THE INDUSTRIAL TRIBUNALS

CASE REF: 1839/13

CLAIMANT: **Elizabeth Jameson**

RESPONDENT: **Department for Social Development**

DECISION

The unanimous decision of the industrial tribunal is that the claimant's claim of disability discrimination (by failing to comply with the duty to make reasonable adjustments) is dismissed.

Constitution of Tribunal:

Employment Judge Buchanan

Members: **Mrs C Stewart**
Mr P McKenna

Appearances:

The claimant was represented by Ms M Morgan, of NIPSA.

The respondent was represented by Mr A Sands, Barrister-at-Law, instructed by The Departmental Solicitor's Office.

1(i) The claimant, Ms Elizabeth Jameson, by a claim presented to the tribunal on 17 October 2013, alleged that the respondent Department, her employer, had discriminated against her contrary to Section 4A of the Disability Discrimination Act 1995, as substituted by the Disability Discrimination Act 1995 (Amendment) Regulations (Northern Ireland) 2004, by reason of its failure to make a reasonable adjustment to her working arrangements.

(ii) (a) The issues to be determined by the tribunal were agreed at a Case Management Discussion on 30 January 2014 and a copy of that Record of Proceedings (dated 31 January 2014) and a list of the issues are attached at Appendix A.

(b) The claimant suffers from bi-lateral osteoarthritis of the knees and severe osteoarthritis of her left hip. This is a chronic progressive degenerative disease of the joints. Pain and swelling and stiffness affect her ability to walk and change position, and her mobility is restricted. When her condition flares up she suffers severe exacerbation of her pain. This is further exacerbated by travelling, and this in turn can increase the length and severity of the flare up.

It is accepted by the respondent that the claimant is disabled.

(c) The adjustment sought by the claimant was an arrangement whereby, when her condition flared up, she could phone her line manager and inform him that she would work at home on that day. The days on which the claimant worked at home would not be agreed in advance. Management would be informed on the mornings in question that the claimant was working from home on the days that she had invoked the arrangement.

Management refused to agree to the proposed arrangement, giving rise to these proceedings.

(iii) In order to determine this matter, we heard evidence from the claimant, Ms Jameson.

We heard evidence from the following on behalf of the respondent Department:-

John McKervill (Director of Pensions, Disability and Corporate Services in the Social Security Agency ('SSA');

Patrick McGlinchey (Deputy Principal, and the claimant's immediate line manager from 2011 – 2013);

John O'Neill (Assistant Director in Pensions, Disability and Corporate Services within the SSA);

Josephine Quinn (Disability Liaison Officer in the Human Resources Division of the respondent Department);

Patricia O'Brien (Principal Officer in Pensions, Disability and Corporate Services); and

Martin McGeown (Deputy Principal in SSA and Corporate Services)

Additionally, Gail McCullough (Deputy Principal) and Leslie Robb (Disability Liaison Officer) were called and sworn to give evidence, but it was then agreed by the parties that nothing turned on their evidence and they were consequently not cross-examined.

We also had regard to the documentary evidence submitted by the parties.

(iv) The tribunal find the facts set out below.

2(i) The claimant is employed as a Staff Officer in the Social Security Agency, an agency within the respondent Department for Social Development. She has worked there for approximately 28 years and we would record at the outset that there is no complaint by management about the quality of her work or her commitment to her work. Her main work had been in projects and at the relevant time she was working on what was known as the Mosaic Project (Mail Opening Scanning Image Circulation Project). As a Staff Officer she had line management responsibility for other members of staff. The project on which she worked had 2.8 Staff Officers. She herself was partially retired and worked four days a week.

(ii) The nature of her disability has been briefly described at *Paragraph 1(ii)(b)* above. The claimant is in receipt of Disability Living Allowance (High Rate Mobility) and there are arrangements in place (the provision of taxis) under the Government's Access to Work Scheme in order to help her attend her place of work.

