Appeal No. UKEAT/0266/19/DA

EMPLOYMENT APPEAL TRIBUNAL

ROLLS BUILDING, 7 ROLLS BUILDINGS, FETTER LANE, LONDON, EC4A 1NL

At the Tribunal
On 18 February 2020

Before

THE HONOURABLE MR JUSTICE CHOUDHURY (President)

(SITTING ALONE)

MS O KHOROCHILOVA — APPELLANT

EURO REP LIMITED — RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant	MR SAUL MARGO (of Counsel) Bar Pro Bono Scheme
For the Respondent	MR ALEXANDER MELLIS (of Counsel) Instructed by: Brabners LLP 55 King Street Manchester M2 4LQ

SUMMARY

DISABILITY DISCRIMINATION

The Claimant claimed she was disabled based on having a "Mixed Personality Disorder". At a Preliminary Hearing to determine whether the Claimant had a disability, the Tribunal rejected that claim, and found, in any event, that there was no specific evidence to substantiate her claim that her condition had a substantial adverse effect on her ability to carry out normal day to day activities. The Claimant appealed on the grounds that:

(1) The Tribunal had erred in its approach to the question of impairment by considering that issue first before determining the substantial adverse effect issue and

(2) That its conclusion that there was no substantial adverse effect was one that no reasonable tribunal, properly considering the evidence, would have reached.

Held, dismissing the appeal, that in respect of ground (1), the Tribunal did not err in considering the issue of impairment first. It was stated in **J v DLA Piper LLP** [2010] ICR 1052 that Tribunal should not apply rigid sequential approach to the questions under Section 6 of the **Equality Act 2010** see [40(2)]. However, that did not mean that the Tribunal necessarily erred in dealing with the questions in the order they appear in the statutory provisions. The Tribunal did go on to consider the question of substantial adverse effect in any event. As to ground (2), the Tribunal's conclusion that there was no substantial adverse effect cannot be said to be perverse. Whilst there was some evidence relating to the kinds of matters, identified in the Guidance, that it would be reasonable to treat as having a substernal adverse effect, that evidence was somewhat thin, and it was open to the Tribunal, in the circumstances, to conclude that the requirement of substantial adverse effect was not made out.

THE HONOURABLE MR JUSTICE CHOUDHURY (President)

1. I shall refer to the parties as the Claimant and the Respondent as they were below. The Claimant appeals against the Judgment of the Watford Employment Tribunal ("the Tribunal") that the Claimant did not have a disability within the meaning of the **Equality Act 2010** ("the 2010 Act"). The disability which the Claimant asserts she has is "mixed personality disorder."

Background

2. The Respondent is in the business of breeding insects, in particular crickets, as food for other animals such as reptiles. The Claimant was employed by the Respondent from July 2015 until her summary dismissal on 9 February 2017. She was dismissed, according to the Respondent, for issues relating to her management of the cricket colony.

3. The Claimant presented a complaint to the Tribunal on 2 May 2017 alleging unfair dismissal, detriments for having made a protected disclosure, disability discrimination and other claims. In relation to the claim of disability discrimination, the Claimant's ET1 did not identify the disability upon which she relied. Moreover, the only pleaded difficulty was that the disability causes the Claimant to be "*somewhat obsessive*" about how she does her work and that some people interpreted this as "*perfectionist behaviour*."

4. The Claimant's complaints of whistleblowing, detriment and unfair dismissal were dismissed at a Preliminary Hearing in July 2017. A further Preliminary Hearing was listed for 1 March 2018 in order to consider whether, at the material time, the Claimant was a disabled person for the purposes of the **2010 Act** and to consider whether the claim of disability discrimination had any reasonable prospects of success.

5. At the Preliminary Hearing, the Claimant identified her disability as mixed personality disorder. She relied upon a report from the Consultant Psychiatrist, Dr Schuff ("the report"). The report is undated but is based on, amongst other matters, assessments carried out in July and August 2010 and was prepared in respond to a letter of instruction dated April 2010. It is not in dispute that the report was produced at some point in 2010.

6. The Claimant did not seek to adduce more recent evidence from Dr Schuff or any other consultant psychiatrist. She did rely upon evidence from her GP and her own disability impact statement. It is clear from that statement, a copy of which has been produced today, that the mental impairment relied upon was that of mixed personality disorder. Although the Claimant also suffered with depression and anxiety following her dismissal, she did not rely upon those conditions in order to establish that she was disabled at the material time.

