Decision No. 21/07

Reference No. **HRRT 13/2006**

BETWEEN	**MELANIE ANNE TREVETHICK**
	Plaintiff
AND	**MINISTRY OF HEALTH**
	Defendant
AND	**HUMAN RIGHTS COMMISSION**
	Intervenor

BEFORE THE HUMAN RIGHTS REVIEW TRIBUNAL

Mr R D C Hindle Chairperson
Ms J Binns Member
Mr S R Solomon Member

HEARING: 3 August 2007 (Wellington)

APPEARANCES:

Mr J Miller & Ms W Proffitt for plaintiff.
Ms M Coleman & Mr C Curran for defendant.
Ms C A Rodgers & Ms J Ryan for intervenor.

DATE OF DECISION: 24 October 2007

DECISION No.2

('Cause of disability' interpretation issue)

Preliminary

[1] The background to this matter is set out in our first decision in this litigation, *Trevethick v Ministry of Health* [2007] NZHRRT 7 (4 April 2007). In this decision we deal with the issue that was left open, namely whether the definition of 'disability' in s. 21(1)(h) of the Human Rights Act 1993 ('the HRA') ought to be interpreted as encompassing not only the physical manifestation of a disability, but also the cause or causes of that disability as well.

[2] In essence, the plaintiff wishes to challenge the way in which Government allocates different levels of funding to people who, although they have essentially the same kind of disabilities, have come to their situation as a result of personal injury caused by an accident, as against those who are disabled as a result of a disease or degenerative process of the body. Debate about the equities of treating similarly circumstanced people differently in this context is not new; we have already referred in our first decision (and by way of example only) to the symposium held in 2004 under the title *"The Future of Accident Compensation : New Directions and Visions"* (see [2004] VUWLRev 32 et seq.) Clearly it is a topic that is of interest and concern to the Minister for Disability Issues, amongst others.

[3] We begin our decision in this way because we wish to make it clear that we have considerable sympathy for the plaintiff's argument that there is a substantial social inequity arising out of the fact that similarly circumstanced people are treated differently depending on the cause of their disability. It is far from clear to us how that state of affairs might be justified. Certainly we think that the plaintiff has a legitimate political point to make.

[4] However, it is important to recognise that the issue we have to decide is much narrower. The question for us is one of statutory interpretation: does the plaintiff's proposed claim fall under the HRA? For reasons that follow, we have come to the conclusion that it does not, and that this proceeding ought to be struck out. But we make it clear at the outset that our conclusion is not be taken as having somehow endorsed the present regime as being fair or equitable. It does not.

[5] Our first decision sets out how we have approached the issues, and the considerations we regard as relevant in the context of an application to strike out. We do not repeat the discussion here, but we draw attention to paragraphs [54] to [59] of the decision which explain the issue of statutory interpretation that was reserved for further argument.

[6] After receiving our first decision, the parties agreed to file a further round of written submissions. Counsel also indicated that the parties wished to have a further *viva voce* hearing as well. The hearing took place on 3 August 2007.

[7] In our first decision we recorded that the intervenor (which we refer to again as 'the Commission') was not arguing for any particular outcome on the remaining 'cause of disability' issue. But submissions subsequently filed on behalf of the Commission make it clear that the Commission's position is no longer neutral; instead the Commission now joins with the plaintiff in arguing that we ought to read the definition of 'disability' in s.21(1)(h) HRA as being at least capable of including the cause or causes of disability (and, on that basis, to conclude that the plaintiff's claim ought not to be struck out at this stage). On behalf of the plaintiff, Mr Miller filed submissions arguing for the same outcome, although his analysis of the legislation was not quite the same as that advanced by the Commission. The submissions for the defendant (which, for the reasons given in our first decision, we again refer to as 'the Crown') were to the contrary.

[8] In what follows we have tried to summarise the contrasting arguments in such a way as to catch the points that we assessed as being the most significant, having regard to what we have to decide. It does not follow that the detail of the submissions has been overlooked. To the contrary, once again we have had the benefit of comprehensive, articulate and well researched submissions. We are grateful to all counsel for their assistance.