(iii) In her claim form to the tribunal she described the symptoms and effects of her disability as follows:-

> *" ... My condition flares up sporadically and the effort of travelling to work, albeit by taxi, has a negative impact on the length and severity of episodes. During a flare-up, my localised pain, usually controlled by pain medication, increases and travelling to work (getting in and out of a taxi) and moving around in the workplace exacerbates the pain. In the past this has prolonged the severity and length of time it takes for the flare up to settle down. This has affected my managing attendance record in the past.*
>
> *While flare ups are sometimes triggered by changes in temperature, stress can also be a factor and the effort and detrimental effects of travelling to work at such times has increased the frequency and severity of episodes over the past 6 years or so."*

It is convenient to state here that the issue of managing attendance was one which was of concern to the claimant. In November 2011 the claimant had been required to attend a formal inefficiency meeting following a lengthy period of absence. She clearly was worried about the frequent taking of sick leave leading to disciplinary action or enforced retirement on health or efficiency reasons. However, it has to be noted that at the meeting in November 2011, Mr McGlinchey, the Deputy Principal who carried out the formal review, was sympathetic to her health problems and recommended that no disciplinary warning should be given to her about her attendance.

(iv) In September 2012 the claimant suffered a flare-up and rang in one morning to inform her line manager, Mr McGeown, that she would work from home that day. She assured him that she had work at home she could get on with (ie reading papers that she needed to catch up on).

(v) According to the claimant's evidence, when she returned to work the following day, Mr McGeown told her that Mrs O'Brien, the Principal Officer, was unhappy with what had happened. It is the claimant's case that an arrangement of that kind, whereby, without prior notice to line management, she could decide on a morning that she was too unwell to travel into work, and work at home instead had been agreed following the previous flare-up in November 2011 with her then

line manager, Mr McGlinchey, and the Assistant Director, Mr O'Neill. This arrangement was put in place following on from the managing attendance meeting referred to at *Sub-paragraph (iii)* above.

(vi) While Mr McGeown has no very great recollection of any conversation with the claimant in September 2012, it is clear that he and Mrs O'Brien did speak about the matter. At the end of October 2012 he e-mailed the claimant stating:-

> *"As discussed, Patricia (ie Mrs O'Brien) and I are content for the previous informal ... 'working from home' agreement, on an exception [sic] basis, by pre-arrangement with me or another [Deputy Principal]/Patricia on the work to be undertaken at home, to continue."*

Mrs Jameson at no time disputed with Mr McKeown the accuracy of the description of the previous Working from Home agreement, and this, coupled with the evidence of both her former line manager, Mr McGlinchey, and of Mr O'Neill, which we accept, and the documentary evidence lead us to conclude that while there was a previous informal and unrecorded arrangement about home-working, it was to be on an occasional pre-planned basis, that is to say, agreed with management in advance.

It should also be noted that there is no documentary record available of the claimant working from home under any arrangement which had not been pre-arranged.

3(i) Ms Jameson considered that any arrangement for home-working which required prior agreement was not suitable for her needs, because of the nature of her condition and the sudden and sporadic onset of flare-ups. Consequently, on 15 March 2013 she made a formal request for an adjustment under the Disability Discrimination Act 1995. In its final form, the request stated:-

> *"I would like to be able to carry out my duties, which are mainly sedentary and computer based, from home when my arthritis flares up and I am unable to leave home."*

(ii) In support of her application for this adjustment, Ms Jameson relied on medical evidence from her own doctor, the report from Occupational Health (to which she had been referred) with the recommendation of the OH nurse, and at the hearing, a memo written by Mr McGeown which was in supportive terms. (She only became aware of this memo through the discovery process in her claim.)

(iii) The letter from her GP practice, which was undated, but which was clearly written in March 2013 around the time of her referral to OH, made reference to her medical conditions and the exacerbations of severe pain and reduced mobility which characterised it. The doctor stated that during these exacerbations:-

> *"She is still officially fit for her work, which would I believe involve sedentary and computer based tasks. If she was to suffer exacerbations in her pain, we would be grateful for you to consider working from home on a short term basis. This would of course help her recover quicker and promote her performance at work and also prevent unnecessary sick leave days."*

(iv) The OH report, completed by an Occupational Health nurse and dated 22 March 2013 again noted the claimant's condition and symptoms. At Section 2 ... (how the condition(s) impacts on the ability to carry out the job) it stated:-

> *"Increased fatigue and pain can affect her ability concentrate [sic] and focus on her work.*
>
> *Her condition is exacerbated by periods of standing or sitting which in turn affects her mobility."*

In relation to suggested adjustments it was stated, *at Section 3*, that the claimant:-

> *"Would benefit from the opportunity of home working particularly when symptoms flare up."*

(Other suggested adjustments were not controversial).

