EMPLOYMENT TRIBUNALS

PRELIMINARY HEARING

Claimant: **Mr G B Humphreys**
Respondent: **Barwick Bathroom Distribution LLP**
Heard by CVP on: **26 April 2022**

Before: **Employment Judge Rogerson**

Representation
Claimant: **Mr Adam Willoughby (counsel)**
Respondent: **Mr Simon Sheppard (solicitor)**

RESERVED JUDGMENT

1. The claimant was not a disabled person at the material time, within the meaning of section 6 Equality Act 2010.
2. Accordingly the complaints of disability discrimination (direct disability discrimination, disability related harassment and a failure to make reasonable adjustments) are struck out.

REASONS

Issues.

1. This preliminary hearing was listed following the preliminary hearing on 14 February 2021 before Employment Judge Parkin in order to decide
    a. Whether the Claimant was a disabled person by reason of achalasia?
    b. Whether any part of the claim should be struck out?
    c. Whether any part of the claim should be made subject to a deposit order?
    d. Case management.

Disability

2. The relevant parts of the record of the preliminary hearing at page 33 in the PH bundle record as follows:

   "The claimant claims he was a disabled person by reason of a rare physical condition achalasia which came on suddenly in January 2021. The claimant agreed to provide further information about his disability discrimination claims and unlawful act claims. As well as the sudden onset of his condition requiring emergency lifesaving surgery, he contends he now has permanent damage to his oesophagus and difficulty eating. He will provide the supporting medical evidence and an impact statement following which the disability issue was to be determined at this hearing".

3. On 7 January 2022, the Claimant provided further information on his disability to identify the impairment he relies upon and further information about his disability discrimination and victimisation complaints:

   "Disability

   (3) The claimant avers that at all material times he suffered from the medical condition of achalasia.

   (4) Achalasia is a rare disorder that **makes it difficult for food and liquids to pass from the swallowing tubes** connecting a person's mouth and stomach (the oesophagus) and occurs when the nerves in the oesophagus become damaged. This is a lifelong condition from which the claimant has suffered and from which he continues to suffer despite having had surgery on 3 March 2021. It is accordingly averred that the claimant is a disabled person within the meaning of section 6 of the Equality Act 2010 because the claimant suffers from a **physical impairment** and that impairment has a **substantial and long term adverse effect** on his ability to carry out **normal day to day activities. Specifically, it impacts upon what the claimant can eat and drink, when he can eat and how long it takes him to do so.**

   (5) The respondent had knowledge of the claimant's disability because he suffered from ill health during September 2020 and then became seriously ill during November 2020 and was being sick at work. The respondent's director Bob Ashley was aware of this as he worked from the desk next to the claimant. The claimant's health worsened during January 2021 when he started to lose up to 1kg in weight per day. The claimant was then formally diagnosed with achalasia on 15 February 2021 and informed Bob Ashley of that diagnosis the same day" (all highlighted text my emphasis)

4. It was clear the claimant relied upon a physical impairment (Achalasia) which he asserts had a substantially and long term effect on his ability to carry out the normal day to day activity of eating limiting what the claimant could eat and drink when he could eat and drink and how long it took him to eat and drink in the way he carried out the activity and was expected to provide evidence to show he met all the requirements of section 6 in his impact statement and the medical evidence he was to provide.

The alleged unlawful acts of disability discrimination

5. The claimant had provided further information on his disability discrimination complaints identifying 3 types of alleged disability discrimination (direct, disability related harassment and a failure to make reasonable adjustments) and the dates of the alleged unlawful treatment to prove he was a disabled person at the material time he alleges his employer was subjecting him to disability discrimination.
6. For direct disability discrimination the claimant relied on 7 acts of less favourable treatment from 4 January 2021 to 18 May 2021. For ease of reference I have reordered (1) and (2) from the claimant's list to provide the dates in chronologic order.

   6.1. 14 January 2021: alleged act by BA of requiring the claimant to attend at work despite his ill health.

   6.2. 11 February 2021: alleged comment by BA "find something to eat and get on with it.

   6.3. 8 March 2021: alleged act of BA sending an email asking the claimant if he was still in hospital.

   6.4. 8 March 2021: suspension.

   6.5. 1 April 2021: decision to commence disciplinary process.

   6.6. 8 May 2021: dismissal.

   6.7. 18 May 2021: dismissal of appeal

7. For disability related harassment the claimant relied upon acts 6.1-6.5 treatment alleged to have occurred from 14 January 2021 to 1 April 2021.
8. Foe a failure to make reasonable adjustments the claimant relies upon the PCP(provision criterion or practice) applied by the respondent after 15 February 2021 requiring employees to work their contracted hours at work which the claimant alleges substantially disadvantaged him as a disabled person because he was not permitted to work flexibly from home following his diagnosis of achalasia which he asserts would have been a reasonable adjustment the respondent could have made.

The other complaints of victimisation and unfair dismissal

9. The claimant also complains he was victimised after his alleged protected act on 7 March 2021, when he raised a grievance about alleged mistreatment the respondent subjected him to detriments 6.4-6.7 because he did a protected act. It was disputed that the grievance qualified as a protected act because the respondent asserts no reference was made either expressly or by implication to any breaches of the Equality Act 2010 it was about a pay dispute.
10. Finally, the claimant complains he was unfairly dismissed by the respondent because of alleged gross misconduct (the claimant instructing a direct report to carry out tasks unrelated to work during work time). He was suspended on 8 March 2021 and was dismissed on 8 May 2021 and that dismissal was upheld on appeal on 18 May 2021.The claimant's position as at suspension and thereafter was that the allegations were untrue and he had not committed

the alleged misconduct for which he was dismissed and that the dismissal was unfair.

Disability Impact Statement

11. On 17 February 2022, the claimant provided a disability impact statement and medical evidence to prove disability (see pages 61 to 110 of the PH bundle) At paragraph 1 of his impact statement the claimant confirms his statement would "*focus on the **effects** the condition of achalasia **has had** and **continues to have on his ability to carry out normal day to day activities** and **the date upon which the condition started".*** The claimant knew that for this hearing he was expected to set out all the evidence he relied upon to prove that he satisfied all the requirements of section 6 of the Equality Act 2010 at the material time. He also had the benefit of being professionally represented.

