EMPLOYMENT TRIBUNALS

Claimant	**Respondent**
Miss O Mironescu	(1) Parkcare Homes (No.2) Limited (2) Priory Central Services Limited (3) Craegmoor Facilities Company Limited (4) Priory Group Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Heard at: **Midlands West Employment Tribunal** **On: 13 December 2019**
and in chambers on 17 & 23 December 2019

Before: EJ Kelly

Appearances
For the Claimant: In person
For the Respondent: Ms Badham of counsel

JUDGMENT

The judgment of the Tribunal is that:

1. The Tribunal is unable to identify the correct identity of the respondent and has added further respondents by separate order.

2. The claimant's claim for unfair dismissal is dismissed.

3. The claimant had a disability for the purposes of the Equality Act 2010 from 19 November 2015 to 21 January 2019, namely the Arm Impairment, as set out below.

REASONS

1. This Preliminary Hearing was to determine the following issues:

    a. The correct identity of the respondent. The claimant called the respondent "Priory Group Head Office". There is no such company registered at Companies House and it cannot be the correct name for the respondent. The respondent contended that the correct name of the respondent was Parkcare Homes (No.2) Limited.

b. Whether the claimant was an employee of the respondent and, therefore, whether the Tribunal has jurisdiction to determine the claimant's claim for unfair dismissal. The respondent accepted that the claimant was a worker.

c. Whether the claimant was a disabled person as defined in the Equality Act 2010 (EQA) at any material time. At the preliminary hearing of 12 September 2019, the claimant identified that she was a disabled person by reason of her medical conditions of carpal tunnel syndrome, fibromyalgia and planter fasciitis. In medical evidence submitted to the hearing, the claimant also had a diagnosis of "myofascial pain".

2. For the purposes of these reasons, when we refer to the respondent, we shall refer to the claimant's employer in the Priory Group of companies, whichever company that may be, unless the context requires us to be referring to Parkcare Homes (No.2) Limited, which company Ms Badham was apparently representing.

3. By an email to the Tribunal of 21 Oct 2019, the respondent contested that the claimant had a disability at the material time on the following grounds:

    i. The claimant did not suffer from a medical impairment given that her medical records did not show a demonstrable cause of the symptoms.

    ii. The alleged physical impairment did not have a substantial adverse effect on the claimant's ability to carry out normal day to day activities.

    iii. The impairments were not long term; the claimant's medical records showing that she suffered from plantar fasciitis for a short period in 2016 and with fibromyalgia between June 2017 and December 2017.

4. The question of when the "material time" was to identify whether or not the claimant had a disability had not been explored at the preliminary hearing of 12 September 2019. When this was raised in this hearing, it emerged that the claimant considered that acts of disability discrimination occurred, not only on her dismissal, but also prior to this when she was allegedly overlooked for other positions. We noted that the Tribunal would have to accept her application to amend her claim in order to rely on these pre dismissal events in her disability discrimination claim. Consideration of this application should take place at the next preliminary hearing. For the purposes of the today's hearing we are considering whether the claimant was a disabled person at any time during the period October 2014 to 21 January 2019 (when her contract was terminated), this being the period of disability discrimination contended for by the claimant.

5. The claimant gave evidence and was cross examined. She also relied on a written statement of Angela Hobbs. We did not find Ms Hobb's statement of much assistance in considering the issues. The respondent relied on a written statement of Patrick Van Rensburg, operations director at the respondent's group, which we refer to at points below. Neither Ms Hobbs nor Mr Van Rensbury attended to be cross examined on their evidence.

6. We had a bundle of documents, and a written skeleton argument for the respondent.

WHAT HAPPENED

7. We find the following as the primary facts relevant to the issues for today's hearing.

8. From 21 Oct 2010, the claimant worked as a support worker at an establishment called the Tithe Barn, a specialist residential home for individuals with learning disabilities, autism and challenging behavior.

9. Initially the claimant was an employee. When she joined as an employee, the Tithe Barn was operated by an organisation called Craegmore. The Tithe Barn operation was then taken over by the respondent or its group company.

