



# EMPLOYMENT TRIBUNALS

**Heard at:** London South **On:** 16 November 2023

**Claimant:** Ms E McGladdery

**Respondents:** (1) Alpha Plus Group Limited, (2) Ms S Mitchell, (3) Mr S Williams, (4) Mr P Brereton

**Before:** Employment Judge Ramsden

**Representation:**

**Claimant** Miss Gillian Crew, Counsel

**Respondent** Mrs Grace Holden, Counsel

## RESERVED JUDGMENT ON PRELIMINARY ISSUE

1. The Claimant was not disabled by reason of:
  - a) autistic spectrum disorder;
  - b) chronic fatigue; and
  - c) hypermobility,in the period 10 June 2022 and 24 August 2022.
2. The Claimant's claims, including that of disability discrimination on other bases, will proceed to a hearing on commencing **18 November 2024**.

## REASONS

### Background

3. The First Respondent is a company which operates a number of independent schools and colleges across the UK, employing around 1,200 people. The Second, Third and Fourth Respondents are individuals employed by the First Respondent, in the positions of Director of Boarding (at the College referred to in

the next paragraph), Head of Human Resources, and Director of Human Resources, respectively.

4. The First Respondent advertised that it had a vacancy for the role of Residential Boarding Assistant at DLD College London (one of the institutions operated by the First Respondent). The position involved looking after students aged 14 to 20 in the boarding house, which the Respondents describe as a physically demanding role with long hours and shift work. The Respondents say that the role was erroneously advertised as a permanent position when it was in fact a fixed-term post.
5. On 25 May 2022 the Claimant applied for the vacancy. The Claimant was provided with a medical screening form, and she did not declare any medical conditions. The Claimant says that this is because the form only related to whether reasonable adjustments for the recruitment process were required, which she judged were not.
6. On 10 June 2022, the Claimant was conditionally offered the role, subject to satisfactory outcomes of various checks, including an enhanced DBS certificate and verification of medical fitness to carry out work responsibilities. She was due to start in the role on 24 August 2022 (although that date was subsequently amended to 22 August 2022).
7. On 15 or 17 June 2022 (the parties disagree about the date of this) the Claimant returned an equal opportunities form, disclosing:
  - a) That she has dyspraxia (diagnosed in 2006); and
  - b) An undiagnosed condition which left her feeling overwhelmed due to sensory issues, and which meant she needed instructions to be repeated.
8. The First Respondent sought the Claimant's consent to refer her to Occupational Health (**OH**), which consent was given.
9. OH sent the First Respondent a report on 7 July 2022 (the **First OH Report**). That report made no reference to any declared condition by the Claimant, and made no recommendations, so no further action was taken by the First Respondent.
10. In late-June or mid-July 2022 (the parties disagree about the date) the Claimant attended the First Respondent's college premises in London, and in part of her discussions when "on site", informed the Second Respondent that she suffers with chronic fatigue.
11. The First Respondent then sought an updated OH report to ensure the Claimant was able to undertake her role. That updated report was received on 12 August 2022 (the **Second OH Report**), recommending:
  - a) A number of adjustments if feasible; and

- b) Undertaking some further assessments, including access to work and stress management.
12. The First Respondent met with the Claimant on 16 August 2022 to discuss the Second OH Report. The Respondents say that, in the course of that meeting, the Claimant referred to the fact that her condition is exacerbated if there were loud noises (such as from kitchen crockery, sirens and traffic). She also described some difficulties she experiences with understanding the meaning and intention from conversations. In the same meeting the First Respondent informed the Claimant that the position had been advertised as a permanent one in error, and that it was in fact a fixed-term role (and that the start date had been changed to two days earlier).
13. On 17 August 2022 the First Respondent withdrew its offer of employment from the Claimant, due to the fact that some of her disclosures to the First Respondent were considered by it to raise serious safeguarding concerns, for example, if the Claimant were in a situation which was volatile with students, off site on a trip or even in the kitchen area during mealtimes.
14. The Claimant appealed the First Respondent's decision, and an appeal hearing was held on 9 September 2022. The Claimant was informed that her appeal was successful on 14 September 2022, and she was offered the role on a fixed-term basis on 16 September 2022. However, the Claimant had already found alternative employment and rejected the role on 19 September 2022. The Claimant was paid a sum of money equivalent to her notice period of two weeks, as well as reimbursement of the costs of her flights.
15. She has brought complaints against the Respondents of disability discrimination under the Equality Act 2010 (the **2010 Act**). The Respondents accept that the Claimant is, and was at the time of these events, disabled by reason of (a) anxiety and depression and (b) dyspraxia (together, the **Accepted Disabilities**), however the Claimant also says that she is disabled by reason of:
- (i) Autism Spectrum Disorder (**ASD**);
  - (ii) Chronic Fatigue Syndrome (**CFS**); and
  - (iii) Hypermobility,
- together, the **Disputed Conditions**.
16. The Respondents say, in relation to (i) and (ii):
- a) that they do not concede that the Claimant has these impairments given the Claimant has produced no formal medical diagnosis of these conditions; and
  - b) they did and do not have a substantial adverse effect on the Claimant's ability to carry out day to day activities, and

