eye. In January 2016 he attended Moorfields Eye Hospital in relation to his right eye and this ultimately led to the diagnosis of Optic Neuritis in that eye.
11. The claimant's evidence in his disability impact statement was that he had lost around 60% of his sight in his right eye and that his vision in both eyes was blurry and sometimes foggy. The respondent said that this was not consistent with the medical evidence at page 52 of the bundle, a letter from Dr Kapoor. He finds harsh lighting and strip lights very bad and a cloudy day with white sky is uncomfortable. The claimant's evidence was that his eyes get tired and are "super sensitive" which in turn makes him tired more than normal.
12. Dr Starr said that the condition usually causes a reduction rather than an increase in sensitivity to light (page 82 paragraph 4.3.9) but the claimant's

evidence was that sensitivity to light did affect him. I found that this was demonstrated by the claimant's discomfort with the lighting in the tribunal and his preference for the lights to be off and a reliance placed on daylight.

13. He said day-to-day tasks are much harder and take him longer. For example he finds computer work a struggle and he makes more mistakes. He has to take a break after each 30 minutes. The damage to the claimant's optic nerve is not going to improve. He said that at home he misses a lot of detail around the house so it is easier to lose things like keys and cleaning is a challenge so that the standard of his household cleanliness had gone down. He can drop things and not see them on the floor. He does a lot less cooking than before this condition arose, so as not to burn or cut himself.
14. The claimant said that since the onset of this condition in January 2016, that due to fatigue arising from the condition he is able to spend less time with his four-year-old son.
15. When he is out and about he has to take more time for a journey. Reading signs when travelling is hard for him. He cannot see things clearly in the distance and has to spend more time planning journeys. When walking on the street he either cannot see street signs and building numbers, or he has to go much closer to them in order to see them (around one and a half to two times closer) so journeys take more time.
16. The claimant was asked in evidence about his ability to see certain font sizes. In his report at paragraph 4.3.2 Dr Starr dealt with this and said that the claimant could see certain sizes of text referred to as N8 and N6. I asked the respondent to say in more recognisable lay terms what font size this was said to be and the respondent said it was font size 6 or 7 although I can make no finding as to this.
17. The claimant said that whilst what Dr Starr said was correct, this related to the clinical examination on 13 September 2017 in terms of what he was shown by Dr Starr in consultation. The claimant said that the font size he could read on a computer screen was very different. He said he would need a font size of 12 increased to size 18. I find from this that the claimant has difficulty in reading common and regular font sizes of 10 to 12 on a computer screen. Using a computer is a normal day-to-day activity.
18. The claimant acknowledges that he is permitted to drive a car but he cannot drive at night or do long journeys. The claimant avoids driving at night and long journeys. He sticks to local journeys with which he is familiar.
19. So far as his work is concerned he said that this impacts his work and post production is particularly challenging as he cannot see file names and numbers on a computer screen so he is more reliant on team members for this.
20. With his disability impact statement the claimant submitted a GP letter dated 23 September 2016 stating that he became unwell in January 2016 and was

diagnosed with Optic Neuritis. The GP said that investigations were ongoing but visual impairment was permanent and unlikely to improve.

