



EMPLOYMENT TRIBUNALS

Claimant: Dr L E Morgan

Respondent: Maximus UK Services Ltd

Heard at: Cardiff (in public by CVP)

On: 28 September 2023

Before: Employment Judge R Brace

Appearances

For the Claimant: Ms C Ibbotson (Counsel)

For the Respondent: Ms M Polimac (Counsel)

JUDGMENT

It is the decision of the Employment Judge sitting alone that the Claimant was a disabled person by reason of her dyslexia at the material time.

Written Reasons

Introduction and Background

1. This is a public preliminary hearing on the issue of whether the Claimant has a disability by reason of her dyslexia within the meaning of s.6 and Sch. 1 Equality Act 2010 (“EqA 2010”) and if not, whether the complaints of disability discrimination contrary to the EqA 2010 should be dismissed.
2. I had before me an agreed bundle of 92 pages (“Bundle”), and reference in these written reasons to pages in that Bundle are denoted by []. An additional document, a poem that had been written by the Claimant to her ex-work colleagues, was permitted to be added to the Bundle with the consent of the Claimant [93]. A copy of the Claimant’s disability impact statement (“Impact Statement”,) signed and dated 26 July 2023, was also contained within the Bundle [58].

3. The Claimant's representative was permitted to ask additional questions of the Claimant on the additional document [93] and the Claimant was subject to questioning by the Respondent's representative, the Tribunal and re-examination.
4. The hearing proceeded with no connectivity issue.
5. That the Claimant has dyslexia, a life-long impairment, was not challenged by the Respondent's representative at this hearing. Rather, the focus of the dispute between the parties is on the issue of whether the dyslexia had a substantial adverse effect on the Claimant's ability to carry out normal day-to-day activities. It was also accepted by the Respondent's representative that there was no dispute that the 'activities', relied on by the Claimant as being impacted by her dyslexia, were 'normal day-to-day' activities.

Disability - Law

6. The Equality Act 2010 ("EqA") provides that a person has a disability if he or she has a 'physical or mental impairment' which has a 'substantial and long term adverse effect' on his or her 'ability to carry out normal day to day activities'.
7. Supplementary provisions for determining whether a person has a disability are contained in Part 1 Sch 1 EqA, which essentially raise four questions:
 - a. Does the person have a physical or mental impairment?
 - b. Does that impairment have an adverse effect on their ability to carry out normal day to day activities?
 - c. Is that effect substantial?
 - d. Is that effect long term?
8. Although these questions overlap to a certain degree, when considering the question of disability, a Tribunal should ensure that each step is considered separately and sequentially (**Goodwin v Patent Office [1999] IRLR (EAT)**). In **Goodwin**, Morison P, also set out very helpful guidance as to the Tribunal's approach with regard to the determination of the issue of disability, at paragraph 22 saying:

"The tribunal should bear in mind that with social legislation of this kind, a purposive approach to construction should be adopted. The language should be construed in a way which gives effect to the stated or presumed intention of Parliament, but with due regard to the ordinary and natural meaning of the words in question."

9. The supplementary EqA 2010 Guidance on the definition of disability ("Guidance") also states;

'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' (D3).

10. The requirement that the adverse effect on normal day to day activities should be considered a substantial one is a relatively low threshold. A substantial effect is one that is more than minor or trivial (s.212 EqA, supplemented by B1 Guidance).
11. The EAT in **Paterson v Commissioner of Police of the Metropolis** [2007] IRLR 763 and **Elliot v Dorset County Council** [2021] IRLR 880 EAT both gave consideration as to when there is a substantial impact, saying that:
 - a. The comparison is not with the population at large, that '*what is required is to compare the difference between the way in which the individual in fact carries out the activity in question and how he would carry it out if not impaired*' (at para 27 **Paterson**); and
 - b. In **Elliot**, Judge Talyer identified that the '*adverse effect of an impairment on a person is to be compared with the position of the same person, absent the impairment. If the impairment has a more than minor or trivial effect on the abilities of the person compared to those s/he would have absent the impairment, then the substantial condition is made out* (at para 43)
12. Whilst tribunals should consider whether the adverse effect is 'substantial' in light of the statutory definition and the supplementary Guidance, the Guidance does not impose any legal obligations in itself, although tribunals must take account of it where they consider it to be relevant.
13. The Guidance (D3) also indicates that normal day-to-day activities can include 'general work' and the EAT in **Paterson** concluded that 'normal day-to-day activities' must be interpreted as including activities relevant to professional life. It emphasized that the phrase is to be given a broad definition that can include irregular but predictable activities that occur in professional life.
14. Furthermore, a non-exhaustive list of how the effects of an impairment might manifest themselves in relation to these capacities, is contained in the Appendix to the Guidance on matters to be taken into account in determining questions relating to the definition of disability.
15. Finally, the burden of proof is on the claimant to show she satisfied this definition. The time at which to assess the disability i.e. 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 Ltd** 2002 ICR 729, EAT). This is also the material time when determining whether the impairment has a long-term effect

