



EMPLOYMENT TRIBUNALS

Claimant: Ms V Churchhouse
Respondent: PA Housing Limited
Heard at: London South (by CVP) **On:** 13 June 2023
Before: Employment Judge Rice-Birchall

Representation
Claimant: In person, accompanied by Ms Rayner (her friend)
Respondent: Mr Charles, Consulting Barrister

RESERVED JUDGMENT

The claimant is not a disabled person by reason of dyslexia within the meaning of the Equality Act 2010.

REASONS

Background

1. The claimant was employed by the respondent, a registered provider of social housing, as a Resident Manager at a retirement housing complex, from 30 August 2011 until 13 December 2021. Early conciliation started on 16 February 2022 and ended on 2 March 2022. The claim form was presented on 30 March 2022. The claimant makes claims of unfair dismissal and direct age and disability discrimination.
2. The claim is about the ending of the claimant's employment contract. The claimant asserts she has been treated unfairly in respect of allegations of misconduct, and that the reason behind the disciplinary proceedings and dismissal is her age. She also complains of comments made by the respondent in respect of dyslexia, and the failure to adapt the disciplinary process to ensure she was not at a disadvantage because of dyslexia. The respondent's defence is that there was a complaint of misconduct which was reasonably investigated and dismissal was within the range of reasonable responses. Age and disability were not part of the reason and it is denied the respondent failed to make reasonable adjustments.
3. The respondent does not accept that the claimant was disabled because of dyslexia or that it had knowledge of this prior to the claimant raising it in the disciplinary process.

4. This hearing was listed as a public preliminary hearing for the purpose of considering whether or not the claimant was, at the material time, a disabled person within the meaning of the Equality Act 2010 in respect of dyslexia.
5. Since the claim was listed there appears to have been an application to amend the claim to include other impairments, including anxiety, but that was not the subject of this hearing. A further preliminary hearing was listed to consider that amendment application.

Issues

6. The issue for the Tribunal to determine was whether the claimant had a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about.
7. The Tribunal has considered
 - a. Did she have a physical or mental impairment: dyslexia?
 - b. Did it have a substantial adverse effect on her ability to carry out day-to-day activities?
 - c. If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
 - d. Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without treatment or other measures?
 - e. Were the effects of the impairment long-term? The Tribunal will decide:
 - i. did they last at least 12 months, or were they likely to last at least 12 months?
 - ii. if not, were they likely to recur?
8. In this particular case, the key issue is whether or not the claimant's dyslexia had, at the material time, a substantial effect on her day to day activities, as that is the basis on which the respondent does not accept that the claimant has a disability (according to the respondent's email to the Tribunal dated March 28 2023).

The evidence

9. The Tribunal had the benefit of a Bundle of documents.
10. The claimant relied on her written responses to the case management orders as her evidence in chief but had also prepared two witness statements. One was from Andrew Farley, the claimant's former colleague and the other from Maxine Martin, who had been the claimant's manager between 2015 and 2019. In the event, on the day of the hearing, only Mr. Farley was able to attend and it was explained that a written statement without the person being there to be cross examined may be given less weight.
11. The claimant also relied on a Confidential Diagnostic Assessment Report prepared at an assessment which took place on 21 December 2022 and which was conducted by a qualified specialist teacher holding an approved qualification and a Specific Learning Difficulties Practicing Certificate.

Although this assessment was done in 2022, it was accepted that dyslexia is a lifelong condition which does not change over time.

12. The Tribunal heard evidence from Erica Myers, HR Operations Manager, on behalf of the respondent. Ms Myers had prepared a witness statement which the Tribunal read.
13. The Tribunal ensured that the claimant was given additional time and/or breaks when needed.

Finding of Facts relevant to the issues

14. The claimant applied for her role with the respondent in December 2010. She completed an application form which appeared in the Bundle in her hand writing and which was well structured and well presented. It all made sense and there were few spelling mistakes. The claimant said that she completed that form with help from friends, in that they wrote what she needed to say and she copied it.
15. The application form indicates that the claimant had held a wide range of positions, including that of licensee, having owned a pub and restaurant. In that role, the claimant managed a team of twelve. The claimant said that this had been possible because she hadn't needed a computer in those days.
16. The claimant had also been an office manager for six years. The claimant said that there had been a secretary to do all the paperwork.
17. The claimant had qualifications in typing and shorthand and an NVQ level 2 in health and social care and had completed other training in adult protection; food hygiene and safety and medication.
18. The claimant had responded "No" to the question of whether she had a disability on that application form.
19. Although the claimant had ticked "no" to the question as to whether or not she had a disability on her claim form, she explained that it was because she had never seen herself as a disabled person at that time, but had thought of herself as a terrible speller. She said that it didn't affect her day to day activities because her work was almost exclusively done by telephone and she would only have to log onto the computer once a week. The claimant had no idea that she had dyslexia until she attended college in 1992.
20. It was put to the claimant that, throughout the period when she had been working in these roles, she had functioned effectively and that her dyslexia did not have a substantial impact. The claimant stated that the jobs were mostly about communication and that she had not used a computer until she started work with the respondent, and that, even then there hadn't been a problem, as, for the first six years working for the respondent, she had had support from her managers.
21. As part of the recruitment process, the claimant was required to respond to do a computer based test independently. She had to respond to certain

scenarios by inserting her answers into a computer. Her responses, which she gave during the test, and without support, were in the bundle. The claimant said that the person who had interviewed her had told her that she would only need to know how to switch on the computer. Her responses to those questions were sensible, comprehensive, and well written.