The Tribunal's Judgment

7. The Tribunal, Employment Judge Wyeth presiding, went through the various items of evidence carefully and concluded as follows at paragraphs 49 to 53 of the Judgment:

> **"49. In accordance with the claimant's own expert medical evidence upon which she relies, the Psychiatrist, Dr Schuff declines to diagnose the claimant as having a multi personality disorder but describes instead the claimant suffering with 'problematic personality traits'. Furthermore, there is no mention of any such condition in the claimant's GP records save for the claimant's own reference to it recorded on 12 July 2017. Accordingly I am not satisfied on the evidence before me that the claimant has the impairment of 'mixed personality disorder'.**
>
> **50. Even if I am wrong about the existence of an impairment of 'mixed personality disorder', the claimant herself has not advanced any satisfactory evidence to support the assertion that such an impairment if it existed was an impairment that had an adverse effect on her day-to-day activities.**
>
> **51. Likewise, on the basis of my findings above, even though the claimant does not seek to rely upon them, her depression and anxiety did not have an adverse effect on her day-to-day activities at the material time (29 July 2015 to 9 February 2017). The claimant was not taking any prescribed medication for these conditions prior to 10 February 2017. Even if she was, it is evident from the expert medical report of Dr Schuff, upon which she relies, that any antidepressant mood stabilizing medication was not 'necessarily helpful or needed'. Thus the effect of the impairment if it existed, and also the claimant's depression and anxiety, was unlikely to be ameliorated by the measures being taken to treat it being the use of prescribed medication and counselling. Accordingly, the lack of impact upon the**

> **claimant's normal day-to-day activities would not have been any different but for any treatment measures identified which were, in any event, limited and relied upon before and after, but not during, the material time.**
>
> **52. Even taking account of how the claimant's depression and anxiety may have impacted upon her asserted multi personality disorder (if it did exist as an impairment), the cumulative effects did not adversely impact upon her ability to carry out normal day-to-day activities, nor were they substantial.**
>
> **53. For all the above reasons, the claimant is not a disabled person for the purposes of the Equality Act 2010."**

8. The Claimant's application for a reconsideration of the Judgment was refused on the basis that there was no reasonable prospect of the Judgment being varied or revoked.

Legal framework

9. Section 6 of the **2010 Act** provides:

> **"(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..."**

10. The approach to be taken by Tribunals in applying that statutory provision was considered by Underhill P, as he then was, in the case of **J v DLA Piper UK LLP** [2010] ICR 1052 at paragraphs 38 to 40:

> **"38. …There are indeed sometimes cases where identifying the nature of the impairment from which a claimant may be suffering involves difficult medical questions; and we agree that in many or most such cases it will be easier – and is entirely legitimate – for the tribunal to park that issue and to ask first whether the claimant's ability to carry out normal day-to-day activities has been adversely affected – one might indeed say "impaired" – on a long-term basis. If it finds that it has been, it will in many or most cases follow as a matter of common-sense inference that the claimant is suffering from a condition which has produced that adverse effect - in other words, an "impairment". If that inference can be drawn, it will be unnecessary for the tribunal to try to resolve difficult medical issues of the kind to which we have referred. This approach is entirely consistent with the pragmatic approach to the impairment issue propounded by Lindsay P in the Ripon College case and endorsed by Mummery LJ in McNicol (loc. cit.). It is also in our view consistent with the Guidance. Paras. A3-A4 of the Guidance read as follows:**
>
> **A3. The definition requires that the effects which a person may experience must arise from a physical or mental impairment. The term mental or physical impairment should be given its ordinary meaning. In many cases, there will be no dispute whether a person has an impairment. Any disagreement is more likely to be about whether the effects of the impairment are sufficient to fall within the definition. Even so, it may sometimes be necessary to decide whether a person has an impairment so as to be able to deal with the issues about its effects.**

A4. Whether a person is disabled for the purposes of the Act is generally determined by reference to the effect that an impairment has on that person's ability to carry out normal day-to-day activities….

Paras. A7-A8 read:

A7. It may not always be possible, nor is it necessary, to categorise a condition as either a physical or a mental impairment. The underlying cause of the impairment may be hard to establish. There may be adverse effects which are both physical and mental in nature. Furthermore, effects of a mainly physical nature may stem from an underlying mental impairment, and vice versa.