12. The relevant parts of the impact statement on the substantial adverse effect of achalasia are surprisingly brief:

> *"3. Achalasia is a rare disorder that makes it difficult for food and liquid to pass from the swallowing tube connecting a person's mouth and stomach and I understand it occurs when the nerves in the oesophagus become damaged. I have been informed by my surgeon that this a life-long condition and I will continue to suffer from it and have to manage its impact on me.*
> *4. I was readmitted to hospital on 1 March 2021 and on 3 March 2021 I had what was described to me by my surgeon as life saving surgery because by that point my body was starting to shut down. I had lost 4 stone in total in weight I had not been able to eat anything of substance for 10 weeks and I had consumed no liquid for 5 days.*
> *5. The condition has had a significant and adverse impact upon both my physical and mental health and I have been prescribed and I take omeprazole for the heartburn and indigestion from which I still suffer. The condition and how I was treated at work by the respondent has caused me to suffer from depression and I have been prescribed and take sertraline to combat that particular condition.*
> *6. In terms of the **ongoing adverse effect**, it has on my day to day activities, and I have ongoing concerns about being underweight. I **have to avoid** eating spicy food and foods which will have a detrimental impact upon my indigestion effect. I lack energy and the difficulty I have sleeping at night because of my indigestion affects my ability to concentrate on a daily basis.*
> *7. As a consequence of the above I am firmly of the belief that I am disabled person under the Equality Act 2010".*

13. On 18 March 2022, the respondent submitted a detailed amended response (17 pages) resisting all the claims setting out in detail why disability was still disputed and why it was applying to strike out each claim providing detailed grounds to explain why it considered the claim had no reasonable prospects of success by reference the facts asserted by the claimant and how those asserted facts did not meet the statutory requirements to establish liability.

14. The claimant objected to the strike out application (pages 58 to 60 of the bundle) and the contested strike out application was left for this hearing. After discussion it was agreed that the order in which I would deal with the issues was to hear evidence and submissions on the disability issue, then the parties' submissions on the strike out application. I would then decide the disability issue because if the claimant was not 'disabled' I only had to decide the strike out application for the complaints of victimisation and unfair dismissal. If on the other hand I decided, the claimant was a disabled person at the material time (14 January 2021-18 May 2021) I would need to assess the prospects of success of all the complaints. Unfortunately, after submissions there was insufficient time left for an oral judgment and reasons to be provided and the decision had to be reserved.

The disability Issue

15.. On disability, the respondent's position in the grounds of resistance (pages 20 and 21) is as follows:

> "Issue of disability
>
> (5) The respondent accepts that the claimant had been unwell from around March 2021 until his dismissal and was off sick for a few days during this period, however the respondent does not accept that the claimant's impairment is sufficient to constitute a disability as defined by section 6 of the Equality Act 2010.
>
> (6) The claimant informed the respondent that he had been diagnosed with Achalasia after being admitted to hospital on 3 March 2021. The respondent understands that the claimant underwent surgery shortly after being admitted to hospital to treat this condition.
>
> (7) The respondent understands that the claimant started a new job on 1 June 2021 less than a month after the termination of his employment when he had recovered post-surgery.
>
> (8) It is denied therefore that the claimant has an impairment that is long term.
>
> (9) It is further denied that the claimant's alleged impairment had a substantial adverse effect on his ability to carry out normal day to day activities.
>
> (10) The respondent therefore puts the claimant as **strict proof** as to whether he meets the definition of disability."

16. At this hearing the claimant gave evidence and was cross-examined on the evidence provided. The Tribunal also saw documents from an agreed bundle of documents and from the evidence it saw and heard made the following findings of fact.

Findings of fact

17. The claimant's impact statement confirms that during January 2021, he was very ill indeed, he was losing up to 1kg in weight per day, which he says would have been noticeable at work. He was referred by GP to the Hospital and was formally diagnosed as suffering from achalasia on 15 February 2021. He was admitted to hospital for treatment and discharged back to the care of his GP. He was re-admitted to hospital on 1 March 2021 and on 3 March 2021 he had surgery known as Heller's Cardiomyotomy which was successful.

18. In relation to the 'significant impact' on normal day to day activities the claimant does not give any examples of how his ability to carry out the normal day to day activity of eating food was long term substantially adversely effected after surgery. In his impact statement her refers to indigestion causing difficulties with sleeping which affected his ability to concentrate on a daily basis but provides no evidence to show either the nature and extent in which his sleep was effected by his achalasia and which normal day to day activities he had struggled with or could only do with difficulty because of concentration difficulties.

19. The claimant has in his impact statement referred to the effects in the future tense not the past tense suggesting that "**notwithstanding the surgery** I **will** struggle to eat or drink properly. He says he avoids eating spicy food and foods which have a detrimental impact upon his digestion. He does not say that "since the surgery I have not been able to eat or drink at all" which was his oral evidence at this hearing.

20. The claimant has relied upon the GP medical records and recent correspondence with his treating consultant following a consultation on 7 February 2022.

21. The medical records the claimant has provided confirm that on 13 January 2021 he had reported "*a history of foods sticking in throat, he has to use water washed down with water. Also often comes back up whilst sleeping. Has hiatus hernia and some gastritis*." The hospital records show that the claimant had an upper GI endoscopy on 8 January 2021.On 20 January 2021, the GP records confirm that the claimant had reported "*losing weight of 1.5 stones over a year, could not keep food down as regurgitates*". On 29 January 2021, the GP records confirm that the claimant had reported he was "*struggling with foods and fluids and was often vomiting*".

22. Following an examination at the hospital on 5 February 2021, he was diagnosed with achalasia after which he was discharged back to his GP until his readmission into hospital on 1 March 2021.The medical records also confirm that as at 23 February 2021, his GP had attributed the claimant's difficulty swallowing to his diagnosis of achalasia. As a result of these symptoms, the GP made an urgent referral back to the treating consultant, Mr Manby who performed surgery known as Heller's Cardiomyotomy on 1 March 2021. The surgery was successful. The claimant was discharged on 5 March 2021. The hospital records show that the claimant made good post-operative recovery and was discharged with dietary advice. He was required to have a fluid diet for two weeks, followed by a sloppy diet for two weeks followed by a soft diet for two weeks. A follow up appointment was made for him to speak with Mr Manby for review at week six after surgery to check that there were no ongoing problems with eating or drinking.

