EMPLOYMENT TRIBUNALS

Claimant: Mr A Young

Respondent: Wm Morrison Supermarkets PLC

Heard at: Hull **On:** 7 February 2020

Before: Employment Judge Evans (sitting alone)

Representation
Claimant: Mr Bronze (counsel)
Respondent: Mr Liberadzski (counsel)

JUDGMENT

1) The Claimant was a person with a disability during the relevant period.

REASONS

Preamble

1. The Claimant was employed by the Respondent as a café assistant from 28 July 2018 until he was dismissed on 14 May 2019. Following his dismissal he brought a claim of disability discrimination on 14 August 2019. The Respondent presented a response and there was a preliminary hearing for case management purposes before Employment Judge Maidment on 9 October 2019.

2. At that preliminary hearing the Claimant clarified that he pursued a single claim: that by dismissing him the Respondent had subjected him to unfavourable treatment because of something arising in consequence of his disability. The Claimant explained that he was a person with a disability for the purposes of section 6 of the Equality Act 2010 ("the EQA") because he suffered from Attention Deficit Hyperactivity Disorder ("ADHD") and anxiety. The Respondent did not accept that at all relevant times the Claimant had a disability. A preliminary hearing was therefore listed for 7 February 2020 to deal with the issue of disability.

3. The parties had agreed a bundle before the preliminary hearing on 7 February 2020 running to 215 pages. I also had before me a witness statement for the Claimant. Both representatives provided skeleton arguments.

4. The Claimant gave oral evidence after there had been a discussion of any adjustments necessary to enable him to participate fully. As a result of this discussion it was agreed that the Claimant would have a break after he had been giving evidence for around 20 minutes and that questions would be kept short.

5. The representatives each made submissions after the Claimant had given his evidence. By the time the evidence had been heard, submissions agreed and further contingent directions agreed, it was 1pm. I therefore reserved my decision, having another case to hear in the afternoon.

The issues and the discussion at the beginning of the hearing on 7 February 2020

6. Employment Judge Maidment set out the issues in relation to disability in the Case Management Summary prepared following the hearing on 8 October 2019:

   6.1. Did/does the Claimant have a mental impairment, namely ADHD and/or anxiety? At the beginning of the hearing before me, the Respondent conceded that at all relevant times the Claimant had had the mental impairment of ADHD but not that of anxiety.

   6.2. If so, did/does the impairment have a substantial adverse effect on the Claimant's ability to carry out normal day-to-day activities?

   6.3. If so, is that effect long-term? In particular, when did it start and:

      6.3.1. has the impairment lasted for at least 12 months?

      6.3.2. Is or was the impairment likely to last at least 12 months or the rest of the Claimant's life, if less than 12 months?

7. At the beginning of the hearing on 7 February 2020 there was a discussion about whether the Claimant still relied in his claim on the mental impairment of anxiety. After taking instructions, Mr Bronze confirmed that the Claimant did not rely on the mental impairment of anxiety. His claim was based purely on the mental impairment of ADHD.

8. I queried with the representatives what the relevant time period was for the purpose of assessing whether the Claimant had a disability for the purposes of the EQA. It was agreed that the relevant time period was 1 April to 14 May 2019.

The Law

9. Section 6 of the EQA provides that 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.

10. An effect is "substantial" if it is "more than minor or trivial" (section 212 of the EQA).

11. There are supplementary provisions in part 1 of Schedule 1 to the EQA which deal with the meaning of "long-term":

   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.

   (3) For the purposes of sub-paragraph (2), the likelihood of an effect recurring is to be disregarded in such circumstances as may be prescribed.
   (4) Regulations may prescribe circumstances in which, despite sub-paragraph (1), an effect is to be treated as being, or as not being, long-term.

12. The meaning of "likely to" in these circumstances is "could well happen" (SCA Packaging Ltd v Boyle [2009] UKHL 37.

13. "Guidance on matters to be taken into account in determining questions relating to the definition of disability (2011)" ("the Guidance") was issued by the Secretary of State pursuant to section 6(5) of the EQA. The Guidance does not impose any legal obligations in itself and is not an authoritative statement of the law. However the Tribunal must take into account any aspect of the Guidance which appears to it to be relevant.

