



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr K Coppin

**Respondent:** T H Checketts Limited

**Heard at:** Birmingham **On:** 23 September 2020 (and reserved decision on the papers)

**Before:** Employment Judge Flood (sitting alone)

## **Appearances**

For the claimant: In person

For the respondent: Mr Colman (Director) attended but no part played in this part of the hearing

## RESERVED JUDGMENT ON PRELIMINARY HEARING

The claimant was a disabled person as defined by section 6 of the Equality Act 2010 at all relevant times.

## REASONS

### **Background**

1. The claimant was employed by the respondent, a retail butcher, as an apprentice butcher from 16 September 2019 until dismissal with effect on 14 January 2020. The claimant presented his claim on 20 February following a period of early conciliation from 19-20 February 2020.
2. The claimant's remaining complaint is for disability discrimination. The claimant says he is a disabled person because of Asperger's Syndrome ADHD and dyslexia. The complaints are that of discrimination arising from disability (section 15 Equality Act 2010) and a failure to make reasonable adjustments (sections 20 & 21 Equality Act 2010).
3. The respondent has not served a response. However it is not possible for judgment to be issued under rule 21 of the Employment Tribunal (Rules of Procedure) 2013 as the claimant has to prove his claim. In the first instance the claimant must provide by evidence that he is a disabled person as defined

by section 6 of the Equality Act 2010.

4. At a previous case management hearing before Employment Judge Woffenden on 26 May 2020, the claimant was ordered to provide information in this regard. On 20 August 2020 the claimant provided a disability impact statement; a document setting out what reasonable adjustments were suggested should have been made and some medical evidence relating to the claimant's condition including the claimant's Education, Health and Care Plan for the academic year 2019/2020 and letters from the Benefits agency in respect of his PIP.
5. At a further preliminary hearing held before me on 23 September 2020, it was agreed that the question of whether the claimant was a disabled person would be determined by me on the papers (as these had not been available to me in advance of the hearing itself).

### **The Issues**

6. Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:
  - 6.1. Did he have a physical or mental impairment?
  - 6.2. Did it have a substantial adverse effect on his ability to carry out day-to-day activities?
  - 6.3. If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
  - 6.4. Would the impairment have had a substantial adverse effect on his ability to carry out day-to-day activities without the treatment or other measures?
  - 6.5. Were the effects of the impairment long-term? The Tribunal will decide:
    - 6.5.1. did they last at least 12 months, or were they likely to last at least 12 months?
    - 6.5.2. if not, were they likely to recur?

### **The Law**

7. The relevant sections of the EqA applicable to this claim are as follows:

#### ***4 The protected characteristics***

*The following characteristics are protected characteristics: ... disability"*

#### ***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 effect on P's ability to carry out normal day-to-day activities*

**Section 212(1) EqA** defines substantial as being "*more than minor or trivial*".

**Schedule 1 of the Equality Act 2010** sets out Supplementary Provisions in relation to Disability.

Paragraph 2 of Schedule 1 provides 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.”

Paragraph 5 of Schedule 1 provides that:-

“(1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if:-

- (a) measures are being taken to treat or correct it, and
  - (b) but for that, it would be likely to have that effect.
- (2) “Measures” includes, in particular, medical treatment and the use of prosthesis or other aid.”

8. I have also had regard to the guidance issued under section 5 of the Equality Act:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/570382/Equality\\_Act\\_2010-disability\\_definition.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/570382/Equality_Act_2010-disability_definition.pdf)

9. There is no statutory definition of normal day-to-day activities, but the guidance states, that in general “day-to-day activities are things that people do on a regular or daily basis.” Normal day-to-day activities can include work related activities/study and educational related activity.

10. In determining what the adverse effect is; the tribunal should focus on what the person has difficulty in doing, or can't do rather than trying to undertake a balancing act.

### **Findings of Fact**

11. The claimant is 19 years old and I have accepted that he has a medical diagnosis of Asperger's Syndrome and Attention Deficit Hyperactivity Disorder (ADHD). He has never received a formal diagnosis of Dyslexia (although he has received the additional support of someone with that condition throughout his education in the form of a scribe, reader, use of laptop in secondary school and extra time during examinations). I accept the claimant's evidence and that of his mother that these conditions are lifelong.

12. The claimant's mother gave evidence about his conditions. She told me that his conditions affect his ability to process information. He requires additional time to process information which should be given verbally in a factual, clear and precise way in short sentences. If too much information is provided or by multiple individuals, this can lead to information overload which leaves the claimant feeling stressed, confused, anxious and forgetful. This could lead to the claimant having a “meltdown” which could result in the claimant using

inappropriate language or physical outbursts (anger, crying, swearing, threats, punching walls/doors/windows, kicking objects). The claimant masks his behaviour and will use coping and avoiding strategies if he does not fully understand instructions or is frustrated, so as "I'll do it later". The claimant has good eye contact and relatively good social interactions but he struggles to understand non factual information such as "banter" or sarcasm. He also struggles to understand non-verbal communications such as facial expressions and body language. The claimant can have low motivation or a loss of interest in everyday tasks. His condition can inhibit his ability to converse or give oral instructions. It can affect his ability to remain focused and on task and can result in impulsive behaviours.

13. I saw a Decision Notice dated 26 July 2018 from the First Tier Tribunal Social Entitlement Chamber. This confirmed that the claimant was entitled to be awarded a Personal Independence Payment. He was awarded the daily living component at the enhanced rate from 9 August 2017 until 8 August 2020 and the decision concluded that the claimant was:

"severely limited ability to carry out activities of daily living", noting that he:

"Needs supervision or assistance to either prepare or cook a simple meal";

"Needs either –

(i) to use an aid or appliance to be able to manage medication; or

(ii) supervision, prompting or assistance to be able to manage medication or monitor a health condition";

"Needs supervision or prompting to be able to wash or bathe";

"Needs either –

(i) prompting to be able to dress, undress or determine appropriate circumstances for remaining clothed; or

(ii) prompting or assistance to be able to select appropriate clothing";

"Needs prompting or assistance to be able to read or understand complex written information"; and

"Needs prompting or assistance to be able to make complex budgeting decisions".

### **Conclusion**

14. Taking into account my findings of fact above, I conclude that the claimant does have a physical or mental impairment in that he has Asperger's Syndrome and Attention Deficit Hyperactivity Disorder (ADHD). I accepted the claimant's evidence that he also had Dyslexia.

15. It is also clear to me on the findings of fact above that the impairment does have a substantial adverse effect on the claimant's ability to carry out day-to-day activities. In particular, my findings of fact at paragraph 12 and 13 above leave me in no doubt that this is the case.

16. I also conclude that given the evidence provided that the claimant's conditions

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are lifelong, I conclude that the effects of the impairment are long-term.

17. Accordingly the claimant has shown that he is a disabled person within the meaning of section 6 of the Equality Act 2010. The claim will now be listed for hearing to determine whether the complaints are made out.

**Employment Judge Flood**

22 October 2020