10. After this take over, in November or December 2013, the claimant was successful in finding a position with a third party to work 30 hours a week caring for elderly people. She still wished to

continue at the respondent part-time and asked if she could change her working arrangement to be a bank worker, which was agreed. There was no break in time between her full time employment and transition to bank working.

Relating to status

11. A bank working agreement of 21 January 2014 was sent to the claimant on paper headed "Priory Group of Companies" from Priory Central Services Limited by cover letter of 21 January 2014. It was signed by the claimant and the respondent.

12. This agreement stated that it detailed the essential terms and conditions of the Priory Group bank working agreement and that further details of standards at work were available in the bank workers' handbook. We were supplied with a later copy of that handbook, but from the evidence we heard, there was no difference between the earlier and later versions relevant to the issues at this hearing.

13. The agreement stated:

    a. "This agreement is not a contract of employment."

    b. "Any bank hours offered are at the sole discretion of the company, as dictated by the needs of the business, which you may accept or decline as you wish."

    c. "The company does not guarantee to offer you any number of bank working hours or any bank working hours at all."

    d. "You may decline to accept bank working hours offered. But once bank working hours are accepted you are required to give reasonable notice if you subsequently are unable to work the bank working hours accepted."

    e. The claimant was paid an hourly rate for bank hours worked. She was entitled to paid holiday, but not company sick pay. She was obliged to follow company procedures.

    f. "If you no longer wish to be considered available for bank work please inform your manager in writing."

    g. "The company may inform you in writing if your bank working services are no longer required."

    h. "Casual bank working will not count towards continuous service."

14. In the bundle was a letter of 27 June 2019 to the claimant, sending her a new bank agreement stated to take effect from 21 December 2013. This comes from "Group HRD Administrator" but is not printed on company paper showing from which company it was sent. The enclosed agreement was not in the bundle.

15. The Handbook stated:

    a. "The nature of a bank working arrangement means that there is no guarantee of employment and no entitlement to additional benefits. Similarly you are under no obligation to accept work that is offered to you."

    b. "As a bank worker you will be offered bank hours at the sole discretion of the company, as dictated by the needs of the business. You will be advised of the time and duration of work for each attendance."

    c. "If you no longer wish to be available for bank work you should advise your manager in writing of the date after which you will not be available. If there is no need for you to be available for work, the company will advise you of this in writing confirming the date of termination of your bank agreement."

16. The claimant said that the respondent explained to her that there was no obligation from it to her or vice versa.

17. The claimant arranged her shifts as follows. She was shown a copy of the rota and asked to put her name down for any shifts she wanted to work. Also, she was called and asked if she could do a shift. When this happened, she felt moral pressure was put on her to accept the shift; she was told that it was her duty as a carer to accept the shift and she felt guilty and that she had to rearrange any prior commitments and do the shift. However, she accepted that it was her decision whether to refuse the shift. She said that, once she had accepted a shift, she was asked to give 24 hours' notice to be released from it and look for cover and, if she could not cover the shift, pressure was put on her to cover the shift.

18. The claimant accepted that the respondent did not have to offer any hours of work to her at all and sometimes, she had no hours on the rota.

19. The claimant was provided with training by the respondent, during her period as a bank worker. Mr Van Rensberg's statement says that, due to the nature of the services, Priory Group has a responsibility to ensure that all staff have a sufficient skills and knowledge to ensure that vulnerable service users were appropriately safeguarded.

20. The claimant had two extended periods when she opted not to have any bank working shifts, in order to go abroad. One was from 8 June 2018 to 1 July 2018, and the other from 16 July 2018 to 7 Sep 2018.

21. The respondent undertook an investigation into an issue involving the claimant in November 2018 using what appears to be a standard "Investigation Workbook" which demanded the claimant's "Employee signature".