In Section 3 it was also stated that it was for the employing Department to take the ultimate decision on what was reasonable and could be accommodated within their business needs.

(v) In some respects the report from OH to management threw up more questions than it answered. The reference to the potential for the claimant's increased fatigue and pain to affect her ability to concentrate and focus on her job, coupled with the fact that the claimant travelled the comparatively short distance from home to work by taxi provided under the Access to Work Scheme, led the respondent Department to query what medical benefit there would be in home-working for Ms Jameson, and to ask whether, when there were these flare-ups in her condition, she was actually fit to work from home.

When this question was addressed by one of the Department's Disability Liaison Officer to the OH nurse no satisfactory response was forthcoming. However, notwithstanding this, the Disability Liaison Officer did e-mail Mr McGeown on 6 June 2013 stating that OH was 'supportive' of the claimant's request.

(vi) Mr McGeown, in an e-mail to Mrs O'Brien of 6 June 2013, asked her if she was happy to accommodate the claimant's request for home-working when her condition flared up, with a review after 4 – 6 months, as suggested by the Disability Liaison Officer. He stated in his e-mail:-

> *"Our difficulty is that Liz's condition can flare at any time and if it flares up at night preventing her from sleeping, she may be unable to attend work, however she had no work home with her which she could undertake, notwithstanding her managerial responsibilities in the office. The options would be to provide her with a laptop which would not come at any additional cost as her PC would be 'swapped out' for a laptop, but which in my non-medical opinion, would exacerbate her mobility difficulties with something else to carry, or a home workstation which would attract additional costs, as a 2nd workstation, and potentially a work mobile, so she can manage the team, in an albeit limited fashion, from home.*

I am content to give the arrangement a 'trial period', with records being kept of the number of occasions on which it is invoked during the trial period, along with a report produced by Liz on her return, and countersigned by myself, of the work undertaken on her day(s) of absence."

(vii) Although the claimant relies on the report of her GP, the recommendation of OH and, latterly, Mr McKeown's memo to Mrs O'Brien, it has to be said that none of them provides unequivocal support for the adjustment she sought.

Neither the GP's report, nor the recommendations of the OH nurse, suggests home-working on an unplanned basis, without prior agreement, and the latter raised unresolved issues about the blurring of the line between a reasonable adjustment for someone at work (whether at home or at her place of work) and sick leave (where the person was not fit for work). Mr McKeown's minute shows that although he was 'content' to give the unplanned arrangement sought by the claimant a trial, he nonetheless had reservations about how feasible it was, bearing in mind both what work she would have to do at home, and how it would fit in with her managerial responsibilities.

4(i) In addition to the matters referred to at *Paragraph 3* above, the claimant also contended that the practice of home-working was common in the DSD. Figures supplied by the respondent during the interlocutory process showed that 97 of its employees (of whom six were disabled) had worked at home on various occasions.

The claimant also alleged that Mrs O'Brien, her Principal Officer, also 'often' worked from home.

(ii) As far as Mrs O'Brien was concerned, we find that this was not in fact the case.

As far as the 97 other employees of the respondent are concerned there is no issue that they worked from home. They were described as doing so on an 'ad hoc' basis. 'Ad hoc' was also the expression used by Ms Jameson to characterise the arrangement which she sought, ie working from home when the need arose without prior arrangement. However, we are satisfied that in relation to other employees working from home, such home-working was always by prior arrangement with line management. It was done on a pre-planned basis, when the need arose.

5(i) On 23 July 2013, Mrs O'Brien refused the adjustment requested. We are satisfied that she considered it conscientiously, and she consulted with Mr McGeown (her subordinate), and also with Mr O'Neill and Mr McKervill (her supervisors). She also had regard to the relevant documentary evidence before her, such as the medical and OH reports, and Mr McKeown's minute to her. It is also clear that Mrs O'Brien had no objection in principle to home-working on a pre-arranged basis.

It was her view that the adjustment was not reasonable and could not be accommodated within her business area.