21. I also had copies of two letters from Dr Raj Kapoor a Consultant Neurologist at University College London Hospitals NHS Foundation Trust. The letters were dated 20 April 2016 and 7 December 2016.
22. The letter of 19 April 2016 said that the claimant had developed right sided Optic Neuritis at the end of January 2016. Dr Kapoor said "*He received high-dose steroids just under a week later and there has been a gradual recovery of vision although he still has acuity of 6/9 in that eye*". In the letter of 7 December 2016 Dr Kapoor said "*On a positive note, the scan of the brain that was repeated in the summer showed no new lesion activity and thankfully he has not had any further relapses*".
23. There was also another very significant part of Dr Kapoor's letter of 19 April 2016 which had a profound effect upon the claimant. It said "*His MRI scan shows one or two scattered white matter lesions and he is aware that there is a chance that further lesions may develop with time and that he may experience further neurological problems. If so, one would diagnose MS, and I have explained to him that we have a range of treatments that are now capable of controlling the condition.*" From the claimant's evidence I accept and find that he lives under a cloud of the risk of a future diagnosis of Multiple Sclerosis arising from the condition of Optic Neuritis. This is an understandable cause of anxiety for the claimant.
24. The claimant is under the care of Mr Fion Bremner, a Consultant Ophthalmologist. There was a letter from Mr Bremner dated 11 October 2016 at page 60 of the bundle. In that letter he referred to the claimant having "*extensive visual field loss*". Mr Bremner referred to the claimant having acuity in the right eye of 6/9. The respondent questioned the claimant on the references in Dr Starr's report to acuity of 6/9 to 6/12 which is mild. The claimant said that every lighting situation and environment was different for him and this has an impact on how he is in that particular situation. He disagreed with Dr Starr's finding. I find that different environments affect the claimant's quality of vision differently.

The joint expert's report

25. Dr Matthew Starr is an Ophthalmologist working as a private practitioner at the London Eye Clinic in Harley Street, London W1. He studied medicine at Cambridge and ophthalmology in the United States. He is an affiliate member of the Royal College of Ophthalmologists (amongst other professional memberships). The date of his report is 13 September 2017 which was also the date of Dr Starr's examination of the claimant.
26. Dr Starr concludes that the claimant has two categories of visual loss; the first being ophthalmic causes with ophthalmic neuritis in the right eye causing loss of colour vision, mild reduction of central clarity of vision, some loss of contrast

vision and some loss of peripheral vision on the right eye plus amblyopia of the left eye. This results in a mild reduction in central clarity of vision in the left eye and in impaired three-dimensional vision. There is a loss of peripheral vision in the left eye.

27. Taking both eyes together, Dr Starr concludes that the ophthalmic causes lead to mild reduction in clarity of vision at near and far, some reduction in visual fields to the far left and some loss of contrast sensitivity. He concludes this would cause a mild effect on work but this could be mitigated by using a high quality larger screen with a larger font without loss of speed.
28. Dr Starr also concluded that there were non-ophthalmic causes which he describes as functional overlay due to psychological causes. This has the effect, in his opinion, of causing a further mild functional reduction in the visual clarity of the right eye and circular constriction of his visual fields. He concludes that psychological effects appear to include anxiety/functional inability to undertake visual activities and that these matters should be considered by a psychologist.
29. Dr Starr reports that the claimant's central vision is good enough to meet the DVLA standards for driving a car.
30. In his concluding paragraphs Dr Starr says (paragraphs 4.3.13 and 4.3.14):

In my opinion there is a mild impairment of the visual system itself. The visual problems alone would have a long-term but mild, rather than substantial, adverse effect on his ability to carry out normal day-to-day activities. The great majority of patients could tolerate a visual condition of this extent without a substantial effect on their ability to carry out normal day-to-day activities. As to Johns appears to have adapted very poorly to the reduction of right eye vision.

In Mr Johns, however, the problem is not purely ophthalmic. When combined with the visual problems due to functional overlay, and his general psychological well-being which interacts with these visual problems, he may well be considered to have a disability under the definition of the act. This is however outside by realm of expertise and the opinion of a psychologist is also required, possibly with a conversation between myself and the psychologist, in order to produce an overall view of his disability for the tribunal.

31. At paragraph 3.4 of his report Dr Starr sets out the claimant's account of the effect upon him of his condition on his ability to carry out normal day-to-day activities. This is put in the report as follows:

Washing: He can no longer manage to see in the bathroom. He has slipped in the bath or not realised that soap has fallen. He can manage if he wears glasses but he cannot wear glasses in the shower or bath.

Getting dressed: not affected.

Preparing food: He spills things if trying to pour e.g. cereal.