A8. It is not necessary to consider how an impairment is caused … What it is important to consider is the effect of an impairment not its cause – provided that it is not an excluded condition.

39. But we do not think that it follows – if Mr Laddie really intended to go that far – that the impairment issue can simply be ignored except in the special cases which he identified. The distinction between impairment and effect is built into the structure of the Act, not only in section 1 (1) itself but in the way in which its provisions are glossed in Schedule 1. It is also reflected in the structure of the Guidance and in the analysis adopted in the various leading cases to which we have referred, which have continued to be applied following the repeal of para. 1 (1) of Schedule 1 (see, e.g., the decision of this Tribunal (Langstaff J. presiding) in Ministry of Defence v Hay [2008] ICR 1247 – see paras. 36-38 (at pp. 1255-6)). Mr Laddie's recognition that there will be exceptional cases where the impairment issue will still have to be considered separately reduces what would otherwise be the attractive elegance of his submission. Both this Tribunal and the Court of Appeal have repeatedly enjoined on tribunals the importance of following a systematic analysis based closely on the statutory words, and experience shows that when this injunction is not followed the result is all too often confusion and error.

40. Accordingly in our view the correct approach is as follows:

(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.

(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 para. 1 (1) of Schedule 1, and they remain authoritative save insofar as they specifically refer to the repealed provisions."

The grounds of appeal

11. The Claimant drafted her own grounds of appeal. These were rejected on the sift by HHJ Stacey. Revised grounds of appeal were permitted to proceed at the oral hearing before Lavender J. The permitted grounds of appeal are as follows:

"Ground 1

The Tribunal erred in law in failing to consider whether the condition described in paragraph 1.2.3 of Dr Schuff's report constituted a mental impairment.

Ground 2

The Tribunal erred in law in failing to consider the evidence of the alleged impairment set out in paragraph 1.2.4 of Dr Schuff's report and subsequently and in the Claimant's statement of disability and in the letter from the Department for Works and Pensions confirming that the Claimant was entitled to disability living allowance.

Ground 3

The Tribunal erred in law in failing to reconsider the Judgment pursuant to the reconsideration application."

Submissions

12. The Claimant is ably represented before me by Mr Margo of Counsel who appears *pro bono* through Advocate. I am most grateful to him, as the Employment Appeal Tribunal always is to those who appear *pro bono,* for his careful and comprehensive submissions. He submits that the Tribunal erred in that it placed too much emphasis on whether the Claimant had mixed personality disorder (often referred to incorrectly by the Tribunal as "multi-personality disorder") and whether that condition had a substantial adverse effect on her ability to carry out normal day-to-activities.

13. Mr Margo submits that on a proper application of Section 6 of the Act read in light of the **J v DLA Piper** judgment, the Tribunal should have started by making findings about the effect of the impairment and then to have gone on to consider the question of impairment in light of those findings. Instead, it adopted a strictly sequential approach which led to an erroneous assessment of whether there was the requisite adverse effect.

14. As to ground 2, Mr Margo submits that the Tribunal erred in its approach to the effect of the impairment by failing to consider some of the evidence which suggested the condition described in Dr Schuff's report did have a substantial adverse effect on her ability to carry out

normal day-to-day activities. Having done so, the Tribunal reached a conclusion, submits Mr Margo, that no reasonable Tribunal having proper regard to the evidence would have reached.

15. Mr Mellis, who appears for the Respondent as he did below, submits that the Tribunal was entitled to rely upon the contents of the report. It is clear in its conclusions that the Claimant did not have mixed personality disorder, but that she had problematic personality traits. He submits that such traits do not of themselves amount to an impairment. He further submits that the Judge specifically considered whether there was evidence of a substantial adverse effect on the Claimant's ability to carry out normal day-to-day activities and concluded that on the balance of probabilities there was no such adverse effect. He submits that given that this is a perversity appeal, it falls far short of the high threshold for such appeals.

Discussion and analysis

16. I begin with the requirements of the statue. Section 6 of the **2010 Act** requires the Tribunal to consider: (a) whether a person has a physical or mental impairment and; (b) whether that impairment has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities. Whilst it has been made clear that the Tribunal should not adopt a rigid sequential approach to the questions that need to be asked of it: see **J v DLA Piper** at paragraph 40(2), there can be no error of law in seeking to identify whether or not a person has an impairment as that is what the statute expressly requires.