(ii) The reasons for refusing the adjustment included the fact that the claimant had line management responsibilities for other more junior staff and was required to interact and engage with them and give them advice and support; the number of staff working on the current project was comparatively small; the project was about to go 'live' and all staff, regardless of their normal duties, were required on site in

the run-up to that phase so that any problems that arose in implementation could be resolved and taken forward; the claimant, in the course of her job, received confidential financial information on a regular basis, and there were issues about document security in the context of home-working; while there was an acceptance that the claimant was an experienced staff member and could work on her own initiative, without supervision, there were nonetheless still issues about managing the arrangement sought by the claimant in terms of the availability and allocation of work, what work was to be done at home and monitoring of the output of work.

While Mr McKeown had indicated that he was prepared, notwithstanding his reservations, to give the proposed adjustment a trial period, Mrs O'Brien did not find this acceptable. She considered that Mr McKeown, by virtue of his own job responsibilities, was under pressure and in the interests of the entire team and its functions, she did not wish to increase the pressure upon him.

(iii) Although the claimant's suggested adjustment was not acceptable to management, the latter nonetheless put forward other adjustments for consideration. These were in addition to adjustments which were already in place (ie allowing her to change positions from sitting to standing when necessary, facilitating easy access to her workplace, and providing appropriate toilet facilities). The proposed new adjustments were allowing the claimant to change her partial retirement day from a Monday to a Wednesday so that she would not have to work for four consecutive days, allowing her to break 'core time' working hours so that if she could not make it into work before 9.30 am because of her condition, no sanction would be applied provided she attended before 12.00 pm, and the provisions of a workstation on the ground floor for convenience to the main door. It seems to us that the last of these would have been of limited value, because in any event she took a lift to her workstation on the second floor.

(iv) Ms Jameson did not engage with the respondent in relation to the alternative adjustments which were proposed by it. On 25 July 2013 her trade union representative informed Mrs O'Brien that he had discussed the matter with Ms Jameson, and that they did not consider that there would be any benefit in having a formal meeting to discuss the respondent's proposals.

Subsequently, in October 2013, Ms Jameson moved out of the Project Team to a new post. In that new post she has not made any request for a similar adjustment.

6(i) The relevant law is found in the Disability Discrimination Act 1995, as amended by the Disability Discrimination Act 1995 (Amendment) Regulations (Northern Ireland) 2004.

(ii) Section 4A of the Act deals with the duty to make reasonable adjustments.

A failure to make a reasonable adjustment is not capable of being justified.

The factors to be taken into account by a court or tribunal in determining whether it is reasonable for a person to have to take a particular step in order to comply with a duty to make a reasonable adjustment and a non-exhaustive list of examples of reasonable adjustments are set out at Section 18B of the Act, and we do not repeat them here. Whether something is a reasonable adjustment is for

tribunal to decide, objectively, on the facts of the particular case. (See : ***Smith v Churchill Stairlifts PLC [2006] IRLR 41 CA***.)

Also, the making of a reasonable adjustment does not lead to the situation where everything remains the same for a claimant. ***Taylor v Dumfries & Galloway CAS [2007] SLT 425***.)

The duty to make reasonable adjustments is extremely wide in scope. This is clear from the judgment of Baroness Hale in ***Archibald v Fife Council [2004] IRLR 65***.

(iii) Notwithstanding its width, it is clear that the duty to make a reasonable adjustment is not limitless. At p 659, Baroness Hale stated:-

> *"It is … common ground that employers are only required to take those steps which in all the circumstances it is reasonable for them to have to take. Once triggered, the scope of the duty is determined by what is reasonable, considered in the light of the factors set out in Schedule 6(4) …*
>
> *… There is no positive duty other than addressing the impact of the disability on her ability to do a job which she is otherwise well-fitted to do. This duty cannot arise where the disability means that she cannot do the job at all and there are no adjustments to the arrangements for that job which can make any difference."*

(iv) Regard must also be had to the guidance given to tribunals in ***Environment Agency v Rowan [2008] IRLR 20 (EAT)*** where His Honour Judge Serota stated, at paragraph 27, that a tribunal considering a claim that an employer has failed to make a reasonable adjustment must identify:-

