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# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Jugdeep Buttar  
**Respondent:** Commissioner of Police of the Metropolis  
**Heard at:** East London Hearing Centre  
**On:** 25 October 2019  
**Before:** Employment Judge Hallen (sitting alone)

## Representation

**Claimant:** Ms E Grace (Counsel)  
**Respondent:** Mr P Edwards (Counsel)

# RESERVED JUDGMENT

The judgment of the Tribunal is that:-

1. The Claimant is disabled as defined by section 6 of the Equality Act 2010.
2. The issues for the substantive hearing were agreed between the parties at the preliminary hearing on 22 May 2019. In addition, directions for the substantive hearing have already been given by Regional Judge Taylor on 22 May 2019 and the parties are required to comply with them in order to be prepared for this hearing.

# REASONS

## Background

1 Following the preliminary hearing on 25 October 2019 and prior to this reserved judgment being sent to the parties, the Tribunal asked the parties to provide written representations to the Tribunal within 14 days as it was considering an anonymity order not identifying the parties in respect of the reserved judgment pursuant to rule 50(3)(b) of

the Tribunals Rules of Procedure 2013 and Section 12(2) of the Employment Tribunals Act 1996. The Respondent in its written representations objected to an anonymity order and the Claimant requested that there be an anonymity order made until promulgation of the final determination of her claims. The Respondent cited that the default position in English Law is and should be that it is in the public interest that the full decision of the courts and tribunals, including the names of the parties, should be published (F –v- G (2012) ICR 246. It argued that the Tribunal when considering the imposition of an anonymity order should give full weight to the principle of open justice and the convention right of freedom of expression. The Claimant in her written submission in support of the order cited section 12(7) of the Employment Tribunals Act 1996. It was submitted on her behalf that evidence of a personal nature such as any evidence of a medical or other intimate nature would be disclosed in the judgment and would cause her significant embarrassment if reported. It was submitted that the symptoms of her endometriosis would cause her significant embarrassment.

2 After considering the written representations of the parties, the Tribunal after weighing up the parties convention rights under the Human Rights Act 1998 determined that there should not be an anonymity order in this case. The Tribunal had particular regard to the importance of the convention right to freedom of expression and noted that derogations from the general principle of open justice is granted only in exceptional circumstances and when they are strictly necessary as measures to secure the proper administration of justice. Although the Tribunal noted that evidence relating to the Claimants medical conditions could cause her embarrassment, it did not conclude that this was sufficient for the tribunal to override the principle of open justice in this case.

3 On 22 May 2019, Regional Employment Judge Taylor had a preliminary hearing at which she listed the question of disability to be determined at a preliminary hearing listed for 25 October 2019. At paragraph 8 of the case management summary, she stated, “It is noted that the Claimant asserts that she is disabled as defined in section 6 and Schedule 1 of the Equality Act 2010 in respect of the following medical conditions: –

- (a) Dyslexia;
- (b) Endometriosis;
- (c) Hypertension;
- (d) Rheumatoid arthritis and/or
- (e) Work-related stress and anxiety.’

4 She gave directions for the preliminary hearing to determine the issue of whether the Claimant was disabled at the material time in respect of the above conditions. She also gave directions in respect of preparation for the preliminary hearing as well as directions for the disclosure of medical evidence. As the Respondent continued to dispute that the Claimant was disabled as defined, the preliminary hearing proceeded as directed by Regional Judge Taylor.

5 At the commencement of the preliminary hearing, the Tribunal had before it a disability impact statement from the Claimant and an agreed bundle of documents made up of extensive medical records relating to the Claimant of 416 pages. In addition, the Claimant’s counsel produced a skeleton argument.