in relation to (iii), while the Respondents acknowledge that the Claimant has a medically-diagnosed condition of hypermobility, they say that it did and does not have a substantial adverse effect on the Claimant's ability to carry out day to day activities.

17. A preliminary matter to be decided at this public preliminary hearing is whether the Claimant was disabled for the purposes of section 6 of the 2010 Act at the relevant times by reason of the Disputed Conditions.

18. These contested conditions are relevant to some of the Claimant's complaints. Specifically, the Claimant complains of:

a) Direct discrimination, relating to:

(i) email correspondence between members of the First Respondent's employees, including the Second Respondent, about the Claimant's chronic fatigue on 8 July 2022, in which withdrawing the Claimant's job offer was discussed. The Claimant clarified in this hearing that she is saying this was because of her anxiety and depression, her dyspraxia, her ASD and her chronic fatigue;

(ii) email correspondence between members of the First Respondent's employees, including the Second Respondent, about the Claimant's chronic fatigue on 12 August 2022, in which:

- I. withdrawing the Claimant's job offer was discussed;
- II. it was suggested that the Claimant had tried to conceal her disabilities;
- III. the view was expressed that the Claimant would not have been offered the job if the First and/or Second Respondent had been aware of the Claimant's disabilities;
- IV. it was wrongly stated that chronic fatigue syndrome was a disability the Claimant suffered from; and
- V. it was stated that the Claimant had had 15 days' absence by reason of chronic fatigue syndrome.

The Claimant clarified in this hearing that she is saying that the contents of this 12 August 2022 email chain were expressed because of her anxiety and depression, her dyspraxia, her ASD and her chronic fatigue;

(iii) the meeting that took place on 16 August 2022 between the Claimant, the Second Respondent and the Third Respondent, where the Claimant contends that:

- I. she was subjected to an inappropriate and intrusive line of questioning from the Second and Third Respondents in relation to her disabilities;
- II. the Third Respondent questioned the Claimant's completion of the "Work Health Assessment Form" and the 'fit to work' outcome;
- III. the Second and Third Respondents wrongly stated that chronic fatigue syndrome was a disability that the Claimant suffered from; and
- IV. the Third Respondent stated that the Claimant should have been on a fixed-term contract, and the permanent contract she had been provided with was a mistake.

The Claimant clarified in this hearing that she is saying that what was said at this 16 August 2022 meeting was because of her anxiety and depression, dyspraxia, ASD, chronic fatigue and hypermobility;

- (iv) the decision on 17 August 2022 in which the Second Respondent withdrew the offer of employment. The Claimant clarified in this hearing that she is saying that this was because of her anxiety and depression, dyspraxia, ASD, chronic fatigue and hypermobility; and
- (v) the offer, from the Third and Fourth Respondents, of reinstatement after the Claimant's appeal on 16 September 2022, on a fixed-term contract. The Claimant clarified in this hearing that she is saying that this was because of her anxiety and depression, dyspraxia, ASD, chronic fatigue and hypermobility;

- b) Discrimination arising from disability, relating to the decision on 17 August 2022 in which the Second Respondent withdrew the offer of employment. The Claimant clarified in this hearing that she is saying that this was because of her anxiety and depression, dyspraxia, ASD, chronic fatigue and hypermobility; and
  - c) Failure to make reasonable adjustments, namely, the failure to allow the Claimant's father (who is neither a work colleague or a trade union representative as regards the First Respondent organisation) to attend her appeal hearing with her. The Claimant clarified in this hearing that she is saying that this was because of her anxiety and depression, dyspraxia, ASD and chronic fatigue.
19. The Respondent denies each of these claims.