> *"(a) the provision, criterion or practice applied by or on behalf of an employer; or*
>
> *(b) the physical feature of premises occupied by the employer; or*
>
> *(c) the identify of non-disabled comparators (where appropriate); and*
>
> *(d) the nature and extent of the substantial disadvantage suffered by the claimant. It should be borne in mind that identification of the substantial disadvantage suffered by the claimant may involve a consideration of the cumulative effect of both the 'provision, criterion or practice applied by or on behalf of the employer and the physical feature of premises', so it would be necessary to look at the overall picture."*

He continued:-

> *"In our opinion, an employment tribunal cannot properly make findings of a failure to make reasonable adjustments without going through that process. Unless the employment tribunal has identified the four matters we have set out above, it cannot go on to judge if any proposed adjustment is reasonable. It is simply unable to say what adjustments were reasonable to prevent the*

provision, criterion or practice, placing the disabled person concerned at a substantial disadvantage."

(v) In ***Tarbuck v Sainsburys Supermarkets Ltd [2006] IRLR 664 (EAT)***, Elias J, as he then was, held that there was no separate and distinct duty on an employer or other person to consult with a disabled person, while emphasising that it will always be good practice to do so, and that failure to do so may jeopardise a respondent's legal position. The question for the tribunal is an objective one, namely has the employer complied with its obligations to make reasonable adjustments (*Ibid p 673)*. As we have noted, in this case the claimant failed to engage with the employer.

7(i) Section 17A(1C) sets out the burden of proof in disability discrimination claims. Following the now common formula in legislation outlawing other forms of discrimination, it provides as follows:-

"Where, on the hearing of a complaint, under sub-section (1), the complainant proves facts from which the tribunal could, apart from this sub-section, conclude in the absence of a adequate explanation that the respondent has acted in a way which is unlawful under this Part, the tribunal shall uphold the complaint unless the respondent proves he did not so act."

(ii) In ***Igen Ltd (formerly Leeds Careers Guidance) and Others v Wong***; ***Chamberlain Solicitors and Another v Emokpae***; and ***Brunel University v Webster [2005] IRLR 258***, the Court of Appeal in England and Wales has set out guidance on the interpretation of the statutory provisions shifting the burden of proof in cases of sex, race, and disability discrimination. This guidance is now set out in full at an Annex to the judgment in the ***Igen*** case. We therefore do not set it out again in full, but have taken it fully into account.

In short, the claimant must prove facts from which the tribunal could conclude in the absence of an adequate explanation that the respondent has committed an unlawful act of discrimination. The tribunal will also consider what inferences it is appropriate to draw from the primary facts which it has found. Such inferences can include inferences that it is just and equitable to draw from the provisions relating to statutory questionnaires, a failure to comply with any relevant Code of Practice, or from failure to discover documents or call an essential witness.

If the claimant does prove facts from which the tribunal could conclude in the absence of an adequate explanation from the respondent that the latter has committed an unlawful act of discrimination, then the burden of proof moves to the respondent. To discharge that burden the respondent must show, on the balance of probabilities, that the treatment afforded to the claimant was in no sense whatsoever on a proscribed ground (here disability). The tribunal must assess not merely whether the respondent has proved an explanation for the facts from which inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that disability was not a ground for the treatment in question. Since the facts necessary to prove an explanation will normally be in the possession of a respondent, a tribunal will normally expect cogent evidence to discharge the burden of proof.

Although the above logically establishes a two-stage process, it is not to be applied slavishly or mechanically, and in deciding whether the claimant has made out a

prima facie case the tribunal must put to one side the employer's explanation for the treatment, but should take into account all other evidence, including evidence from the employer. (See : ***Laing v Manchester City Council [2006] IRLR 748 EAT; Madarassy v Nomura International Ltd [2007] IRLR 246***; and ***Arthur v Northern Ireland Housing Executive and Anor [20070] NICA 25***.)

(iii) More specifically, in relation to the duty to make reasonable adjustments, the burden of proof was considered in ***Project Management Institute v Latif [2007] IRLR 579***. In *Harvey on Industrial Relations and Employment Law*, the position is summarised as follows:-

> *"… [T]he EAT held that a claimant must prove both that the duty has arisen, and also that it has been breached, before the burden will shift, and require the respondent to prove that it complied with the duty. There is no requirement for claimants to suggest any specific reasonable adjustments at the time of the alleged failure to comply with the duty; in fact it is permissible … for claimants to propose reasonable adjustments on which they wished to rely at any time up to and concluding the … hearing itself."*

8(i) Having set out the facts as found above and applying the relevant law to them, we are satisfied that the claimant's claim in respect of a failure to make reasonable adjustments should be dismissed. In reaching that conclusion we have discounted the evidence showing that there is no other employee of the DSD working from home on an unplanned basis. We are concerned with what is a reasonable adjustment for the claimant.