22. There were three emails in the bundle which the claimant wrote to the respondent (dated 20 January 2021; 7 July 2021 and 10 December 2021). They are well written with no spelling mistakes. The claimant confirmed that the first two emails were typed by her but the third one she would have had help with.
23. Mr Farley's evidence was that the claimant was struggling with the computer and was one of the employees who approached him for training. She also sought additional support from Mr Farley but, as a result, Mr Farley confirmed, she "completed all the required work and achieved this ahead of schedule as most of us did". He says that the claimant made him aware of her struggles but that they "managed to get Vanessa up to date on everything." He stated that she always hit the deadline and when she needed help, she would ask. He confirmed that she was not the only employee struggling.
24. There were minutes of a meeting which Mr Farley had attended in September 2021 and in which he was asked about the claimant and the time he spent managing her. He was asked whether, during that time, he was made aware of any issues with workload, wellbeing and stress levels. His response was that the claimant had some medical problems and was a bit stressed about that but it wasn't about the workload. He was then asked about day to day workload pressures and again there was no mention of dyslexia. He was also specifically asked whether the claimant had any support needs and none were mentioned.
25. At the end of the claimant's reconvened disciplinary hearing, the claimant had prepared a statement which she had memorized and read out. In that statement she said: "It will also have become abundantly clear that I am dyslexic, as will have been obvious from some of the emails and letters I have sent to you over the past few weeks. Normally I am able to cope with my dyslexia, but as I have no access to a computer or printer since you barred me from my office, it has made the whole process of reading and writing long documents ..extremely difficult."
26. The claimant's evidence was that she would always seek help with detailed or lengthy paperwork and would get emails and reports checked before they were sent out.
27. She also confirmed that her dyslexia never affected her until the respondent came on board (the Tribunal understands that the claimant is referring to a change of ownership at the respondent), after which time everything had to be done on the computer. The claimant also said that she had never seen dyslexia as a problem until she was "blocked by Dawn" (which the Tribunal understands to be a reference to the claimant's suspension and not being permitted to access any computer).

28. Ms Myers was unaware of the claimant's dyslexia until the claimant's statement at the reconvened disciplinary hearing. She had checked with the claimant's previous line managers who had considered the claimant to be confident sending emails and completing forms and were not aware of the claimant's dyslexia.
29. Ms Martin stated in a letter that the claimant had informed her that she had dyslexia and a problem retaining information during one of their first meetings and that her dyslexia became more of a problem as her work became more computerised. However, Ms Martin was not present to be cross examined. Nonetheless this evidence was consistent with the claimant's own evidence that she struggled with using the computer, though relied on it for reading and writing documents.
30. It is important to note that the claimant has never taken any medication for dyslexia.

Diagnostic Assessment report

31. The report states that whilst the claimant "reveals excellent verbal and visual reasoning skills, [her] speeds of processing information, memory processes and phonological awareness are weaker than would be expected by chance alone. These challenges are impacting her learning, predominantly reading comprehension, spelling and writing skills."
32. The report confirms that the claimant has dyslexia and identified that the claimant's short term and working memory scores were lower than the scores for her underlying ability and that she had difficulty retrieving information at speed from her long term memory.
33. The report indicates that the claimant reported concerns as regards reading, in that she forgets what she has read and must re-read; spelling; writing; and memory, attention and concentration.
34. The claimant underwent a series of tests the results of which were contained in the report. Almost all of her scores were in the high or above average range, with some exceptions where her scores were in the low average range.
35. The report concludes: "Vanessa worked hard throughout the assessment, concentrating well during the tests....This assessment shows...a range of strong abilities across the verbal and visual areas along with excellent spoken language and communication skills....processing language and information particularly in the written form, is the challenge; working memory, speed of working and literacy are frustratingly time-consuming.."

Claimant's written response to request for further information

36. The claimant says that dyslexia affects her reading and writing skills and her memory and information organizational skills. It says: "This means that the claimant's spelling is poor, that she has difficulties writing letters or reports, avoids reading or writing where possible and finds taking notes or organizing written work extremely challenging. She also finds it difficult to

describe or record events in chronological order , and to assimilate and retain information when reading complex texts.”

37. The claimant says that, without access to a computer, she finds it hard to write reports or other forms of handwritten text. It goes on to state that, “as the claimant was denied access to her office computer, which she normally used to read and write documents with, this made it impossible for her to read and respond to the lengthy documents she was expected to deal with as part of the disciplinary process.”

Law

38. Section 6 of the Equality Act 2010 (EqA) 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.”

39. It is for the claimant to prove that they are a disabled person within the definition of section 6 EqA.

40. “Substantial” means: “more than minor or trivial” (section 212(1) EqA).