Facts

16. The Claimant was born on 1 September 1986. She is a qualified healthcare practitioner and holds a full licence to practice medicine. She has been a practising doctor for over 5 years, after graduating from Cardiff University with a MBChB in 2017.
17. The Claimant had, prior to her commencement of employment with the Respondent on 16 August 2022, worked exclusively in the NHS, primarily in front line acute specialties and particularly accident and emergency. She also volunteered twice during the Covid-19 pandemic to be deployed to the NHS frontline.

Primary and Secondary Education Period

18. Within her Impact Statement, the Claimant had included no evidence as to the impact of dyslexia on her during the period of her primary and secondary school education, stating only that it had been '*missed in the school system*'¹. She was cross examined on that period of her life however, in the context of what she had reported during a later psychological assessment, undertaken in 2017 when she was nearing the end of her medical degree.

Higher Education Period – 20 April 2017 Psychological Assessment

19. The possibility of the Claimant having dyslexia was not identified until the latter stages of her medical degree, which she had entered through an NVQ access course, and had to wait a year before commencing due to repeating an entry maths exam.
20. By this time, the Claimant was 30 years' old and had failed her medical 'PSA' examination, described as a prescribing medicines' examination, an exam that involved both heavy wording and numerical analysis. She also felt generally that her examination performances had never reflected her intellect or ability. She sought an assessment.
21. On 18 April 2017, Richard Edwards, Chartered Psychologist, assessed the Claimant to determine if she had a specific learning difficulty ("SpLD") that could adversely impact her studies. That assessment took place over 2.5 hours with no interruptions. Following that assessment, he produced his report ("Psychological Assessment Report")[61].
22. Whilst the Claimant's representative submitted that the assessment was 'artificial', where the Claimant was not functioning as she normally would and knowing that the assessor was trying to assist her, I was not persuaded by this argument. I found that this was the most thorough in terms of assessment of the Claimant's difficulties generally and also found that the Claimant, at that time, would likely have been candid and honest about the difficulties she was facing in order to get as much assistance as possible to complete her education. On that basis, I accepted the content of that

¹ CWS§4

Psychological Assessment Report as an accurate presentation of the Claimant's difficulties up to 2017.

23. Within the 'Background Information' of that report, he noted the Claimant had told him that she had been performing to satisfaction in all areas except maths and that it was this that had prompted her to seek an opinion about possible dyscalculia, a specific difficulty in understanding numbers which can lead to a diverse range of difficulties with mathematics, reporting that she had difficulties in passing a maths exam which had been part of her course and that this reminded her that despite high academic achievements, maths had always been unexpectedly delayed for her. She told him that she had found many aspects of maths difficult and confusing and recalled hating maths from school.
24. The Claimant had also reported that she:
 - a. was a literate person, who had always enjoyed reading and writing and felt that her essay and spelling skills were good;
 - b. often found herself running out of time in exams, which typically involved reading large chunks of text before answering; and
 - c. did not recall any problems with literacy tasks.
25. She also reported being easily distracted, thought that her organisation was good but that she could take a long time to do things. She considered that her time management, whilst good, could be better.
26. The report contained an assessment of the Claimant's intellectual abilities as well as literacy and numeracy skills with the Claimant's relevant scores. Within the assessment results for:
 - a. the Claimant's 'Intellectual abilities' [63],
 - i. the Claimant's verbal comprehension ("VCI") fell within the very superior range at 99.9th percentile;
 - ii. her processing Speed Index was within the average range, at the 70th percentile'; and
 - iii. her working memory was within the below average range at the 13th percentile;
 - b. the Claimant's 'Literacy and Numeracy Skills' [63], were below the range predicted from the Claimant's VCI score, with the Claimant's attainment for reading being within the above average range for her age group, at the 77th percentile as was her spelling, at the 79th percentile.
 - c. Under Word Reading Efficiency, he concluded that the Claimant was '*reasonably efficient in word reading at speed*' and that her '*reading speed appeared to be in the lower end of the average range*' [64].