23. Initially post-surgery fit notes were provided by the hospital, then by the GP which covered the claimant's absence from 3 March 2021 to 7 May 2021.The GP agreed the claimant was unfit for work based on the information the claimant had reported about his *'recovery from surgery'*. It is clear from the

medical records that the claimant contacted his GP for extensions of the fit notes and the records identify the reason for the request was the recovery from surgery rather than any recurring or ongoing symptoms after surgery.

24. From 25 March 2021 to 15 April 2021 the claimant reported to his GP: *"I had surgery for achalasia on 3 March. The hospital gave me a sick note for three weeks which runs out tomorrow, so I need a continuation note for my employer as I am not yet fit to return to work."* On 15 April 2021 the claimant obtained a further fit not from his GP which ran to 7 May 2021 which refers to the surgery for achalasia as the reason why the claimant was unfit to return to work. All the fit notes ruled out any return to work with adjustments and the claimant did not identify any adjustments he wanted his GP to consider which would have enabled an earlier return to work. The final fit note request before his dismissal states "*recovering from major surgery. Not recovered enough to go back to work. Surgery was for achalasia.*"

25. On 13 April 2021, six weeks after the operation, Mr Manby attempted unsuccessfully to contact the claimant to follow up his progress after surgery.

26. On 11 May 2021, Mr Manby wrote to the claimant's GP to confirm that he had been unable to contact the claimant but confirmed that:

> *"I do note we had a dietetic follow up appointment towards the end of April when **he reported that he was managing well with his diet** and has **put weight back on since his operation**. As we've not heard from him in any other regard, **I can only presume that he is progressing well**. I'm going to discharge him back to your care, but should you feel he needs any other help and support please do not hesitate to get back in touch".*

27. As at 11 May 2021, the consultant's view was that the surgery had been successful, the claimant was progressing well he had showed he was able to eat and swallow normally and was back on a normal diet and was putting on weight. Following surgery, if the claimant had been unable to eat or drink anything, he did not report any difficulties to the dietician, his consultant or his GP. The Claimant did not report any recurring symptoms or report any ongoing effects post-surgery until December 2021 (7 months after his dismissal and 3 months after he presented his claim).

28. None of the medical evidence supported the claimant's evidence in cross examination inferring the surgery was unsuccessful and that he continued to struggle to eat food. As at the review stage on 11 May 2021, Mr Manby confirmed the surgery had been a success and the claimant "**was manging well with his diet and was putting weight back on**". Mr Manby was sufficiently satisfied with the claimant's progress to discharge him back to the care of his GP which was unlikely if his swallowing difficulties had not improved. If the operation had not been a success and the claimant knew this in June 2021 it was odd that no contact at all was made with his GP for a referral to Mr Manby and why these difficulties were not recorded by the dietician.

29. In August 2021 the GP records relating to visit to the GP for a chesty cough show the following entry:

> *"history chesty cough green sputum. Says feeling unwell. Feeling OCC SOB and chest tightness. No fever. Says going to Lanzarote in 3d. Wants ABX in case worsens-pt quite anxious. Struggling to swallow tabs/capsules due to achalasia. Diagnosis: Likely UTRI infection. Plan advised likely self-limiting case-pt. wants ABX nonetheless despite explanation. ABX. Rest. Fluids. Analgesia as required. Call back if no better"*

30. The record focuses on the chesty cough and the claimant's request for antibiotics before his upcoming holiday which the GP was reluctant to provide. No difficulties were reported with eating food or drinking liquids or frequent vomiting or any recurrence of his earlier symptoms.

31. On 7 December 2021, the claimant attended his GP and for the first time reported ongoing problems associated with his achalasia. The record states as follows:

> "*has achalasia and then had a blockage so then had an operation after this noted some issues with pain and keeping him up all night feels like is getting trapped wind and noted some bulge in the stomach* ***on occasion needs to drink water when eating*** *and also* ***now everything he's eating needs to have water*** *with it* ***and vomiting*** *and noted no diarrhoea and noted no constipation and some trapped wind on occasion had to pullover to get out of car due to pain and trapped wind.*
>
> *.*
>
> *post-op –* ***lost job as was not active*** *and now going through a court case against them and* ***this has got him down*** *and noted then got another job and couldn't get into this and* ***now*** *has some low mood.*
> *Diagnosis: Hiatus hernia".*

32. The GP made an urgent referral to Mr Manby to request a review "*due to vomiting and trapped wind and also reoccurrence of symptoms*.". The claimant was issued with a prescription for Omeprazole for his indigestion and Sertraline (antidepressant) for his low mood. This was the first prescription for Sertraline issued to the claimant and the first time since the operation that the claimant had requested a prescription of Omeprazole to treat indigestion.

33. By this date the claimant had presented his claim (10 October 2021). In that claim the claimant confirmed he started his new job on 1 June 2021, he states *"when I was* ***well enough****, I got myself another job"*. In his claim form the first reference to his illness is January 2021 when he states he had: *"an inability to swallow any food and weight loss his doctors couldn't diagnose him and did not know what was wrong"*. The claimant refers to his suspension and says he "*was relieved when he saw the allegations and knew what it was about because it wasn't a worry for him"*. He knew the alleged gross misconduct '*wasn't true and I had an answer for every one of the 12 points of evidence'*. It was clear from the facts asserted by the claimant that he understood the respondent had dismissed him for misconduct reasons on

evidence which he disputed and believed he could answer the allegations and disprove them. He did not assert any facts to suggest that his dismissal was because of his ill-heath absence or his achalasia.

34. In those circumstances it was very surprising to see that in the medical records the claimant gave a very different reason for dismissal to his GP suggesting he was dismissed because of his sickness absence. The claimant denies telling his GP this but could not explain why his GP would have recorded it such a way if that was not what the claimant had reported to him.

35. The GP record shows a letter was prepared at the claimant's request on 5 January 2022 which states:

"to whom it may concern, please note that Mr Humphreys was seen in December 2021 due to low mood and depression. He **had** some medical issues that resulted in an operation and then unfortunately **lost his employment as a result of this operation and time off**. He has suffered **low mood and depression** and has needed to be started on antidepressants **for this**. Please take this into consideration".

36. I found the Claimant's evidence about this record was very unsatisfactory and find on the balance of probabilities that the GP records accurately record the information the claimant had given to his GP. The claimant had reported inaccurate and untrue information, he knew was untrue and contradicted the information in his claim.