[9] Before dealing with the submissions, it is convenient to repeat the stautory definition which is the subject of this decision. Section 21(1)(h) HRA lists as a prohibited ground of discrimination:

> "*Disability, which **means**:*
> *"(i) Physical disability or impairment:*
> *(ii) Physical illness:*
> *(iii) Psychiatric illness:*
> *(iv) Intellectual or psychological disability or impairment:*
> *(v) Any other loss or abnormality of psychological, physiological, or anatomical structure or function:*
> *(vi) Reliance on a guide dog, wheelchair, or other remedial means:*
> *(vii) The presence in the body of organisms capable of causing illness:"* (We have emphasised the word 'means' as it has particular

significance for the issues dealt with in this decision.)

[10] One final preliminary point. It is a feature of this case that the ground on which the Government distinguishes between people in the allocation of funding for disability is so clear. None of the parties dispute the proposition that different funding streams are available to people who have the same or substantially similar disabilities depending on the way in which they have come to have those disabilities. The relevant differentiation does not involve any distinction between different disabilities, or between those with disabilities and those without them. This is not, therefore, quite the same as what is sometimes called an 'intra-ground' discrimination case, where (for example) a group of people who have a particular disability might say that they are being treated less favourably than another group which has a different kind of disability. Our specific concern is in relation to the different way in which people who have the same or substantially similar disabilities are being treated as a result of (or, to use the language of the HRA, *"… by reason of …"*) what the cause of their disability was – i.e., accident, or something else.

Argument for the plaintiff

[11]The plaintiff's argument started by accepting that the list of disabilities set out in s. 21(1)(h) HRA appears to be exhaustive. Even so, it was submitted that within the list there is a wide range of disabilities envisaged, and that the particular meanings given in the list suggest that Parliament intended to capture the notion of 'disability' as broadly as possible. We were therefore invited to approach the concept of 'disability' as something that is intrinsically inclusive and open-ended, rather than limiting or closed.

[12] Mr Miller went on to refer us to various dictionary definitions of the word 'cause', and noted that at least in some respects, the idea of 'cause' is already contained within the definitions in s.21(1)(h) HRA, such as *' … organisms capable of causing illness'* in s.21(1)(h)(vii) HRA. From that platform Mr Miller argued that the 'cause' of a disability ought be seen as being incorporated in the kinds of disability that are listed, and that the definition as a whole ought to be read as encompassing differentiation on the basis of the cause or causes of disability. That conclusion is reinforced, so it was submitted, because in practice is not always easy to differentiate between cause and effect.

[13] In addition, Mr Miller referred to what are sometimes called the 'medical' and the 'social' models of disability. The medical model is a view of disability which places emphasis on the biomedical condition of a disabled person. In contrast, the social model of disablity focusses on the fact that, for many people with impairments, their ability to participate in normal life is as much a consequence of their interaction with the environment in which they live - including the social environment - as it is a consequence of any medical condition.

[14] The plaintiff's argument is that the social model of disability supports the conclusion that there ought to be an inclusive interpretation of s.21(1)(h) HRA. Mr Miller submitted that the social model is gaining more recognition at the moment. In particular he referred us to the 2007 United Nations Convention on the Rights of Persons with Disabilities ('the Disability Convention') which states, in its preamble:

> *"… recognising that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others".*
>
> (We note that New Zealand has not yet ratified the Disability Convention, although it was one of the first countries to sign it. Given the overall decision we have reached in this case, we do not need to deal with an argument for the Crown that it would be inappropriate to place reliance on an international instrument such as this before ratification takes place.)

[15] We were also referred to the opening words in the New Zealand Disability Strategy (2001) and to provisions of legislation such as The Building Act 2004 (s.2(k)) and the New Zealand Public Health & Disability Act 2000 (in particular, the definition of 'disability support services' in s.6(1)). These were put forward as examples of a legislative trend towards recognising disability as being as much a social constuct as a medical condition.