27. For completeness, within the 'Literacy and Numeracy Skills', the Claimant's test results for Mathematical reasoning and Numerical Operations were at the 12th and 13th centile respectively, both below the average range and that predicted from her VCI score.
28. He concluded that the Claimant test profile met the criteria for the diagnosis of SpLD:
- a. The Claimant had an underlying deficit in working memory;
 - b. Had reported problems with development of numerical skills and that areas of weakness persisted in number skills;
 - c. There were aspects of performance which were also typically identified with dyslexia, such as lower working memory and possibly slower than expected (though average,) reading speed; and
 - d. Underlying ability/attainment differential was noted in spelling/reading (though already well-developed skills).
29. He concluded that the Claimant's history and performance suggested that she experienced SpLDs of dyscalculia, dyspraxia and '*well compensated dyslexia*'. He recommended that the Claimant would benefit for 25% extra time in exams if text based, and 40% extra time if maths/calculation based and that such extra time would offset the Claimant's slower reading / writing and processing speed [75].
30. He also reported that the Claimant:
- a. had been able to develop literacy skills such as reading and spelling to a very good level;
 - b. was a '*relatively slow reader*', assessing that the Claimant's efficiency and speed of reading to be '*adequate to her level of learning*' within the lower end of the average which suggested that the Claimant preferred to read a '*little more slowly than some people*'. He stated that the Claimant did '*have excellent basic reading skills but with an apparent benefit from slowing down*';
 - c. had a working memory deficit;
 - d. had a processing speed that was average, but below expectations;
 - e. had a writing speed slightly below average.
31. I accepted the Psychological Assessment Report and its conclusions and found that the Claimant had well-compensated dyslexia (in addition to dyscalculia and dyspraxia,) and that as a result, whilst the Claimant had reading skills to a very good level, she was a relatively slow reader and had

a working memory² deficit, with an average processing speed that was below expectations.

32. I did find however that the Claimant had been able to read and enjoyed reading. I was not persuaded that what the Claimant meant by 'reading' at that time, was listening to audio-books, an issue she had raised in her evidence. Whilst I did accept that she would have listened to and did listen to such media during periods in her life, when she said she enjoyed 'reading' books in this assessment, she meant the physical activity of looking at the printed word and not listening to the spoken word.
33. The Claimant's live evidence was that whilst at school she had not passed exams well or frequently; that she had failed English examinations and that she had lots of resits and had been given additional time for some internal school exams. The Claimant had difficulty however recalling other matters about this period of her life, such what 'A' levels she had studied and the results of those 'A' levels, and was not able to explain when she had been given extra time for examinations, despite the Claimant giving clear evidence that she had a 'very good' long term memory.
34. I was not persuaded by the Claimant's live evidence in relation to this period of her life, concluding that a more likely reliable and credible account of the difficulties she had experienced during her period of education, was contained in:
- a. the Claimant's written Impact Statement, in which she only referenced that she had '*repeated difficulty during time constrained examinations in 2017*', with no reference to difficulties with exams in school; and
 - b. the Psychological Assessment Report, which was that she:
 - i. had difficulty with passing maths exams;
 - ii. often found herself running out of time in exams, which typically involved reading large chunks of text before answering;
 - iii. that she did not recall any problems with literacy tasks;
 - iv. that she thought that her organisation was good but that she could take a long time to do thing; and
 - v. that whilst she considered that her time management good, it could be better.
35. At some point during her education period the Claimant adopted the use of 'mind maps', memorable organised diagrams representing the information studied, and had at higher education recorded her lectures (audio and

² 'the ability to hold information in mind temporarily while performing some operation or manipulation with that information, or engaging in an interfering task, and then accurately reproducing the updated information or correctly acting on it' [79] Psychological Assessment Report Appendix 2

video,) her preferred fonts for electronic note-taking that she now uses, 'Dyslexie' or 'OpenDyslexia', not being available to her at that time.