17. In the present case, the Tribunal was faced with an assertion that the Claimant had a specific mental impairment, namely mixed personality disorder. The Claimant produced evidence from her Consultant Psychiatrist Dr Schuff in support of that contention, as well as

A evidence from her GP and her own statement attesting to the impact that her disability had on her.

B 18. The report from Dr Schuff was not prepared for the purposes of these proceedings. It appears in fact to have been prepared for an entirely different purpose, possibly in the context of other family proceedings. More significantly, by the time of the hearing the report was some seven years old. That does not in itself mean that the report has no value. In the present case, C the report was not challenged, and the Tribunal stated that its content would be treated as factually accurate. Accordingly, despite its age this was evidence that the Tribunal did properly take into account.

D 19. The Tribunal considered Dr Schuff's report at paragraphs 21 to 30 of its Judgment. At paragraph 23, the Tribunal referred to the fact that neither Dr Schuff nor his colleagues had given the Claimant a diagnosis of personality disorder, and at paragraph 24, that there was no E reliable evidence for one of the requirements for making such a diagnosis. At paragraph 25 the Tribunal sets out what Dr Schuff said at paragraph 1.2.3 of the report:

> **"Thus I will refer here to 'problematic personality traits' which would otherwise be contained in the category of Mixed Personality Disorder, particularly covering features listed under the subgroups of borderline, emotionally unstable, histrionic and narcissistic personality disorder."**

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20. The Tribunal interprets this as, in essence, a conclusion that the Claimant has problematic personality traits. The Tribunal goes on to consider other parts of the report which G confirm, amongst other things, that medication would not necessarily be helpful or needed for the Claimant to address her conditions.

H 21. The Tribunal was therefore correct to conclude that the specific impairment relied upon by the Claimant was not established on the evidence. However, if there was evidence that the

Claimant had some other impairment which has the requisite adverse effect for there to be a disability within the meaning of the **2010 Act**, then it would have been an error for the Tribunal to stop there and not consider whether there was in fact such an adverse effect. As I will go on to describe later, the Tribunal did not stop there and did go on to consider that subsequent question.

22. Dr Schuff stated that the Claimant had what he described as problematic personality traits. On one view, it might be considered somewhat odd to describe mere ‘’personality traits, whether or not these are problematic, as amounting to an impairment. All persons have certain personality traits some of which may be considered problematic. However, it is possible that some personality traits are such that they amount to an impairment within the meaning of the 2010 Act. In the absence of an express conclusion that such personality traits do not amount to an impairment, the real question is whether or not there was evidence of a substantial adverse effect on the Claimant’s ability to carry out normal day-to-day activities. If there was, then, as held in the **J v DLA Piper** case, the appropriate approach would be to consider the question of impairment in light of the evidence as to the adverse effect.

23. In the present case, whilst the Tribunal did not expressly consider whether or not the problematic personality traits themselves amounted to an impairment, it did, in my judgment, give express consideration to the question of adverse effect. The Tribunal noted that the Claimant was not apparently in need of any medication to address her condition and/or that the use of such medication would be sporadic and temporary: see paragraph 31. The Tribunal also noted that the Claimant had not been prescribed any form of antidepressant medication until the day after her dismissal. The Tribunal noted that the Claimant was able to manage her condition

without any form of treatment as at September 2015. Although by March 2016, the Claimant was feeling low, she was still managing well and not on any medication.

24. In the light of that evidence, the Tribunal concluded as follows at paragraph [36]:

> **"It is evident on any objective basis that, notwithstanding any previous difficulties with depression, the claimant was not suffering any condition that was having an adverse effect on her day-to-day activities at that time."**

It is notable that in expressing that conclusion, the Tribunal was not confining itself to the effect of the alleged impairment, namely mixed personality disorder, but was conclusively stating that the Claimant was not suffering "*any condition*" that was having an adverse effect.

