



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102676/2023

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Held via Cloud Video Platform (CVP) in Glasgow on 7 December 2023

Employment Judge P O'Donnell

10 **Ms Natasha Saini**

**Claimant
Represented by:
Mr T Merck -
Counsel [Instructed
by Morrish
Solicitors]**

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Community Infosource

**Respondent
Represented by:
Mr M Briggs -
Counsel [Instructed
by Jackson Boyd
Solicitors]**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

25 The judgment of the Employment Tribunal is that the claimant is a disabled person as defined in s6 of the Equality Act 2010.

REASONS

Introduction

1. The claimant has brought various complaints against the respondent under the Equality Act 2010.
- 30 2. Some of those complaints relate to the protected characteristic of disability. The respondent does not concede that the claimant meets the definition of disability under s6 of the Equality Act and this hearing has been listed to determine that issue.

Evidence

3. The Tribunal heard evidence from only the claimant. The claimant had prepared two witness statements setting out her evidence on her condition as part of the case management process and she adopted these as the bulk of her evidence-in-chief but was asked some supplementary questions.
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4. The Tribunal found the claimant to be a reliable and credible witness and accepts her evidence as to how her condition affects her activities. There was no suggestion that the claimant was exaggerating her description of these effects.
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5. The respondent led no evidence that disputed the claimant's evidence and, rather, challenged certain aspects of her evidence in cross examination.

Findings in fact

6. The Tribunal made the following relevant findings in fact.
7. The claimant was formally diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) in May 2022 with a further confirmatory diagnosis in September 2022. This diagnosis had been obtained as part of process starting in early 2021 when the claimant had sought support from her GP as a result the impact of the covid pandemic had had on her.
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8. The symptoms which led to the diagnosis had been experienced by the claimant throughout her life. She had been described at school and college as "gifted but lazy" or in similar terms. She frequently had to request extensions for the submission of assignments due to being unable to focus on completing the work.
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9. ADHD is a lifelong condition and the claimant will experience the effects of it for the rest of her life.
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10. The claimant has difficulty in maintaining focus and concentration. When undertaking activities such as watching television with her partner or reading

articles as part of her PhD studies she will regularly experience a strong urge to undertake other tasks and be unable to continue with the initial task until the other activity is concluded. This can mean that it can, for example, take her as long as a whole day to read a single academic article as she requires to start over each time she finds herself pulled towards a different activity.

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11. The claimant's inability to focus and concentrate also impacts on the claimant's ability to shop. She only shops for groceries at quiet times because she finds a busy shop difficult to cope with due to the amount of sensory information resulting from a number of people in the shop. She finds that she needs to give up on shopping in such circumstances because she simply cannot focus on the task of shopping due.

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12. The claimant's ability to shop is also negatively impacted by the effect of her ADHD on her memory. She needs to read any shopping list several times before she fully understands what she is shopping for. If she finds that there is too much sensory information because the shop is busy then she can be unable to complete her shopping successfully because she forgets what she had come to buy,

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13. The claimant also experiences becoming hyper-focused on a particular activity or item. This also impacts on her shopping which can take longer because the claimant spends excessive time focussed on whether to purchase a particular item.

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14. When driving the claimant can become so focussed on the act of driving that she misses a turn in her route or an exit from the motorway.

15. If the claimant becomes hyper-focussed on a particular task then she can forget to eat and drink until the task is completed. She has become dehydrated in such circumstances.

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16. The claimant's ADHD also negatively impacts on her understanding of time. This is particularly acute when she has become hyper-focussed. The effect, which she describes as "time dilation", is that a significant amount of time will

have passed whilst she carries out a task but she will have felt that it has only been a few moments.

17. Her perception of how long a task will take is also impacted by this time dilation. She will perceive that activities such as cleaning her cat's litter tray or emptying her dishwasher will take less time than it actually takes her to do these.
18. A consequence of all of this is that the claimant's time-keeping is negatively affected; she can be frequently late for appointments or work as a result of undertaking activities which she thinks will take only a few moments but take longer in reality.
19. The claimant experiences what she describes as "racing thoughts" where she is trying to process so much information that she is unable to clearly articulate herself. When going discussing her ADHD with her medical advisers as part of the diagnosis process, she was unable to clearly describe her symptoms.
20. These racing thoughts also impact on the claimant's ability to maintain focus and are a manifestation of the same effects that cause her to leave one task to do another. She will procrastinate and avoid starting simple tasks such as making phone calls or sending emails as a result of her racing thoughts leaving her unable to concentrate on these tasks.
21. The claimant has difficulty sleeping due to racing thoughts and she will often put off going to bed because she knows she will not sleep. This would leave her tired the next day which has a knock-on and negative impact on her ability to focus and concentrate.
22. The claimant's memory is adversely affected by her ADHD. She describes being unable to recall the entry code for the building in which she worked for the respondent. She would attempt to cope with this by putting a note of the code on her phone but would be to recall that she had done this. She then needs to phone colleagues to ask for them to remind her of the code.
23. Another coping mechanism relates to the claimant seeking to ensure she remembers appointments; she will have reminders on her phone set up weeks