(ii) The provision criterion or practice (PCP) with which we are concerned here is the usual requirement placed upon employees of the respondent that they should work at the respondent's premises, and we have to determine whether the PCP placed the claimant at a substantial disadvantage.

(iii) The medical evidence is, at best, inconclusive on the issue of whether when the claimant was unfit to travel to work, she was nonetheless able to perform her duties at home. The OH report suggests that the pain would still have made it difficult for her to concentrate and focus on her work.

(iv) The claimant's own case was that she would have expected to avail of the proposed arrangement for unplanned home-working infrequently. This suggests that, in any event, it would have had a limited effect on any substantial disadvantage she suffered.

(v) We accept the evidence of the respondent's witnesses that the nature of the claimant's work on the project team would have presented great difficulties for them given their business needs and we accept that the reasons put forward by management for rejecting the claimant's application were valid. We have already set these out *at Paragraph 5* above and do not therefore repeat them again.

9 In conclusion we wish to state that we reject as completely unfounded the claimant's assertions that Mrs O'Brien, her Principal Officer, acted in bad faith in her dealings with her. Various matters (not included in the issues to be determined) were put forward by the claimant in an effort to show bad faith on Mrs O'Brien's part. These were matters about which no complaint or grievance had previously been made, and

we are completely satisfied that in relation to this matter Mrs O'Brien acted properly, in good faith, and with complete integrity. Indeed, in her overall dealings with the claimant she treated the latter sympathetically and well.

Employment Judge

Date and place of hearing: **19 – 22 May 2014, Belfast**

Date decision recorded in register and issued to parties:

APPENDIX A

Record of Proceedings of 30 January 2014 (dated 31 January 2014) and list of issues

THE INDUSTRIAL TRIBUNALS
CASE MANAGEMENT DISCUSSION
(DISCRIMINATION)

CASE REF: 1839/13

CLAIMANT: Elizabeth Jameson

RESPONDENT: Department of Social Development

DATE OF HEARING: 30 January 2014

REPRESENTATIVES OF PARTIES:

CLAIMANT BY: Ms M Morgan, of NIPSA.

RESPONDENT BY: Mr A Sands, Barrister-at-Law, instructed by The Departmental Solicitors' Office.

Case Management Discussion
Record of Proceedings

---

1. Legal and factual issues

A draft' list of issues was submitted and is attached to this Record of Proceedings. If these are any changes to these, they will be submitted to the Office of the Tribunals **by 10 February 2014**. The issue of the claimant's disability has been conceded by the respondent.

2. Preliminary issues

There are no preliminary issues requiring a separate pre-hearing review.

3. Interlocutory matters

It was indicated to me that the parties would deal with interlocutory matters between themselves. This process will be completed **by 7 March 2014**.

Orders

In accordance with Rule 10(1) of the Industrial Tribunals Rules of Procedure 2005, I make the following orders, by consent:-

(i) **Witness Statements**

(a) The claimant and any witness she wishes to call must provide a witness statement to the respondent's representative **by 5.00 pm on 31 March 2014.**

(b) The respondent and any witness it wishes to call must provide a witness statement to the claimant's representative **by 21 April 2014.**

(c) A witness statement must be a complete statement of the evidence relating to the issues, in respect of both liability and remedy, in the case, that the witness wishes to give to the tribunal. A witness will not be permitted to add to his statement without the consent of the tribunal. Consent will only be given where there is good reason for doing so.

Witness statements should commence with an introductory paragraph which identifies the witness and explains the relevance of the witness to the claim, eg claimant, line manager, member of interview panel, etc.

The statement should then use the factual issues agreed and set out the witnesses' evidence [if any] in relation to each factual issue chronologically. The witness statement should finish with a short summary paragraph.

Witness statements may not exceed 5,000 words unless otherwise directed by the tribunal.

(d) Witness statements will not be read aloud to the tribunal, subject to the discretion of the tribunal hearing the case.