[16] Against that background Mr Miller concluded:

> *"The objective of anti-discrimination legislation such as the Human Rights Act is that people are treated equally and have the same opportunities. The prevailing approach emphasises the rights of people with disabilities, focusing less on the impairments of the person and more on the limitations of society. This therefore aims at outcomes, rather than focusing on narrow causes or kinds of disability. There are many causes, including outside of the person with the disability.*
>
> *"To allow a narrow cause to exclude protection, itself becomes a cause of the disability, that is of the disabling effects. There can therefore be no intention to exclude from the prohibited ground differentiation on the basis of the cause of disability, or to exclude this merely on the basis of one cause or a type of cause. As well as encompassing cause, the definition describes disability in ways that go beyond cause being relevant, such as effects. Overall, it is how the impacts of disability are addressed that is the important factor.*
>
> *"A broad and purposive interpretation of s.21(1)(h) HRA is therefore needed, incorporating the 'social model' of disability."*

Submissions on behalf of the Commission

[17] In its very comprehensive submission, the Commission traced the development of the definition of 'disability' in s.21(1)(h) HRA. It was accepted that the definition does not in terms include the cause of disability, and that if the definition is to be considered to include cause of disability (beyond the instances in which it is explicitly referred to; see e.g., s.21(1)(h)(vii) HRA), then 'cause of disability' needs to be read into it.

[18] Like the submissions for the plaintiff, the Commission drew our attention to what was described as a paradigm shift in society's view of disability. We were referred to

international materials, and also to the New Zealand Disability Strategy and in particular the observation:

> *"Disability is not something individuals have. What individuals have are impairments. They may be physical, sensory, neurological, psychiatric, intellectual or other impairments. Disability is the process which happens when one group of people create barriers by designing a world only for their way of living, taking no account of the impairments other people have* (Ministry of Social Development, the New Zealand Disability Strategy: Making a World of Difference: Whakanui Oranga, Wellington (2001), page 1).

[19] A number of international treaties and covenants were said to be relevant as well. As Ms Rodgers observed, the long title of the HRA describes the purpose of the HRA as being to provide better protection of human rights in New Zealand in general accordance with United Nations' covenants and conventions on human rights. Most recently, there is the Disability Convention which provides a prototype for State action in an attempt to see that people with disabilities are able to enjoy the same rights and opportunities as people without disabilities. The definition of 'discrimination on the basis of disability' in Article 2 of the Convention is:

> *". . .* [A]*ny distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation".*

[20] Ms Rodgers noted the similarity between that definition, that which has been adopted by the United Nations Human Rights Committee under the International Covenant on Civil and Political Rights, and that of the United Nations Committee for Economic, Social and Cultural Rights under the International Covenant on Economic, Social and Cultural rights. We were referred to the definition adopted by the World Health Organisation. The submissions for the Commission went on to discuss a number of other international and domestic reference points as well.

[21] We mean no disrespect to the comprehensive way in which the submissions were prepared, but in summary all of that material seemed to us to be offered to support the primary argument put forward by the Commission, namely that we ought not to give the definition of disability a narrow or confined meaning in the present circumstances. The fundamental purpose of anti-discrimination laws in this context is to enhance the inclusion of disabled persons in society. That objective, it was argued, requires a wide interpretation that recognises the multi-dimensional nature of disability and which promotes wide access to protection against discrimination on the ground of disability. On that basis the objective of the HRA itself indicates that the definition of disability ought to be read as encompassing all of the causes, the manifestations and the effects (whether functional and social) of disability.

[22] The submissions for the Commission referred to a number of case authorities, both in New Zealand and elsewhere, as well. The Commission accepted, however, that there is no authority in New Zealand in which the specific point now at issue has been addressed.

[23] The Commission described the following features of the idea of disability as emerging consistently from the cases and materials referred to:

> [a] The term ought to be defined widely, and applied in such a way as to achieve the objectives of the legislation in which it is found;

[b] The text of s.21(1)(h) HRA refers to some examples of causes of later manifestation of disability, such as the presence in the body of organisms capable of infection (although the Commission acknowlegeded that some commentators in New Zealand regard the definition of 'disability' in s.21(1)(h) as being exhaustive – see, e.g., Butler & Butler, *The New Zealand Bill of Rights Act: A Commentary*, LexisNexis 2005 at p.487);

[c] A multi-dimensional approach is required, which does not limit the definition to the manifestation of disability, but which includes cause and effect;

[d] The 'social model' of disability supports the interpretation advanced by the Commission;

[e] Such an approach now has particular relevance in light of the new Disability Convention (and having regard to the Long Title to the HRA);

[f] If the cause of a disability is a deciding factor then the definition potentially excludes some groups and will compromise the possibility of intra-ground claims;

[g] Section 21(1)(h) HRA itself refers to remedial means in subsection (vi) disjunctively from the cause of disability.