in advance of the appointment; as the appointment gets closer, these will become daily; she will set multiple alarms for the day in question to keep her focussed on getting to the appointment on time.

24. The claimant has taken medication to attempt to alleviate the effects of her ADHD and this has assisted to some degree but has never fully resolved the issues she has faced.

Relevant Law

25. Disability is one of the protected characteristics covered by the Equality Act 2010 and s6 of the Act defines disability as a physical or mental impairment which has long-term, substantial adverse effects on a person's day-to-day living activities.

26. Schedule 1 of the 2010 Act sets out further provisions in relation to the definition of "disability":

Paragraph 2

(1) *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.*

(2) *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.*

(3) *For the purposes of sub-paragraph (2), the likelihood of an effect recurring is to be disregarded in such circumstances as may be prescribed.*

(4) *Regulations may prescribe circumstances in which, despite sub-paragraph (1), an effect is to be treated as being, or as not being, long-term.*

Paragraph 5

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

(a) *measures are being taken to treat or correct it, and*

(b) *but for that, it would be likely to have that effect.*

10 (2) *'Measures' includes, in particular, medical treatment and the use of a prosthesis or other aid.*

27. In *Goodwin v Patent Office* 1999 ICR 302, the Employment Appeal Tribunal gave guidance as to how the Tribunal should approach the issue of disability by addressing the following questions:

15 a. did the claimant have a mental and/or physical impairment? (the 'impairment condition')

b. did the impairment affect the claimant's ability to carry out normal day-to-day activities? (the 'adverse effect condition')

c. was the adverse condition substantial? (the 'substantial condition'), and

20 d. was the adverse condition long term? (the 'long-term condition').

28. However, in *J v DLA Piper UK LLP* 2010 ICR 1052, it was said that the Tribunal did not have to rigidly adhere to answering these questions consecutively although it is good practice for the Tribunal to set out its findings on these issues separately. In particular, if the issue of impairment is in
25 dispute then it may assist for the Tribunal to set out its findings on the long term, substantial and adverse effect conditions first then address the issue of impairment in light of its findings.

29. The term “impairment” is to be given its ordinary and natural meaning and has broad application (*McNicol v Balfour Beatty Rail Maintenance Ltd* 2002 ICR 1498).
30. In considering whether there is an impairment, it is the effect and not the cause of any impairment which is of importance to the Tribunal’s determination of whether a claimant is disabled (*Walker v Sita Information Networking Computing Ltd* UKEAT/0097/12).
31. The Government Guidance on the definition of disability addresses the issue of what can be considered “normal, day-to-day” activities at D2-7.
32. Section 212(2) of the 2010 Act states that the word “substantial” means more than minor or trivial. The time taken to carry out activities or the way in which they are carried out can be relevant to the question of whether there is a substantial adverse effect (Government Guidance paragraph B2-3). The cumulative effect of any impairment on different activities also has to be taken into account (Guidance paragraph B4).
33. The Tribunal is required to assess what a claimant cannot do as opposed to what they can do (*Goodwin*).
34. The Tribunal must assess the issues relevant to disability status (for example, whether there are substantial adverse effects, whether the effects are long-term, the likelihood of recurrence) as at the date of the alleged discrimination (*McDougall v Richmond Adult Community College* [2008] IRLR 227).

Decision

35. It is not in dispute that the claimant has the condition of Attention Deficit Hyperactivity Disorder (ADHD) and so the Tribunal has no hesitation in finding that the claimant has a mental impairment.
36. Similarly, there was no dispute that ADHD is a life-long condition with any effects on the claimant having persisted from childhood to the present day and for the rest of her life. In these circumstances, if there are any substantial

adverse effects then the Tribunal considers that the “long term” element of the test is satisfied.

37. The real dispute between the parties in this case is whether any effects on the claimant’s day-to-day activities are substantial.