## The hearing

20. The Claimant was represented by Miss Crew, Counsel, and was given support by her father, Mr McGladdery. The Respondent was represented in the hearing by Mrs Holden, Counsel.
21. The Claimant requested that she be given extra time to answer questions, and that questions be rephrased if she needed that. All of that happened naturally in the course of her giving evidence, with Mrs Holden and Miss Crew rephrasing questions when required. The Claimant was offered breaks, most of which she said were unnecessary. The support given by Mr McGladdery was the reassurance of his presence – the Claimant answered all questions put to her on her own, and had not asked for any adjustment in that regard. No one else had any needs that required adjustments.
22. The parties had agreed a hearing bundle of 293 pages, in accordance with the Case Management Order of EJ Self on 27 July 2023.
23. The Claimant gave evidence in support of her position that she was disabled on the basis of the Disputed Conditions at the relevant times.

## Law

### The case pleaded

24. The Court of Appeal decision in *Chapman v Simon* [1994] IRLR 124, a race discrimination claim, held that: “*The jurisdiction of the Industrial Tribunal is limited to complaints which have been made to it. Under s.54 of the Race Relations Act, the complainant is entitled to complain to the Tribunal that a person has committed an unlawful act of discrimination, but it is the act of which complaint is made and no other that the Tribunal must consider and rule upon. If it finds that the complaint is well founded, the remedies which it can give the complainant under s.56(1) are specifically directed to the act to which the complaint relates. If the act of which complaint is made is found to be not proven, it is not for the Tribunal to find another act of racial discrimination of which complaint has not been made to give a remedy in respect of that other act.*”

### Disability generally

25. The 2010 Act defines the protected characteristic of “disability” in section 6(1) as follows:

“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.*"

26. The burden of proof is on the claimant to show, on the balance of probabilities, that they were disabled at the relevant time.
27. When considering the meaning of section 6(1), the following should be considered:
- a) the terms of Part 1 of Schedule 1 of the 2010 Act, entitled "Determination of disability";
  - b) guidance issued by the Disability Unit on matters to be taken into account in determining questions relating to the definition of disability (section 6(5)) (the **Guidance**); and
  - c) the Code of Practice on Employment (2011), published by the Equality and Human Rights Commission (the **Code**)

and, indeed, an Employment Tribunal *must* take account of (b) and/or (c) where it considers the Guidance and/or Code, as applicable, relevant, pursuant to paragraph 12 of Part 1 of Schedule 1 of the 2010 Act.

28. As a general rule, when assessing whether an impairment has a substantial adverse effect on the ability of a person to carry out normal day-to-day activities, measures taken to treat or correct the impairment are to be disregarded – but that does not apply to sight impairments "*correctable by spectacles or contact lenses*" (paragraph 5(3) of Part 1 of Schedule 1 of the 2010 Act).
29. The leading case on the examination of whether a person is disabled is the EAT decision of *Goodwin v Patent Office* [1999] ICR 302. While that case concerned the predecessor legislation to the 2010 Act, the four questions identified in *Goodwin* remain appropriate:
- (1) *The impairment condition*: Does the claimant have an impairment which is either mental or physical?
  - (2) *The adverse effect condition*: Does the impairment affect the claimant's ability to carry out normal day-to-day activities, and does it have an adverse effect?
  - (3) *The substantial condition*: Is the adverse effect (upon the claimant's ability) substantial?
  - (4) *The long-term condition*: Is the adverse effect (upon the claimant's ability) long-term?
30. The assessment is done as at the date of the alleged discriminatory act(s) to determine whether the claimant was disabled then (*Cruickshank v VAW Motorcast Ltd* [2002] ICR 729).

*In relation to the first question: Does the claimant have an impairment which is either mental or physical?*

