



EMPLOYMENT TRIBUNALS

Claimant

Respondents

Mr Babatunde Esan

v

Royal College of Defence Studies

OPEN PRELIMINARY HEARING

Heard at: London Central Employment Tribunal (CVP)

On: 6 October 2022

Before: Employment Judge Brown

Appearances

For the Claimant:

In Person

For the Respondents:

Ms L Robinson, Counsel

JUDGMENT AT AN OPEN PRELIMINARY HEARING

The judgment of the Tribunal is that:

- 1. The Claimant has permission to amend his claims to include his particulars dated 22 June 2020 and complaints of a failure to make reasonable adjustments and discrimination arising from disability in relation to his dismissal appeal outcome.**
- 2. The Claimant's complaints are not struck out; nor are deposit orders made.**

This Hearing

- 1. This Open Preliminary Hearing was listed to determine:**
 - 1.1. Whether Claimant has permission to amend his claim as set out in writing on 22 June 2022 and orally on 20 July 2022 (in relation to failure to make reasonable adjustments at the appeal stage).**
 - 1.2. The Respondent's application to strike out the claims / for a deposit order because they had no particulars, as contended at paragraph 3 and para 11 of the Grounds of Response.**
 - 1.3. If the amendments are permitted, a List of Issues and case management of the claim for final hearing.**

2. The background to this hearing is as follows.
3. By a claim form presented on 3 May 2022, the Claimant brought complaints of unfair dismissal, race and disability discrimination, and failure to notice pay, holiday pay and unlawful deductions from wages, against the Respondent, his former employer. The Claimant did not include details of his complaints on his claim form, and said that these were to follow.
4. The Respondent defended the claim. It said that the Claimant had not provided particulars. It asked that the claim be struck out for lack of particulars and/or that a deposit order be made. It did not admit that the Claimant was a disabled person at the relevant times.
5. The Claimant sent written Particulars of his claim to the Tribunal on 22 June 2022. At a preliminary hearing on 20 July 2022, he explained his claim further and asked to amend his claim to include a complaint of a failure to make reasonable adjustments in relation to his appeal against dismissal.
6. The Claimant relies on his black colour in his race discrimination complaints. He relies on multiple medical conditions: heart attack, transient ischaemic attacks, asthma, artificial fibrillation (AF) and heart failure, high blood pressure, IBS, diabetes and depression, in saying that he was a disabled person at the relevant times.
7. At the 20 July 2022 Preliminary hearing, I had ordered that the Claimant obtain his GP medical records and send them to the Respondent by 31 August 2022. The Claimant had not done this. He said that he had asked his GP but his GP was confused about the dates for which the records needed to be provided. He said that he had difficulty obtaining his hospital records. I said that he had not been asked to produce his hospital records and that he had failed to produce any GP records at all.
8. At the same 20 July 2022 hearing, I had also ordered that the Claimant prepare a witness statement for this hearing, giving the reason he had not given the details of his claim earlier. Having looked at the statement, it did not give any medical reason why the Claimant had not presented his claim earlier, or made his amendments earlier. I decided that I would proceed with this hearing today, in the absence of the medical records, given that the Claimant had not relied on ill health as a reason he had not set out his complaints earlier.
9. I heard evidence from the Claimant and submissions from both parties at this hearing. There was a bundle of documents. I read relevant documents in it.

Findings

10. I have identified the following facts relevant to the amendment applications. I do not make findings which bind the final hearing in its consideration of the claims.
11. The Respondent wrote to the Claimant on 1 February 2022, dismissing him. The letter said, "After considering all the relevant factors, I have decided that your

employment with the Department will be terminated. ... A Civil Servant is entitled to notice as set out in the Civil Service Management Code. The extent of that notice is determined by your length of service. You are therefore entitled to 13 weeks' notice, meaning you are dismissed with effect from 3 May 2022. However, after discussion, we have agreed that you are not required to work your notice period. You will therefore not be required to attend the workplace again from 2 Feb 2022. You will, however, be entitled to a lump sum payment, as Compensation In Lieu Of your unworked Notice (CILON). The CILON payment will be paid at the rate of pay you were receiving immediately prior to your dismissal."