Eating: Not affected apart from spilling.

Walking: He takes more time to do this. He finds it difficult to manage on a grey day with white clouds.

Using public transport: he takes longer on journeys. He has trouble seeing the sign or exit and he does not see it quickly. He has sometimes got onto the wrong train as he does not see the sign.

Driving: He has been told by a consultantthat he is permitted to drive..... He can only drive short local journeys and routes that he knows. He cannot drive at night.

Shopping: He has difficulty tolerating bright lights in shops. It takes longer to find the article he is looking for.

Socialising: he dislikes going out at night. He becomes very anxious. He has lost a lot of confidence. He socialises much less than he did previously. He dislikes going to unfamiliar places and becomes very anxious if he does.

He previously enjoyed swimming but cannot see enough to swim in a pool any more as he keeps bumping into people. He does not have goggles with prescription lenses.

He previously enjoyed off road cycling. He can no longer see enough to cycle safely. He feels insecure and has cycled into objects and fallen from his bicycle.

32. I asked the claimant if this is what he had said to Dr Starr and he confirmed that the claimant had set this out correctly. The claimant wanted to add that his condition affected the time he spent with his son because the claimant's condition made him so tired. He also said that in terms of corrective lenses, his optician had told him that there was nothing more that they could do to assist him.

33. As quoted above, Dr Starr rightly says that it is outside his remit to find whether the claimant meets the statutory definition of disability. The claimant is not registered sight impaired (Dr Starr's report paragraph 4.3.12).

The law – disability issue

34. Section 6 of the Equality Act provides that a person has a disability if that person has a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

35. Under section 212(1) of the Equality Act 2010 "substantial" means more than minor or trivial.

36. I considered the Guidance on Matters to be Taken into Account in Determining Questions Relating to the Definition of Disability (2011) issued under section 6(5) of the Equality Act.

37. Paragraph B9 of the Guidance says "*Account should also be taken of where a person avoids doing things which, for example, cause pain, fatigue or substantial social embarrassment, or avoids doing things because of a loss of energy and motivation..... It is important to consider the things that a person cannot do, or can only do with difficulty.*"

38. Paragraph D3 of the Guidance assists with the meaning of normal day-to-day activities.

In general, day-to-day activities are things people can do on a regular basis, and examples include shopping, reading and writing, having a conversation using the telephone, watching

television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities. Normal day-to-day activities can include general work-related activities, and study in education related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or a shift pattern.

39. Paragraph D15 states in bold that “*Physical impairments can result in mental effects and mental impairments can have physical manifestations*”. The Guidance cites the example of a journalist with severe recurrent migraines which cause her significant pain. Owing to the pain she had difficulty maintaining concentration on writing articles and meeting deadlines.
40. While the view of doctors on the nature and extent of a claimed disability is relevant, the issue is one for the tribunal to decide on all the evidence - ***Abadeh v British Telecommunications plc 2001 IRLR 23 EAT*** (Nelson J).
41. The Court of Appeal held in ***Gallop v Newport City Council 2014 IRLR 211***, that it essential for a reasonable employer to consider whether an employee is disabled, and form their own judgment. Ordinarily an employer will be able to rely on suitable expert advice, but this does not displace their own duty to consider whether the employee is disabled, and it is impermissible for that employer simply to rubber stamp a proffered opinion.

