



## EMPLOYMENT TRIBUNALS (SCOTLAND)

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**Case No: 8000550/2024**

**Preliminary Hearing held at Dundee on 28 November 2024**

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**Employment Judge McFatridge**

**Miss M McDermott**

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**Claimant  
In person**

**Roseangle House Nursery Ltd**

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**Respondent  
Represented by  
Mr Hagan,  
Director**

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### JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that the claimant was not a disabled person in terms of section 6 of the Equality Act at the relevant time. The claim of disability discrimination is dismissed. No other claims remain to be determined.

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### REASONS

1. The claimant submitted a claim to the tribunal in which she claimed that she had been unlawfully discriminated against by the respondent. The respondent submitted a response in which they denied the claims. They did not accept that the claimant was disabled and if they were wrong in this it was their position that they had neither actual nor constructive knowledge of her disability. In any event they denied discrimination. The

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case was subject to a degree of case management and a preliminary hearing was fixed in order to deal solely with the issue of whether or not the claimant was disabled in terms of the Equality Act at the relevant time. At the hearing the claimant gave evidence on her own behalf. She lodged  
5 a bundle of documents comprising excerpts from her medical records. These are referred to by page number in the discussion below. Although she initially had not lodged this for the hearing the claimant made reference towards the end of her oral evidence to a disability impact statement which she had lodged at an earlier stage in the proceedings. In  
10 the circumstances I decided it would be appropriate to adjourn the hearing to allow the tribunal to make further copies of this disability impact statement and for it to be lodged so that the claimant could expand on it and the respondent could ask questions about it. On the basis of the evidence and the productions I found the following essential facts relevant  
15 to the question to be determined by the preliminary hearing to be proved or agreed.

### **Findings in fact**

2. The claimant was born in January 1987. The claimant suffers from epilepsy and has done since childhood. The claimant was not seeking to  
20 rely on her epilepsy in order to establish that she was disabled.
3. In 2005 when the claimant was 18 she took an overdose. Following this she was assessed by a Dr H Elder at Ninewells Hospital on or about  
25 15 June 2005. The report which he issued after this was lodged (pages 2 and 3). It was noted that the claimant had received a job rejection letter and decided she could not cope any more and impulsively took an overdose. She immediately regretted what she had done and called for assistance and was then admitted to Ninewells. Under Disposal/Follow up it states:-

30 *“As Michelle exhibited no depressive features or ongoing ideas of self-harm, I felt there was no need for (redacted) follow-up at present. I have however asked her to make an appointment with her GP over the next couple of weeks to ensure the situation has calmed down.”*

Although there are no medical records confirming this it would appear that around this time the claimant was commenced on Citalopram which is an anti-depressant. The claimant found that the Citalopram did not agree with her and in or around 2006 she was moved on to a prescription of Sertraline. She has remained on anti-depressants ever since. Her Sertraline prescription was changed to a prescription of Venlafaxine at some point after this. Venlafaxine is also an anti-depressant.

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4. Apart from contact with her GP to maintain her prescription (which latterly was put on a repeat prescription) the claimant did not contact her medical advisers again until 2011. At that point the claimant's view was that her mental health had gone downhill and she had started to have further thoughts of taking another overdose. Her GP advised that her Sertraline dose was already as high as it could go and accordingly made a referral to Psychological Services. The claimant was then seen by a Dr Ansar as an outpatient on or about 20 July 2011. Dr Ansar produced a report which was lodged (pages 4-6). It is noted in this report that the claimant presented with a six month history of depressive symptomatology. It referred to low mood and thoughts of self-harm however it also reports that she was still managing to socialise with her friends and enjoyed this. It is noted that her concentration and memory appeared satisfactory. The report makes reference to various adverse life circumstances which were occurring at the time. Dr Ansar records his impression on page 6 stating:-