14. The burden is on the Claimant to show that he had a disability at the material time.

15. The question of whether the Claimant had a disability at the material time is a matter for the Tribunal rather than for any medical expert.

16. In cases involving mental health, the assessment of disability can be particularly difficult. The issue was considered in J v DLA Piper UK LLP [2010] IRLR 2010. The EAT set out the correct approach at paragraph 40 of its judgment:

    (1) It remains good practice in every case for a tribunal to state conclusions separately on the questions of impairment and of adverse effect (and, in the case of adverse effect, the questions of substantiality and long-term effect arising under it) as recommended in Goodwin v Patent Office [1999] ICR 302 .

    (2) However, in reaching those conclusions the tribunal should not proceed by rigid consecutive stages. Specifically, in cases where there may be a dispute about the existence of an impairment it will make sense, for the reasons given in para 38 above, to start by making findings about whether the claimant's ability to carry out normal day-to-day activities is adversely affected (on a long-term basis), and to consider the question of impairment in the light of those findings.

    (3) These observations are not intended to, and we do not believe that they do, conflict with the terms of the Guidance or with the authorities referred to above. In particular, we do not regard the Ripon College and McNicol cases as having been undermined by the repeal of paragraph 1(1) of Schedule 1 , and they remain authoritative save in so far as they specifically refer to the repealed provisions.

The Claimant's oral evidence

17. The Claimant answered supplementary questions posed by Mr Bronze and was cross-examined by Mr Liberadszki. I find that the Claimant was honest in his answers to the questions asked. His answers were also consistent with the documents in the bundle relating to his health. In summary, I found him to be a credible witness and, indeed, Mr Liberadszki did not suggest otherwise in his oral submissions.

18. In his supplementary questions, Mr Bronze asked the Claimant about an incident referred to in the letter dated 21 July 2009 (page 106 of the bundle). The Claimant recalled that a leak in the window of a holiday home had sent him into a panic and that, even after the leak had been repaired, he had found it difficult to occupy the room. Further, he had had a "massive meltdown" when they had turned up at the swimming pool and discovered it to be closed.

19. The Claimant spoke about difficulties he had had during both his primary and secondary education. He explained adjustments made for him: in particular he had been given a pass which permitted him to leave the classroom without explanation to go to the SLT support learning area until he felt comfortable. He described an incident when he had been at catering college when he had thrown around his and other people's belongings, and thrown a locker on the floor, having become frustrated by his inability to debone a chicken.

20. In answer to supplementary questions, the Claimant explained that he was taking slow release Equasym. He thought that he had been taking that since around March 2018. He also referred to difficulties in continuity of care which he had experienced around the time he had reached the age of 18: the care he had previously received as a child had stopped abruptly and he had gone "into a black hole".

21. In answer to questions asked in cross-examination, the Claimant confirmed that he had been on medication since he had been diagnosed with ADHD in 2009. He confirmed that he had had the pass referred to in his supplementary evidence until he had left High School aged 16. He was asked about the incident referred to in paragraph 22 of his witness statement and confirmed that that incident had happened in June or July 2018.

22. He was asked about the "dip in my behaviour" referred to in paragraph 22. He answered that it can "dip and rise, there are good days when I feel happy to do tasks, and bad days when it can make me feel really, self-harm and have worse thoughts". He confirmed that there had been no other particular incidents since leaving college.

23. He confirmed that the first paragraph under the heading "Conclusion and Recommendations" (page 214 of the bundle) of the Occupational Health Report prepared for the Respondents by Medigold Health ("the Occupational Health Report") reflected his understanding of how ADHD had affected him.

24. He was asked about paragraph 21 of his witness statement, which described his family assisting him with timekeeping and reminding him to set an alarm clock. He explained that because of his ADHD "I don't think, I just get on with it, I don't think, I can't keep up with time, I'll be late or early, sometimes I don't get up because I don't set the alarm". He was asked when he had last overslept and he said it was an occasion during his employment with the Respondent.