Submissions

42. As set out above, the submissions were fully considered even if not expressly referred to here. This is not intended as a full account of the submissions but I have highlighted some of the points.
43. The respondent submitted that the claimant must show a link between the adverse effect upon him and the impairment relied upon and I agree with this submission. The respondent highlighted what they saw as discrepancies between what the claimant said in his disability impact statement and Dr Starr’s report for example in terms of the size of font that he could read or in terms of Dr Starr’s assessment of his visual acuity. The respondent submitted that the medical evidence was not consistent with the effects that the claimant sought to rely upon and that the medical evidence said that the condition was mild and it is therefore less than substantial. On visual acuity, Dr Starr’s view was that this was only mildly reduced.
44. In terms of anxiety, the respondent submitted that there was some ambiguity on the cause of any psychological effects. The respondent said that the claimant said it was caused partly by how he was treated by the respondent but the claimant also says it flows from his Optic Neuritis.
45. The respondent and took me to the Appendix to the Guidance which sets out examples of when it would or would not be reasonable to regard something as having a substantial adverse effect on normal day-to-day activities. In the “Would not be reasonable” list it says “*Inability to read very small or indistinct print without the aid of a magnifying glass*”.

46. The claimant submitted that the effect upon the claimant of his condition was substantial in that it was more than minor or trivial. Although Dr Starr says it is mild, he couples this with other factors which the claimant submits are causally linked to the condition relied upon which arose in January 2016.
47. The claimant drew my attention to many of the findings in Dr Starr's report. The claimant relied upon paragraph B9 of the Guidance as set out above.

Conclusions on disability

48. The fact of the impairment is not denied. I find that it is a long-term impairment based on paragraph 4.3.13 of Dr Starr's report set out above. Dr Starr refers to the condition as long term but mild. The respondent in any event does not dispute that the condition is long term.
49. I have considered whether the condition has a substantial adverse effect on the claimant's ability to carry out normal day to day activities. Dr Starr says (again paragraph 4.3.13) that the visual problems alone would not have this substantial adverse effect but that the claimant appeared to have "*adapted very poorly to the reduction of his right eye vision*".
50. At paragraph 4.3.14 Dr Starr concludes that in the claimant, the problem is not purely ophthalmic and that his psychological wellbeing interacts with his visual problems. On that basis Dr Starr took the view that the claimant "*may well*" be considered to have a disability under the Act. I remind myself that the decision is for the tribunal and not for the medical expert.
51. There is a psychological element to the claimant's impairment and Dr Starr makes this link in his report. The Guidance on matters to be taken into account acknowledges that physical impairments can result in mental effects and mental impairments can have physical manifestations. The claimant took the tribunal to paragraph B9 of the Guidance which is set out above. I have to take account of the things that he says that he cannot do, or can only do with difficulty.
52. I therefore take this into account. I did not have the benefit of a psychological report but I had the claimant's evidence. I take account of the fact that Dr Starr says that the claimant has adapted very poorly to the reduction of his right eye vision. I also find that there is a psychological aspect to the claimant's impairment as Dr Starr has found. The claimant lives with the fear and under the cloud of a possible diagnosis of multiple sclerosis as explained by Mr Bremner in his letter of 11 October 2016 (page 60).
53. The claimant is more anxious in social situations and the condition has led to him socialise much less than he did previously. His ability to drive is affected and he avoids night driving and any long-distance driving. He has more difficulty preparing food and he cooks much less than he used to. He finds bright lights in shops difficult and it takes him longer to find what he is looking for. In travelling on public transport he has difficulty seeing signs and has to go much closer or ask someone for help. Due to the tiredness brought on by his condition he enjoys less time with his young son.

54. In terms of ability to read a certain font size, my finding is that his ability to read on a computer is reduced to an extent that is more than minor or trivial. I accept his evidence that he would need a font size 18 and without this he would need help from someone else. Using a computer is a normal day-to-day activity as set out in the Guidance at paragraph D3, as is driving and travelling on various forms of transport.
55. Based on these findings above, I find that the claimant's impairment has a substantial (meaning more than minor or trivial) adverse effect upon his ability to carry out normal day-to-day activities. The claimant is and was at the material time a disabled person under section 6 of the Equality Act 2010.