41. The statutory guidance states at para B1: “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.”

42. The Tribunal also referred to paras B2-B11 of the statutory guidance which sets out further criteria to consider in assessing an impairment as a disability or otherwise. In particular, the Tribunal referred to paragraph B7 which states: “Account should be taken of how far a person can reasonably be expected to modify his or her behaviour, for example, by use of a coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day-to day activities. In some instances, a coping or avoidance strategy might alter the effects of the impairment to the extent that they are no longer substantial and the person would no longer meet the definition of disability. In other instances, even with the coping or avoidance strategy, there is still an adverse effect on the carrying out of normal day to day activities.”

43. In B9 it states: “...it is important to consider the things that a person cannot do, or can only do with difficulty.”

44. And in B10: “In some cases, people have coping or avoidance strategies which cease to work in certain circumstances (for example, where someone who has dyslexia is placed under stress). If it is possible that a person’s ability to manage the effects of an impairment will break down so that effects will sometimes still occur, this possibility must be taken into account when assessing the effects of the impairment.”

45. *Elliott v Dorset County Council* [2021] IRLR 880 confirms that the focus of attention must be on the things the claimant either cannot do, or can only do with difficulty; and that the correct approach is to consider how the

individual carries out the activity compared with how they would do if not suffering the impairment.

46. *Elliott* also approves a number of points set out in *Paterson v The Commissioner of Police of the Metropolis* [2007] UKEAT 0635_06_2307 including: “In order to be substantial the effect must fall out with the normal range of effects that one might expect from a cross section of the population.” and: “In our judgment the only proper basis, as the Guidance makes clear, is to compare the effect on the individual of the disability and this involves considering how he in fact carries out the activity compared with how he would do if not suffering the impairment. If that difference is more than the kind of difference one might expect taking a cross section of the population, then the effects are substantial.”
47. *Elliot* also states: “One might imagine it is a rough and ready cross section of the population taken at approximately the claimant’s level.”
48. The time at which to assess the disability (ie whether there is an impairment which has a substantial adverse effect on normal day to day activities) is the date of the alleged discriminatory act: *Cruickshank v VAW Motorcast Limited* 2002 ICR 729, EAT. A Tribunal is however entitled to infer, on the basis of the evidence presented to it, that an impairment found to have existed by an expert at the date of a medical examination, was also in existence at the time of the alleged act of discrimination: *John Grooms Housing Association v Burden* EAT 0937/03.

Conclusions

49. The claimant has an impairment, namely dyslexia, as confirmed by the claimant’s diagnostic assessment report. It is important to note that the claimant has had dyslexia from birth, it is not a condition which develops, gets worse, or changes. Thus its longevity is also not in dispute.
50. The respondent does not deny that the claimant has the condition, but does not concede that it amounted to a disability.
51. For the duration of the claimant’s employment she was able to function effectively without asking for any adjustments, probably as a result of her coping strategies, of taking her time, asking for support when needed and having emails checked when needed.
52. Such support as was requested was for support with using a computer, as the claimant was not comfortable using it.
53. The Guidelines issued by the Government Office for Disability Issues says “Account should be taken of how far a person can reasonably be expected to modify his or her behaviour, for example by use of a coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day-to-day activities. In some instances a coping or avoidance strategy might alter the effects of the impairment to the extent that they are no longer substantial and a person would no longer meet the definition of disability. In other instances, even with the coping or avoidance strategy, there is still an adverse effect on the carrying out of normal day-to-day activities ... In some cases, people have coping or avoidance strategies

which cease to work in certain circumstances (for example, where someone who has dyslexia is placed under stress). If it is possible that a person's ability to manage the effects of an impairment will break down so that effects will sometimes still occur, this possibility must be taken into account when assessing the effects of the impairment” (Paragraphs B7 and B10).

54. The fact that the claimant was able to work for the respondent over such a long period with no issues, according to her own and Mr Farley's evidence, is a helpful indication of the effectiveness of her acquired coping strategies in most situations. Asking friends and colleagues to check over a report or email before sending it is one such coping strategy.
55. The claimant herself said that she never saw dyslexia as a problem until she was blocked (which the Tribunal understands to be reference to her suspension as part of the disciplinary process as a result of which her employment was terminated which meant she no longer had access to a computer). She was then struggling in the disciplinary process as a result of not having access to a computer rather than because of her dyslexia. In the claimant's own evidence she coped fine until then, Furthermore, any difficulties she did encounter appear to have been through a lack of confidence with new computer systems on which she needed some additional training, as did others.
56. The claimant was asked in cross examination what the most significant impact on her was, of dyslexia and she said it was the ability not to be able to answer things in a sentence or to be black and white. That is not a substantial adverse effect on normal day to day activities.
57. The claimant has not discharged the burden on her of showing that her condition of dyslexia had a substantial adverse effect on her ability to carry out normal day to day activities. As the claimant has never taken any medication for dyslexia, there is no need for the Tribunal to consider the effect of the medication.

Employment Judge Rice-Birchall
Date: 14 July 2023