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*"I discussed this case with my senior (redacted) Dr Glen, Consultant (redacted) CMHT 3. We were both of the opinion although Ms McDermott is suffering from a depressive disorder, her full dose of Sertraline appears to be having a reasonably good effect. Ms McDermott's main problem appears to be learning how to cope with her depressive illness. Her current presentation is precipitated by various situational triggers and her cyclical health problems seem to have a negative effect on her (redacted) health.*

*I discussed various management options with Ms McDermott. She expressed a willingness to engage with any support offered or changes suggested. Please find our management plan outlined below."*

The management plan involved increasing the dose of Sertraline to 200mg and asking Clinical Psychology to explore any appropriate courses. Subsequent to this the claimant remained an outpatient of Psychological Services from 2011 until 2013. She did various courses. These included  
5 1 to 1 sessions, an online course called Beating the Blues and various others designed to give her strategies to deal with her issues. She continued to take Sertraline. She was discharged from Psychological Services in or about 2013. She continued on Sertraline after this until, as noted above, this was changed to Venlafaxine at some point. This was  
10 around 2018. At some point over this period it was also felt the claimant would benefit from being prescribed an anti-psychotic as well as an anti-depressant. The claimant was therefore prescribed Quetiapine.

5. On or about 23 August 2014 an incident occurred which considerably upset the claimant. The claimant did not give detailed evidence in relation  
15 not this however it would appear that the claimant suffered a violent assault. The claimant sought medical assistance in the immediate aftermath of this but there was no psychological or psychiatric input. During this period the claimant continued to receive her anti-depressant and anti-psychotic drug on repeat prescription.

20 6. In or about June/July 2018 the claimant again was referred to Psychological Services because of long-standing low mood. In or about December 2018 the claimant attended a building confidence group run by Dundee Adult Psychological Therapies Service. During the course of this the claimant was assessed and told that she may be suffering from PTSD.  
25 A copy of the assessment was lodged (page 14).

7. On 18 March 2019 a Dr Lonsdale produced a report on the claimant following his having met with her on four occasions between June 2018 and January 2019. He confirmed that she appeared to have PTSD. During the course of her interactions with Dr Lonsdale the claimant  
30 admitted that she on occasions self-harmed by cutting her legs with a knife. Dr Lonsdale arranged to refer the claimant to various psychological support groups and therapies and following this the claimant once again completed a number of courses. The claimant was discharged by Psychological Services in or around 2021 having completed a substantial

number of courses and several treatments over the period 2019-2021. The claimant's discharge letter was lodged (pages 26-28). This summarises the treatment and therapies the claimant had received since 2017. Under Summary and Opinion Dr Lonsdale stated:-

5                    *"Ms McDermott has engaged for an extensive period within my service both in group and individual contacts. Whilst she appears to have benefited in some measure from this input, it has not been sufficient to address her long standing, very poor self opinion and chronic depression. Her ambivalence and sporadic use of the*  
10                     *coping techniques she has been trying to establish continues to undermine her progress and it is because of this that I do not believe she is currently ready for further psychotherapeutic work to help her address and process the trauma memories from the (redacted) seven years ago. She has at times been able to engage*  
15                     *in more interpersonally based approaches although because of the limit to our service this has only been partially effective. When I last spoke to her we discussed alternative sources of support and I encouraged her to get back involved with Wellbeing Works. However, her response that she was reluctant to open up to anyone*  
20                     *else because they were 'likely to abandon me too' illustrates that she continues to struggle in this regard. It is my recommendation that if Ms McDermott seeks further (redacted) input she should be directed towards Level 3 services and in particular interpersonally based therapies.*

25                    *I would also recommend that you review at points of contact how she is getting on with following her healthy eating plan with an awareness that there is the potential for this to develop into an eating disorder.*

30                    *I have now discharged Ms McDermott from this service, please do not hesitate to contact me at the number or email above if you have any questions."*

8. Following this the claimant continued to take Venlafaxine and Quetiapine which are on repeat prescription from her GP. She did not require to attend her GP again in relation to her mental health.