22. The claimant made the points that she was given the same job title of "support worker" as was applied to employees, not "bank worker", that like employees, she accessed group intranet materials, she paid national insurance contributions and income tax, she had to submit to the same policies and procedures as employees, the respondent organised her CRB check, she had the same line manager when an employee and a bank worker; she had access to the same employee support helpline as employees, and she felt she should have been supported to the same level as employees.

Relating to identity of employer

23. The claimant was employed full time by Craegmoor Facilities Company Limited from 21 Oct 2010, as shown by a contract of employment for the claimant in the bundle of documents, from November 2010. This company is ultimately owned by Craegmoor Group Ltd, a company in the Priory Group.

24. For the first 2 years of working for the respondent, the claimant's bank statements said that payments were being made to her by Priory Central Services Ltd. The statements then changed to say that payments were being made by "Priory Group". The claimant's P60's showed the employer as "Priory Central Services" and then "Priory Group", and her pay slips showed it as "Priory Group". The claimant's P45 gave the employer as "Priory Group" of 2 Barton Close, Leicester. This is not the registered office address of any of the companies mentioned above.

25. A Care Quality Commission report of July 2016 stated that the Tithe Barn was run by Parkcare Homes (No.2) Limited.

26. The respondent has a very complex corporate structure. A company plan produced by the respondent shows Parkcare Homes (No.2) Limited as being in its group of companies, directly owned by Craegmoor Care (Holdings) Ltd, ultimately owned by Craegmoor Group Ltd. This latter company is shown as owned by Priory Investments Holdings Limited and two of its indirect subsidiaries are Priory Central Services Ltd and Priory Group Ltd.

27. Mr Van Rensburg's statement states that Tithe Barn was part of the Craegmoor Group of Companies which was acquired by Priory Group of Companies in or around 2011. He referred to a current bank workers agreement in the bundle showing the contract being with Parkcare Homes (No2) Ltd. He did not actually state in so many words that the claimant's contract was with this company.

Relating to disability issue

28. The claimant said that she suffered pain from 2013, initially in the hands and wrists. In 2015, she underwent an operation intended to relieve carpal tunnel syndrome. After this operation, pain in her hands continued and spread up her arms and into the side and back of the neck, the chest and sides of the body, and shoulder blade. She was diagnosed with fibromyalgia in 2016. She also experiences feelings of weakness and numbness and extreme fatigue.

29. By reference to a diagram of the symptoms of fibromyalgia, the claimant established that myofascial pain is a symptom of fibromyalgia.

30. The claimant explained that planter fasciitis leads to pain in the feet (and the claimant also said she felt it up to the hips).

31. The claimant produced a statement on how her disabilities affected her, and gave more information on dates covered orally.

    a. She said that, from 2014 onwards, she needed extra time to get ready for the day, IE having a shower and washing her hair, getting dressed and eating. She struggled with showering and washing her hair because of the movements in the arms and wrists, and squeezing shampoo bottles, and holding up and moving a hair dryer. She needed extra time to dress because it hurt her arms to raise them and pull down a top and pull up trousers, to reach down to tie shoes and to put a coat on. She could not cut hard vegetables or fruit when preparing food. She suffered pain driving in holding the steering wheel, changing gear, adjusting the hand brake, and sometimes opening and closing the car door. It would take her 5 to 7 days to clean her flat. Texting hurt her fingers as did holding a phone. She could not hold a cup of tea in her hand.

    b. From late 2014 or the start of 2015, she could not press switches on and off, hold a kettle full of water, flush a toilet or carry a certain amount of shopping.

    c. From March or April 2015, she could no longer take a suitcase on holiday as she could not carry it.

    d. From the end of 2015, she did not really sleep or fell asleep very late because there were no comfortable positions to lie in. From March 2015, she did not socialise.

32. We were referred to a letter from a consultant hand and upper limb surgeon of 5 Dec 2016 regarding the claimant's "pain both arms" which stated that the claimant's pain fluctuated in intensity but was there all the time and caused her to drop things; her arms felt heavy; lifting her arms high was particularly painful; she worked as a carer doing cooking, personal care, driving and dressing but some adaptions have been made. She had someone to carry the full basket of washing for her and she had a trolley to move food rather than she carry it. "It seems likely that it is a chronic fibromyalgia picture."