[24] On these bases the Commission submits that the plaintiff has a tenable claim under the HRA, which should not be struck out at this stage of the proceedings.

Argument for the Crown

[25] Mr Curran presented the argument for the Crown on this issue. His essential point is that the definition of disability in s.21(1)(h) HRA is comprehensive, and that (beyond the situations expressly included, such as the presence in the body of organisms capable of causing disease) there is nothing in that definition, in the HRA, in the New Zealand Bill of Rights Act 1990 or anywhere else that might justify a decision to read the definition as including the cause or causes of a disability.

[26] The argument for the Crown began by identifying three different models for anti-discrimination laws:

[a] The first model expresses the required standard in very wide terms. An example is the equal protection clause of the 14th Amendment to the US Constitution *("No State shall … deny to any person within its jurisdiction the equal protection of the laws"*). This approach deliberately leaves it to the Judges to decide what distinctions are prohibited, and which are not;

[b] The second model opts for a non-exhaustive list of grounds upon which discrimination is prohibited, but leaves open the possibility that judicial decisions may, to some extent, extend the grounds in cases that are thought appropriate. The examples suggested by Mr Curran here were s. 15(1) of the Canadian Charter of Rights and Freedoms, and Article 14 of the European Convention on Human Rights (*"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground* ***such as*** *sex, race, colour, ..* etc*"* (emphasis added)*;*

[c] Finally, the third model is that in which the legislation contains an exhaustive list of grounds upon which discrimination is prohibited. The

> application of elements of the list is for the Courts, of course, but in this model any decision to add to the list can only be made by Parliament. The New Zealand legislation is suggested to be an example of the third model. Section 21(1) HRA sets out a comprehensive but closed list of grounds upon which discrimination is rendered unlawful: see, e.g., Butler and Butler (supra, para [23][b]).

[27] The point of the analysis was to demonstrate that in adopting the third of these options, Parliament must be taken to have made a deliberate decision to retain for itself, to the exclusion of the Courts and this Tribunal, the role of extending the grounds of unlawful discrimination.

[28] Against that general background, the Crown went on to submit that a decision to read the definition of disability as including the cause or causes of a disability would involve a significant *de facto* amendment to the legislation. The definition in s.21(1)(h) HRA opens with the word '*means'*, not words like 'such as', 'for example', or 'includes'. Indeed, given that the word 'includes' is used elsewhere in s.21(1) HRA, the use of the word 'means' in s.21(1)(h) HRA was clearly deliberate. The word 'means' signals that the definitions which follow are intended to be exhaustive. If Parliament had intended to include the cause or causes of a disability as prohibited grounds of discrimination, then it would have done so (or at least it might have introduced the list in the definition with the word 'includes' rather than 'means').

[29] Mr Curran developed the argument by adding that 'cause of disability' is something that is qualitatively different from the situations which fall within s.21(1)(h) HRA. Each of the elements of s.21(1)(h) HRA describes an existing state of affairs. That is even true of s.21(1)(h)(vii) HRA which, although it refers to the possibilty that illness may occur in the future, is concerned with a present state of affairs in which organisms capable of causing illness are already in the body. But the cause of a state of affairs is not usually thought of as being the same thing as the state of affairs itself; rather it is an explanation as to how a state of affairs has come to exist. In the Crown's submission, the natural and ordinary meanings of the words that are used in s.21(1)(h) HRA to describe the situations in which discrimination is prohibited, all refer to the state of affairs or condition of the disabled person. They do not encompass the cause or causes of that person's state of affairs generally, or in any particular situation.

[30] Mr Curran also argued that the plaintiff is not assisted by reference to the social model of disability. The Crown does not disagree that the social model is now very widely accepted but submits that, even so, that does not justify a decision to read into s.21(1)(h) HRA words about the cause or causes of disability that are not found in the text of the legislation. Nor is there anything in that view of disability that requires the cause of an impairment to be considered as a ground of discrimination in addition to the consequences for the disabled person of having the impairment in question.

[31] Mr Curran referred to the implications of a decision that the elements of disability in s.21(1)(h) HRA ought be read as including the cause or causes of the disability in question. It is, he submitted, hard to see how one could 'ring-fence' such a decision so that it applies to the definition of disability only and not (for example) to the definitions of ethical belief, age, family status and so on. He added that the consequences of adopting a meaning which encompasses 'cause' in those areas, as well in the area of disability, are difficult to see: after all, what would it really mean to say that it is unlawful to discriminate against a person by reason of the cause or causes of their marital or family status?