9. The claimant commenced work for the respondent in early 2023. She had previously worked for another nursery. When she started working with the respondent she restricted her hours to two and a half to three days a week since she felt that this would be easier for her to cope with. The claimant's view was that she continued to suffer from poor mental health. She said that on occasions it was a struggle for her to get up in the morning, have a shower and go to work. She did not refer to any occasions when she had been unable to do this. The claimant's position was that she would only socialise in her house with people she knew well. She did not like travelling on public transport on her own. She had concerns about people being behind her. When she was going anywhere other than work she would prefer to be driven by her mother or get a taxi. Whilst at work she did go on public transport either with another member of staff or with the children she was looking after when they were being taken out for an outing.
10. When she started work with the respondent it is unclear whether or not she made any disclosures in relation to her mental health. In any event, the respondent thought highly of the claimant and considered that she was an extremely competent, mature and sensible employee. After a short time, a promoted position became available and although there were other members of staff who had greater length of service, the claimant was successful in being promoted to this post.
11. Subsequently the claimant was reported to the SSSC for behaving inappropriately towards children in her care. During the course of this investigation the claimant became aware of various correspondence from other members of staff which criticised her for being moody and unapproachable.

### **Observations on the evidence**

12. I accepted that the claimant was genuinely trying to give honest evidence to the tribunal. During cross examination she became upset at various points and at one stage indicated that she was withdrawing her claim. She was angry with the respondent's representative for suggesting that she was not in fact disabled. The documentation lodged by the claimant

comprised excerpts from her medical records. The records appear to be restricted to copies of correspondence. It has to be observed that the correspondence had been redacted in an apparently entirely random fashion however the claimant advised that this was how the documents had been received by her from her GP. There was also included with the documents a copy of a text exchange with the claimant's GP where the GP confirmed that certain records had been lost and accordingly there was no full list of all the encounters which the claimant had had with her GP over the years which is what I would have expected to see in the circumstances. I entirely accepted the claimant's explanation as to why this was not available. I entirely accepted the claimant's evidence as to the various drugs which she had been prescribed over the years. One thing which was surprisingly absent from the claimant's evidence was any indication as to how she would be if she were not taking these drugs. The position appears to be that the claimant has been on anti-depressant drugs since 2005 and on both anti-depressant and anti-psychotic drugs since around 2016. There was no clear evidence as to what her condition would be or what the effect would be on her ability to carry out day-to-day activities if she was not taking these drugs.

## **Discussion and decision**

13. The sole question which I required to determine was whether or not the claimant was disabled in terms of section 6 of the Equality Act 2010 and the relevant time which coincided with the period of the claimant's employment in 2023/4. Section 6 of the Equality Act states:-

*“(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.”*

It can be seen from the definition that the definition is a medico- legal one. There is a medical component in that the tribunal must be satisfied that the claimant was suffering from an impairment. There is also a purely legal aspect to the definition as well which notes that the claimant's impairment must have a substantial and long-term adverse effect on their

ability to carry out normal day-to-day activities. The burden of proof is on the claimant to lead evidence to allow the tribunal to make a finding in respect of both aspects of the definition.

14. In this case I was in absolutely no doubt that the claimant suffers from a  
5 mental impairment and has done so since around 2005. She suffers from depression and PTSD. The main symptom of this is long standing low mood. I was entirely satisfied with regard to the medical evidence in relation to this.