31. There is no statutory definition of “*physical or mental impairment*” in the 2010 Act.
32. Paragraph A3 of the Guidance notes that the term should be given its ordinary meaning, and that “*It is not necessary for the cause of the impairment to be established, nor does the impairment have to be the result of an illness.*” Paragraph A8 states that: “*It is important to remember that not all impairments are readily identifiable. While some impairments, particularly visible ones, are easy to identify, there are many which are not so immediately obvious, for example some mental health conditions and learning disabilities.*”
33. The Code says, at paragraph 7 of Appendix 1: “*There is no need for a person to establish a medically diagnosed cause for their impairment. What it is important to consider is the effect of the impairment, not the cause.*”
34. The EAT decision in *Kaler v Insights Esc Ltd* UKEAT/0051/20 is authority for the fact that a medical diagnosis is influential in assessing this first question, though not determinative.
35. In the case of *Ministry of Defence v Hay* [2008] ICR 1247, the EAT held:
  - a) “*the term “impairment”... bore its ordinary and natural meaning*”;
  - b) that “*impairment*” could be an illness, or result from or be a symptom of an illness; and
  - c) the tribunal was entitled to regard as disabled someone who suffered from a combination of impairments with different effects, to different extents, over periods of time which overlapped.
36. The EAT in *J v DLA Piper UK LLP* [2010] ICR 1052 held that “*in some cases, where identifying the nature of the impairment from which a claimant might be suffering involved difficult medical questions, it might be easier to leave aside that issue and first determine the second element, namely whether the claimant’s ability to carry out normal day-to-day activities had been adversely affected on a long-term basis; that if the tribunal found that the claimant’s ability had been so affected, in most cases it would follow as a matter of inference that the claimant was suffering from an impairment*”.
37. As to whether the effects of multiple impairments can be considered together so that, for example, their aggregate effect can be assessed for the purpose of determining whether the claimant is disabled, the position is not clear:
  - a) Paragraph B6 of the Guidance sets out that: “*A person may have more than one impairment, any one of which alone would not have a substantial effect. In such a case, account should be taken of whether the impairments together have a substantial effect overall on the person’s ability to carry out normal day-to-day activities. For example, a minor impairment which affects physical co-ordination and an irreversible but minor injury to a leg*

*which affects mobility, when taken together, might have a substantial effect on the person's ability to carry out certain normal day-to-day activities. The cumulative effect of more than one impairment should also be taken into account when determining whether the effect is long-term", which seems to suggest a cumulative approach is possible; but*

- b) The decision of the EAT in the case of *Purohit v Hospira UK Ltd* UKEAT/0520/13/LA suggests that that is only appropriate where there is some inter-relationship between the impairments complained of.

*In relation to the second question: Does the impairment affect the claimant's ability to carry out normal day-to-day activities, and does it have an adverse effect?*

38. The assessment of adverse effect is personal to the claimant.
39. As the EAT in *Goodwin* observed:  
*"The focus of attention ... is on the things that the applicant either cannot do or can only do with difficulty, rather than on the things that the person can do."*
40. The Guidance includes examples of day-to-day activities, such as shopping and driving.
41. Appendix 1 to the Code states that 'normal day-to-day activities' are activities that are carried out by most people on a fairly regular and frequent basis, and gives examples such as walking, driving, typing and forming social relationships.

*In relation to the third question: Is the adverse effect upon the claimant's ability substantial?*

42. This is a question of fact. The effect must be "*more than minor or trivial*" (section 212(1) of the 2010 Act).
43. In determining whether an adverse effect is substantial, a tribunal must compare the claimant's ability to carry out normal day-to-day activities with the ability the claimant would have if not impaired – not what the claimant can do with what the average person can do (*Paterson v Commissioner of Police of the Metropolis* [2007] ICR 1522, EAT).
44. Paragraph 8 of Appendix 1 to the Code states:  
*"The requirement that an effect must be substantial reflects the general understanding of disability as a limitation going beyond the normal differences in ability which might exist among people".*
45. However, the Guidance (at paragraph B7) indicates that:

*“Account should be taken of how far a person can reasonably be expected to modify his or her behaviour, for example... to prevent or reduce the effects of an impairment on normal day-to-day activities.”*

The fourth question: Is the adverse effect long-term?

46. Paragraph 2(1) of Part 1 of Schedule 1 of the 2010 Act stipulates that:

*“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.”*

47. Sub-paragraph (2) provides that:

*“If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.”*

48. This is determined as at the date(s) of the alleged discriminatory act(s), by reference to facts and circumstances existing at that date (*McDougall v Richmond Adult Community College* [2008] EWCA Civ 4).

**Application to the claims here**

49. What follows is a consideration of those four questions in respect of each of the three Disputed Conditions of ASD, CFS and Hypermobility.

**ASD**

The first question: Does the Claimant have an impairment which is either mental or physical?

50. The impairment asserted here is a mental impairment.

51. The burden of proof sits on the Claimant to prove, on the balance of probabilities, that she had ASD at the time of the events with which this matter is concerned, namely June to September 2022.