37. The claimant has provided two unsigned letters from Mr Manby. Both letters are annotated as 'typed as dictated' on 23 February 2022, addressed to 'whom it may concern'. In the first letter Mr Manby states:

"*I can confirm that Mr Humphreys was admitted under my care at the Bradford Royal Infirmary on 16 February 2021 for a gastroscopy and Botox injections to his gastroesophageal junction. He was then discharged on 17 February. Mr Humphreys was then readmitted due to further swallowing difficulties on 1 March 2021 and underwent an urgent operation where he had* ***Laparoscopic Heller's Cardiomyotomy*** *and DOR fundoplication performed by myself, to treat a condition called achalasia. Mr Humphreys made a* ***good recovery*** *from his operation and was discharged home on 5 March. Achalasia is a serious condition where the muscles surrounding the oesophageal sphincter (muscle at the bottom of the food pipe) becomes hypertrophied and therefore the patient struggles to eat and drink. The operation that Mr Humphreys underwent* ***was to relieve this and to allow him to get back towards a normal diet****".*

38. In the second letter Mr Manby states:

"*I can confirm that Mr Humphreys was treated for a condition called achalasia in March 2021. Achalasia is a condition of the oesophagus where the lower oesophageal sphincter muscle is hypertrophied leading to poor relaxation which* ***generally*** *affects the patient in the way that they*

> *progressively struggle to eat and usually* ***require some form of intervention*** *either via endoscopic means or surgical means. I can confirm that this is a* ***lifelong condition even after treatment*** *and I can confirm that* ***patients with this condition <u>can</u> get symptoms on a daily basis and <u>may</u> even require hospital- based treatments***."

39. The first letter paints a positive picture of the claimant's successful surgery and prognosis which was consistent with the contemporaneous evidence. The second letter gives very generalised unspecific information about patients with this condition which does not identify the claimant reporting or having any ongoing difficulties swallowing which had prevented him from eating any food. In fact, the evidence showed the opposite was true. After surgery the claimant had made a 'good recovery' and he was putting on weight. These 2 letters were contradictory in the picture presented and it appears that the claimant had requested a second letter presumably because he was not satisfied with the contents of the first letter.

40. In my view the more reliable and relevant information of any ongoing effects comes from the records and discharge letter written a week before the end of the material period (letter written 11 May 2021 end of material time 18 May 2021). The only GP visit post-surgery recording any difficulties with eating and a 'reoccurrence of symptoms' was on 7 December 2021, 7 months after discharge. If as the claimant now asserts the symptoms had never improved post- surgery and they really were as severe as the claimant described in cross examination(see paragraph 45 below), I would have expected to see evidence of more visits to the GP, which would in turn have prompted an earlier review back to Mr Manby.

Respondent's position on disability following disclosure.

41. By letter dated 18 March 2022, following the disclosure of medical evidence, the respondent's solicitors wrote to the claimant disputing the disability. They had in the grounds of resistance set out their position on the letters provided and in the letter page 103 state as follows:

> "*The respondent accepts that the claimant has an impairment that is likely to be long term, although* ***due to the claimant's operation, it is denied that his condition has a substantial adverse effect on his ability to carry out normal day to day activities****. There is nothing in the claimant's medical records that would indicate such an adverse effect. The medical records refer to the claimant needing to drink water with meals. The claimant's own witness statement refers to an inability to eat spicy foods and having to avoid other foods to avoid indigestion, neither of which would constitute an adverse effect on his day to day activities*."

42. By letter dated 28 March 2022, the claimant's solicitors replied as follows:

> *"I note that disability is not conceded and it therefore will be a contested hearing on 26 April. I'm surprised that disability is being disputed* ***given the content of my claimant's medical records, the letters from his surgeon and his witness statement****. You've cherry picked what he*

*has to say in his witness statement and have completely ignored the final sentence of paragraph 6 of it, namely "**I lack energy and have difficulty in sleeping at night because of my indigestion and this affects my ability to concentrate on a daily basis**."*

43. In the bundle the Respondents included some general information from the NHS website about achalasia, which was referred to in the grounds of resistance and was not challenged by the claimant. This information confirms that achalasia is a rare disorder of the food pipe (oesophagus) which can make it difficult to swallow food and drink. Normally the muscles of the oesophagus contract to squeeze food along towards the stomach. A ring of muscle at the end of the food pipe then relaxes to let food into the stomach. In achalasia the muscles in the oesophagus do not contract correctly and the ring of muscle can fail to open properly or does not open at all. Food and drink cannot pass into the stomach and become stuck. It is often brought back up. In relation to the symptoms of achalasia it confirms that not everyone with achalasia will have symptoms. But most people with achalasia will find it difficult to swallow food or drink and swallowing tends to get gradually more difficult or painful over a couple of years to the point where it is sometimes impossible. In terms of the treatment for achalasia there is no cure for achalasia, but **treatment can help relieve the symptoms** and make swallowing easier.

44. In relation to surgery the NHS guidance provides that:

> "under general anaesthetic the muscle fibres in the ring of muscle that lets food into your stomach are cut. This is done using keyhole surgery and is called Heller's Myotomy. It can **permanently** make swallowing easier. Often a second procedure will be done at the same time to stop you getting acid reflux and heartburn can be a side effect of the Heller's Myotomy operation. The guidance also confirms that possible side effects such as acid reflux and heartburn can be treated by prescription medication".

45. If the surgery had not permanently made swallowing easier why did the claimant not seek any treatment until December 2021. The current position as at April 2022 is that the claimant is due to have an appointment with Mr Manby on 23 May 2022.

46. In cross examination the claimant agreed the medical records are correct and that he had not needed to visit his GP about any recurring symptoms until December 2021. He agreed the information provided by the NHS about the surgery 'permanently' correcting the problem was accurate and consistent with the information he had been given by Mr Manby. He denied the surgery had worked for him. He said that 3 months after the operation (June 2021) he was unable to eat at all and that has remained the position. Swallowing and vomiting are more of a problem than they were when it happened in 2021 and he was vomiting up to 30 times a day. The claimant accepted that none of that new information is contained in his witness statement or was corroborated by his medical records. The claimant was asked questions about the ongoing effects he has referred to in his impact statement of needing to drinking water with meals and avoiding spicy food to avoid indigestion. He reconfirmed his evidence that he was not able to eat or drink anything and it

was not simply about avoiding spicy foods he could not and was not eating any food. It was put to him that the evidence he had given in cross examination was contradictory to the factual assertion made in his claim that he was well enough in June 2021 to get a new job.

