



# EMPLOYMENT TRIBUNALS

**Claimant**

Ms S Spratt

**Respondent**

v SLM Community Leisure Charitable  
Trust

**Heard at:** Watford

**On:** 26 February 2023

**Before:** Employment Judge S Moore

**Appearances**

**For the Claimant:** In person

**For the Respondent:** Ms G Nicolls, Counsel

## JUDGMENT

**(1) The Claimant was not a disabled person within the meaning of s. 6 of the Equality Act 2020 during the relevant period.**

**(2) The claim of disability discrimination is struck out.**

## REASONS

### Introduction

1. This was a hearing to determine whether the Claimant was a disabled person within the meaning of s.6 Equality Act 2010. The disabilities relied upon were ADHD, autism and a mental health impairment of anxiety and depression.

### Background

2. The Respondent operates Leisure and Cultural Centres and the Claimant has been employed as a Front of House Lead and Retail Manager since 15 May 2021.
3. Following a period of Early Conciliation between 24 February and 7 April 2023 the Claimant presented a claim against the Respondent on 5 May 2023 alleging unfair dismissal, race discrimination, disability discrimination and sexual orientation discrimination and claiming notice pay, holiday pay and arrears of pay.
4. Ahead of a Preliminary Hearing (PH) on 6 November 2023 the Claimant was ordered to produce a disability impact statement and medical evidence by 22 September 2023.
5. At that PH the complaints, other than those of discrimination, were dismissed on withdrawal by EJ Ord, who listed today's hearing for the purpose of deciding whether the Claimant was, at the material time, a disabled person within the meaning of the Equality Act 2010.
6. EJ Ord further ordered the Claimant to provide further information in respect of her discrimination claims by 8 December 2023 and copies of all medical notes and records on which she relied in support of her contention to be a disabled person within the meaning of s. 6 Equality Act 2010, together with an Impact Statement, by 12 January 2024.
7. The Claimant did not comply with those orders.
8. As at today's hearing she had not provided any further information in respect of her discrimination claims or any medical evidence additional to that which she provided prior to the hearing before Judge Ord and she did not provide an Impact Statement until the night before today's hearing.
9. At the outset of her cross-examination the Claimant agreed that the discriminatory acts upon which she relied for the purposes of her claim of disability discrimination occurred between 20 May 2022 and 18 February 2023. The issue before me today is therefore whether the Claimant was a disabled person within the meaning of the Equality Act 2010 at any point during that period.

### **Evidence**

10. In her Impact Statement the Claimant says that following an event at work in October 2021 she was prescribed antidepressants to alleviate symptoms of depression, anxiety, and suicidal ideation. On occasions where she fell asleep without taking the medication she had woken up shaking and crying however the medication made her feel numb and emotionally reclusive. Following an alleged sexual assault at a Christmas party in December 2022 she avoided strangers and made little effort to contact her best friends, and the thought of being in a public space resulted in her having panic attacks. On a day-to-day basis she did not leave the house and spent most of the day in her bedroom. She also had

symptoms of bulimia, insomnia and she says, most significantly, mania which included grandiose spending so that in the latter half of 2023 she had spent £11,000 in just a few months, including on beauty treatments to become more desirable. As a result, she had become entirely financially dependent on her parents and had been increasingly suicidal since November 2023.

11. The medical evidence is very limited.
12. First, there is a Patient Access Medical Record (although no GP notes).
13. This shows the Claimant saw a GP on 4 October 2021 in respect of Mixed Anxiety and Depressive Disorder and again on 29 October 2021 for a Depression Interim Review. There is no other record of the Claimant seeing her GP for mental health matters save for an entry dated 15 November 2022, referred to as “mood observations”, when the Claimant also saw the GP for “urinary symptoms”, both of which matters are described in the Medical Record as past minor problems.
14. Secondly, while the Respondent accepts the Claimant was signed off work on grounds of “anxiety and depression and work-related stress” from 24 March 2023 for a significant period (although it is unclear exactly how long that period lasted since neither the Claimant nor the Respondent had disclosed the sick notes) the Claimant accepts that she had not been signed off work on grounds of her mental health in October 2021, or indeed at any stage prior to 24 March 2023.
15. Thirdly, there is a report from a Dr Cappai, Consultant ADHD Psychiatrist and Forensic Psychiatrist dated 14 August 2023 (in respect of an assessment dated 8 August 2023), following a private, self-referral. The report noted the Claimant had good self-care and rapport and that her speech was of normal tone, flow rate and volume. Dr Cappai described the Claimant’s mood as follows: “Subjective: low mood with irritability, normal enjoyment. Hopeful for the future. Poor sleep. Energy levels low. Appetite is poor. Motivation is low. Objective: low mood with congruent reactive effect”. As regards thoughts, Dr Cappai stated: “No formal thought disorder. No thoughts of self-harm, suicide, or harm to others. No delusional thoughts elicited.” His conclusion was “Mild depressive episode which may benefit from specific counselling and increase of the dose of your current medications. We considered that your background and presentation are suggestive of ADHD and you may benefit from formal ADHD assessment.”
16. Fourthly, as regards medication, the Claimant submitted a screen shot of her NHS App to show that she had been prescribed 50 mg of Sertraline in October 2021 and that this had been increased to 100 mg in November 2022.