Period of employment to March 2022

36. After graduating and working in post graduate placements for a period, up to May 2022 the Claimant worked as a junior doctor predominantly but not exclusively, within the accident and emergency department for the NHS.
37. In live evidence, the Claimant was cross-examined on how she managed with her dyslexia to operate in such a high pressurised environment. She explained how her work in that department was highly visual and verbal and explaining how written patient notes were both read and made by her.
38. Whilst initially this was surprising, I did accept the Claimant's evidence and made the following findings, that:
 - a. The Claimant did have to read medical notes in detail within A&E, but that a verbal 'run-down' of the patient would be given to her on a handover and that she would speak to the patient to get background or history;
 - b. a nurse or clinician, not actively involved with the patient, would be clerking/taking notes whilst was dealing with the patient;
 - c. she would 'gravitate' to notes which were in electronic format, that she could later open in 'Word' where the 'Read Aloud' function was used by her;
 - d. her own writing up of notes would be 'after the event', when she had time to recall and record, and when she could give herself more time to read hand-written notes;
 - e. she was able, under pressure, to read '*short, sharp sentences*', where she would be looking for problem areas which were invariably flagged in red, and that there was no need to engage in sustained reading of large blocks of text, where she had her difficulty;
 - f. She was not solely responsible for prescribing, but worked within a team which supported her.

39. I did not find that there was any aspect of her professional day to day activities within that environment that she avoided, whether reading or writing, but that rather the Claimant had modified her behaviour on how she reviewed / write up notes and had coping strategies to reduce the effects of her dyslexia during this time.

Role at the Respondent

40. The Claimant commenced employment at the Respondent in August 2022 as a Functional Assessor. In her written evidence the Claimant had described the strategies she had adopted when in that clinic setting,³.
41. I accepted the following Claimant's evidence, as set out in §10 and 11 of her Impact Statement, which the Claimant was not challenged on, that she:
- a. did find note-taking difficult on the ward round, in that she had difficulty writing by hand a dictated form of the consultant's interview of the patient, while actively precisising the conversation in real time;
 - b. that she found rapid verbal instructions difficult to follow, having to ask seniors to repeat instructions or distil information, highlighting only the most relevant information;
 - c. that she became cognitively fatigued due to reading hundreds of patient documents with varieties of typed and handwritten notes;
 - d. That when fatigued or stressed, she would often mispronounce or read sentences incorrectly and that this had been embarrassing on a morning round after a night shift when she had to present the patient to a consultant.
42. I found that the Claimant developed a system of working to cope with her dyslexia in that she:
- a. devised a system for note-taking, whereby she created template to use to enable her '*to document clearly and quickly*' to ensure that she did not miss important information;
 - b. Used her phone to read back to her a list of instructions.
43. Again, I did not find that these were avoidance strategies but coping mechanisms put in place by the Claimant to reduce the effects of her dyslexia.
44. Whilst I accepted that the Claimant would dictate letters, for later transcription by others, rather than compose letters by hand, I was not persuaded that this was a coping mechanism for her dyslexia. Rather, as had been put to the Claimant on cross examination, this was a system likely adopted by most clinicians and on balance found that it was more likely than not something that she would have done even if she did not have dyslexia.

Occupational Health assessment 29 November 2022

45. By November 2022, the Claimant had been referred to Occupational Health by the Respondent for advice on her dyslexia, the Claimant having failed Stage 3 of her training at some point at the end of September 2022. Their Report was provided ("*OH Report*"), suggesting a Neurodiversity Diagnostic Assessment to understand the impact that additional time and other

³ CWS§10

reasonable adjustments would have on the Claimant's performance (both theory and practical elements of training) [87].

46. Adjustments for backpain were also suggested and a neurodiversity diagnostic assessment for further advice was recommended, together with recommendations in relation to her dyslexia. These included, in particular, extra time for tasks the Claimant found particularly challenging, overlays and use of 'dyslexie' font typeface, if available, to help improve reading and ease of reading.