33. We were referred to a letter from the claimant's GP of 26 Jun 2019 stating that the claimant had been consulting him for severe chronic pain which had been extensively investigated in the past and for which she was currently on medication. He stated that she had been diagnosed with plantar fasciitis and myofascial pain syndrome. She was managing her pain with strong pain killers.

34. The claimant's GP records show an entry for plantar fasciitis in Oct 2015, with a few months of pain sole in the right foot, and another in April 2016. There is no other entry for plantar fasciitis. The claimant said that it was affecting her outside those dates, even if she did not mention it to the GP.

35. To summarise the claimant's GP records, which start on 20 Nov 2014, with a broad brush approach: In Nov 14, the entry says the claimant was diagnosed with carpal tunnel, giving painful numb hands. In Jan 15, she had bad pain in her hands. In Jan 16, she felt could not return to work due to hand pain. In Mar 16, she said she could not cope any more with the pain. In Jan 17, she suffered increased pain and the GP considered referral to pain clinic. In Oct 17, her right arm was hurting a fair amount and myofascial pain syndrome was diagnosed. In Nov 18, she had pain in the legs and arms and there was a diagnosis of myofascial pain syndrome, and fibromyalgia was mentioned. In May 19, she had pain in the right shoulder and arm.

36. In the bundle were a number of Statements of Fitness for Work submitted by the claimant to the respondent. The claimant said that she did not submit these to her third party employer because, in that job, she was a team leader with lighter duties which protected her physically.

    a. There were three statements in 2015 referring to carpel tunnel syndrome; five in 2016 referring to carpel tunnel syndrome; six in 2017 referring to carpel tunnel syndrome, fibromyalgia and myofascial pain syndrome; and five in 2018 referring to myofascial pain syndrome.

37. The Statements were submitted to the respondent either to support a need for lighter duties or to support an inability to work for a period. Until June 2016, they related to the claimant being unfit for work, generally for periods of one or two months. In Jan and April 2017, for 6 weeks or 2 months, she was fit if avoiding heavy lifting and strenuous activities involving the arms. One Statement had the example of lifting heavy laundry baskets. In May and August 2017, for 2 months and one month, she was fit for work if she avoided heavy lifting or strenuous activities. In October 2017, December 2017, Feb 2018, she was fit for 2 months if she avoided heavy lifting. In April and July 2018, she was fit for two months with light duties, if there was no lifting, pushing or pulling. In Sep 18 and Nov 18, she was fit for 2 months and 3 months if she avoided heavy lifting/pushing/pulling.

38. The claimant was given a risk assessment in June and November 2016 which stated that the claimant would not carry any heavy load upstairs or downstairs and she would not do any heavy lifting or carrying or carrying of refuse/shopping bags or moving items of furniture. Small and regular loads were advised. The claimant could not peel or chop root vegetables, she would use the trolley to bring food items from the stores and would require help with laundry baskets. She could not change beds but may be able to assist. She would be able to drive but this would be monitored to see how she managed the steering. She could not wash up large pots and pans but could manage smaller items. She could not hoover due to the pushing and pulling motion. She could not move any furniture. She could do general day to day cleaning. She would need more time to write client notes due to pain.

39. Risk assessments were subsequently reviewed with no change. In July 2018, it stated that there were no amendments to her risk assessment. She was able to complete all her duties depending on what her pain was like on that day. In October 2018, it states that the claimant was to let the respondent know at the start of a shift if she was unable to do certain jobs. No other amendments were made to the risk assessment.

40. There is a note, apparently from 2018 (p225) as the lower part is dated 3 Oct 2018, stating that the claimant could do more cleaning than others some days and she could not do any laundry tasks. She needed backups dealing with double beds. She could not do much cooking, only breakfast, and driving was OK.