52. The Claimant points to the following:

a) The Claimant and her parents have long suspected that the Claimant has significant autistic traits;

b) Both of her only two first cousins have ASD;

- c) On 20 May 2022 the Claimant was provided with a verbal diagnosis of risk of autism, which resulted in her completing the requisite forms for a referral for autism screening (the results of which are still awaited);
- d) The symptoms of ASD which she experiences:
- (i) She feels overwhelmed if she is not given a break during a working day;
  - (ii) She jumps at loud noises, for example, she finds it difficult to sit in the kitchen when her parents are putting plates away because of the noise;
  - (iii) Sensory struggles, for example, the fact that different kinds of clothing fabrics can affect her differently, and those effects can vary day-to-day, labels need to be cut out, and she buys clothes that are several sizes larger than her actual size to keep tops loose because fabric can irritate and itch her skin;
  - (iv) Needing instructions to be explained to her thoroughly and clearly, with expectations or tasks clarified and broken down into smaller points;
  - (v) Requiring extra time to learn new things;
  - (vi) Reacting to a change of tone/voice, for example, if someone raises their voice at her this will upset her;
  - (vii) Sudden emotional meltdowns in challenging situations such as conflict situations at work, in large crowds in enclosed spaces;
  - (viii) She has to plan journeys in advance;
  - (ix) She finds change difficult (such as starting a new job);
  - (x) Struggles to make eye-to-eye contact;
  - (xi) Repetitive swaying movements;
  - (xii) Very fixed behaviour patterns and timings;
  - (xiii) Hits her wrist on her head when stressed;
  - (xiv) Repetitive and fixated thoughts - she can overthink things and this can make her feel anxious (e.g., she was very anxious during the week leading up to her recent driving theory test);
  - (xv) Hypersensitive sense of smell (e.g., her clothing cannot be dried outside because of outdoor smells);
  - (xvi) Has to smell a glass before using it for a drink;
  - (xvii) Struggles to adapt to changes in circumstances or behaviour of others; and

(xviii) Needing time on her own to decompress and sleep after an intense day at work

together, the **Alleged ASD Symptoms**; and

- e) The Claimant works with students who have autism, and so has work-related familiarity with ASD symptoms.
53. The Respondents submit that:
- a) The Claimant has not been provided with a formal diagnosis of ASD (her verbal diagnosis – of which there is no written evidence – was of “risk of” ASD, not an actual diagnosis of ASD). The Claimant’s and her parents’ suspicions are only self-diagnosis;
  - b) The lack of diagnosis for this Claimant is significant, as she has had psychological testing as a child and extensive engagement with medical professionals throughout her life. If the Claimant had ASD, it is highly likely that this would have been diagnosed; and
  - c) Despite screening being offered to the Claimant, she did not continue with it.
54. On the latter point, the Claimant’s evidence is that:
- a) The screening that was offered to her was in England, and it was for a date after her offer of employment from the First Respondent had been withdrawn;
  - b) As she had no employment at that time, she was forced to return to her parents’ home in Northern Ireland, which meant she lost her place on the screening waiting list in England (and was no longer eligible for screening in England), and the Northern Ireland waiting list is considerably longer. Now that is employed, she is pursuing a private diagnosis, but that is still awaited.
55. The Tribunal has placed no weight whatsoever on the fact that the Claimant did not continue with her screening assessment in England, as that would be distinctly unfair in the circumstances the Claimant describes.
56. The Claimant notes that her diagnosed condition of dyspraxia, one of the Accepted Disabilities, is on the same spectrum as ASD, and she points to that as a complication in her diagnosis in the past (i.e., it may have been difficult for those assessing her to recognise her ASD once they recognised her dyspraxia).
57. She also refers to a statistical difference between the prevalence of ASD diagnosis among boys and men compared with that among girls and women, and she suggests that discussion papers have started to question whether there has been an under-diagnosis of girls and women with ASD – but no written or expert evidence was presented to the Tribunal on either point.

58. A paper was disclosed in the Bundle that refers to “*the important clinical implications*” of the finding that “*adults with dyspraxia experience social difficulties that mirror the difficulties experienced by adults with [ASD]*”, but the paper does not add anything to the question of whether the Claimant has the impairment of ASD.
59. Paragraph 7 of Appendix 1 of the Code, together with the *DLA Piper* case, would point towards the Tribunal, when faced with difficulty identifying the nature of impairment suffered by the Claimant, examining the effects the Claimant relies upon as deriving from her ASD (set out above).