12. The letter appeared to be ambiguous, in that it is said that the Claimant was "dismissed with effect from 3 May 2022", but it also said that the Claimant would be paid compensation in lieu of his unworked notice. I considered that the effect of the letter was that the Claimant was being dismissed without notice, but with compensation for the failure to have notice.
13. Having heard evidence from the Claimant, it was clear to me that he also understood that he was dismissed on 1 February 2022. He explained that, on 1 May 2022, he had tried to present his claim to the Croydon Tribunal, so that it would be presented within 3 months of his dismissal. That showed that he believed he had been dismissed 3 months previously, on 1 February. He also gave the date of his dismissal as 1 February 2022 in his ET1 claim form, presented on 3 May. In his particulars of claim presented on 22 June 2022, he said, "I have worked for the Civil Service for almost 24 years, and in the capacity of Executive Officer for 17 years, till the termination of my appointment on the 1st of February 2022."
14. I concluded that the Respondent dismissed the Claimant on 1 February 2022 and that the Claimant knew this on 1 February 2022.
15. The Claimant underwent ACAS EC conciliation between 24 February 2022 and 6 April 2022. The relevant time limit would thereby have been extended by an additional 5 weeks 6 days.
16. By a claim form presented on 3 May 2022, the Claimant brought complaints of unfair dismissal, race and disability discrimination, and failure to notice pay, holiday pay and unlawful deductions from wages. He simply ticked those boxes on the claim form and said that details would follow. It was not in dispute that this claim was presented within the primary time limits for bringing an unfair dismissal claim and discrimination claims in relation to his dismissal.
17. On 8 February 2022, the Claimant had appealed against his dismissal. He attended an appeal hearing on 10 March 2022. The appeal officer then went on annual leave and was diverted to other tasks for a period. The Claimant was referred to Occupational Health. He attended and a report was produced dated 6 May 2022, saying that the Claimant was fit to return to work and recommending some adjustments. The Claimant was asked to attend a further appeal meeting on 8 June 2022, when he said that he agreed with the report. On 14 June 2022 the appeal officer wrote to the Claimant, dismissing his appeal against dismissal.
18. The Claimant told me, and I accepted, that he believed that he should complete the appeal process before proceeding with his claim. He sent further particulars of

his complaints to the Tribunal on 20 June 2022, shortly after he had received the appeal outcome.

19. The new particulars made the following allegations: The Claimant had worked for 24 years until his dismissal on 1 February 2022; Following a complaint of bullying, harassment and victimisation in June 2020 he was dismissed after a continuous chronology of events (unspecified); He was subjected to excessive scrutiny from Line Managers and the Royal College of Defence Studies. The Claimant compared himself with his white colleagues who he says were not subject to the same scrutiny; The decision to terminate his appointment was predetermined since September 2021 when he was off sick; The dismissal decision officer, Paul Mitcham, queried whether the Claimant was a disabled person and also queried the authenticity and validity of Fit Notes from the Claimant's GP; Mr Mitcham did not believe that the Claimant was ill or had underlying health issues; The investigation of his complaint of bullying, harassment, discrimination and victimisation and his appeal was not independent.
20. At a preliminary hearing on 20 July 2022 the Claimant explained his further particulars. He told me that, in June 2020, he had done a protected act when he complained that he was being discriminated against and harassed because of race. Relying on the 20 June 2022 particulars, he said he wished to bring the following complaints: Direct race discrimination acts – dismissal, excessive scrutiny and investigation into complaint of June 2020; Victimisation acts – excessive scrutiny, investigation into the complaint of June 2020 and dismissal; Discrimination arising from disability – decision to dismiss in September 2021 – (the something arising was his repeated / long term absence from work); In relation to dismissal, the Claimant's claims are direct discrimination or discrimination arising from disability (the something arising is both "ambiguity of disability" and his absences from work); In relation to his dismissal appeal: he contends that this adopted and repeated the discrimination arising from disability in the original dismissal.
21. The Claimant made a new allegation orally at the case management hearing on 20 July 2022, that the Dismissal Appeal Officer disregarded OH recommendations; Claimant therefore said that the Respondent failed to make reasonable adjustments for disability in order to allow the Claimant to return to work. He said that the relevant report dated 6 May 2022, obtained for the appeal, recommend a phased return to work, addressing work relationships, short breaks to relieve leg cramps, and an adjustment to the Respondent's expectations for attendance on account of a planned operation. The Claimant therefore said that the Respondent failed to implement these instead of dismissing him.
22. The Claimant told me at the hearing on 6 October 2022, and I accepted, that he had had no legal advice. He said that he was alleging that all the acts he complained about were linked and formed a continuing act.