25. He was asked about paragraph 23 of his witness statement which described his family taking him to appointments. He said that if he was not taken he would forget which way to walk, get the necessary timekeeping keeping wrong, he was unable to speak to someone alone, he was not at all comfortable doing "one-to-one talking". In answer to further questions he said that he was always accompanied to all medical appointments by his parents. He had never attended any medical appointments alone.

26. He was asked if he understood what he was at told medical appointments. He said that it "goes in and comes straight back out" and that he would turn and look to his parents explanations.

27. He was asked about paragraph 24 of his witness statement which referred to his parents washing his clothes for him and putting them in a particular place. He accepted that many young people of his age living home would have their clothes washed by their parents. However, he explained that he needed to be reminded to get dirty clothes out of his bag and, also, that it was important to him that clothes were returned to a particular place. If his clothes were in the wrong place he would "kick off", stating that he wanted the clothes "here" and "not there".

28. He was asked about paragraph 25 of his witness statement and whether he still had an issue with not understanding whether people were laughing at or with him in group situations. He confirmed that he still had that issue.

29. He was asked about paragraph 25 of his witness statement. He was asked whether he ever made phone calls alone. He said that he did not. If someone asked him to call them, he would say that he would rather just text instead.

30. He was asked by reference to the letter from Dr Forster dated 30 November 2017 at page 167 whether the question of whether he had autism (as referred to in the letter) have been investigated. He said that it had not been. It was put to him that Dr Forster said that the obsessiveness might come from undiagnosed autism rather than from ADHD. The Claimant said he understood one could be "borderline of both".

31. The Claimant confirmed that he had been taking 30 mg daily of Equasym during his employment with the Respondent and that it would wear off over eight hours. He was asked whether the issues with timekeeping and washing were issues when the medication had worn off and he said that they were.

32. Finally, he was asked by Mr Liberadzski whether he thought that the kind of behaviour he described might come from anxiety or autism rather than from ADHD. I commented that the Claimant was not a medical expert and, in light of his obvious vulnerability, this was not in my view an appropriate question to ask him. Mr Liberadszki did not pursue the point and said that he would address it instead in submissions.

33. In answer to questions which I asked, the Claimant confirmed that the effects on him of his ADHD as set out in paragraphs 23 and 24 of the witness statement and also paragraph 25 would have all applied in April and May 2019.

34. I asked the Claimant what would happen if he did not take his medication. He said that if he turned up for work without having taken his medication things would "start off okay". But then, if matters did not go his way during his shift, for example if he had asked for help and was not given it, he would "be likely to swear and kick off". He could become quite aggressive if he was not on medication. Behaviour would "drop", he would feel "low", and not want anyone to speak with him.

Submissions

35. Both representatives relied primarily on their written skeleton arguments. The oral submissions including the following points. The submissions are recorded in full in the record of proceedings on the Tribunal's file. I have taken all of the submissions into account when reaching my conclusions below.

36. Mr Liberadszki for the Respondent emphasised that the Tribunal needed to conclude on the balance of probabilities that the mental impairment – ADHD – was the cause of any adverse effect on the ability of the Claimant to carry normal day-to-day activities. He referred in particular to paragraphs 53 and 55 of the decision of the Employment Appeal Tribunal ("the EAT") in Royal Bank of Scotland v Morris [2010] UKEAT/0436/10. This was a case in which the Claimant's case of disability discrimination depended on him showing that he had a disability by virtue of "clinical depression" from which he said suffered. The EAT noted at paragraph 55 that there was no rule of law that proving disability required first-hand expert evidence but it went on to quote Lindsay P in Morgan v Staffordshire University [2002] ICR 475 has having observed that "the existence or not of a mental impairment is very much a matter for qualified and informed medical opinion".

37. Mr Liberadzski also referred in particular to paragraphs 55, 58, 59 and 63 of JC v Gordonstoun Schools Limited [2016] CSIH 32. In particular, paragraph 55 noted that the Tribunal's role was not inquisitorial – it is for the person bringing a claim to show that the impairment in question "is at a level which amounts to a substantial and long-term adverse effect on normal day-to-day activities".