6 The Claimant's witness statement confirmed that she was relying on items (a), (b), (c) and (e) in Regional Judge Taylor's above list of medical conditions in respect of her disability claim. However, in the disability impact statement, the Claimant confirmed that she suffered from osteoarthritis not rheumatoid arthritis. She confirmed that she relied on this health condition. The Claimant asserted that reference to rheumatoid arthritis in the Claim Form was a mistake and that she never suffered from rheumatoid arthritis. She sought through her counsel in closing submissions to amend reference to rheumatoid arthritis to osteoarthritis. The Claimant's counsel confirmed that the Respondent was on notice that this was the correct condition as of 24 July 2019 in respect of a letter sent to the Respondent's solicitors by the Claimant's solicitors specifying osteoarthritis as one of the medical conditions which the Claimant was going to rely on at the preliminary hearing. In addition, she submitted that the disability impact statement that was exchanged prior to the date of the preliminary hearing also raised this condition so the Respondent was well aware of what was being argued. At the preliminary hearing, the Respondent's counsel took the approach that none of the conditions the Claimant was asserting amounted to a disability as defined whether it was rheumatoid arthritis or osteoarthritis. His approach was not to cross examine the Claimant in respect of rheumatoid arthritis after she confirmed she did not suffer from the condition. He asserted that evidence of osteoarthritis in the bundle of documents was scant and did not amount to a disability and nor did the other conditions relied upon. He objected to the amendment of the condition from rheumatoid arthritis to osteoarthritis as it was made late in the day.

7 The Claimant's counsel confirmed that the amendment was simply a re-labelling exercise and that the Respondent did not suffer any prejudice as it was aware prior to the preliminary hearing of what was being asserted and had the opportunity to question the Claimant on both of these conditions. Furthermore, she asserted that the Respondent had made the point that in its opinion there was scant evidence of osteoarthritis in the medical evidence and therefore had an opportunity to make whatever submissions it wished to in respect of this condition.

8 The Tribunal having regard to the guidance given to it in *Selkent Bus Company – v- Moore* [1996] IRLR 661, considered all the circumstances and balanced the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. Accordingly, the Tribunal weighed up the application for an amendment to include osteoarthritis rather than rheumatoid arthritis and concluded that the amendment should be granted as it was merely a relabeling exercise, did not place the Respondent at any prejudice as the Respondent had the ability of reviewing the disability impact statement prior to the preliminary hearing as well as the bundle of documents containing the claimants medical evidence. The Respondent had all that it needed to ask the Claimant whatever questions it needed to do in respect of osteoarthritis as well as making submissions on this condition.

9 The Tribunal heard evidence from the Claimant after reading her disability impact statement and she was subject to cross examination by the Respondent. In addition, the parties' respective counsel made closing submissions which the Tribunal was greatly assisted.

## **Facts**

10 The Claimant who is a 42-year-old woman confirmed that she suffered from a list of health conditions which she said amounted to a disability under the Equality Act 2010. She accepted at the beginning of her evidence that although she suffers from dyslexia,

she was not relying upon this health condition in respect of her argument that she was disabled. She confirmed that she was relying upon her health conditions of endometriosis, hypertension, osteoarthritis and work-related stress and anxiety.

11 In 2010, the Claimant suffered severe back and pelvic pains with pain in her vaginal area and ovaries which at the time she put down to her periods. She also had severe frequent urination problems which she put down at the time to having a lot of water to drink. During her pregnancies (which resulted in miscarriages), through internal scans it was discovered that she had endometriosis in around late 2016 and early 2017. During the same period she also had cysts on her ovary and both conditions were causing her severe pain, anxiety and discomfort.

12 At times due to this condition, the Claimant has had random bleeding outside her menstruation period and this would sometimes happen on the way to work on the tube and she would have to rush back to get changed or call her husband to collect her and take her to work. This caused her severe stress and anxiety.

13 She confirmed that stress was a trigger point and made her endometriosis worse. In May 2017, she had an operation to treat her endometriosis which removed cysts and reduced some of her symptoms. However, she still suffers with severe fatigue, a frequent need to urinate and lower back and abdominal pain which can be stabbing and shooting as well as having painful periods. She cannot travel on public transport for more than 40 minutes due to the pain from her osteoarthritis and bleeding that she experiences from her endometriosis. As a consequence of this condition, she has always to plan her routes by car and public transport mindful of where the nearest public toilets might be if an emergency arose. There is no cure for endometriosis and it is a lifelong condition. However, in order to manage this condition, the Claimant takes medication as prescribed by her GP including paracetamol, ibuprofens and co-codamol.