Relevant Law

23. In deciding whether to allow an amendment the Employment Tribunal is guided by the principles set out in *Selkent Bus Company v Moore* [1996] IRLR 661. In deciding whether to grant an application to amend, the Tribunal must balance all

the relevant factors, having regard to the interests of justice and to the relative hardship that would be caused to the parties by granting or refusing the amendment. Relevant factors include the nature of the amendment: applications to amend range, on the one hand, from correcting clerical and typing errors and the additional factual details to existing allegations and the additional substitution of other labels for facts already pleaded to and, on the other hand, the making of entirely new factual allegations which change the basis of the existing claim. The Tribunal has to decide whether the amendment sought is one of the minor matters or a substantial alteration pleading a new cause of action.

24. Other factors include 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. Other factors to be considered include the timing and manner of the application: an application should not be refused solely because there has been a delay in making it, as amendments can be made at any stage of the proceedings. 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 the documents disclosed on discovery.
25. Even if there is an entirely new claim presented out of time the Claimant may still be allowed to amend, taking into account the balance of injustice and hardship. In considering whether to allow an amendment the Tribunal should analyse the extent to which the amendment would extend the issues and the evidence, *New Star Asset Management Holdings Limited v Evershed* [2010] EWCA Civ 870.

Time Limits & Continuing Acts

26. By s123 Equality Act 2010, complaints of discrimination in relation to employment may not be brought after the end of
 - 26.1.the period of three months starting with the date of the act to which the complaint relates or
 - 26.2.such other period as the Employment Tribunal thinks just and equitable.
27. By s123(3) EqA conduct extending over a period is treated to be done at the end of the period.
28. In *Commissioner of Police of the Metropolis v Hendricks* [2003] ICR 530, the Court of Appeal held that, in cases involving numerous allegations of discriminatory acts or omissions, it is not necessary for an applicant to establish the existence of some 'policy, rule, scheme, regime or practice, in accordance with which decisions affecting the treatment of workers are taken' in order to establish a continuing act. The Claimant must show that the incidents are linked to each other, and that they are evidence of a 'continuing discriminatory state of affairs'. This will constitute 'an act extending over a period'. The question is whether there is "an act extending over a period," as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed'. Paragraph [52] of the judgment.

29. In *Galilee v Commissioner of Police of the Metropolis* UKEAT/0207/16, [2018] ICR 634 the EAT held that, in cases involving an alleged continuing act, it may not be possible to decide the limitation point without hearing evidence; in such cases, depending on the circumstances, a tribunal is entitled either to defer the whole question of amendment and limitation to be decided after the evidence has been given, or to allow the amendment and leave the limitation issue to be decided at that later stage.
30. Where a claim has been brought out of time the Employment Tribunal can extend time for its presentation where it is just and equitable to do so. In *Robertson v Bexley Community Centre T/a Leisure Link* [2003] IRLR 434 the Court of Appeal stated that there is no presumption that an Employment Tribunal should extend time unless they can justify a failure to exercise the discretion. Quite the reverse; a Tribunal cannot hear a complaint unless the Claimant convinces the Tribunal that it is just and equitable to extend time, so the exercise of the discretion is the exception rather than the rule. In exercising their discretion to allow out of time claims to proceed, Tribunals may have regard to the checklist contained in s33 Limitation Act 1980 as considered by the EAT in *British Coal Corporation v Keeble & Others* [1997] IRLR 336. Factors which can be considered include the prejudice each party would suffer as a result of the decision reached, the circumstances of the case and, in particular, the length of and reasons for the delay, the extent to which the cogency of the evidence is likely to be affected by the delay, the extent to which the party sued has cooperated with any requests of information, the promptness with which the Claimant acted once he or she knew of the facts giving rise to the course of action and the steps taken by the Claimant to obtain appropriate advice once he or she knew of the possibility of taking action.