38. Mr Liberadzski submitted that the Occupational Health Report was simply an insufficient basis for finding that the adverse effects of which the Claimant obtained were caused by the ADHD from which he suffered.

39. Further, there were gaps in the evidence which mean that the Tribunal could not say whether any adverse effects were caused by the ADHD from which the Claimant suffered or by something else.

40. Finally, he noted that the matters he had extracted from the Claimant's evidence at paragraphs 12 and 14 of his own skeleton argument were insufficient to show that, even if causation were proved, there were substantial adverse effects on the Claimant's ability to carry out normal day-to-day activities.

41. Mr Bronze for the Claimant submitted that in order to show that there were substantial adverse effects on his ability to carry out normal day-to-day activities he did not need to prove that it was impossible for him to do something. Consequently, Mr Liberadzski's points in paragraphs 12 and 14 of his skeleton argument were not well made.

42. The pattern was clear: if the Claimant did not manage his medication carefully, he would go off the rails. He had not been cured.

43. It was not necessary for the Claimant to produce expert medical evidence and it was often the case that the effects of an impairment flowed naturally from it. Mr Bronze referred in particular in this respect to J v DLA Piper UK LLP. Further, the Occupational Health Report was unequivocal and contained the author's view that the Claimant had a disability.

44. The prevailing tide of the evidence supported the Claimant's case. There was evidence at the following pages demonstrating adverse effects: pages 70, 112, 75-78, 149, 152, 163, 112, 167 and 60.

45. There was also significant evidence about what happened when the treatment stopped: pages 131 to 132, 138, 149 and 156. The Claimant had been on medication for many years and went off the rails if he stopped taking it.

46. Mr Bronze submitted that the Respondent had accepted that the Claimant had been honest in his evidence and the effects that he described on his ability to carry out normal day-to-day activities was clearly more than minor or trivial. It was not normal for a 19 year old to be unable to attend medical appointments alone.

47. Mr Liberadzski wished to reply briefly and I allowed him to do so. He said much of the medical evidence referred to related to an earlier period, not the period of April to May 2019 which was the relevant period for the purpose of the Tribunal. The witness statement did not deal with all the matters dealt with by paragraph 15 of the Claimant's skeleton argument. The view of the writer of the Occupational Health Report on whether the Claimant was disabled was just that – whether the Claimant had a disability was a question for the Tribunal.

Findings of fact

48. I do not refer to all of the evidence in my findings of fact but I have taken it all into account when making them.

Physical or mental impairment

49. Did the Claimant have a physical or mental impairment between 1 April and 14 May 2019 ("the relevant period")? Yes he did. He had ADHD. The Respondent has conceded that this was the case.

Did something have an adverse effect on the ability of the Claimant to carry out normal day-to-day activities during the relevant period

50. The Guidance notes at its paragraph D3 that:

> *In general, day-to-day activities are things people do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities. Normal day-to-day activities can include general work-related activities, and study and education-related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or a shift pattern.*

51. I find that during the relevant period (and as at the date of the hearing before me) something did have an adverse effect on the ability of the Claimant to carry out the following normal day-to-day activities:

    51.1. **Organising clothes:** organising and storing one's clothes after they have been washed is a normal day-to-day activity. It is something that most people give little thought to and most people will tolerate differences in how and exactly where their clothes are organised and stored. However I find that something had and has an adverse effect on the ability of the Claimant to carry out this normal day-to-day activity because it is necessary for his parents to do it for him and to do it in a very particular way, with clothes being stored in exactly the same place each time after they have been washed.

    51.2. **Organising medication:** taking prescribed medication at specified intervals is a normal day-to-day activity. I find that something had and has an adverse effect on the ability of the Claimant to carry out this day-to-day activity. I so find because I accept as true his evidence that it is necessary for his parents to remind him to take his medication.