The claimant's application to amend

56. On 16 May 2017 the claimant's representatives sent an email to the tribunal stating that they had recently been instructed on behalf of the claimant. They made an application to amend the claim to include automatically unfair dismissal which they said they would particularise some 3.5 weeks later on 9 June "*should the tribunal grant this application*". It is not clear how the tribunal was meant to consider the amendment application when there was no draft of the proposed amendment. No mention was made of a claim for victimisation in that application dated 16 May 2017.
57. In reply on 18 May 2017 the respondent set out their objection to the application for leave to amend. They pointed out that the claimant's representative had not set out the basis upon which they sought leave to amend nor had they particularised the proposed amendment. It could not possibly be clear from the one sentence application as to the type of automatically unfair dismissal the claimant alleged. The respondent was unable to answer the claim in that form.
58. In a further email dated 18 May 2017 the claimant's representative stated that they had been instructed "less than a week ago". At this hearing the tribunal was told that the claimant's present representative was instructed on 11 May 2018. In the second email of 18 May 2017 (14:58 hours) the claimant's representative said: "*Our client's ET1 is clear to the extent that he considers his dismissal to be as a result of his disability accordingly we seek to amend this claim to include automatically unfair dismissal as disability is the real reason for the dismissal and our client has the right not to be discriminated against*".
59. The amendment now amounts to the adding two new causes of action and some new factual allegations and it is out of time. The claimant's employment ended on 31 August 2016.
60. The application of 16 May 2017 gave no explanation as to the delay in making such a claim or why the claimant had not mentioned it at the preliminary hearing on 5 April 2017. The particulars of 9 June 2017 added both automatically unfair dismissal, victimisation and seven new factual matters. It was said that the basis upon which it was not reasonably practicable for the claimant to present

these new claims within time was because he “*lacked the required understanding to categorise the facts of this matter under the appropriate grounds of action*” (claimant’s further particulars paragraph 30). In oral evidence the claimant said that the amendment was made based on a review of his case with his current legal representative.

61. At page 56 of the bundle was a letter from the Legal Rights Service of the Royal National Institute of Blind People dated 22 July 2016 people (RNIB) written in the capacity of a representative for the claimant assisting him with his employment matters (first paragraph of that letter). They set out their view that the claimant was disabled under the Equality Act and referred to the duty to make reasonable adjustments and direct discrimination. This letter is relied upon as the protected act for victimisation purposes.
62. The claimant’s evidence was that he received advice from the Legal Rights Service of the RNIB from July 2016 to the end of December 2016. His ET1 was filed on 11 December 2016. He said he drafted the ET1 and it was “*looked over and tweaked slightly*” by his representative at the Legal Rights Service. I find that the claimant was in possession of legal advice when he filed his claim.

The law – amendment application

63. The Employment Tribunal has power to grant leave to amend under Rule 29 of the Employment Tribunal Rules of Procedure 2013, the power to make case management orders.
64. The guidelines for amendment are set out in the decision of the EAT in ***Selkent Bus Co Ltd v Moore 1996 IRLR 661***. The matters for consideration are:
- a. The nature of the application itself, whether it is minor or substantial.
 - b. Time limits. Where the claimant proposes to include a new claim by way of amendment, the tribunal must have regard to the relevant time limits and, if the claim is out of time, to consider whether the time should be extended under the appropriate statutory provision. In the case of automatically unfair dismissal it is the reasonable practicability test in section 111 Employment Rights Act 1996 and in the case of victimisation it is the just and equitable test in section 123 Equality Act 2010.
 - c. The timing and manner of the application. Although delay in itself should not be the sole reason for refusing an application, the tribunal should nevertheless consider why it was not made earlier and why it is now being made, [for example, whether it was because of the discovery of new facts or new information appearing from documents disclosed on discovery].
65. Mummery J (as he then was) emphasised in ***Selkent*** that “*the paramount considerations are the relative injustice and hardship involved in refusing or granting an amendment*”.
66. A distinction can be drawn between amendments which add or substitute a new claim arising out of the same facts as the original claim and those which add a new claim which is unconnected with the original claim.