15. With regard to the second part of the definition, my view was that given  
10 the onus of proof is on the claimant, the claimant had not really provided a lot to go on. All the claimant said was that she had a restricted social life although she accepted that she did socialise with people in her home. She spoke of simply doing nothing else apart from going to work 20-24 hours per week but it was clear that in addition to this she also did other  
15 things such as visiting her mother. Many people have restricted social lives without necessarily being disabled. Whilst I have no doubt that her mental health issues may make it more difficult for her to have as active a social life as she would wish, I did not consider that this amounted to a substantial effect on her ability to carry out day-to-day activities. The claimant talks of being unhappy about travelling by public transport.  
20 Again, this is something which many people have a concern about. In addition it appears that the claimant can travel by public transport when she has to and in fact was able to do so during the course of her employment with the respondent. The position appears to be that the claimant prefers not to travel by public transport but she can do this if she  
25 needs to. In her initial evidence the claimant did not mention the issue raised in her impact statement about being unhappy with people coming behind her and feeling threatened and even after the impact statement was lodged she did not give any further detail regarding this. There was  
30 no suggestion that this would have any particular effect on her ability to carry out day-to-day activities.

16. The claimant during her evidence was cross examined by the respondent's representative essentially on the basis that when she started working for them she appeared to be absolutely fine. She appeared to be



a very good employee and absolutely no issues arose to the extent the claimant was promoted within a short number of months. Much of the claimant's evidence related to how she felt internally and I have absolutely no doubt that the claimant was telling the truth when she set out the various internal struggles which she had. The difficulty for the tribunal is that so far as carrying out day-to-day activities is concerned the impact of the claimant's mental health on her abilities appears to be fairly slight. The threshold is not a high one but in my view what the claimant said did not meet even the fairly limited threshold required of being no more than trivial.

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10 17. During cross examination the claimant referred to the various letters which she had seen during the course of the SSSC investigation against her which noted that she was moody and unapproachable at times. I did not consider this evidence to be particularly helpful. There was nothing to suggest her moodiness or unapproachability was due to her mental health  
15 difficulties. In any event the claimant was not herself saying that she was moody or unapproachable merely that other people had accused her of this in the context of other accusations which she denied.

18. In relation to the drugs the claimant has been taking the law requires me to assess what the effect of her mental health impairment would be on her  
20 ability to carry out day-to-day activities if she was not taking these drugs. Unfortunately, as mentioned above, the claimant did not herself give any evidence in relation to this and there is nothing in the medical records. It can of course be argued that doctors do not prescribe drugs without reason however, in this case I did not feel that I could hold it as having  
25 been established in evidence that if the claimant was not receiving anti-depressants or anti-psychotic drugs, her impairment would have a greater effect on her ability to carry out day-to-day activities. The tenor of the claimant's evidence was that her main problem was the internal dialogue which took place in her head. The claimant has feelings of low self-worth  
30 which can make her seek to avoid interpersonal conversations and relationships unless she has to. The evidence was however that despite this internal dialogue even at her worst the claimant was still able to carry out normal day-to-day activities albeit that within her own mind she was, as she put it, struggling. The reason which she gave for going back to her

GP on two occasions and seeking further psychological help was that on each occasion she felt that she was at risk of additional self-harming behaviour. In short, it would appear that the medication was to deal with her low mood. Her own evidence was that despite her low mood and her ongoing internal struggles, the only effect on her ability to carry out normal day-to-day activities was that she had less of a social life than she would wish and that she preferred not to take public transport where it could be avoided albeit she could do it where it could not be avoided.

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19. In all the circumstances my conclusion was that although the claimant did suffer from a mental impairment she did not meet the second part of the test and that accordingly at the relevant time she was not a disabled person in terms of the Act.

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20. I note that in her ET1 claim form the claimant only ticked the box to indicate she was making a claim of disability discrimination. At the first PH it was noted that the claim of disability discrimination was the only claim being made. Subsequent to this at the second preliminary hearing it was noted that the claimant was also making other claims however absolutely no specification of these can be seen anywhere in the documentation. In the circumstances it appears to me that the only claim validly before the tribunal is one of disability discrimination and given that I have found that the claimant is not disabled then that claim cannot proceed. I do not believe there are any other claims but if there are these are dismissed on the basis they are not specified. Accordingly, all claims are dismissed.

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**I McFatridge**  

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**Employment Judge**

**5 December 2024**  

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**Date of judgment**

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**Date sent to parties**

**9 December 2024**  

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