



Case of the Month

The House of Lords has deliberated on the meaning of the word “likely”. The context was the Disability Discrimination Act 1995 and the rule that if an impairment is likely to have a substantial adverse effect on an individual if treatment being received stops then the individual is to be treated as if it does have that adverse effect i.e. the treatment is ignored.. So if someone wears a hearing aid in determining whether a disability exists you ignore the hearing aid. One might ask why this is the rule but that is a different issue!

The case, **SCA Packaging Limited v Boyle** [2009] UKHL 37, concerned a woman who had speaking problems caused by nodules on her vocal cords. These had been removed by an operation and the medical opinion was that only her subsequent adherence over many years to a strict management regime had prevented them recurring. A preliminary hearing had been arranged to determine whether this impairment was “likely” to have a substantial adverse effect. The tribunal had held that it would, applying the strict test that “likely” meant “more likely than not” which accorded with guidance issued by government. The employers had appealed to the Court of Appeal in Northern Ireland which rejected the appeal but had said that likely meant “could well happen” a less stringent test. The employers then went off to the House of Lords arguing that the Court of Appeal had applied the wrong test.

The House of Lords considered this was an important point of law of public importance because the Disability Discrimination Act applies to the whole of the UK and the courts in England were using the “more probable than not” test and the Irish courts the lower test and it was their role to ensure that a uniform test applied throughout the UK.

In reaching the decision that the Court of Appeal in Ireland had been correct to apply the easier test one of the factors that influenced the House of Lords was that medical treatment is usually prescribed if it could alleviate symptoms not just when there was a more than 50% chance that it will. That makes it easy for employers to know that if their employee is receiving treatment prescribed by a doctor then he or she will come within the “likely” test which the court considered more readily concurred with the purpose of the legislation.

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Further Information

If you would like further information or to comment in general regarding this case, please contact



Stephen Levinson

e stephen.levinson@rlb-law.com

t 020 7227 6714

w www.rlb-law.com