THE LAW

Employment status

41. S230 Employment Rights Act 1996 states that "In this Act "employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

42. The case of *Ready Mixed Concrete (South East) Limited v Minister of Pensions and National Insurance (1968 2 QB 497)* established that the following are required for a contract of employment:

    a. The worker was subject to a right of control by the employer. The respondent conceded this was so in this case.

    b. The worker was obliged to perform services personally. The respondent conceded this was so in this case.

    c. There must be mutuality of obligation between the employer and the worker. The respondent said that this did not exist in this case.

43. For mutuality of obligation to exist, the worker must be obliged to accept work and the employer to offer it.

44. According to *St Ives Plymouth Ltd v Haggerty EAT 0107/08,* a course of dealing between a casual worker and an employer may give rise to mutual legal obligations, even where the worker is entitled to refuse the offer of a particular shift.

Meaning of disability for EQA

45. Under s6 EQA, a person (P) has a disability if—

    (a)P has a physical or mental impairment, and

    (b)the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

46. Under Schedule 1 Part 1 EQA:

    a. The effect of an impairment is long-term if—

        (a)it has lasted for at least 12 months,

        (b)it is likely to last for at least 12 months, or

        (c)it is likely to last for the rest of the life of the person affected.

    b. If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.

    c. An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if—

        (a)measures are being taken to treat or correct it, and

        (b)but for that, it would be likely to have that effect.

    d. This paragraph applies to a person (P) if—

        (a)P has a progressive condition,

        (b)as a result of that condition P has an impairment which has (or had) an effect on P's ability to carry out normal day-to-day activities, but

        (c)the effect is not (or was not) a substantial adverse effect.

        P is to be taken to have an impairment which has a substantial adverse effect if the condition is likely to result in P having such an impairment.

47. Under s212 EQA, “substantial” means more than minor or trivial.

48. Under the Code of Practice on Employment 2011 App 1 section 7: There is no need for a person to establish a medically diagnosed cause for their impairment. What is important is to consider the effect of the impairment, not the cause.

49. The Guidance on matters to be taken into account in determining questions relating to the definition of disability is relevant and the parties were referred to it.

CONCLUSIONS

Identity of respondent

50. We did not find clear evidence pointing to any particular corporate entity as the employer, and this was solely the fault of the respondent for failing to issue clear documents on the point.

51. There are several candidates for the employer:

    a. The respondent says it was Parkcare Homes (No 2) Ltd and relies on the CQC report giving this company as running the Tithe Barn and its current bank working agreement giving the employer as this company. We do not find these determinative of the issue. Staff can be employed by one group company and assigned to work for another. The current bank working agreement post dates the claimant's agreement. Mr Van Rensburg did not give unequivocal evidence on this point.

    b. The claimant's bank working agreement was sent to her by Priory Central Services Limited, salary payments initially entered the claimant's account from this company and this company also appeared on P60's issued in respect of the claimant.

    c. The claimant was initially employed by Craegmoor Facilities Company Limited and this company is still within the Prior group.

    d. Payslips showed the employer as Priory Group and this is also the name of the entity which came to make payments to the claimant's account after a couple of years. Priory Group Limited is a company in the respondent's structure.

52. As all of these companies are potentially the correct respondent, we have made an order adding them as respondents in this case.

Employment status

53. It is well established law that mutuality of obligation is necessary for employment status, and this is set out in *Ready Mixed Concrete (South East) Limited v Minister of Pensions and National Insurance*.

54. The claimant accepted that the respondent was not obliged to offer her any hours of work at all. This alone means that there was not mutuality of obligation.

55. We also find that the claimant was not obliged to offer any hours of work. Although she may sometimes have felt under moral pressure to cover shifts, she was not obliged to do so and this was made clear in the bank working arrangement. It can be seen working in practice in her failure to offer any shifts from 8 June 2018 to 1 July 2018, and from 16 July 2018 to 7 Sep 2018. This confirms the lack of mutuality of obligation.