[32] In summary, Mr Curran argued:

> *". . . the Tribunal must conduct the necessary interpretative inquiry on this strike out application in the context in which it arises, namely s.21 HRA*. *Section*

21HRA does not contain a free-standing right to equality or to a fully inclusive society; it is rather a guarantee against discrimination on the listed prohibited grounds. Given its careful design, any amendment of this scheme is for Parliament and not the Courts."

Discussion

[33] We have no doubt that the plaintiff and the Commission are right to say that the definition of disability in the New Zealand legislation should be interpreted in a broad and purposive way, having regard to the objects of the HRA, and that any interpretation exercise needs be approached with an eye to the international and domestic context of the legislation: see, generally, Brookers *Human Rights Law* (Adzoxorno Ed, at para's IN.4 and IN.5). But even so, the propositions that were put forward by the plaintiff and the Commission are all pitched at such a level of generality that they do not seem to engage in any sufficient way with the words that have actually been used in s.21(1)(h) HRA.

[34] The definition of disability that is contained in the HRA does not include the cause or causes of disability as a ground or as grounds on which discrimination is prohibited. To interpret it as doing so would, as as the Commission accepts, involve reading words into the legislation which simply are not there. We therefore accept the arguments that were put forward for the Crown. Because they are already summarised above, we do not repeat the points here but we do add the following observations:

[a] It is important that the definitions of disability (and, indeed, all of the grounds upon which discrimination is prohibited under the HRA) are considered within the context of the legislation as a whole. This includes the words by which the various grounds listed in s.21 are linked to the areas of activity in which discrimination is unlawful. We take, as an example, s.22 HRA. That section prohibits discrimination on any of the grounds set out in s.21 in the area of employment. The words that link s.22 and s.21 make it unlawful for an employer to treat applicants for work or employees in certain ways " … ***by reason of*** *any of the prohibited grounds of discrimination.*" (our emphasis; this is the standard formula - see ss. 36(1), 37(1), 40(1), 42(1), 44(1), 53(1) and 57(1)). Similar treatment, but for reasons not listed in s.21, is not prohibited. In our view this formulation makes it clear that the grounds on which discrimination is rendered unlawful are closed. It adds weight to the Crown's argument that the identification of the characteristics on which discrimination is prohibited - in this case, disability - is not intended to include any cause of the characteristic in question (unless, of course, it is expressly included).

[b] Any study of the incremental way in which grounds have been added into what is now s.21(1) HRA over the period since the Race Relations Act 1971 was first enacted, and of the areas of activity to which the anti-discrimination standard applies, must compel the conclusion that - just as the Crown argues - Parliament has been very deliberate in deciding what will, and what will not, amount to unlawful discrimination in New Zealand (for general histories of the legislation reference might be made to Rishworth et al, *The New Zealand Bill of Rights* (OUP, 2003) esp. at pp 18 to 21 and Butler & Butler (supra) at para's 3.4.21 to 3.4.28. Reference can also be made to the timeline in Appendix B of the Report of the Constitutional Arrangements Committee of the House of Representatives of August 2005).

[c] The leading New Zealand academics writing in this area agree that the definition of 'disability' is exhaustive. The passage in the text by Butler and

Butler has been noted (para [23[b]). In the text by Rishworth at al (supra) the learned authors set out s.21(1)(h) HRA and then add:

"Although this definition is exhaustive, there is considerable scope for argument as to the meaning of such terms as 'disability', impairment', 'illness', and 'abnormality'. To take just one example, is a genetic predisposition to a medical condition a disability?" (at p.370).

We agree that there is much in the definition about what is, and what is not, a 'disability' in terms of s.21(1)(h) HRA that could be debated. But the interpretation for which the plaintiff and the Commission contend is not just a matter of looking at particular words or phrases in the definition to see whether a given situation is encompassed. In effect we are asked to add to all of the elements of the definition an idea that not only is the presenting impairment caught by the definition, but also the reason or reasons why the person whose circumstances are of concern has come to have that impairment. To illustrate the point we take (as an example only) an impairment which requires the disabled person to have to rely on a guide dog. One can envisage a number of potential debates about when or in what circumstances it should be held that a person is reliant on a guide dog. That is a proper area for factual investigation and statutory interpretation. But we regard it as being quite a different thing to say that the words 'reliance on a guide dog' should be read as encompassing the reason or reasons why a person has come to be reliant on a guide dog.