Discussion and Decision

31. The Respondent contends that the Claimant's Particulars of 22 June 2022 are new factual and legal complaints and the Claimant needs permission to amend the claim to include these new particulars. The Respondent says that a decision on whether to grant the amendment requires a decision on whether time should be extended.
32. I agreed that the new discrimination allegations presented on 22 June 2020 were new factual allegations pleading new grounds of complaint. They amounted to substantial amendments, to which the time limits applied for the purposes of *Selkent*. However, they also pleaded a continuing act.
33. The particulars appeared to be ambiguous as to whether they complained about the appeal against dismissal. At the hearing on 20 July 2022, the claimant told me that there was no appeal against grievance investigation, so it appeared that their mention of an appeal related to the dismissal appeal.
34. In any event, on 20 July 2022, the Claimant also said that he wished to bring a claim for failure to make reasonable adjustments at the appeal stage and said that outcome of the appeal against dismissal involved repetition of the alleged earlier discrimination arising out of disability in the dismissal. He reiterated that he relied on a continuing act throughout.

35. The Claimant alleges a continuing act in relation to all his complaints of discrimination, from June 2020 until July 2022.
36. In respect of the time limits, his amended discrimination claims in relation to the appeal, whether presented on 22 June, or on 20 July 2022, were made well within the time limits for such claims.
37. As the Claimant alleges continuing acts, his other discrimination complaints, if brought together on 20 July 2022, would also prima facie be in time, subject to findings about the alleged continuing acts at the final hearing. In any event, a hearing of his "in time" discrimination complaints about the appeal would have to consider both the appeal and the original decision to dismiss, because he alleges that the appeal repeated the discrimination arising from disability in the original dismissal decision.
38. The Respondent contended that the Claimant was circumventing the time limits by attempting to amend his claim after the time limits had expired in relation to complaints about his dismissal. The Respondent said that the Claimant had presented claims in time on 3 May, but gave no details of them and that these should be struck out and no amendment permitted.
39. I disagreed. I considered that, if the Claimant had presented discrimination claims, including his complaints about the appeal, for the first time on 22 June 2022 or 20 July 2022, they would all have been in time, in that they relied on a continuing act. The Claimant was not circumventing time limits. The Respondent had not given an appeal outcome until 14 June 2022 and that was the most recent event on which the Claimant relied. There was no abuse of process by the Claimant; the facts of the appeal had prima facie extended the period within which the claim could be brought.
40. I considered that the discrimination amendments were therefore presented in time, in that they relied on a continuing act, the last of which was in time.
41. Considering the balance of hardship and injustice, I considered that there would be considerably more hardship to the Claimant if I were to refuse permission for an amendment to bring discrimination claims which were in time when the amendment was presented, than hardship to the Respondent in requiring it to defend that claim on the merits. This was particularly so when the amendments were made at a very early stage of the proceedings, before any preparation for the final hearing. I had accepted that the Claimant had waited for the Respondent's appeal outcome, which was very significantly delayed after the appeal hearing in March 2022, to particularise and pursue his claim. This was a factor which favoured the Claimant. He had cooperated with the appeal and attempted to resolve the matter internally. I did not consider that the fact that he had presented discrimination, unfair dismissal and contractual claims on 3 May 2022, within 3 months of his dismissal, should be weighed against the Claimant. He had, at least, set out the types of claim he was bringing within 3 months of his dismissal, putting the Respondent on notice of his claims. (While the letter of dismissal was ambiguous, this was not a factor which supported allowing the amendment, because the Claimant was not, in fact, misled by it.)