### **Conclusions**

17. The question is not whether the Claimant has, or has ever had, problems with her mental health but whether she has shown that she satisfied the statutory definition of being a disabled person within the meaning of the Equality Act 2010 at any point during the material period of 20 May 2022 to 18 February 2023.
18. Section 6 of the Equality Act 2010 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."
19. In this case the impairments relied upon for the purposes of section 6(1)(a) are the mental impairments of anxiety and depression, ADHD and autism.
20. As regards the alleged impairments of ADHD and autism there is no medical evidence that the Claimant had either of these impairments during the material period.
21. As regards the impairment of anxiety and depression, s6(1)(b) provides that a mental or physical impairment amounts to a disability if it has both a substantial and a long-term adverse effect on a person's ability to carry out normal day-to-day activities.
22. As to the meaning of substantial, section 212(1) of the Equality Act 2010 and paragraph B1 of the Guidance on matters to be taken into account in determining questions relating to the definition of disability 2011 ("the Guidance"), state that the requirement that an adverse effect on normal day-to-day activities should be a substantial effect reflects the general understanding of disability as a limitation going beyond normal differences in ability which may exist among people and that a substantial effect is one that is more than a minor or trivial effect.
23. The Claimant's case is that she became a disabled person in or about October 2021 because at that point she began to suffer from the mental impairment of anxiety and depression which had a substantial and long-term adverse effect on her ability to carry out normal day-to-day activities.
24. However, the only medical evidence before me to support that assertion is that the Claimant saw her GP on two occasions in October 2021 and was prescribed Sertraline. Notably, the Claimant was not signed off work in October 2021.
25. Indeed, the Claimant was not signed off work at any point prior to or during the material period. Moreover, there is no medical evidence to suggest the Claimant asked her GP (or any other medical professional) for help with anxiety and depression at any time during the material period. Further there is no medical evidence that addresses how the absence of Sertraline would affect the Claimant's mental health.

26. As regards Dr Capai's report, while it must be borne in mind that the report is dated August 2023 (after the material period), it is notable that, as at that date, he diagnoses the Claimant as suffering from a "mild depressive episode" and noted there were no thoughts of self-harm or suicide, an assessment which is somewhat counter to the Claimant's impact statement. He further makes no mention of the Claimant suffering from mania or grandiose spending (and I note that according to her impact statement, this mainly appears to have occurred in the latter half of 2023 and only after the material period).
27. Further Dr Capai does not suggest the Claimant's anxiety and depression had been worse during the material period or even that the Claimant had reported to him that her anxiety and depression had been worse during the material period.
28. At the conclusion of the report Dr Capai states the Claimant should book a 30 minutes' follow-up appointment in 3 weeks' time to check progress. The Claimant said she had not done so, but this was because of the cost.
29. I also note that the Claimant's evidence in her Impact Statement that she spent most of the day in her bedroom and did not leave the house must relate to the period after she was signed off work which was from 24 March 2023 onwards and again after the material period.
30. Accordingly, on the basis of the medical evidence before me, I am not satisfied that the issues the Claimant says she had with her mental health in respect of anxiety and depression from October 2021 onwards amounted to a mental impairment within the meaning of s. 6 Equality Act 2010 at any time prior to or during the material period. Further, if the Claimant was during the material period (or any part of it) suffering from such a mental impairment, I am not satisfied that that impairment had a substantial adverse effect on her ability to carry out normal day-to-day activities for the purposes of section 6(1) of the Equality Act 2010.
31. It follows from the above that the Claimant was not a disabled person within the meaning of s. 6 of the Equality Act 2010 during the material period and the claim for disability discrimination is therefore dismissed.

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Employment Judge S Moore

Date: 26 February 2024.....

Sent to the parties on: 4 March 2024  
T Cadman  
For the Tribunal Office