Screening Assessment 14 February 2023

47. The Claimant was again assessed on 14 February 2023 by Jade Armstrong, Assistant Psychologist, ("Screening Assessment Report")[76].
48. Unlike the psychological assessment in 2017, this was a screening assessment that did not formally diagnose the condition, but provided general recommendations for work-place adjustments to address the multi-tasking responsibilities engaged in an employee's environment. It was based on a pre-assessment questionnaire (not within the Bundle,) and a discussion with the Claimant that had been carried out by video.
49. Whilst I found that the Psychological Assessment Report was likely to be the most thorough in terms of the Claimant's SpLDs, and was not persuaded that either this screening assessment or the workplace needs assessment, were diagnostic assessments, I did accept the contents of the Screening Assessment Report as identifying the areas that the Claimant had reported to them at that time and that she '*may find challenging*' [82]. The report stated that that the assessment had been requested by the Claimant, as the nature of her role involved the use of a computer aspects that her previous job roles did not cover.
50. The challenges included [79]:
- a. Recalling of information, for instance remembering complex sentences at one;
 - b. Writing tasks, such as getting her thoughts in written structure and grammar;
 - c. Reading long pieces of text, particularly at speed;
 - d. Mixing up orders of numbers and occasionally letters, when reading and writing;
 - e. Listening and taking notes at the same time, for example assessments; and
 - f. Time management, such as planning sufficient time to complete tasks.
51. The coping strategies that the Claimant had implemented was also set out [80].

52. It was the opinion of the assessor that the Claimant met the threshold to suggest that she showed tendencies related to dyslexia [79]. They recommended a Workplace Needs Assessment Report.

Workplace Needs Assessment 21 February 2023

53. That Workplace Needs Assessment took place on 21 February 2023 and a subsequent report was provided dated 2 March 2023 ("WPA Report") [85]. Again, I accepted the content of that report and found that the Claimant reported that she had been diagnosed with dyscalculia and tendencies associated with dyslexia and developmental coordination disorder (dyspraxia). By that time, the adjustments that had already been suggested, had been put in place.

54. Adjustments recommended included coaching on IT techniques, strategies and assistive equipment, and software, including an additional monitor, read and write software (enabling the Claimant to listen to text read aloud) and overlays.

Impact Statement

55. Within her Impact Statement the Claimant gave evidence that she 'struggled' to read books and mainly 'read' by listening to audiobooks. When challenged on cross examination, that this appeared to contradict what she had said in her 2017 assessment, the Claimant suggested that listening to audio books was 'reading', clarifying that she could read but that it took her a lot longer.

56. Whilst I accepted from the Psychological Assessment Report that the Claimant had a slower reading speed taking longer to read, and from her evidence that she had difficulties in reading at speed, I did not accept her evidence that she had a 'struggle to read' and I was not persuaded that choosing to listen to audio books was something that she had to do to avoid physically reading a book.

57. I accepted the Claimant's evidence that her dyslexia impacted on her ability to process what she had read, particularly long text including hundreds of patient notes, which was accepted by the Respondent as a day to day activity. I also accepted the Claimant's evidence that became cognitively fatigued after reading hundreds of patients documents with varieties of handwritten, printed and typed notes.

58. In terms of executive functioning and organisation, the Claimant agreed that she considered her organisation and time management was good making use of her electronic devices, such as Alexa and calendar notifications to set reminders, referring to them in live evidence as her 'coping mechanisms'. It was suggested to the Claimant on cross-examination that such behaviour demonstrated that she had strong executive functioning and organisational skills. She suggested that she would not have to take such steps if she had been, what she termed, 'normal'.

59. I was not persuaded by that evidence and found that the steps that she had taken did demonstrate good executive functioning and organisational skills. I was not persuaded that she would not have used such tools, such as to do lists, electronic calendar reminders, had she not been dyslexic. In any event, such steps demonstrated a coping strategy that altered the effects of any dyslexia to the extent that they could longer be said to be substantial.
60. Whilst I found that the Claimant generally had good oral communication, I also found that the Claimant had found rapid or 'exceptionally fast' verbal instruction difficult to follow having accepted her evidence, which was not contradicted, and that she had to often ask her seniors to repeat instructions or distil information. It was not put to the Claimant that others in that role had or would have similar difficulties, and/or that had the Claimant not had dyslexia, she still would have or might have had similar difficulties.
61. I also accepted her evidence that environmental factors, such as fatigue and stress, impacted negatively on her ability to pronounce or read correctly and accepted that the Claimant had been embarrassed when this had arisen after a night shift, the example that had been given by the Claimant in her statement⁴ and again in live evidence. Again, it was not put to the Claimant that others in that role had or would have similar difficulties after a night shift or when fatigued or stressed, and/or that had the Claimant not had dyslexia, she still would have or might have had similar difficulties
62. In terms of other day to day activities:
- a. the Claimant gave evidence that she needed her mother's support to do food shopping explaining that she often purchased the wrong products as chose store own-brands, rather than name brand foods which were less recognisable and 'wordy', with plain packaging and that she had found shopping difficult due to the external stimulus of the store. She also gave evidence that she shopped online using images, something that I found she would likely have done even if she were not dyslexic. I was not persuaded by any of that evidence, finding the Claimant's evidence neither persuasive or credible.
 - b. the Claimant also had explained that she struggled to read her utility bills, that her mother helped her and that she received them electronically so that she could change the font to read them. This appeared to contradict her live evidence where she accepted that she also assisted in the family business, when she had to read extensive invoices. Again, I was not persuaded that the Claimant's evidence was credible on this point, which I considered was contradictory and on balance did not find it likely that the Claimant did require her mother's assistance to the extent that she had stated in her evidence.