47. In answer to questions from me the claimant confirmed that in June 2021 he was well enough to obtain alternative employment a full time management role in a transport company he was able to perform full time without any sickness absences or time off despite having daily severe ongoing symptoms of vomiting up to 30 times a day and being unable to eat anything. He said the only reason he decided to leave that role in October 2021 was because it was an unsuitable role for him and not because of any difficulties he was having with his health.

Respondent's closing submissions

48. In his oral submissions, Mr Shepard suggests that the claimant has exaggerated his evidence at this hearing, realising his impact statement was inadequate. There is no evidence adduced to support the suggestion made by the claimant's counsel that the low mood/depression was linked to the achalasia. Such an asserted link was unsupported by the medical evidence and should be considered carefully by the Tribunal. The focus of the enquiry about disability should be on the impairment the claimant has relied upon of achalasia. There was no evidence of depression at the material time in the fit notes provided or in the medical notes. December 2021 is the first-time low mood is mentioned which the GP linked it to the claimant losing his second job in October 2021.Mr Shepard submits there was no evidence about any long term substantial adverse effect on daily activities affected by lack of concentration linked to sleep caused by achalasia. The claimant's evidence was inconsistent and unreliable. In the claim he confirms he was well enough to find a new full-time management role a month after his dismissal, at a time when he now says he was unable to eat or drink and was vomiting 30 times daily. The respondent submits the evidence that was given was unreliable and the claimant has failed to prove his impairment had long term substantial adverse effects on normal day to day activities.

49. Mr Sheppard also relied on the points made in his written closing submissions as follows:

    1. The respondent accepts that the claimant had been unwell from around February 2021 until his dismissal on 7 May 2021, but the respondent does not accept that the claimant's impairment is sufficient to constitute a disability as defined by section 6 of the Equality Act 2010.
    2. The burden is on the claimant to show that he meets the definition in section 6 Equality Act based on the evidence provided the claimant cannot discharge this burden and as the claimant is not a disabled person his claims for disability discrimination should be struck out. The claimant relies on his medical condition of achalasia as his alleged disability. The claimant was diagnosed with achalasia on 15 February 2021 and that he had an operation on 3 March 2021.

3. Guidance on the definition of disability (2011) The various sections of the guidance need to be read in conjunction with one another.

   B1: "*The requirement that an adverse effect on normal day to day activities should be a substantial one reflects the general understanding of disability as a limitation going beyond the normal differences in ability which may exist among people. A substantial effect is one that is more than a minor or trivial effect.*"

   B2. "*The time taken by a person with an impairment to carry out a normal day to day activity should be considered when assessing whether the effect of that impairment is substantial. It should be compared with the time it might take a person who did not have the impairment to complete an activity".*

   B3. "*Another factor to be considered when assessing whether the effect of an impairment is substantial is the way in which a person with that impairment carries out a normal day to day activity. The comparison should be with the way that the person might be expected to carry out the activity compared with someone who does not have that impairment."*

   B7. "*Account should be taken of how far a person can reasonably be expected to modify his or her behaviour, for example by use of a coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day to day activities. In some instances, a coping or avoidance strategy might alter the effects of the impairment to the extent that they are no longer substantial, and the person would no longer meet the definition of disability.*

   C11. "*If medical or other treatment is likely to* ***permanently cure a condition*** *and* ***therefore remove the impairment*** *so that* ***recurrence of its effects would then be unlikely*** *even if there was no further treatment,* ***this should be taken into consideration when looking at the likelihood of recurrence of those effects****."*

4. There is nothing in the claimant's witness statement or in his medical records to support the assertion that there is any more than a minor or trivial adverse effect on the claimant's normal day to day activities.

5. The NHS website regarding achalasia states that this is a rare disorder of the food pipe (oesophagus) which can make it difficult to swallow food and drink. The NHS website refers to there being 'no cure' but that treatment can help relieve the symptoms.

6. However, the NHS website also lists several types of treatment including surgery …. "under general anaesthetic the muscle fibres in the ring of muscle that lets food into your stomach are cut. This is done using keyhole surgery and is called Heller's Myotomy. It **can permanently make** swallowing easier." This is the operation the claimant had on 3 March 2021.

7. The claimant states (paragraph 6 statement) *"I still struggle to eat and drink properly and I have ongoing concerns about being underweight. I have to avoid eating spicy foods and foods which will have a*

detrimental impact upon my indigestion." Having to avoid spicy foods and some other foods is hardly a substantial adverse effect on normal day to day activities.

8. The claimant alleges that he struggles to eat or drink properly. **No details or examples are given. How does the claimant struggle in comparison to others? There is no evidence about this.**
9. Although the appendix to the guidance refers to difficulty eating, as a normal day to day activity this refers to not being able to co-ordinate a knife and fork or due to an eating disorder.
10. The claimant's alleged difficulties are **not consistent** with the medical records.
11. The claimant's operation was on 3 March 2021. The claimant's medical records for March and April refer to sick notes being issued for recovery from surgery.
12. At page 95 is a letter from Mr Manby the claimant's consultant to the claimant's GP. The letter refers to a dietetic follow up in April where the claimant reported that he is managing well with his diet and had put weight on following his operation. As he hadn't heard nothing further, Mr Manby presumed that the claimant was progressing well.
13. Following the appointment on 15 April 2021, the claimant did not see his GP again until 17 August 2021, four months later (page 68). This was for a chesty cough and chest tightness. The only reference to achalasia was that he was struggling to swallow tablets/capsules. No reference to other symptoms nor to not being able to sleep.
14. The claimant did then not attend his GP again until 7 December 2021 nearly four months later (page 69). This does refer to "some issues with pain and keeping him up all night". There is no suggestion that this is a regular occurrence.
15. The claimant needed "to drink water when eating". Having to drink water when eating is not an adverse effect on ability to carry out normal day to day activities.
16. The notes also refer to depression and low mood.
17. There is therefore nothing in the claimant's medical records that indicate a substantial and long-term adverse effect on the claimant's ability to carry out normal day to day activities due to achalasia following his successful operation. There is just reference to "some trapped wind on occasion."
18. The claimant has also submitted two letters from his consultant Mr Manby both dated 23 February 2022.
19. The first letter (page 101) refers to the claimant's operation. Mr Manby states that the claimant made a good recovery from his operation and was discharged on 5 March 2021. The letter also refers to the issue with the food pipe referred to below and Mr Manby states that the operation was to relieve this and had allowed the claimant back towards a normal diet. There is no mention in his letter to any ongoing problems for the claimant.