    51.3. **Setting alarm clock, being in the right place at the right time:** being able to take steps to manage one's own time, for example, by setting an alarm clock, so that one can be in the right place at the right time is a normal day-to-day activity. I find that something had and has an adverse effect on the Claimant's ability to carry out normal day-to-day activities necessary to manage his time, such as setting an alarm clock. This is because I accept as true his evidence that his parents do this for him. I also accept as true his evidence that "I just get on with it, I don't think, I can't keep up with time, I'll be late or early…"

    51.4. **Speaking on the telephone:** speaking on the telephone is a normal day-to-day activity. I find that something had and has an adverse effect on the ability of the Claimant to carry out this activity because I accept his evidence that he avoids speaking on the telephone wherever possible – and that if he has to make a phone call his parents will sit with him.

    51.5. **Attending medical appointments:** attending medical appointments is a normal day-to-day activity. I find that something had and has an adverse effect on the ability of the Claimant to carry out this normal day-to-day activity because I accept as true his evidence that he never attends such appointments alone and that this is in part due to his inability to understand and remember what is said to him (it goes in one ear and comes out the other, to paraphrase only slightly his evidence on this issue) and in part because of an inability to navigate to the correct location for an appointment at the right time.

52. The Claimant also made reference to the following activities which he had difficulties with:

    52.1. Reflecting before speaking; and
    52.2. Regulating emotions: i.e. dealing with emotions internally and not immediately externalising them.

53. However I find that these internal mental processes are not in and of themselves normal day-to-day activities, although they are undoubtedly matters which *might* have an adverse effect of the ability of someone to carry out normal day-to-day activities. The Claimant has failed to provide sufficient evidence for me to make further findings in this regard.

If so, was the "something", the ADHD from which the Claimant suffered?

54. A sensible starting point for my consideration of this issue is the detailed five-page letter of diagnosis dated 1 December 2008 written by Dr Sophie Roberts, a consultant child and family psychiatrist, contained at page 86 of the bundle. It is worth noting that this letter was written in response to the letter at page 74 on 22 July 2008, the thrust of which

was that there was a concern that the Claimant's presentation was indicative of an "Autistic Spectrum Disorder".

55. At page 2 of the letter (page 87 of the bundle) Dr Roberts notes:

> *He gets quite anxious and needs to know what exactly is happening and will often ask for reassurance what time it is for example. He has no sense of time. He finds it difficult to organise himself for example if he is having bath he will put his pyjamas straight on without getting himself dry. … He is very impulsive for example banging on cars in the street and is easily led by other children*

56. At page 5 of the letter (page 90 of the bundle), Dr Roberts notes:

> *Mrs Freeman completed the sensory profile and it showed a mixed pattern of difficulties in sensory regulation including difficulties with emotional regulation, distractibility, auditory processing, touch processing and multi sensory processing as we as some modulatory difficulties and significant problems in terms of emotional – socio regulation and associated behavioural outcome.*

57. Then, under the heading "Overall Impression", Dr Roberts wrote:

> *… Overall although there was some concern that [the Claimant's] difficulties might lie on the Autism Spectrum I am confident having assessed him that although he does have some empathy skills delay and is clearly not confident in social relationships, he does have good reciprocity skills and a clear desire to make and maintain relationships.*
>
> *Having carefully reviewed all the information and seeing [the Claimant] again I feel that his difficulties are complex and that he certainly has major problems within the ADHD spectrum. Particularly noticeable for him is the impact on his emotional regulation and how it affects his self esteem… He has also notably [sic] overactivity, inattention.*

58. It is clear, therefore, that in 2008 Dr Roberts provided a firm diagnosis of ADHD, rejecting the possibility that the Claimant had an Autistic Spectrum Disorder. After this report from Dr Roberts, there is a large amount of medical correspondence showing that from 2009 the Claimant was treated on the basis that he had ADHD.

59. The possibility that the Claimant had an Autistic Spectrum Disorder was again raised in a brief letter by Dr Forster dated 13 November 2017 (page 167 of the bundle). Dr Forster appears to raise the issue because of how the Claimant deals with group situations and how he reacted to failing an exam for a second time, but the letter lacks real detail. The possibility of this comorbidity has not been progressed as a result of what appear to be bureaucratic failures within the NHS, with nobody taking responsibility for the matter, probably as a consequence of the Claimant having reached the age of 18 and therefore no longer being the responsibility of those within the NHS who deal with mental health issues in children.