25. A similar conclusion was expressed at paragraph 42 where the Tribunal stated as follows:

> **"Finally, in terms of my assessment of the evidence for the purposes of the findings of fact I have reached above, there is nothing in the evidence before me, and perhaps most importantly, the evidence tendered by the claimant herself about her condition, that demonstrates that, if indeed she suffered from an impairment of 'multi personality disorder' [sic], any such purported condition (or alleged diagnosis) had or has any substantial adverse effect on her ability to carry out any day-to-day activities."**

26. Mr Margo took to me other passages in Dr Schuff's report which he says tend to undermine the Tribunal's conclusions. Those passages included the following:

"(a) Paragraph 1.2.4 of the report where there is reference to the Claimant being "…unable to manage herself and others (children) appropriately.";

(b) Paragraph 1.3.1 which states that the Claimant "…struggles to get along with everyday life finding herself rapidly overwhelmed by stress…"; and

(c) Paragraph 1.4.1 which states that the Claimant "frequently and profoundly disassociates particularly when being faced with stressful aspects in herself and relationships."

(d) Paragraph 1.4.2 which records that the Claimant said that "she is often misunderstood and/or needs somebody to help with understanding and expressing herself"."

27. Whilst the Tribunal does not refer expressly to these passages in the report in its Judgment, it cannot necessarily be inferred from that that it has disregarded them. The Tribunal clearly went through the report in some detail as is clear from the various references to passages contained within in it relating to the existence or otherwise of the alleged personality disorder and the medication considered necessary to manage her condition.

28. Mr Margo submits that the Tribunal's conclusion was in effect stating that there was no evidence supporting the Claimant's case on adverse effect and that that cannot be correct. However, that is not what the Tribunal said at paragraph 42. It stated that there was nothing in the evidence that *demonstrated* that the condition relied upon had any substantial adverse effect. Far from saying that there was *no* evidence about these matters, the Tribunal's conclusion was that such evidence as did exist was insufficient to discharge the burden on the Claimant in this respect.

29. The report, whilst treated as accurate, did not contain an up-to-date picture of the effect of the Claimant's condition on her day-to-day activities. That up-to-date evidence was provided by the Claimant herself. The Tribunal correctly referred to that as perhaps the most important evidence in this regard: see paragraph 42.

30. The Code of Practice of Employment 2011 provides guidance on normal day-to-day activities. The Tribunal refers to that guidance in its Judgment. I was taken to the following

extract from the appendix to that guidance, which sets out an illustrative and non-exhaustive list of factors which, if they are experienced by a person, it would be reasonable to regard as having a substantial adverse effect on normal day-to-day activities.

31. There is a long list of potential effects set out in the guidance. My attention was drawn to two in particular: the first was, "frequent confused behaviour, intrusive thoughts, feelings of being controlled or delusions,"; the second was, "compulsive activities or behaviour or difficulty in adapting after a reasonable period to minor changes in a routine. Mr Margo submitted that the following passages in the Claimant's evidence raise at least a *prima facie* case that her abilities in relation to these matters were adversely affected:

> **"Normal skills of routine insect breeding are advantaged by her instance of strict routines. This is perhaps where her disability was an asset. Even so rigorous rule following [sic] and event indicators may have seemed strange to others. It is noteworthy that her skills and understanding of insect breeding were not impaired by her disability just management and communications. When stressed and anxious Ms Khorochilova becomes disorientated and if allowed to continue may bring on panic attacks. Further deterioration leads to severe headaches and migraines. Pain[?] medication is required to bring relief. Other medications including those of a mood-altering effect seem to have limited results. More beneficial seems to be the use of behavioural strategies. These however are not without consequence. Many people interpret her behaviour as being argumentative, insistent and peculiar to her. Her disability demands she make mental adjustments so that the confusion generated on many occasions is restricted and made to make sense. By knowing her disability intimately, she has developed her own way of handling it and this may not to be everyone else's understanding or even liking. Of course, her meticulous routines and idiosyncrasies present their own problems but are better than the chaos they replace. On occasions when things go badly Ms Khorochilova descends into a state of confusion. This is often uncontrollable and compounds the problem. When this happens reason and rationality are lost, and she tends to disassociate from the problem sometimes skipping from various aspects to another without any logical connection…"**

32. He submitted that there was clearly evidence here both of compulsive behaviours and of confusion. Mr Mellis submits that whilst this evidence might refer to some of these difficulties, there is none of the detail that would substantiate the claim that the Claimant's disability had a substantial adverse effect on her ability to carry out normal day-to-day activities.