⁴ CWS

- c. The Claimant relied on her phone for contact information as she struggled to recall phone numbers. Again, I was not persuaded that the Claimant had proven on balance that this demonstrated a memory issue or a symptom of her dyslexia or that it was a coping mechanism for her dyslexia. I considered it likely than not, that even if she had not had dyslexia, she would not have recalled phone numbers and would have relied on her contact list. I also not persuaded that that this was an effect of the dyslexia, but likely her dyscalculia, an impairment that was not relied on by the Claimant, either in isolation or in conjunction with the dyslexia.

Submissions

63. The Respondent reminded me that the key question in this case was whether the Claimant's dyslexia caused a substantial adverse effect on the her day to day activities, submitting that the Psychological Assessment Report from 2017 was the most thorough in terms of the Claimant's dyslexia, that neither the OH Report, nor the Screening Assessment Report was a diagnostic assessment. She further submitted that the WPA Report had been prepared at a point when the suggested reasonable adjustments had been put in place for the Claimant and that she had still failed Stage 3 of her probation, suggesting that problems, other than dyslexia, had been causing issues for the Claimant.
64. In terms of the impact on the Claimant's day to day activities, it was submitted that although the Claimant had dyslexic tendencies, it was well-compensated and, taking into account her evidence, the Claimant had not proven substantial impact on day to day activities, submissions which are addressed in the conclusions below.
65. The Claimant provided written submissions, which are incorporated by reference in these written reasons and in supplemental oral submissions, I was invited me to find that the 2017 psychological assessment had been undertaken in an artificial and comfortable environment, with a psychologist the Claimant knew was trying to assist her and where the Claimant was not functioning as she normally would. This was compared to the WPA Report, which, it was argued, was more credible.
66. It was not accepted that the Claimant's dyslexia was well-compensated, but that the Claimant had learned through coping techniques to mask her dyslexia and that what she had described in evidence was how she had 'avoided' doing certain things, although what the Claimant had 'avoided' specifically was not articulated. It was submitted that the Claimant had developed coping techniques and had learned to cope with the impact of her dyslexia and the evidence was that when tired or stressed her coping techniques broke down and that the impact of her dyslexia worsened and that the Claimant was disabled.

Disability – Conclusions

67. Dyslexia is, by its very nature, a condition that is lifelong condition and I was satisfied, having accepted the Psychological Assessment Report, that the Claimant had an impairment of dyslexia and that its effects were 'long term' in accordance with the definition set out in Sch 1 Para 2 EqA 2010 .
68. In reaching a conclusion on whether the Claimant had been able to demonstrate to me that her dyslexia had had a substantial adverse impact on her day to day activities at the relevant time, I focussed not on what the Claimant could do but on what she could not do or could only do with difficulty (B9 Guidance).
69. I concluded that the Claimant's dyslexia did have a substantial adverse effect on her day to day activities at the material time for the reasons set out below. In coming to this conclusion, I took into account that the threshold of what is substantial is low; it is more than minor or trivial (s.212 EqA 2010).
70. I focussed on that period of time that the Claimant worked at the Respondent from May 2022, and not on the period of the Claimant's education or her time as an A&E doctor. I was not persuaded that the Claimant's time in A&E was particularly of assistance, as it was a different environment to the Claimant's workplace at the Respondent, save that this period did evidence the coping strategies that the Claimant had put in place that had likely resulted in the Claimant's dyslexia not having a substantial effect on the Claimant's professional day to day activities at that time.
71. In respect of the day to day activity of reading, I did not find that the Claimant had struggled to read generally. For reasons set out in the findings, I did consider the Claimant's live evidence was contradictory to what she had told the Richard Edwards during his 2017 assessment, and I concluded that the Claimant had a good ability to read and throughout her education at least, without aids such as special fonts.
72. I did accept that the time taken by the Claimant to carry out the activity of reading however, was adversely affected, whether generally or in the professional environment within which she worked at the Respondent, acknowledging that the adverse effect of the impairment was to be compared with the position of the same person, absent the impairment.
73. I did not accept the Respondent's submission that the fact that the Claimant's reading speed was still in average range and therefore the impact on her ability to read was not substantial. Rather, I considered what the effect of the dyslexia would have been on the Claimant without the dyslexia (**Paterson** and **Elliot**). I had found that the Claimant had difficulty with reading at speed, and concluded that she required longer to read matters and that she had processing difficulties, particularly with longer text, than she would had she not had dyslexia.