60. The most recent medical evidence was the Occupational Health Report prepared in July 2019, apparently as a consequence of the Claimant raising the issue of ADHD within the context of the disciplinary proceedings which had resulted in his dismissal.

61. Ms Mkandia, the Occupational Health Advisor who wrote the report noted on its page 1 (page 213 of the bundle):

> *The symptom he exhibits are mainly memory deficit, in capability to fully engage himself before speaking, being impulsive and not thinking things through which has manifested in the way that he speaks or his behaviour. His lack of concentration and organisational skills can be poor as he needs prompting and is unable to multitask.*

62. Then, under the heading "Conclusion and Recommendations", Ms Mkandia stated:

During the consultation, [Claimant] appeared open and honest and was able to give a history of his condition with the assistance and support of his mother, especially in instances where he needed to articulate himself. From the information he offered to me at the assessment, it appears that he has some developmental impairment related to ADHD. This is a disorder that can include symptoms such as inattentiveness, hyperactivity and impulsiveness. Symptoms of ADHD tend to be noticed at an early age, with most cases being identified between the ages of 6 to 12 years old, however such symptoms may become more noticeable when a child's circumstances change, such as they start school. The symptoms of the condition vary from person to person, however, might include lack of attention to detail, making careless mistakes, difficulty sustaining attention, having trouble completing given tasks, problems when organising tasks, being easily distracted and forgetful in daily activities. With regard to hyperactivity, the individual is inappropriately restless and overactive, can talk incessantly and possibly interrupt others when they are speaking.

63. It is of course true that the Claimant has not adduced expert medical evidence setting out specifically whether or not it is ADHD which had and has adverse effects as set out above on his ability to carry out normal day-to-day activities. Mr Liberadzski submitted that in part as a consequence of this the Claimant had failed to prove on the balance of probabilities that any adverse effect on his ability to carry out normal day-to-day activities was caused by the impairment of ADHD rather than by some other impairment (for example, undiagnosed Autistic Spectrum Disorder).

64. I disagree. Whilst it is true that Dr Forster raised in his letter of November 2017 the possibility of autism, that was primarily in relation to the Claimant struggling with social situations and, apparently, his reaction to failing an exam. It does not relate obviously to the effect of any impairment on the ability of the Claimant to carry out day-to-day activities as considered at paragraph 51 above. Further, the letter is brief and lacking in detail.

65. By contrast, the original diagnosis of ADHD by Dr Roberts and the most recent Occupational Health Report by Ms Mkandia do support the Claimant's contention that the cause of the adverse effect on the Claimant's ability to carry out the normal day-to-day activities specified is his ADHD, except the normal day-to-day activity of speaking on the telephone. This is because:

    65.1. The items "organising clothes", "organising medication", "setting an alarm clock, being in the right place at the right time" reflect what Dr Roberts wrote in relation to the Claimant having difficulties organising himself and managing time. He had, she said "no sense of time". They are also reflected in Ms Mkandia's comments that the Claimant's "organisational skills can be poor" and her comments about symptoms of ADHD including "difficulty sustaining attention, having trouble completing given tasks, problems when organising tasks etc";

    65.2. The item "attending medical appointments" because in part of an inability to understand and remember what is said is reflected in what Ms Mkandia said about "memory deficit" and the possibility of symptoms such as "inattentiveness", "difficulty in sustaining attention" and "being easily distracted and forgetful". The inability to attend such appointments in part because of an inability to navigate to the correct location at the right time is reflected by what was said by both Dr Roberts and Ms Mkandia about organisational and time management skills.

66. I therefore find on the balance of probabilities that the adverse effects on the Claimant's ability to carry out normal day-to-day activities as set out in paragraph 51 above are caused by ADHD, subject to one exception. That exception is that there is insufficient evidence for me to conclude on the balance of probabilities that the cause of the Claimant finding it very difficult indeed to speak on the telephone is ADHD.