33. The Tribunal referred to this evidence at paragraph 45 of its Judgment:

> **"Likewise, in the supplementary statement written in the third person at p55 to 57, again the claimant offers no specific evidence about how she is prevented from undertaking normal day**

> **to day activities. She refers to the fact that she becomes confused and that she has difficulty sometimes at work dealing with certain matters, but there is nothing in her statement which satisfies me on the balance of probabilities that even if any multi personality disorder (sic) did amount to an impairment, it had a substantial adverse effect on her normal day-to-day activities. Whilst the list is not exhaustive, there is no suggestion that she has difficulty with any of the examples given in the Appendix to the 2011 Code. The claimant also accepts that she has found coping strategies to ameliorate the impact any alleged impairment has on her day-to-day activities."**

34. Once again, the Tribunal does not say there is *no* evidence of the Claimant being unable to undertake normal day-to-day activities, but that there is no *specific evidence*. This can be read as stating that there is little more than an assertion with no substantive examples as to how the purported condition prevents the Claimant from carrying out any day-to-day activities. Having carefully considered the statement today, I am satisfied that that was a conclusion that the Tribunal was entitled to reach.

35. The highest that the statement puts it is that the Claimant insists on strict routines. Of course, that in itself would not necessarily suffice to show that there was a substantial adverse effect on the ability to carry out day-to-day activities. I bear in mind that "substantial" in this context means more than trivial.

36. The guidance refers to difficulties in adapting after a reasonable period to minor changes in routine. There is little, if anything, to support a case that there was any difficulty in adapting to change in a routine. Indeed, the Claimant's ET1 states that when procedures were changed, the Claimant adjusted easily to those changes.

37. As for the references to confusion, there is little to support that such confusion was experienced on a frequent basis. The statement states that, "*<u>on occasions</u> when things go badly Ms Khorochilova descends into a state of confusion*." The Claimant's statement further suggests that any problems she suffers can be managed with the appropriate coping strategies

and that medication seems to have limited results. She states that her behaviour may be interpreted by others as being argumentative, insistent and peculiar to her. However, such interpretation of her behaviour does not necessarily give rise to any substantial adverse effect on her ability to carry out normal day-to-day activities.

38. In my judgement, having regard to these matters, the Tribunal cannot be said to have reached a perverse conclusion when stating that it was not satisfied on the balance of probabilities that the Claimant's condition had a substantial adverse effect on her normal day-to-day activities. The evidence of substantial adverse effect was somewhat thin, and it was open to this Tribunal to reach the conclusion that it did. It may well be that another tribunal could have reached a different conclusion, but that would not render this particular decision perverse or one that no reasonable tribunal could have reached. The threshold for perversity appeals is, as Mr Margo fairly acknowledged, a high one, and I am satisfied that, notwithstanding his powerful submissions in this regard, that high threshold was not crossed.

39. There was some debate before me this morning as to the extent to which the Tribunal could have probed the evidence to tease out further details that were not present in the evidence. However, there was no evidence before me as to what those further details might have been, and in the absence of any ground of appeal based on some sort of procedural irregularity, it does not appear to me appropriate to explore that contention further.

40. I note that the Tribunal in this case did give the Claimant and her representative an opportunity to add anything that they wished, thereby not constraining them to the contents of the statements, and also that the Tribunal did consider whether the anxiety and depression upon which the Claimant suffered could be said to give rise to any substantial adverse effect at the

relevant time, notwithstanding the fact that those impairments were not the ones specifically relied upon. As such it seems to me that the Tribunal was not acting unfairly in its approach to the case and was not seeking to deprive the Claimant of a fair opportunity to present her case.

41. One other item of evidence which the Claimant says should have been but was not properly considered by the Tribunal is the letter from the DWP. That letter states that the Claimant is entitled to disability living allowance at the lower rate care component for help with personal care and the lower rate mobility component for help with getting around. That letter does not however identify the impairment from which the Claimant was said to be suffering or a particular adverse effect on her ability to carry out day-to-day activities.

42. Whilst it is true that one might be able to infer from such a letter that there is an adverse impact on the Claimant's ability to carry out day-to-day activities, the Tribunal was entitled to give weight to the evidence that was before it in the form of the medical reports and the Claimant's own evidence rather than to a letter containing a decision as to entitlement to benefit, the basis for which is far from clear from the letter itself.

Conclusion

43. For these Reasons, grounds 1 and 2, which are related, fail and are dismissed. Ground 3 is, as both parties agree, parasitic upon grounds 1 and 2. As those grounds have failed there is no need to consider ground 3 which challenges the Tribunal's failure to reconsider its own Judgment. That deals with all the issues on this appeal.