



## EMPLOYMENT TRIBUNALS

**Claimant**

**Miss A Manning**

**Respondents**

**v The Governors of Trinity Church of  
England School (R1)  
London Borough of Lewisham (R2)  
David Lucan (R3)**

### ORDER AT PRELIMINARY HEARING

Heard at: **Croydon**

On: **1/10/2019**

Before: **Employment Judge Wright**

**Appearances**

**For the Claimant: Mr D Rommer - Solicitor**

**For the Respondent: Ms I Omambala - Counsel**

### PRELIMINARY HEARING JUDGMENT

The Tribunal finds the claimant is a disabled person for the purposes of the Equality Act 2010.

1. At a preliminary hearing (PH) on 24/4/2019 the case was listed for a public PH to determine whether or not the claimant was a disabled person at the relevant time (July/August 2018) for the purposes of s. 6 Equality Act 2010 (EqA).

(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.

...

(6) Schedule 1 (disability: supplementary provision) has effect.

2. The Tribunal was also referred to schedule 1 and to the Equality Act 2010 Guidance - on matters to be taken into account in determining questions relating to the definition of disability.
3. Oral reasons were given at the PH and the respondents requested written reasons in accordance with Rule 62(3).
4. The burden is on the claimant and she gave evidence. There was a bundle of documents, however in the main, only the claimant's disability impact statement and an expert report from Mr Nicholas Morris were referred to.
5. The parties made oral submissions, which set out their respective positions.
6. The claimant relies upon a physical impairment of: endometriosis; adenomyosis; and anaemia (anaemia can be relied upon as it has not been 'cured' it is being managed by medical treatment).
7. The Tribunal considered whether these conditions and the symptoms produced (eg pain or heavy bleeding) have a substantial and long-term adverse effect on the claimant's ability to carry out day-to-day tasks.
8. The Tribunal found it was not disputed that the claimant had the conditions upon which she relies. The respondents however dispute they fall within the s. 6(1)(b) EqA definition. The issue is around the effect the conditions have.
9. A substantial effect is one that is more than minor or trivial and the Tribunal was referred to para B4 of the Guide in respect of cumulative effects of an impairment. As an example, the cumulative effects are: the pain stops the claimant from sleeping and that then impacts on her ability to carry out other day-to-day tasks. A normal day-to-day task would be coming home from work and doing domestic or social activities, not going to bed; as the claimant said she did. For this claimant, working and studying was a normal day-to-day task, which she was no longer able to carry out.
10. On the long-term nature of the condition as per schedule 1, the expert report records that the claimant had experienced period pain for 5 months in 2011. There is then a gap in the chronology until a referral in July 2014 for heavy periods. There is an ultrasound scan and blood tests in 2015 followed by a misdiagnosis of PCOS. The Tribunal notes that just because the PCOS was misdiagnosed, that does not prevent the symptoms or even the fact the claimant was on the wrong medication from contributing to or being considered as a disability. The Guide says it is not necessary for the cause of the impairment to be established and so the misdiagnosis was causing the claimant physical problems.
11. There was again a gap in 2016 and in June 2017 the claimant was prescribed Mefenamic acid. The expert says he is unclear whether that was for the pain or heavy periods, however both are symptoms of the endometriosis and adenomyosis.
12. In October 2017 the claimant was diagnosed as anaemic (if the claimant did not wish to take Mefenamic acid, she is not obliged to take all medication

which is suggested or prescribed and she had been misdiagnosed in the past). In April 2018 there was a further visit to her GP and a referral to hospital. Eventually the claimant's symptoms improved, once she had a coil inserted in 6/7/2018.

13. The Tribunal agrees that the expert misunderstood what is meant by long-term, as he refers to the condition ending if claimant had an ablation, hysterectomy or it the alternative, said her symptoms would stop at the menopause.
14. Based upon the medical evidence which the Tribunal saw and which is summarise above, the finding is that the effect was long-term and had lasted at least 12 months at the material time or was likely to last for 12 months as the expert stated it would last until the menopause or until medical intervention. In view of claimant's age and based upon what she said in her impact statement, a hysterectomy was unlikely; particularly so with the success of the coil.
15. In addition to the to normal day-to-day activities referred to above, the Tribunal heard from the claimant that when her symptoms flared up, she was unable to walk, stand or drive; these are all day-to-day activities she was unable to carry out.
16. The Tribunal accepted there is a cumulative effect as a result of the claimant's conditions; eg the endometriosis causes the blood loss, which causes the anaemia, which then results tiredness. The endometriosis also causes the pain which results in the claimant being unable to sleep and the cumulative effect is she is unable to carry out day-to-day tasks. The Tribunal accepts this may have only been on the days of her monthly cycle but there is no requirement in the EqA that the disability be constant. All that is required is that the impairment satisfies the definition.
17. Although the Tribunal disagrees with the expert's conclusion, as stated in the instructions to him, the question of whether the claimant is disabled is ultimately a matter for the Tribunal.
18. Finally, the Tribunal finds that the coil is medical treatment and so is accepted to be a measure under Schedule 1(5) of the EqA.
19. The claimant has discharged the burden of proof placed upon her, and the Tribunal finds on the balance of probabilities based upon the evidence, which was heard and the documents seen, that she is a disabled person for purposes of the EqA.
20. The claim will now proceed to the full merits hearing listed for 6/7/2020 and will proceed as per the directions given in the Order dated 24/4/2019.

Employment Judge Wright

2 October 2019

**Online publication of judgments and reasons**

The Employment Tribunal (ET) is required to maintain a register of all judgments and written reasons. The register must be accessible to the public. It has recently been moved online. All judgments and written reasons since February 2017 are now available online and therefore accessible to the public at:

<https://www.gov.uk/employment-tribunal-decisions>

The ET has no power to refuse to place a judgment or reasons on the online register, or to remove a judgment or reasons from the register once they have been placed there. If you consider that these documents should be anonymised in anyway prior to publication, you will need to apply to the ET for an order to that effect under Rule 50 of the ET's Rules of Procedure. Such an application would need to be copied to all other parties for comment and it would be carefully scrutinised by a judge (where appropriate, with panel members) before deciding whether (and to what extent) anonymity should be granted to a party or a witness.