If so, was the adverse effect "substantial"

67. The Guidance notes at its paragraph B1 that:

> *The requirement that an adverse effect on normal day-to-day activities should be a substantial one reflects the general understanding of disability as a limitation going beyond the normal differences in ability which may exist among people. A substantial effect is one that is more than a minor or trivial effect.*

68. The Guidance notes at its paragraph B4 that:

> *An impairment might not have a substantial adverse effect on a person's ability to undertake a particular day-to-day activity in isolation. However, it is important to consider whether its effects on more than one activity, when taken together, could result in an overall substantial adverse effect.*

69. I have divided the effects on the Claimant's ability to carry out normal day-to-day activities into two sub-categories at paragraph 65 above. The first are mainly effects on organisational abilities, the second are mainly effects on information processing and retention abilities.

70. I find that in each case the effects on the Claimant's abilities go beyond normal differences in ability which exist among people of the Claimant's age. The Claimant was 19 during the relevant period. I find that his ability to organise himself and to process and retain information as described and so to carry out the normal day-to-day activities considered were not within the normal range. Consequently they represented limitations on his abilities which went beyond the normal differences in ability which exist amongst all people (and 19-year olds). For example, most 19-year olds are able to attend medical appointments alone, even if on occasion they may ask their parents to accompany them. The Claimant quite clearly could not (even the work-related Occupation Health meeting was attended by his mother and the Occupational Health Report specifically refers to him being able to give a history of his condition "**with the assistance and support** of his mother" [emphasis added]).

71. Turning specifically to whether the effects were substantial, I find that the effects were more than minor or trivial (and so were substantial) both when the two sub-categories identified in paragraph 65 are viewed in isolation and when they are viewed cumulatively. That is to say the effects of each are more than minor or trivial and the effects of them together are also more than minor or trivial:

    71.1. An inability in a 19-year old to organise himself as set out above is clearly more than minor or trivial because it means that he needs the day-to-day assistance of his parents (or another adult) to do normal day-to-day activities such as organising clothes, taking medication, and setting an alarm-clock. The effect is, therefore, that he cannot be properly independent;

    71.2. An inability in a 19-year old to process and retain information as set out above is again clearly more than minor or trivial because it means that he needs the assistance of others when attending meetings relevant to his personal well-being. Again the effect is that he cannot be properly independent.

If so, was the substantial adverse effect of ADHD on the Claimant's ability to carry out normal day-to-day activities long-term?

72. Yes. Taking the evidence in the round, it is clear that the substantial adverse effects which existed as of the relevant period had existed for a number of years.

73. It should be noted that I have made my findings of fact above on the basis that the substantial adverse effects found existed even though throughout the relevant period the Claimant was taking medication regularly. What is slightly unusual about this case is that a daily dose of medication would "wear off" over an 8-hour period. The Claimant's

evidence was not altogether clear on this point, but taking the evidence in the round, it is clear that some of the effects of the ADHD which he described were experienced whilst he was taking his medication, and some were experienced when it had worn off.

74. In these circumstances, it has not been necessary for me to consider "deduced effect" (i.e. the "effect of medical treatment" as considered in Schedule 1 to the EQA) because it is clear that ADHD has substantial adverse effects on the Claimant's ability to carry out normal day-to-day activities during the relevant period even though during that period the Claimant was taking medication to alleviate its effects.

Conclusions

75. Returning to the issues set out at paragraph 6 above:

75.1. **Did/does the Claimant have a mental impairment, namely ADHD and/or anxiety during the relevant period?** Yes - ADHD.

75.2. If so, did/does the impairment have a substantial adverse effect on the Claimant's ability to carry out normal day-to-day activities during the relevant period? Yes, in light of my findings of fact above.

75.3. If so, is that effect long-term? In particular, when did it start and:

75.3.1. has the impairment lasted for at least 12 months?

75.3.2. Is or was the impairment likely to last at least 12 months or the rest of the Claimant's life, if less than 12 months?

The effects as identified above probably began around 2008 when the Claimant received his ADHD diagnosis and had certainly lasted at least 12 months by the beginning of the relevant period.

76. The Claimant therefore had a disability for the purposes of the EQA during the relevant period.

Employment Judge Evans

Date: 17 February 2020