14 In addition to endometriosis, the Claimant suffers from hypertension. This condition was diagnosed by chance in 2016 in pre-operation checks where her heart rate readings were very high. The Royal London hospital had sent a referral back to her GP to monitor her heart and she was prescribed with amlodipine at the rate of 5 mg per day. If the Claimant did not take this medication, she would be at risk of heart attack and or stroke. Being in stressful situations makes the Claimant's hypertension worse.

15 Furthermore, the Claimant has been diagnosed with osteoarthritis. She was diagnosed with this condition in May 2018 when she went for an ultrasound scan. The scan confirmed that she had osteoarthritis on her left side and suffered with severe pain in her neck, left shoulder and arm. She also suffers with spasms and nerve pain. The Claimant completed a physiotherapy course in May to July 2018. She also attends regular massages and acupuncture sessions.

16 On really bad days (once or twice a month), when the Claimant is in severe pain with her neck, shoulder and back she is often bedridden and unable to walk or climb stairs. She also has problems with sleeping due to pain caused by endometriosis and osteoarthritis. The Claimant cannot lift heavy objects as it causes severe stress and pain to her upper left side of her body. Her husband does the heavy shopping as well as household cleaning tasks. In order to manage the pain of endometriosis and osteoarthritis, the Claimant takes 250 to 500 mg of Mefenamic acid as well as the other painkillers mentioned earlier.

17 Suffering from the health conditions of endometriosis, hypertension and osteoarthritis, the Claimant has had a knock-on effect of suffering severe stress and anxiety especially when the endometriosis and osteoarthritis flare up.

**Law**

18 The definition of “disability” for the purposes of this preliminary hearing is found in section 6 of the Equality Act 2010 and schedule 1 of the Equality Act 2010. Section 6 provides as follows: –

“6. Disability

(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 affect on P’s ability to carry out normal day-to-day activities.”

19 Paragraphs 2, 5, and 8 of schedule 1 of the Equality Act 2010 respectfully state: –

a. The effect of an impairment is long-term if it has lasted or is likely to last for at least 12 months, or is likely to last for the rest of the life of the person affected. Further, an impairment which ceases to have a substantial adverse effect on day-to-day activities is to be treated as continuing to have that effect if that effect is likely to re-occur;

b. Impairments are to be treated as having a substantial adverse effect if measures are being taken to treat or correct it and but for that, it would be likely to have that effect;

c. Where a person has a progressive condition, if as a result of that condition the person has an impairment which has (or had) an effect on the person’s ability to carry out normal day-to-day activities, but the effect is not (or was not) a substantial adverse effect, the person is to be taken to have an impairment which has a substantial adverse effect if the condition is likely to result in such an impairment.

20 As provided by section 212 of the Equality Act 2010, “substantial” means “more than minor or trivial“. This is a relatively low threshold that is confirmed in Leonard –v- the South Derbyshire Chamber of Commerce (2001) IRLR 19.

21 An impairment may have a substantial adverse affect even if the relevant effect is not caused by the impairment directly. The Equality Act requires a causal link between the impairment and the substantial long-term adverse effect, but it does not require that the causal link is a direct causal link. This was set out by the capital EAT in Sussex Partnership NHS Foundation Trust V Norris UKEAT/0031/12: –

“if on the evidence the impairment causes the substantial adverse effect on ability to carry out day-to-day activities it is not material that there is an intermediate step between the impairment and its effect provided there is a causal link between the two” (per Slade J).