5 38. There was a submission made by Mr Briggs regarding the extent to which any effects described by the claimant were caused by her ADHD. The Tribunal acknowledges that the burden of proof lies on the claimant but, in the absence of evidence to the contrary, it is prepared to accept her evidence that it is her ADHD which causes the effects on her activities described in her evidence.
10 The Tribunal considers her to be a reliable and credible witness who has the best first-hand knowledge of how her condition impacts on her activities.

39. In assessing whether there is a substantial effect on the claimant’s day-to-day activities, the Tribunal has taken account of the following matters:

15 a. The claimant has difficulty in maintaining focus and concentration. For example, she describes being unable to watch television or read (particularly for her academic studies) without regularly feeling a strong urge to undertake other tasks and being unable to return to her initial activity until the other activity is concluded.

20 b. Equally, the claimant can become hyper-focused on a particular activity or item. This can lead to activities such as shopping taking longer because the claimant spends excessive time focussed on whether to purchase a particular item. Another example of this was the claimant being so engrossed in driving that she misses a turn in her route. She can also forget to eat and drink when she becomes
25 hyper-focussed leading to her becoming dehydrated.

c. Related to this hyper-focus is that the claimant has a difficulty in understanding time; she will often become so focussed on something that a significant amount of time will have passed but she will have felt that it has only been a few moments. She calls this “time dilation”.
30 Further, she will perceive that a task can be completed in less time

than it would actually take her to do so. She gives an example of cleaning her cat's litter tray or emptying her dishwasher which she will perceive as only taking a few moments but will often take much longer in actuality.

- 5 d. All of these matters relating to her focus and concentration means that any activity undertaken by the claimant can take significantly more time than it would take those without her condition.
- e. Another consequence of what is described above is that the claimant is frequently late for appointments or work. If the claimant has
10 become hyper-focused or has experienced time dilation then she will not be aware of the passage of time or how long an activity has taken.
- f. She describes difficulty in communication as a result of "racing thoughts" and gives the example of trying to describe her symptoms to her doctor but being unable to do so because she is processing so
15 much information that she is unable to articulate this.
- g. This difficulty in processing information also impacts on the claimant's ability to shop. She only shops for groceries at quiet times because she finds a busy shop difficult to cope with due to the amount of sensory information resulting from a number of people in the shop.
20 She described needing to give up on shopping in such circumstances or forgetting what she had come to buy.
- h. The claimant described difficulty in sleeping due to racing thoughts and that she would often put off going to bed because she could not sleep. This would leave her tired the next day.
- 25 i. The claimant's memory is adversely affected by her ADHD.
- i. She gives an example of being unable to recall the entry code for the building in which she worked for the respondent and even being unable to recall that she had made a note of the code on her mobile phone requiring to phone colleagues to ask
30 for them to remind her of the code.

5 ii. She also describes how she will remind herself of any appointments using her mobile phone; she will have reminders set up weeks in advance and then daily in the preceding days with multiple alarms on the day in question to keep her focussed on getting to the appointment on time. The Tribunal considers that this goes beyond the simple reminder that many people would set up on their phone.

10 40. The Tribunal considers that, taking account of all of these matters and bearing in mind the Government Guidance on the meaning of disability, the adverse effects of the claimant's ADHD on her day-to-day activities is substantial. It is clear that her ADHD significantly impacts even simple activities such as watching television or reading because she is unable to focus on those activities or, at the other extreme, becomes so focussed on certain activities (coupled with the time dilation she experiences) that these take significantly longer than they would.

15 41. The effects of the claimant's condition adversely impact on essential activities such as sleeping, eating and drinking to a substantial degree. The claimant has described becoming dehydrated because she has been so focussed on a task that she forgets to drink. The Tribunal considers that what was described were clearly substantial adverse effects on the claimant. It is difficult to see how, for example, the claimant becoming dehydrated or being unable to sleep because of the effects of her ADHD has caused her not to drink is anything other than substantial.

20 42. The way in which the claimant carries out certain activities is also substantially effected. A good example is set out above in relation to keeping appointments where the claimant has to employ a system that goes beyond simply placing a single reminder or alarm on their phone. Similarly, the claimant becoming so engrossed in driving that she is unable to focus on her actual journey is clearly a substantial impact.

25 43. None of what was described were one-off occurrences and were regular features of the claimant's day-to-day life.

44. In these circumstances, the Tribunal is satisfied that her ADHD has a substantial adverse effect on the claimant's day-to-day living activities.

45. The other elements of the test not being in dispute, the Tribunal finds that the claimant satisfies the test under s6 of the Equality Act 2010 and is disabled for the purposes of the Act.

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Employment Judge
Peter O'Donnell

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Employment Judge

15 December 2023

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Date

Date sent to parties

18/1/2024