74. In terms of memory, I was not persuaded that either the Claimant's long or short term memory was adversely affected, the Claimant accepting that she had a good long term memory, the Psychological Assessment Report of 2017 recording that the Claimant was generally good at recalling things and the Claimant's examples of how she recorded her notes within A&E demonstrating good short term memory.
75. I did find that the Claimant's working memory, i.e. her ability to withhold information whilst for example engaging in another task and then accurately reproducing that information, was adversely affected. I had also found that the Claimant had difficulty processing information, as evidenced from the content of the Psychological Assessment Report.
76. Whilst I had accepted the Claimant's evidence in relation to her note-taking on ward rounds (set out in §10 of her Impact Statement,) I also concluded that developing her own template, to document clearly and quickly, was a coping strategy that the Claimant had put in place that had altered and reduced the effect of the Claimant's impairment on her ability to note-take, to such an extent that the Claimant had not persuaded me that her dyslexia had a substantial effect on that particular activity.
77. I did not accept that the Claimant's evidence on dictating patient letters assisted me, as I had concluded that dictating patient letters demonstrated no particular coping mechanism. The Claimant had been challenged on cross-examination that her practice of dictating patient letters was a practice commonly undertaken by many clinicians. Whilst she did not accept that, I concluded on balance that more likely than not that this would have been the case and I was not persuaded that, had she not had her dyslexia, she would have transcribed patient letters by hand.
78. Whilst I had found that the Claimant's oral communication was generally good, that during her evidence she had come across clearly and had accepted that verbal communication was a '*particularly strong suit*' of hers, I had accepted her evidence that her communication was adversely impacted when environmental factors, such as fatigue and stress experienced after working a night shift when she had to present a patient to a consultant, mispronouncing or reading sentences incorrectly, adversely impacted on that oral communication. There was no evidence to suggest, and the Claimant was not challenged, that even if the Claimant did not have dyslexia she would likely have been similarly affected, or that others behaved or would likely have behaved in the same way after such a night shift.
79. I concluded that any coping strategy that the Claimant had put in place to assist her generally, did not assist her in such circumstances, or broke down at such times, and caused her embarrassment. Her embarrassment and

inability to communicate clearly was more than minor or trivial. On that basis, I concluded that the Claimant's dyslexia had an adverse effect on her oral communication that was substantial.

80. In live evidence, she had also said that she had been clear to the Respondent that she 'needed a specific font'. Whilst it is possible that certain fonts assist, it was noted that the Claimant admitted that she was not making use of that font on her personal device to view the electronic bundle during this hearing, despite the Claimant using her own electronic device from her own home and confirming that she did have access to such a font on her own software. I was not persuaded that this assisted the Claimant to determine whether she was disabled at the relevant time.
81. Ultimately, whilst I accepted that the Claimant's dyslexia had been well-compensated for considerable periods of the Claimant's education and earlier working life, when placed in the Respondent's working environment, where she had to manage rapid verbal instruction, and had to read and process hundreds of patients notes, her earlier coping strategies did not always assist her, particularly after night shifts where her fatigue and stress likely exacerbated the effect of her dyslexia.
82. Taking into account the purposive approach and the need to focus on what the Claimant cannot do, rather than what the Claimant can do, I concluded that in this Claimant's case, taking into account activities relevant to her professional life, that the adverse effect on the Claimant's normal day to day activities of reading lengthy documents and processing information, to enable her to communicate orally, was substantial.
83. The Claimant was therefore a disabled person by reason of her dyslexia at all relevant times.

Employment Judge R Brace
Date - 6 October 2023

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

FOR EMPLOYMENT TRIBUNALS Mr N Roche