[d] The reference by the plaintiff and the Commission to international conventions and treaties is understandable, but the reality is that the Tribunal has to work with the legislation that is enacted in New Zealand. The point is made in the following passage in *BHP New Zealand Steel Limited and Anor v O'Dea* [1997] ERNZ 667:

"In the present case the question is not whether the covenants conflict with the Human Rights Act nor whether they should effectively override the Act. Rather it relates to the extent to which the provisions of the Human Rights Act can be interpreted so as to more comprehensively adopt or implement applicable international standards.

In our view the Court cannot ignore the fact that the New Zealand Parliament in the Human Rights Act has chosen to incorporate into domestic law only some of the rights recognised in various international covenants and conventions. In those circumstances, the Court cannot use the generality of provisions in the international instruments to increase the scope of what our sovereign Parliament has decided should apply domestically. Further, although in a sensitive and important area such as this words should not be read down, where Parliament has deliberately provided protection for some rights which enjoy international recognition, but not others, it would be wrong for a Court to stretch or manipulate the clear words of the statute so as to provide protection in a greater or different area than Parliament has determined should apply. Where there is any room for interpretation the international obligations will be given full weight. But in the absence of uncertainty or ambiguity, the Courts are not able to introduce into domestic law rights which are beyond the scope of a reasonable and sensible interpretation of the actual words of the relevant statute." (pages 601/602).

[e] We also think that it is telling that at least in respect of two of the limbs of the disability definition, there is an indication that the cause of a later outcome ought to be considered part of person's present status. Section

> 21(1)(h)(vii) refers to the presence in the body of organisms 'capable of causing' illness, and s.21(1)(h)(v) HRA refers to an abnormality of anatomical structure (which might conceivably cover a genetic abnormality such as a predisposition to a particular condition that might or might not "cause" subsequent physical impairment). As already noted, both of these definitions relate to an existing state of affairs (i.e., the fact of presence in the body of an organism capable of causing disease and/or the fact of an anatomical structure that might give rise to an impairment). But even so, we think these particular provisions count against the argument that, when Parliament defined 'disability' in s.21(1)(h) HRA it intended to include the cause or causes of disability comprehensively in all of the different elements of the definition.

[35] As we have said, we have no doubt that the very general propositions that were put forward by both the plaintiff and the Commission in favour of a broad, purposive interpretation of disability are valid. In another case the argument about how the legislation ought be interpreted might very well be assisted by reference to all of the materials and conventions that were canvassed in argument. But in this case there is no sufficient platform for the debate. The wording of s.21(1)(h) HRA does not support it. We agree with the Crown that any decision to recognise ideas of causation as grounds on which discrimination is prohibited would amount to an amendment to the HRA that is beyond any proper exercise of our functions.

Conclusion

[36] For these reasons we accept the Crown's contention that, because the basis of differentiation which the plaintiff seeks to rely on in this case relates to the cause of her disability (not the disability itself), the case does not fall within any of the grounds on which discrimination is prohibited by s.21 HRA. We are satisfied that the claim cannot possibly succeed, and that it should be struck out at this stage.

[37] There is an order accordingly.

Costs

[38] The parties have not addressed the question of costs and, given the way in which the matter unfolded, it may be that costs will not be applied for. However if there is to be a claim for costs by the Crown then the following timetable will apply.

[a] Any application together with supporting materials to be filed and served within 21 days of the date on which this decision is issued to the parties;

[b] Any materials in response (whether by the plaintiff or by the Commission) to be filed and served within a further 21 days;

[c] The Tribunal will then deal with the issue of costs on the basis of those papers, and without any further *viva voce* hearing;

[d] If for any reason the foregoing timetable is incapable of achievement, then we leave it to the Chairperson of the Tribunal to vary the timetable as seems appropriate in order to ensure that the issue of costs is dealt with expeditiously.

Mr R D C Hindle Chairperson	Ms J Binns Member	Mr S R Solomon Member