42. The amendment also gave more detail of the unfair dismissal claim. That claim had already been brought in time on 3 May 2022. The new particulars did not add a different type of unfair dismissal claim – but added details to the existing ordinary unfair dismissal claim under s98 ERA 1996. The time limits did not apply and the amendments were made at an early stage. The new particulars would be heard in relation to discrimination claims in any event, so would not extend the hearing. The balance of hardship and injustice favoured allowing amendment in relation to the unfair dismissal claim, too.

No Strike Out

43. The Respondent's application for strike out or deposit order relied on the lack of particularization of the Claimant's claims. Following the amendment, the claims could be understood and responded to. The basis for the Respondent's application no longer applied. I did not strike out the claims or make a deposit order.

Other Directions.

44. I made other directions in the case, as set out below.

45. By consent, I added 2 days to the Final Hearing. Ms Robinson, for the Respondent, had concerns that the original 6 days would not be adequate due to the number of witnesses she intended to call

46. I gave the Respondent permission to file and serve an amended response by 18 November 2022. I ordered the Respondent to send a Final List of Issues send to the Claimant and ET, incorporating the Respondent's responses to the claim, by 18 November 2022.

47. I raised the possibility of Judicial Mediation. I gave a brief explanation of it. The Claimant may be interested . The Respondent needs permission to enter into Judicial Mediation. It agreed that, if it is interested in judicial mediation, it will inform the Tribunal by 3 February 2023 and ask that a date be set for Judicial Mediation.

48. I explained the directions I made for the Hearing, set out below.

Draft List of Issues

49. In discussion and in agreement with the parties, I drafted the following List of Issues. It will need to be finalized by adding the Respondent's factual defences once the Respondent has filed its amended response to the amended claims.

Issues

Disability

- 1. Was the Claimant a disabled person at the relevant times – that is September 2021 – 8 June 2022 The Claimant relies on multiple medical conditions: heart attack, Transient Ischemic attack, asthma, artificial fibrillation (AF) and heart failure, high blood pressure, IBS, diabetes and depression*

Unlawful Acts

2. *The Claimant relies on the following alleged acts by the Respondent:*

2.1. *Conducting an investigation into the complaint's June 2020 complaint that was biased against him; including appointing investigators who were colleagues of those he had complained about. (Relied on as direct race discrimination and victimisation)*

2.2. *After June 2020 subjecting the Claimant to excessive scrutiny from his Line Managers and the Royal College of Defence Studies. His line managers were Angela Locke, Louise Roosten, AVM Gary Tunnicliffe and Paul Mitcham. (Relied on as direct race discrimination and victimisation)*

2.3. *Deciding to dismiss him in September 2021 (relied on as discrimination arising from disability – the something arising was his repeated / long term absence from work).*

2.4. *Dismissing the Claimant by letter of 1 February 2022 (relied on as direct race discrimination, direct disability discrimination and discrimination arising from disability (the something arising is both "ambiguity of disability" and his absences from work) and victimisation.*

2.5. *Dismissing the Claimant's appeal (relied on discrimination arising from disability (the something arising is both "ambiguity of disability" and his absences from work).*

2.6. *Failing to make reasonable adjustments to allow the claimant to return to work at the time of the appeal hearing.*

Race Discrimination

3. *The Claimant relies on his black colour.*

4. *Did the Respondent treat the Claimant less favourably than it did treat or would have treated an actual or hypothetical comparator, in the same or not materially different circumstances, in the following ways:*

a. *Conducting a biased investigation into his complaint: the Claimant relies on a hypothetical comparator*

b. *Subjecting the Claimant to excessive scrutiny: the Claimant relies on actual comparators: white colleagues: Tina Mapp, Executive Officer managed by Louise Roosten; Paul Edmonds, Executive Officer and Brenda Hazelwood, Executive Officer, both managed by Angela Locke; who he says were not subject to the same scrutiny.*

c. *Dismissing the Claimant: the Claimant relies on hypothetical comparator.*

5. *If so, has Claimant shown facts from which the ET could conclude that the less favourable treatment was because of race?*

