



EMPLOYMENT TRIBUNALS

Between:

Ms R Robinson & others
Claimants

and

Pennine Acute Hospitals NHS Trust
& others
Respondents

Case Management Discussion by Telephone Conference Call

held at: **Nottingham** on: **Tuesday 9 May 2006**
the **Chairman, Mr J K Macmillan**, having identified the issues in the proceedings to be those set out in part 1 below, made the Orders set out in part 2.

Representation

For the Claimants:

Mr M Ford of Counsel

for Mrs Sanderson, Mrs Taylor, Mrs White, Mrs Blore

Mr D Grant of Counsel

for Mrs Whitworth

For the Respondents:

Mr N Paines QC and Mr R Hill of Counsel

for the Secretary of State for Health

Mr D Oudkerk of Counsel

for Pennine Acute Hospitals NHS Trust and South Devon NHS Trust

Mr I Patterson of Browne Jacobson

for Nottingham City NHS Trust

Mr J Wotherspoon of Beachcroft Wansbroughs

for Queens Medical Centre NHS Trust

ORDER

1. The issues

1.1 Of the original Robinson/Sanderson multiple in which it was alleged that the Claimants had continued to be excluded from the Respondents' pension scheme by virtue of a policy, all claims had now been withdrawn in whole or in part or were to be struck out for non-compliance with the Order for further particulars of the claim. Of the claims withdrawn only in part, the NHSPA were invited to comment within 28 days on those parts of the claim which the Claimants were still pursuing.

1.2 The Secretary of State still required, if possible, to have a test case hearing on the grounds which were to have been dealt with in the Robinson/Sanderson test cases, namely whether a claimant required permission to amend a claim form if an allegation of policy was not raised initially; the criteria for granting such an amendment; and in what circumstances it would be appropriate to strike out such an allegation if already pleaded on the grounds that it had no reasonable prospect of success. Mr Macmillan undertook to make enquiries with nominated chairmen around the country to try and identify a suitable replacement test case and Mr Paines QC agreed to invite the NHSPA also to nominate suitable replacement test cases. In the meantime, other than those cases which are currently part-heard at Bury St Edmunds and Bedford, all "policy allegation" cases remain stayed.

1.3 The "misleading contract terms" cases would proceed to a hearing with the following cases being used as test cases:

Mrs Sanderson (2405559/04) v Pennine Acute Hospitals NHS Trust
Mrs Taylor (1701870/98) v Torbay Health Authority
Mrs White (1701121/02) v South Devon Healthcare NHS Trust
Miss Whitworth (2602546/02) v Queens Medical Centre NHS Trust
Mrs Bloor (509741/95) v Queens Medical Centre NHS Trust
Mrs Hallam (2601304/01) v Nottingham City Hospital NHS Trust

Although Mrs Hallam was unrepresented, it was necessary for her case to remain as a test case because it appeared to be the only one in which the "not less than 50% of full-time hours" rule was misstated in the contract but the contract did not also expressly say that the position was not superannuable. Mr Macmillan understood that there was another case against either Nottingham City Hospitals NHS Trust or Queens Medical Central NHS Trust which raised the same point and would attempt to identify it. It was agreed that the only parts of the following orders which Mrs Hallam was required to comply with was to submit any documents that she wished to be included into the bundle to Messrs Hempsons Solicitors (ref: MC/2092/LH/20622/119), Portland Tower, Portland Street, Manchester M1 3LF who have agreed to co-ordinate the

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preparation of the bundle and to send a copy of her witness statement to the tribunal by not later than 18 August 2006 and the tribunal would copy it to the parties.

2. The Orders

2.1 By not later than 23 June 2006 both Respondents are to file full grounds of response in the case of Mrs Sanderson, setting out both the factual and legal grounds relied upon to resist the claim.

2.2 The remaining test case Claimants, other than Mrs Hallam, are to serve fully pleaded grounds of complaint setting out both the factual and legal basis of the claims by not later than 9 June 2006.

2.3 The Respondents to those test cases are to enter a response setting out the full factual and legal grounds on which the claims are resisted by not later than 21 July 2006.

2.4 A single bundle of documents is to be agreed by not later than 4 August 2006.

2.5 Witness statements are to be exchanged by not later than 18 August 2006.

2.6 There will be a pre-hearing review to consider the Respondents' application to strike out the test cases on the grounds that they have no reasonable prospect of success as the Claimants were always eligible to join the NHS Pension Scheme and also to consider whether any of the Claimants need permission to amend their claim forms to raise such an allegation, to be heard by Mr Macmillan sitting alone at the employment tribunal office in London Central, Victory house, 30-34 Kingsway, London WC2B 6EX between Monday 11 and Thursday 14 September 2006.

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Chairman

Date:

IMPORTANT INFORMATION ABOUT ORDERS

(1) Any person who, without reasonable excuse, fails to comply with a requirement imposed under Rule 10(2)(c) [witness orders] or (d) [requirement to disclose documents or information] of the Employment Tribunals Rules of Procedure 2004 is liable on summary conviction to a fine of up to £1,000.00 under section 7(4) of the Employment Tribunals Act 1996.

(2) Failure to comply with an Order may result in the whole or part of a claim or response being struck out at or before the hearing or a costs or preparation time order.

(3) A party may apply to the tribunal to vary or set aside an Order but must do so before the period for compliance with the Order has expired.

(4) An Order granting the right to inspect documents may be complied with by supplying photocopies of the documents in question, provided the party in whose favour the Order was made agrees.