67. In deciding whether a proposed amendment falls within the existing claim or constitutes an entirely new claim, regard must be had to the whole ET1 (***Ali v Office for National Statistics 2005 IRLR 201 CA***)
68. In ***Chandhok v Tirkey 2014 IRLR 195 (EAT)*** Mr Justice Langstaff, then President, said:

The claim, as set out in the ET1, is not something just to set the ball rolling, as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract merely upon their say so. Instead, it serves not only a useful but a necessary function. It sets out the essential case. It is that to which a respondent is required to respond. A respondent is not required to answer a witness statement, nor a document, but the claims made – meaning, under the Rules of Procedure 2013 (SI 2013/1237), the claim as set out in the ET1. (from paragraph 16)

Conclusions on the amendment application

69. The effective date of termination was 31 August 2016. A bare application to amend to include a claim for automatically unfair dismissal was made on 16 May 2017 without stating any of the particulars. These followed 3.5 weeks later on 9 June 2017. This was in the knowledge that the new claims were already out of time.
70. The only basis upon which it is said in written terms that it was not reasonably practicable for the claimant to present his claim for automatically unfair dismissal within time was because he “*lacked the required understanding to categorise the facts of this matter under the appropriate grounds of action*” (claimant’s further particulars paragraph 30). In oral evidence the claimant gave the reason he made his application when he did was because of a “review of the case” with his new representative.
71. It was conceded by the claimant in this hearing that the claim for automatically unfair dismissal did not fall within the scope of section 104(4) of the Employment Rights Act and this part of the application to amend was withdrawn.
72. The primary time limit for this claim expired on 30 November 2016. The amendment application is over six months out of time. The Early Conciliation Rules do not operate in these circumstances so as to extend time. As to the manner of the application, it was not made with any urgency once new representatives were instructed.
73. Many of the matters that the claimant now seeks to rely upon are not legal but factual matters that he would have known when he presented his claim. A claim for harassment in respect of a comment from Mr Richard Fenn in March 2016 is substantially out of time and is new. The ET1 refers to harassment by Mr Chris Elliott and not by Mr Fenn.
74. I fully accept that the claimant’s new representative looked at the claim in great detail and carried out a more in-depth analysis. However, I am also mindful of the decision of the EAT in ***Chandhok v Tirkey*** (above) that the ET1 is not just something to get the ball rolling to which the claimant can add on his say so. It is his claim.

75. The hardship to the claimant if he is not permitted to amend is that he cannot claim a remedy on those matters. He has a potential remedy on the existing elements of his claim. For the respondent they would need to call Mr Fenn and potentially other witnesses which will add to their costs. Mr Fenn will be asked to remember a comment he is alleged to have made 18 months ago. I find that the balance lies in favour of the respondent.
76. As the burden is not on the claimant in relation to the reasonable adjustments that the respondent should have made, I allow his amendment that he contends that a reasonable adjustment would have been to have carried out a stress risk assessment, to make an application to Access to Work or to convene welfare meetings.
77. The claimant does not have leave to amend to include the new claim of victimisation, to add harassment on the part of Mr Fenn or the alleged failure to deal with his grievance.
78. As I considered it necessary in any event to explore with the claimant what it was that arose from his disability for his section 15 claim, I note that this is explained in his Further Particulars as his sickness absence record. I find that this is clarification of the existing section 15 claim.
79. By reference to the respondent's solicitors letter of 14 June 2017 (pages 3 and 4) answering the amendment application, the matters for which leave is refused are numbers 1, 2, 4 and 6. The claimant has leave for number 3 (clarity on what arose from his disability), 5 (on reasonable adjustments for which he contends) and 7 (again on reasonable adjustments for which he contends). For the avoidance of doubt the claimant does not have leave to add a claim for victimisation and he withdraws the application to include a claim for automatically unfair dismissal under section 104 of the Employment Rights Act.

The respondent's application for strike out or deposit

80. The respondent chose not to pursue this application.

Employment Judge Elliott
1 November 2017