



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr V Manne

**Respondent:** Poundland Limited

**Heard at:** London South

**On:** 19 December 2017

**Before:** Employment Judge Cheetham

## Representation

**Claimant:** Mrs Manne (the Claimant's wife)

**Respondent:** Mr J Wallace (counsel)

## JUDGMENT

1. The Claimant is disabled pursuant to the Equality Act 2010.
2. This claim (2301334/2016) is consolidated with the Claimant's second claim, no. 2301747/2017.

## REASONS

1. This Preliminary Hearing was listed to consider the single issue: was the Claimant disabled pursuant to the Equality Act 2010 at the relevant time?
2. The Respondent's case is that the Claimant first went to the GP, who noted symptoms of depression and anxiety, on 4 January 2017. From that date, it is accepted that he had those symptoms. However, there was insufficient evidence of an adverse effect on day to day activities and/or that any effect was substantial and/or that it was long-term.
3. The claim has been listed for a full merits hearing commencing on 11 June 2018 (6 days). At the end of the hearing, the Tribunal went on to give directions, which are set out in a separate Order.

4. There was an issue at the start of the hearing about the Claimant serving a statement and supporting documents on the morning of the hearing. After some discussion, the Tribunal allowed them in. The Claimant, who still suffers from depression according to a GP note, has also been away in India. Further, it did not seem that the late service – although contrary to good practice – had prejudiced the Respondent.
5. The Claimant has brought a second claim (2301747/2017). It was unclear whether the claims had been consolidated already, so – for the avoidance of doubt – the Tribunal ordered their consolidation.

## **The Law**

6. Under the Equality Act 2010 s.6:

- (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-to-day activities.*

7. The Tribunal considered Schedule 1, including:

### **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 that effect is likely to recur.*

## **Findings of fact**

8. The Claimant first complained of stress to his GP on 4 January 2017. In a long entry on that date, the GP recorded the Claimant's narrative about feeling discriminated against at work and noted, "*Been feeling stressed and unable to sleep*" and "*Reports feeling low and depressed regarding everything that is going on*". Under "Comments", the GP recorded "*low mood*" and the Claimant was prescribed anti-depressants.
9. Staying with the GP records, on 15 February 2017 the GP recorded a change of prescription to Sertraline, which is an anti-depressant. On 3 March, there was a diagnosis of "*work-related stress*".
10. A letter of 15 June 2017 from a trainee clinical psychologist at the South London & Maudsley NHS Trust records the Claimant's report of depression and anxiety and notes a score on the PHQ-9 standard of 18/27, which indicated moderate severity, and 14/21 on the GAD7, which indicated severe symptoms.
11. That letter follows correspondence showing that the Claimant began CBT in April 2017, following a telephone assessment on 14 March.
12. His Med 3 forms from the GP record "*work-related stress*" on 9 January, 15

February and 3 March 2017. The most recent Med 3 is dated 3 November 2017 and records “*Depression*”. He remains on anti-depressants and also continues with CBT.

13. The Tribunal therefore finds that there is compelling evidence that the Claimant suffers from a mental impairment, namely stress and depression, and that he did so from around the end of December 2016 up to (at least) the effective date of termination, which was 23 June 2017. The fact that he remained diagnosed with depression in November 2017 also suggests that the impairment has a long-term effect.
14. Turning to the adverse impact on his normal day-to-day activities, the Claimant’s witness statement did not address this in any detail, but he was cross-examined about the impact and gave these examples:
  - (i) from about January 2017, he could no longer concentrate at work;
  - (ii) up to December 2016, he could handle cash at work, but after that he was unable to do so; and
  - (iii) he could no longer cope with customers.
15. He was asked about a recent trip to India to visit his mother, who is unfortunately bedridden. The intention behind the questions was to show him coping and caring, but the Claimant said he was not his mother’s carer while he was there.
16. Currently, the Claimant is not working. While he worked for the Respondent, he was also working 2 or 3 days a week as a paralegal on immigration matters. He said that from January 2017, he could no longer do what he described as “brain work”. He was then largely involved with filling in forms, which was not a demanding role, but from October 2017 could no longer cope with that job either.

### **Submissions and Conclusions**

17. In his helpful submissions, Mr Wallace referred the Tribunal to relevant authorities (including *J v DLA Piper UK LLP [2010] ICR 1052* and *Herry v Dudley Metropolitan Council [2017] ICR 610*).
18. His best point was that the Claimant continued to work as a paralegal, despite his stress and anxiety. However, the evidence suggests that the Claimant’s ability to carry out his day-to-day activities in his employment with the Respondent was adversely affected and in a way that was more than minor or trivial. The Claimant did continue as a paralegal, but that work was also affected.
19. The Tribunal disagreed with Mr Wallace that this was a case where the Claimant was suffering simply as a reaction to adverse circumstances. There was clear diagnostic medical evidence (in other words, more than simply a record of what the Claimant narrated), which did not support that contention. That evidence also showed that the impairment had a long-term effect.
20. The Claimant’s oral evidence (which could not realistically be challenged) clearly demonstrated that his mental impairment affected his normal day-to-

day activities and the impact he described was substantial.

21. In all the circumstances, the Tribunal concluded that the Claimant was disabled at the material time.

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Employment Judge Cheetham

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Date 12 January 2018