*The second question: Does the impairment affect the Claimant’s ability to carry out normal day-to-day activities, and does it have an adverse effect?*

60. The principal difficulty with this question is working out which effects the Claimant’s putative ASD has on her day-to-day activities. The Claimant herself has emphasised that the symptoms she experiences, which she associates with ASD, are symptoms that are also associated with her (already diagnosed and Accepted Disability of) dyspraxia, and the Respondents contend that these matters are not clearly linked to ASD.
61. The Claimant’s oral evidence, the evidence adduced from the NHS website, and the academic paper referred to above, agree that people with dyspraxia do not automatically have ASD, and *vice versa*. This indicates that the fact that the Claimant has dyspraxia neither supports nor undermines her assertion that she has ASD - but crucially it does mean that there does not appear to be any basis for the Tribunal to distinguish between the effects of the Claimant’s dyspraxia and the effects of her putative ASD, and therefore to find (on the balance of probabilities) that any of the Alleged ASD Symptoms are in fact adverse effects from ASD on her normal-day-to-day activities. In this context, the absence of a formal diagnosis of ASD is very significant.
62. The Claimant also pointed to the fact that some of the effects she associates with her putative ASD are effects that could also be associated with her depression and anxiety, so the task is even more difficult.
63. Moreover, the Respondents aver that the matters set out by the Claimant in her impact statement do not relate normal day-to-day activities, and that their impact is not sufficient to meet the threshold “substantial” (and in relation to the latter point, the Claimant appeared to agree with some of the position taken by the Respondents, referring to herself as “high-functioning” and saying that she is able to do most things a neurotypical person is able to do). The Tribunal does not need to consider these matters, given that it is impossible to delineate the Alleged ASD Symptoms from responses that may be related to the Claimant’s dyspraxia and/or anxiety and depression.

## CFS

64. There was some confusion about whether the Claimant is asserting that she has CFS or something else. Paragraph 2 of the Claimant's Particulars of Complaint refer to CFS, but the Claimant was adamant in her oral evidence that she does not have CFS, and she said on numerous occasions that she regards her chronic fatigue as part of her dyspraxia. Unfortunately for the Claimant, the tribunal's jurisdiction is limited to the complaints that have been made to it (*Chapman*), and in light of the Claimant's clear evidence that she does not have CFS, the Tribunal finds that she does not.
65. The Claimant referred to her chronic fatigue as being part of her dyspraxia, which is a disability the Respondent accepts she had at the relevant times. The fact that this Tribunal has determined that the Claimant does not have CFS does not inhibit the Claimant from bringing evidence in the Final Hearing of her experiencing chronic fatigue in connection with her dyspraxia.

## Hypermobility

*The first question: Does the claimant have an impairment which is either mental or physical?*

66. This is not disputed by the Respondents – they agree she has hypermobility.

*The second question: Does the impairment affect the claimant's ability to carry out normal day-to-day activities, and does it have an adverse effect?*

67. The Claimant was very honest and clear in her oral evidence that her hypermobility has limited impact on her day-to-day activities. She referred to being in constant pain, which increases over time if she sits for lengthy periods (when driving, or giving evidence before the Tribunal), but that pain is relatively mild, as she does not take painkillers (even over-the-counter painkillers). She was clear that her hypermobility does not change or limit her day-to-day activities in any way (she referred to driving or taking taxis rather than walking long distances, but was clear that that is consequent on her chronic fatigue rather than hypermobility).
68. The Claimant also referred to the fact that when she has fallen in the shower on a couple of occasions (due to her dyspraxia) the injuries she has sustained have been more severe than they might otherwise be due to her hypermobility (a broken wrist on two occasions), but she does not change her activities, and nor are they limited by her hypermobility.

The third question: Is the adverse effect upon the Claimant's ability substantial?

69. Again, the Claimant's evidence was clear that while she endures a certain degree of joint pain, she does not need to take over-the-counter or stronger pain killers. She manages very well. The impact of her hypermobility is not substantial.

The fourth question: Is the adverse effect long-term?

70. Hypermobility is a permanent condition for the Claimant, diagnosed in 2007, but it does not have a sufficiently adverse effect for the purposes of the definition of disability.

**Conclusions**

71. For all of the above reasons, the Claimant was not disabled for 2010 Act purposes at the relevant times by reason of:
- a) ASD;
  - b) CFS; and/or
  - c) Hypermobility.

Employment Judge Ramsden  
Date **21 November 2023**

JUDGMENT AND REASONS SENT TO THE PARTIES ON  
Date **18 December 2023**

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FOR THE TRIBUNAL OFFICE