20. The second letter (page 102) again refers to the claimant's operation but the rest of the letter provides more details of achalasia generally. Mr Manby states that patients "can get symptoms on a daily basis and may even require hospital-based treatments". There **is nothing in this letter that refers to any ongoing impact on the claimant following his operation which appears to have been largely successful.**

21. The only day to day activities referred to by the claimant relate to his ability to eat and this simply means avoiding spicy foods and drinking water whilst eating.

22. Based on the claimant's medical records and his own witness statement, he has not proved that he is a disabled person and the respondent requests that the claimant's claims of disability discrimination claim are struck out as he is not disabled".

Claimant's Submissions

50. Mr Willoughby made the following oral submissions on behalf of the claimant. He objected to the suggestion that the claimant has 'exaggerated' the effects of his condition which he submits was a suggestion that defies common sense and logic. The evidence supplied by the surgeon shows the claimant had significant surgery it involved a hospital stay and he was unable to eat for some time afterwards. It can be seen from his witness statement that these symptoms started in 2018 and became progressively worse up to March 2021. Evidence today is that notwithstanding the operation there is a day to day impact which is substantial. Indigestion symptoms and pain, severe food blockage has been described by the claimant who is losing weight, vomiting 30 times a day. At its peak it required a hospital admission in 2021 for life saving surgery because the claimant was suffering from malnutrition.

51. On any view that severity of vomiting and inability to digest food or to take water was a substantial adverse impact on normal day to day activities of eating and sleeping. At the peak of his condition his body shut down. It has affected the claimant's physical and mental health. The claimant is not relying on a separate impairment of depression it is part of his disability and his reference to low mood in December 2021 made him visit his doctor. He submits that maybe a combination of factors came to play in losing his job and his illness was a contributing factor.

52. The condition has unfortunately continued to plague the claimant out-with the material period and the tribunal can take note of the fact there is an appointment due on 23/5/222. The claimant has described how he is unable to drink liquid or eat food which gets blocked in his oesophagus. To suggest the operation is a cure is inaccurate. In August 2021 the reference to an inability to swallow tablets supports the claimant's case that he could not eat or drink.

Applicable law

53. The material time for establishing whether the claimant meets the requirements of section 6 of the Equality Act 2010 is when the alleged unlawful conduct occurred from January 2021- 18 May 2021 (for the alleged disability discrimination)

54. Recently in the case of **All Answers Limited v W [2021] IRLR 612** the Court of Appeal gave some guidance on the disability issue as follows: *"the key question is whether as at the time of the alleged discrimination the **effect of an impairment has lasted** or **is likely to last at least 12 months**. That is to be assessed by reference to the facts and circumstances **existing at the date** and so the Tribunal is **not entitled** to have regard to events **occurring subsequently**".*

55. Section 6 of the Equality Act 2010 provides that:

"(1) 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-day activities**.

(2) A reference to a disabled person is a reference to a person who has a disability".

56. Paragraph 2 of Schedule 1 to the 2020 act sets out the circumstances in which an effect is long term:

"2 Long term effects

(1) 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.

(2) 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 it is likely to recur. SCA Packaging Limited -v- Boyle 2009 UKHL 37 the word "likely" means something that could well occur as opposed to something that is more likely than not to happen.

57. Meaning of likely is that 'it could well happen' see paragraph C3 of the guidance and is relevant when determining:

- Whether an impairment has a long-term effect.
- Whether an impairment has a recurring effect. (C5 to C11).
- Whether adverse effects of a progressive condition will become substantial (B18-23)
- How an impairment should be treated for the purposes of the Act when the effects of that impairment are controlled or corrected by treatment or behaviour (B7-B17).

58. The respondent has referred to the guidance on the definition of disability (2011) I have not repeated that guidance here but have considered it. The question for Tribunal is whether the substantial adverse **effect** of the impairment is likely to recur to meet the long-term effect requirement of the definition. The tribunal must therefore identify the **effect** of the impairment with a degree of precision, since a substantial adverse effect resulting from a different impairment that was not the consequence of the condition initially diagnosed would not qualify as a recurrence.

59. C4 of the guidance provides that "in assessing the likelihood of the effect lasting for 12 months account should be taken of the circumstances at the time the alleged discrimination took place. **Anything which occurs after that time will not be relevant in assessing the likelihood.** Account should also be taken of both the typical length of such an effect on an individual and any relevant factors specific to the individual (for example general state of health or age)

60. Likelihood of recurrence should be considered taking all the circumstances of the case into account. This should include what the person can reasonably be expected to take action which prevents the impairment from having such effects (e.g. avoiding substances to which he or she is allergic).This may be unreasonably difficult with some substances(C9)

61. The effect of medical treatment is only relevant where the treatment would permanently cure the person without the need for any further treatment, thereby removing the effects of the impairment. If the treatment merely delays or prevents recurrence and a **recurrence would be likely if the treatment stopped** as is the case with most medication then the treatment should be ignored and the effect of the impairment regarded as likely to recur (see paragraph C11 of the Guidance).

62. Paragraph 5 of Schedule 1 provides:

> "(1) 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) measurers are being taken to treat or correct it, and
>
> (b) but for that, it would be likely to have that effect.
>
> (2) 'Measures' includes in particular medical treatment. Medical evidence (or the lack of it) will often be critical in establishing that a substantial adverse effect is likely to recur".