56. We note from *St Ives Plymouth Ltd v Haggerty EAT 0107/08,* that a course of dealing between a casual worker and an employer may give rise to mutual legal obligations, even where the worker is entitled to refuse the offer of a particular shift. However, no such argument was put forward in this case and we cannot see any particular features of this case which would mean that this principle applied.

57. Therefore we find that the claimant was not an employee.

58. The claimant's points relating to her integration into the respondent's organization are not sufficient to make her an employee in the absence of mutuality of obligation.

59. We dismiss the claimant's claim for unfair dismissal because the Tribunal does not have jurisdiction to hear this claim.

60. The respondent invited us to dismiss the claimant's claim for notice pay if we found that she was not an employee. We did not hear any submissions on this point and we are not prepared to make a decision on this today.

Disability issue

61. We do not consider to be valid the respondent's argument that the claimant did not suffer from a medical impairment given that her medical records did not show a demonstrable cause of the symptoms; the Code of Practice Guidance referred to above states that there is no need for a person to establish a medically diagnosed cause for their impairment. What is important is to consider the effect of the impairment, not the cause.

62. We were concerned that the respondent's approach to the claimant's conditions of separating them into distinct impairments according to a label applied to them may artificially limit the claimant's ability to show that an impairment was long term.

63. By reference to a diagram of the symptoms of fibromyalgia, the claimant established that myofascial pain is a symptom of fibromyalgia and so myofascial pain and fibromyalgia are not distinct conditions. After hearing the claimant's information about her medical conditions, we understood that the planter fasciitis leads to pain in the feet (and the claimant also said she felt it up to the hips); and the carpel tunnel syndrome and fibromyalgia (including myofascial pain) leads to pain from the hands and up the arms and into the neck and parts of the upper torso. We noted from this that the claimant's conditions appeared to essentially be two conditions:

    a. one which caused pain below the waist, plantar fasciitis; we call this plantar fasciitis; and

    b. one which caused pain in the hands, arms and upper torso being labelled as carpal tunnel syndrome, fibromyalgia and myofascial pain; for convenience we call this the Arm Impairment.

64. The respondent was content to accept this analysis.

65. The respondent's oral argument was that, according to the Statements for Fitness for Work, the claimant was, for most of the period, unable to undertake heavy lifting, which was not normal day to activity. It was only for the short period when she was on light duties from April 2018 to September 2018 that the symptoms affected normal day to day activities and that such short period could not constitute a long-term condition for the purposes of the EQA. It also pointed to the fact that the claimant was working in two care jobs, which would involve a high degree of physical activity. It said that the evidence did not show a long term substantial adverse effect.

    <u>Plantar fasciitis</u>

66. We do not accept that there is evidence to show that the plantar fasciitis had a substantial adverse effect on the claimant's ability to carry out normal day-to-day activities. All the effects listed by the claimant in her statement on how her disabilities affected her appear to be linked to issues with in the hands and arms, not the feet. They are to do with lifting the arms and pressing with the hands. Nor do we accept that there is evidence that the plantar fasciitis was long term, it being only mentioned in the GP notes in October 2015 and April 2016, which period does not extend to a year. There was no evidence that it is a progressive condition or that its effects were likely to recur. Therefore, we find that the claimant was not a disabled person by reference to plantar fasciitis.

Arm Impairment – whether long term

67. Turning to the Arm Impairment. By the point of termination of contract, the condition was certainly long term, carpal tunnel syndrome having first been recorded first on 20 November 2014 by the claimant's GP, the GP notes recording pain in every year thereafter, and the GP recording myofascial pain syndrome and fibromyalgia in November 2018. By January 2019, the condition had lasted for over 12 months.

68. We have to consider, not only the point of dismissal, but also the period from October 2014 and, if not the Arm Impairment was not long term then, when it started to be long term.

69. We have no medical evidence until 20 November 2014 when carpal tunnel syndrome is mentioned in the GP notes. We have no evidence to support or go against the suggestion that carpal tunnel syndrome, at that time, would be likely to last 12 months, nor any evidence that it was likely to recur. Therefore, there is no evidence on which to base a finding that the claimant had a disability in October or November 2014.