(e) Witness statements will be read by the tribunal prior to the commencement of the hearing.

(f) Witness statements must be signed and dated.

(ii) Schedule of Loss

The claimant's claim is confined to injury to feelings. Her representative will indicate what she considers to be the appropriate band of ***Vento*** in advance of the hearing.

(iii) **Bundles**

Four agreed bundle of all relevant documents along with four copies of a separate folder containing the witness statements, must be lodged in the Office of the Tribunals **by 16 May 2014** Any documents referred to in the witness statements must be identified by page number in the bundle:-

(a) the bundle must contain only those documents which are necessary for the tribunal to hear and determine the claim. The bundle is not meant to contain all documentation which has been disclosed between the parties, documents should appear only once in the bundle;

(b) the bundle must contain a detailed index and each page in the bundle must be clearly and consecutively numbered;

(c) each document must appear in chronological sequence;

(d) the bundle may not, without the consent of the tribunal, contain more than 200 pages.

(iv) **Date of Hearing**

The hearing will be from:-

19 – 23 May 2014

The tribunal will read the witness statements between **10.00 am** and **1.00 pm** *on the first day of hearing* and the substantive hearing will commence **immediately** thereafter. Parties and witnesses must be in attendance at that point.

Parties and their representatives should note that if any matters arise which require a further direction or order by the tribunal, they should **immediately** notify the Office of the Tribunals of that matter and attend **at 10.00 am on [the first day of hearing]** so that such matters can be resolved.

D BUCHANAN
Chairman:

Date: 31 **January 2014**

Notice

1. If any party fails and/or is unable to comply with any of the above Orders, any application arising out of such failure or inability to comply must be made promptly to the tribunal and in accordance with the Industrial Tribunals Rules of Procedure 2005.

2. Failure to comply with any of these Orders may result in a Costs Order or a Preparation Time Order or a Wasted Costs Order or an Order that the whole or part of the claim, or as the case may be, the response may be struck out and, where appropriate, the respondent may be debarred from responding to the claim altogether.

3. Under Article 9(4) of the Industrial Tribunals (Northern Ireland) Order 1996, any person who, without reasonable excuse, fails to comply with a requirement to grant discovery and inspection of documents under Rule 10(2)(d) of the Industrial Tribunals Rules of Procedure 2005 shall be liable on summary conviction to a fine not exceeding Level 3 on the standard scale - £1,000 at 3 September 2007, but subject to alteration from time to time.

4. A party may apply to the tribunal to vary or revoke any of the above Orders in accordance with the Industrial Tribunals Rules of Procedure 2005.

OFFICE OF THE INDUSTRIAL TRIBUNAL

BETWEEN:

ELIZABETH JAMESON

Claimant

And

DEPARTMENT OF SOCIAL DEVELOPMENT

Respondent

STATEMENT OF ISSUES

MAIN ISSUES OF FACT

1. It is accepted by the Respondent that the Claimant's disability is a disability under the DDA 1995.

2. It is accepted that the requirement that the Claimant must work in an office in Belfast was a provision, criterion or practice ("PCP") applied by the Respondent.

3. Did this PCP place the Claimant at a substantial disadvantage compared to persons who were not disabled.

4. Whether from the date OHS advice recommended the claimant would benefit from the opportunity of Home Working, particularly when symptoms flare up, it was the duty of the Respondent to take such steps as it was reasonable in all the circumstances of the case, for it to have taken in order for it to prevent the relevant provision, criterion or practice having that effect

5. Was there evidence that travel to and from work by taxi would have exacerbated the Claimant's symptoms?

6. What was the disadvantage?

7. Was it substantial?

8. Have the Respondents actions exacerbated the Claimant's physical condition?

9. Would the adjustment proposed by the Claimant have prevented the Claimant form being placed at a substantial disadvantage in comparison with persons who are not disabled?

LEGAL ISSUES

1. Did the Respondent discriminate against the Claimant contrary to Sections 4A and 18B of the Disability Discrimination Act 1995 (as amended) by failing to make reasonable adjustments?

2. To whom does the Claimant compare herself? What are the relevant characteristics of her comparators, whether real or hypothetical?

3. Was the adjustment sought by the Claimant a reasonable adjustment in all of the circumstances?