63. In assessing whether the substantial adverse effect is likely to recur an employment tribunal should disregard events taking place after the alleged discriminatory act but prior to the tribunal hearing (see McDougall-v-Richmond Adult Community College 2008 ICR 431 CA). This is because the central purpose of the discrimination legislation was to prevent employers making discriminatory decisions and to provide sanctions if such decisions are made. Whether an employer committed a wrong under the legislation must be judged, on the basis of the evidence available at the time of the action complained of. The exercise involves "a prediction on the available evidence" (paragraph 23)

64. More recently in **Aderemi -v- London and South Eastern Railway Limited (2013) ICR 591** at paragraph 14 of the EAT judgment the guidance given to tribunals was:

> "It is clear ..from the definition in section 6(1)(b) of the Equality Act 2010 that what a tribunal has to consider is an adverse effect and that is an adverse effect not upon carrying out normal day to day activities but upon his ability to so. Because the effect is adverse, **the focus of a tribunal must necessarily be upon that which a claimant maintains he cannot**

do as a result of his physical or mental impairment. Once he has established that there is an effect that is adverse that is an effect upon his ability that is to carry out normal day to day activities a tribunal has then to assess whether that is or is not substantial"

65. In **Primaz -v- Carl Room Restaurant 2021 WL 0551029** the issue of causation was considered by the EAT in a case considering whether an individual who refrained from drinking coffee or tea was sufficient to have the requisite effect.

> "Where the complainant has or had a particular physical or mental impairment, the tribunal must ask in accordance with section 6(1)(b) whether that impairment has a substantial and long-term adverse effect on their ability to carry out normal day to day activities. There are two related points to note. Mr Brown accepted, the issue raised here is one of causation. Did the impairment have the requisite effect? Secondly, the requisite effect must be on the *ability* to carry out normal day to day activities.
>
> "the test is objective, as it is one of causation. The impairment has to be found *by the tribunal* to, in fact, have had the requisite effect. In many cases, the answer will be straightforward and uncontroversial. But where there is a dispute about it, then whether the impairment does or not does not have the claimed effect must be determined by the tribunal on the evidence before it. It is not enough that the claimant truly believes that it does. The tribunal must decide for itself. This means that, in a case where the claimant asserts that engaging in a certain activity will risk triggering or exacerbating some adverse effect of the impairment itself, such as bringing on a seizure or an adverse skin reaction or something of that sort, and that is disputed, the tribunal must consider whether it has some evidence that objectively makes good that contention"(paragraph 62).
>
> "The tribunal did not, for example, consider whether, in relation to food or drink, matters might lie on a spectrum. At one end of the spectrum, it might be questioned whether, if an individual, refrains from consuming a single particular drink or food product, that would be insufficient to have the requisite effect. The position might be said to look very different, however, if they are unable to eat or drink a very wide range of things, and their diet is extremely limited or restricted. Be that as it may, the tribunal did not give that sort of consideration to this aspect of the claimant's case" (paragraph 79).
>
> "A similar point, it seems to me, arises in relation to visits to the doctor. The fact that an individual may need to visit the GP in connection with their impairment, for a periodic check-up might not be enough. But at the other end of the spectrum, an individual who has to spend several hours each week receiving treatment at the local hospital might have far less difficulty in persuading the tribunal that this substantially disrupted them going about normal day to day activities" (paragraph 80).

66. The Tribunal can make inferences on the evidence of the effect that an impairment has if the available evidence supports the inference.

67. It is for the claimant to discharge the burden of proof that he was disabled for the purposes of section 6 of the Equality Act 2010. The Tribunal is required to

decide the following 4 questions reminding itself that the issues as to impairment and **effect** on day to day activities are not matters for decision by medical experts but by the Tribunal. They are to be distinguished from purely diagnostic or clinical conclusions.:

(1) Was there an impairment? (here it is accepted the claimant has a physical impairment of achalasia which can make it difficult to swallow food and drink)

(2) What were its adverse effects? (when considering the effects of an impairment the focus should be on a what a person cannot do or can only do with difficulty and not what they can do)

(3) Were they minor or trivial? (section 212 Equality Act "substantial" means more than minor or trivial)

(4) Was there a **real possibility that the substantial adverse effects would continue for more than 12 months or that they would recur**?

Conclusions

68. Before setting out the conclusions it is important to remember that the claimant has the burden of proving disability and was made aware of the respondent's challenge on the adequacy of the evidence provided prior to this hearing. In response the claimant's solicitors adopted the stance that the evidence provided was clear and satisfactory stating their surprise "*that disability is being disputed* ***given the content of my claimant's medical records, the letters from his surgeon and his witness statement".*** They suggested the respondent's solicitors had *"cherry picked"* what the claimant had said in his impact statement and they were content the evidence would prove disability.

69. I found that the claimant's oral evidence in cross examination on the effects of his achalasia was inconsistent with the medical evidence and his own impact statement witness and agree with the submission made that the claimant has (in part) exaggerated his evidence, that it was unsatisfactory and lacked the necessary level of detail required to prove disability. While I agree with Mr Willoughby that the effects of the achalasia at its 'peak' before surgery were substantial adverse effects but those effects ceased after the surgery and there was no reliable evidence adduced by the claimant that the substantial effects were continuing because they were likely to recur. I agreed with the respondent's detailed closing submissions.

70. I accept that the activity of 'eating' is a normal day to day activities but expected the claimant to provide detailed evidence to show the substantial adverse effect (if eating was taking him longer, the time taken to carry out the activity, or if he was eating differently on a daily basis what that pattern would look like). I agree with the respondent's submission that the claimant alleges that he struggles to eat or drink properly without giving any details or examples to show how he struggles with eating in comparison to others and what the effects were on eating after the surgery. Although the claimant's representatives had indicated the evidence required would be adduced satisfying all the requirements of section 6 of the Equality Act 2010 the actual evidence provided by the claimant did not provide the details required. The **respondent has in submissions identified the inadequacies of the**

impact statement and the fact that it only refers to one limitation in relation to the activity of eating which is that the claimant has ***"to avoid*** *eating spicy food and foods which will have a detrimental impact upon my indigestion effect".* I agreed the claimant can reasonably be expected to avoid eating spicy foods/ foods which are known to have a detrimental impact for his impairment so as not to cause any substantial adverse effect as it is as the respondent describes a lifestyle choice and action he could reasonably be expected to take to avoid the substantial adverse effect. It was not unreasonably difficult for the claimant to avoid spicy foods or drink water with food (see C9 paragraph 60 above).

71. The reference the claimant makes to difficulties his indigestion causes to sleep which have a substantial adverse effect on his ability to concentrate were not supported by evidence of the precise substantial adverse effect it had on his ability to carry out normal day to day activities. The claimant has had the opportunity to provide historical examples of all the activities that were affected by concentration and if true it should have been easy to provide examples of the tasks that he struggled with at the material time.