70. We consider that the Arm Impairment became long term on 19 November 2015 because, at that point, it has lasted for at least 12 months from the GP having first recorded carpel tunnel syndrome on 20 November 2014. It then remained long term to 21 January 2019, the GP notes recording pain in every year thereafter, and the GP recording myofascial pain syndrome and fibromyalgia in November 2018.

Arm Impairment – whether substantial adverse effect

71. The respondent says that the condition must have had a substantial adverse effect on the claimant's ability to carry out normal day to day activities for a long-term period. We accept this. We will consider the evidence for the Arm Impairment having such an effect.

72. The claimant's medical evidence does not comment on her ability to undertake normal day to day activities, with the exception of the surgeon's letter of 5 Dec 2016 which says that the claimant had someone to carry a full basket of washing for her and had a trolley to move food rather than carry it.

73. We accept that most of the statements for fitness for work issued for the claimant do not show adverse effect on ability to undertake normal day to day activities. Most of them relate to heavy lifting and strenuous activities such as lifting laundry baskets. We accept that this is not normal day to day activity. The only statements indicating a difficulty with more normal activities are for 2 months from April 2018 and for 2 to months in July 2018. By September 2018, the statements revert back to warning against heavy activities. Therefore, the statements only indicate an issue with normal day to day activities from April to September 2018.

74. However, there is more evidence relevant to this point in the risk assessments. We consider the risk assessments to provide good evidence because they contain the respondent's own assessment of the situation. In June and November 2016, the risk assessments note that the claimant would not carry any heavy load upstairs or downstairs and she would not do any heavy lifting or carrying or carrying of refuse/shopping bags or moving items of furniture. Small and regular loads were advised. The claimant could not peel or chop root vegetables, she would use the trolley to bring food items from the stores and would require help with laundry baskets. She could not change beds but may be able to assist. She could not wash up large pots and pans but could manage smaller items. She could not hoover due to the pushing and pulling motion. She could not move any furniture. She could do general day to day cleaning. She would need more time to write client notes due to pain.

75. We do not consider that the following are normal day to day activities: carrying heavy loads up and down stairs, heavy lifting, moving furniture, washing large pots. We consider the following to be normal day to day activities: carrying refuse and shopping bags, peeling and chopping root vegetables, carrying food items from the stores, changing beds, hoovering, and writing. Therefore, the risk assessments show that the claimant was unable or needed more time to undertake these day to day activities from June 2016. The risk assessments were

subsequently reviewed with no change to the above until the last review in October 2018. We therefore accept from this evidence that the claimant had difficulty undertaking normal day to day activities from June 2016 to October 2018. Since there is no change noted in the claimant's medical condition in medical notes after this date, we accept that this situation continued until January 2019.

76. The only evidence of the impact on day to day activities prior to this date is the claimant's statement on how her disabilities affected her in which she describes an impact on normal day to day activities from 2014 onwards in terms of showering, washing and drying her hair, putting on a coat and other dressing, preparing food, driving, cleaning, texting, holding a phone and holding a cup. Other issues with day to day activities are set out in para 31 above from the end of 2014 onwards. These issues are generally consistent with the sorts of day to day activities which the respondent found the claimant could not do in its risk assessments from June 2016. The claimant was diagnosed with carpel tunnel syndrome in November 2014 and so it is consistent with this diagnosis to find that the claimant suffered impact on day to day activities from November 2014.

77. We consider that this impact was substantial, meaning more than minor or trivial. To be unable to undertake activities or require more time in undertaking activities such as hoovering, chopping root vegetable, carrying rubbish bags, changing beds and writing is a substantial impact.

Conclusion on disability issue

78. Therefore, we find that the Arm Impairment had a substantial and long-term adverse effect on the claimant's ability to carry out normal day-to-day activities from 19 November 2015 to 21 January 2019, and that the claimant had a disability for the purposes of the EQA during this period.

Employment Judge Kelly
23 December 2019