6. *If so, has the Respondent shown that the less favourable treatment was in no sense because of race?*

Victimisation

7. *Did the Claimant do a protected act in June 2020, when he complained that he was being discriminated against and harassed because of race?*
8. *Did the Respondent subject the Claimant to detriments by doing the following:*
 - a. *Conducting a biased investigation;*
 - b. *Subjecting him to excessive scrutiny;*
 - c. *Dismissing him.*
9. *If so, has the Claimant shown facts from which the ET could conclude that the detrimental treatment was done because of the Claimant's protected act?*
10. *If so, has the Respondent shown that the protected act was no part of the reason for the treatment?*

Direct Disability Discrimination

11. *Did the Respondent treat the Claimant less favourably than it did treat or would have treated a hypothetical comparator in the same or not materially different circumstances, by dismissing him?*
12. *If so, has the Claimant shown facts from which the ET could conclude that that less favourable treatment was because of disability?*
13. *If so, has the Respondent shown that the less favourable treatment was in no sense because of disability?*

Discrimination Arising from Disability

14. *Did the Respondent subject the Claimant to unfavourable treatment (because of something arising from disability) by:*
 - a. *Deciding to dismiss him in September 2021 (the something arising in consequence of disability is the Claimant's repeated / long term absence from work)*
 - b. *Dismissing him in February 2022 (the things arising in consequence of disability are the Claimant's absences from work and the ambiguity of the Claimant's disability)*
 - c. *Dismissing his appeal in June 2022 (the things arising in consequence of disability are the Claimant's absences from work and the ambiguity of the Claimant's disability)*
15. *If so, has the Respondent shown that the treatment was a proportionate means of achieving a legitimate aim? The Respondent relies on the following legitimate aims:*
 - a.

16. *The Claimant contends that the Respondent's treatment was not proportionate and that, in relation to dismissal, the dismissing officer was unreasonably sceptical about the Claimant's disabilities.*

17. *The Claimant also contends that dismissal of his appeal was not a proportionate means of achieving a legitimate aim because the Respondent failed to make reasonable adjustments to allow him to return to work.*

Failure to make Reasonable Adjustments

18. *Did the Respondent apply the following PCPs:*

- a. Requiring employees to work full time hours*
- b. Requiring employees to work without frequent breaks*
- c. Requiring employees to work without additional assistance in their work relationships*
- d. Applying its Absence management procedure*
- e. All the above PCPS together.*

19. *Did those PCPs, whether together or of any of them, put the Claimant at a substantial disadvantage in that he was unable to return to work complying with all those requirements, so that he was less likely to be reinstated to work?*

20. *Were the following reasonable adjustments for the Respondent to make to allow the Claimant to return to work, rather than dismissing him:*

- a. A phased return to work;*
- b. Addressing work relationships;*
- c. Short breaks to relieve leg cramps, and*
- d. An adjustment to the Respondent's expectations for attendance on account of a planned operation.*

Knowledge

21. *Did the Respondent know, or could it reasonably have been expected to know, that the Claimant was a disabled person at the relevant times?*

22. *Did the Respondent know or could it reasonably have been expected to know that the Claimant was likely to be put at the disadvantage by the relevant PCPs?*

23. *The respondent contends:*

Time Limits

24. *Were the claims presented in time?*

25. *Or did they form part of a continuing act or series of acts, the last of which was in time?*

26. *If they are out of time, is it just and equitable to extend time for them?*

Unfair dismissal

27. *Has the Respondent shown the reason for dismissal and that it was a potentially fair one? The Respondent relies on capability/ ill health.*

28. *If so, was the decision to dismiss fair and reasonable in all the circumstances of the case, including the size and resources of the employer's undertaking and the equity and substantial merits of the case?*

Polkey

29. *The Respondent relies on a Polkey argument in relation to both the alleged unfair and discriminatory dismissals.*