22 Finally, the cumulative effect of more than one impairment should be taken into account by the Employment Tribunal. In *Ginn –v- Tesco Stores Ltd* UKEAT/0197/05, the EAT held that the question for the Employment Tribunal to determine is whether the combined effect of the impairments is to have a substantial adverse effect on the employees ability to carry out normal day-to-day activities. The Employment Tribunal is to be concerned with the impairment itself not the cause of the impairment (*College of Ripon and York St John V Hobbs* (2002) IRLR 185).

### **Tribunal's Conclusions**

23 The Tribunal finds that there is ample evidence to establish that the Claimant fits the definition of disability as set out in section 6 of the Equality Act 2010. The medical evidence supports that each of the impairments relied upon by the Claimant was a long-term condition at the material time. While some of these conditions were only formally diagnosed after a lengthy period of time, including the osteoarthritis and the endometriosis, the Tribunal notes that it is concerned with the impairment itself not the cause of the impairment. The conditions cited by the Claimant namely endometriosis, hypertension, osteoarthritis and stress as a result of these conditions are well-known long-term conditions. Osteoarthritis is a well-known progressive condition and this is reflected in the medical notes which referred to “degenerative changes” (page 387). Whilst the Respondent submitted that the Claimant did not produce expert medical evidence and relied upon her medical records, the Tribunal noted that the Respondent’s own Occupational Health Advisor at page 250-252 of the bundle of documents on 29 November 2018 noted that the Claimant had a past history of arthritis, endometriosis, high blood pressure and his interpretation of the relevant law relating to disability was that the Claimants impairment was likely to be a disability because it had lasted longer than 12 months and without the benefit of treatment there would be a significant impact on her ability to carry out normal day-to-day activities.

24 The medical records show that the symptoms of all of the Claimant’s stated conditions apart from hypertension was in existence from around 2011. The hypertension was diagnosed in 2016. Furthermore, the medical evidence from the Claimant and the Respondent’s Occupational Health Advisors confirms that the disability had a substantial adverse effect on the Claimant’s ability to carry out the day-to-day requirements of her role. The Tribunal noted that the threshold for substantial adverse effect is not particularly high under the legislation. Accordingly it cannot be sensibly argued by the Respondent that the following do not have substantial adverse effects, cumulatively or otherwise on the Claimant’s day-to-day role: –

- a. Endometriosis which causes severe lower abdominal pain, intermittent bleeding and fatigue all of which may be triggered by stress;
- b. Osteoarthritis which results in persistent left-sided musculoskeletal pain;
- c. Hypertension which means that the Claimant becomes extremely distressed in stressful situations because of the risks of palpitations, heart-attack or stroke and is left fatigued when her high blood pressure is elevated;
- d. Work-related stress which results in fatigue. The medical records show that stress and anxiety have been ongoing issues for the Claimant for a considerable time.

25 The Claimant's evidence has been that in relation to day-to-day activities her conditions have a substantial adverse effect. These include the following: –

- a. That travel on public transport leaves her in pain and suffering with anxiety as a result of vaginal bleeding associated with endometriosis and musculoskeletal pain for her osteoarthritis.
- b. The Claimant is unable to travel on public transport for long distances due to intermittent bleeding and frequent urination and has to plan her transport routine.
- c. The Claimant is unable to walk or climb stairs when the arthritic pain is at its most intense.
- d. She has difficulty sitting for prolonged periods of time including sitting at a desk as a result of osteoarthritis and endometriosis.
- e. She has difficulty sleeping as a result of pain as well as due to her increased heart rate.

26 As was evident from the medical records and the Claimant's disability impact statement, the effects of her conditions are controlled by treatment and medication without which the Claimant would be unable to carry out her role. The Employment Tribunal must disregard the effect of measures she has been taking to treat or correct the conditions and look at how the impairments would impact upon the Claimant without these measures. On the Claimant's evidence, without medication, physiotherapy and massage she would be bedridden. In the light of the above, the Tribunal finds that the Claimant is and was disabled at the material time and may proceed with her claim.

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Employment Judge Hallen  
Dated: 9 December 2019