72. The other area where the claimant's evidence in chief was lacking and his oral evidence was not credible or consistent with the medical evidence is the evidence that notwithstanding the operation he had been vomiting 30 times a day and had been unable to eat and drink and had been losing weight. The direct evidence did not support a finding that those were the actual effects and there was no reliable evidence from which it could be inferred that the substantial adverse effects were likely to recur.

73. The respondent has correctly identified the guidance about the likelihood of recurrence which should be considered. The claimant admitted that his consultant had confirmed after the operation that it was a permanent solution to the swallowing difficulties (consistent with the NHS guidance which describes the surgery "can permanently make swallowing easier"). All the medical evidence confirms that is exactly what it did do for the claimant and he did not report any effects until December 2021. It could not have been predicated as at 18 May 2O21 (the end of the material period) that swallowing difficulties were likely to recur after surgery. The evidence shows that at the end of April the claimant was seen by a dietician. He was able to confirm he had returned to a normal diet and that the substantial adverse effect (the swallowing difficulties) which had affected his ability to eat or drink had ceased as far as the GP and the treating consultant were concerned. As at 11 May 2021 no further treatment or follow up was required.

74. It is not in dispute and I have no difficulty in finding that in the period January-May 2021, the impairment had a substantial adverse effect on the claimant's ability to swallow which affected his ability to carry out the normal day to day activities of eating and drinking and was also disrupting his sleep. See paragraphs 21 23 and 24 of the findings setting out the GP records and hospital records. The claimant was making frequent visits to the GP during this time because of those substantial adverse effects on his ability to eat food. On 13 January 2021 the claimant had reported "a history of foods sticking in throat, he has to use water washed down with water. Also **often** comes back up whilst sleeping". On 20 January 2021, the GP records confirm that the claimant had reported "losing weight of 1.5 stones over a year, **could not keep food down as regurgitates**". On 29 January 2021, the GP records

confirm that the claimant had reported he was "**struggling with foods and fluids and was often vomiting**". The hospital records show that the claimant had an upper GI endoscopy on 8 January 2021.Following an examination achalasia was diagnosed on 15 February 2021 after which the claimant was discharged back into his GP's care until his readmission into hospital on 1 March 2021. The medical records confirm that this referral was prompted following a GP visit on 23 February 2021 when the claimant's difficulty with swallowing was associated with the diagnosis of achalasia. As a result of these symptoms the GP made an urgent referral back to the consultant Mr Manby who successfully performed the Heller's Myotomy on 1 March 2021. The claimant was discharged on 5 March 2021 and was then absent from work for a period of post -operative recovery. He was suspended from work on the 8 March 2021 pending an investigation into allegations of gross misconduct of instructing a junior employee to undertake work for his personal benefit during work time (alleged misuse of company resource). The investigation was completed on 1 April 2021 and the claimant attended a disciplinary hearing on 22 April 2021.He was dismissed by letter dated 5 May 2021. He appealed and the appeal hearing took place on 14 May 2021. By letter dated 18 May 2021 the claimant was informed dismissal was upheld.

75. As at 18 May 2021, the claimant did not report any ongoing symptoms to his GP. He was seeing a dietician to the end of April 2021 and had returned to a normal diet (avoiding spicy foods).There was nothing in the medical evidence or the impact statement to indicate the surgery had not worked or that further treatment was required following the surgery or of any reported difficulties with eating or drinking until December 2021. Although the claimant's impact statement had confirmed that he would "*focus on the effects the condition of achalasia* ***has had*** *and* ***continues to have on his ability to carry out normal day to day activities*** *and* ***the date upon which the condition started"*** he has failed to do so. The claimant knew that he was expected to set out all the evidence he relies upon to show how the effects of his impairment meet the requirements of section 6 of the Equality Act 2010 of disability. He has also had the benefit of being professionally represented in these proceedings and at this hearing and has failed to satisfy me that he is a disabled person within the meaning of section 6 Equality Act 2010.

76. For those reasons the complaints of disability discrimination are struck out as having no reasonable prospects of success because I have found that the claimant does not have the protected characteristic of disability.

Unfair Dismissal and Victimisation.

77. I considered whether I should grant the respondent's application to strike out the 2 remaining complaints of unfair dismissal and victimisation. I note that there is a factual dispute as to whether the grievance relied upon is a protected act satisfying the requirements of section 27(1) Equality Act 2010. Putting the claim at its highest and given the dispute of fact I decided that it was not appropriate to strike out that part or order a deposit to be paid as a condition of the claimant continuing with that part of the claim. However, the claimant and his representatives should take note of the evidence provided on disclosure and in witness statements and consider carefully whether it is sufficient to prove a protected act having regard to the burden of proof provisions and the requirement on the claimant to establish a prima facie case

of unlawful victimisation. The prospects of success should be reviewed carefully on an ongoing basis.

78. Similarly, I note the claimant says the allegations of misconduct that lead to his dismissal were untrue and he was confident he could contest the evidence and prove his innocence at the disciplinary and appeal hearing. It is the respondent's belief in the guilt of the claimant that will be relevant for the unfair dismissal complaint and whether that belief was genuine and was supported by a reasonable investigation. Clearly the claimant disputes the reasonableness of the respondent's belief and the tribunal will need to make findings of fact after hearing all the evidence and consider the reasonableness of the sanction. It appears that the allegation (if proven) would fall into the category of serious misconduct but arguments may be made that a lesser sanction was an appropriate alternative to dismissal. For those reasons putting the claim of unfair dismissal at its highest it was not appropriate to strike it out or make a deposit order as a condition of the claimant continuing with the claim of unfair dismissal. Again, the prospects of success should be reviewed carefully on an ongoing basis.

Next Steps: Case Management Orders

79. The parties should now work together to propose a timetable of the next steps including an up to date schedule of loss, disclosure of documents, the preparation of a bundle and witness statements for the remaining complaints of victimisation and unfair dismissal. The claims will be listed for 2 days (liability and remedy) in the listing period October 2022 – January 2023.

80. By no later than 31 May 2022 the parties must provide the following information (marked for the attention of Employment Judge Rogerson) for further case management orders to be made:

    - dates to avoid in the listing period October 2022-January 2023.
    - timetable of proposed steps with dates of compliance
    - parties' hearing preference with supporting reasons (CVP remote/attended)

81. If the parties cannot agree those steps by this date, they should request a telephone case management preliminary hearing (time estimate of 1 hour) before me for further case management orders to be made.

Employment Judge Rogerson

Date 23 May 2022