30. *What is the likelihood that this Respondent, acting fairly, would have dismissed the claimant in any event?*

31. *The Respondent contends:*

Contributory fault

32. *The Respondent relies on contribution in relation to both the alleged unfair and discriminatory dismissals.*

33. *Did the Claimant cause or contribute to his dismissal by not cooperating with the Respondent and/or not providing it with information on his medical condition?*

34. *The Respondent contends:*

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

Final Hearing

1. The Final Hearing is now listed for **8 days on 24 – 28 April, 2 - 4 May 2023 before a Full Tribunal, in person. (2 days have been added on 3 & 4 May 2023)**

Amended ET3 Response

2. The Respondent has permission to file and serve an amended Response by **18 November 2022.**

Final List of Issues

3. The Respondent shall send a Final List of Issues to the Claimant and Tribunal, incorporating the Respondent's responses to the claim, **by 18 November 2022.**

Schedule of Loss

4. By **18 November 2022** the Claimant shall send to the Respondent a schedule of loss setting out the sums he claims in all his claims, including financial loss and injury to feelings.

5. The Claimant shall send to the Respondent an Updated Schedule of Loss 14 days before the Final Hearing, calculated to the last day of the Final Hearing.

Disability Statement and Records

6. The Claimant shall, by **4 November 2022** disclose to the Respondent his GP records for the period January 2017 – July 2022.

7. By **18 November 2022** the Respondents shall confirm to the Claimant and the Tribunal whether they concede that the Claimant was a disabled person at all relevant times, from September 2021 to July 2022, by reason of any or all of the conditions he relies on, and if they do not so concede in relation to any of the conditions, why they do not.

8. If the Respondents do not concede that the Claimant was a disabled person at all relevant times, the Claimant shall, by **9 December 2022** send a statement of disability to the Respondent, setting out each disability on which he relies, the adverse effects each disability has had on his ability to carry out normal day to day activities, when those effects started and how long they lasted.

Disclosure of Documents and Bundle

9. By **13 January 2023** the parties shall disclose to each other all the documents they have in their possession, relevant to the claim and response, by providing a list and copies of those documents to each other.

10. The Respondent shall prepare the Bundle for the Final Hearing.

11. By **27 January 2023** the Claimant shall tell the Respondent what documents need to be included in Final Hearing Bundle on his behalf.

12. By **17 February 2022** the parties shall agree the contents of the indexed, paginated Final Hearing Bundle and the Respondent shall prepare and send a hard copy of the Bundle to the Claimant. The Respondent shall send any updated hard copies of the Bundle to the Claimant for use at the Final Hearing.

Witness Statements

13. The parties shall exchange witness statements for the Final Hearing by **17 March 2023**.

14. The witness statements should be in numbered paragraphs on numbered pages.

15. Each witness statement should set out all of the evidence which that witness intends to put before the Tribunal on all the issues and on compensation.

16. If the witness refers to a document, the witness statement should refer to page/s in the agreed Bundle.

17. A failure to comply with this order may result in a witness not being permitted to give evidence because it has not been disclosed in a witness statement; or in an adjournment of the hearing and an appropriate order for costs caused by such adjournment.

18. The Respondent shall bring 5 copies of the Bundle and all the witness statements to the Final Hearing.

Chronology and cast list

19. The Respondent shall produce a neutral **Chronology and cast list** and shall send it to the Claimant **by 17 April 2023**. The parties shall attempt to agree the chronology and cast list for use at the hearing.

Other matters

Public access to employment tribunal decisions

All judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Any person who without reasonable excuse fails to comply with an Order to which section 7(4) of the Employment Tribunals Act 1996 applies shall be liable on summary conviction to a fine of £1,000.00.

Under rule 6, if this Order is not complied with, the Tribunal may take such action as it considers just which may include (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.

You may apply under rule 29 for this Order to be varied, suspended or set aside.

Employment Judge **Brown**
Date: 6 October 2022

SENT to the PARTIES ON

.10/10/2022

FOR THE TRIBUNAL OFFICE