



EMPLOYMENT TRIBUNALS

Claimant: Mr A Stewart

Respondent: Top Line Support Ltd

Heard at: London South, by CVP **On:** 17 March 2025

Before: EJ Rice-Birchall

Representation

Claimant: In person accompanied by Mr Keech, friend

Respondent: Mr Baker, legal representative

JUDGMENT

1. At the relevant times the claimant was not a disabled person as defined by section 6 Equality Act 2010 because of Crohn's disease.
2. The complaints of disability discrimination are therefore dismissed.

REASONS

Background

1. The claimant was employed by the respondent, a company that provides care services, as an house co-ordinator, from 11 September 2017 until 3 October 2023. Early conciliation started on 8 December 2023 and ended on 11 December 2023. The claim form was presented on 22 December 2023. The respondent defends the claims.
2. At a preliminary hearing for case management, the claim was listed for a further public preliminary hearing to determine the issue of disability and any application from the claimant to amend his complaints. Further case management orders were also to be made.
3. The claimant was ordered, by 3 October 2024, to send the respondent an impact statement in relation to Crohn's Disease. The Record of Preliminary Hearing set out in detail what the impact statement should include, such as the effect of Crohn's disease on the claimant's ability to do day to day activities, including clear examples; the dates when Crohn's disease started and stopped; what medical treatment, including medication, the claimant had had, and so on.

4. The claimant was also ordered, by 3 October 2024, to send to the respondent copies of the parts of their GP and other medical records that were relevant to whether they had the disability at the material times; and any other evidence relevant to whether they had a disability or not.
5. Following correspondence with the Tribunal, the time limit for the claimant to comply with these orders was extended to 29 November 2024.
6. The claimant disclosed 53 pages of medical evidence.

Issues

7. The issues for the Tribunal to determine were as follows:
 1. Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:
 - 1.1 Did they have a physical or mental impairment: Crohn's disease?
 - 1.2 Did it have a substantial adverse effect on their ability to carry out day-to-day activities?
 - 1.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
 - 1.4 Would the impairment have had a substantial adverse effect on their ability to carry out day-to-day activities without the treatment or other measures?
 - 1.5 Were the effects of the impairment long-term? The Tribunal will decide:
 - 1.5.1 did they last at least 12 months, or were they likely to last at least 12 months?
 - 1.5.2 if not, were they likely to recur?

Evidence

8. Although the claimant had prepared an impact statement it did not deal with any of the questions he had been asked to address by EJ Lumby at the preliminary hearing and rather focused on the impact on him of the respondent's alleged actions which were the subject of his claim.
9. The Tribunal did have the benefit of a Bundle of documents which ran to 108 pages, approximately 52 of which were the claimant's medical records.
10. There was a discussion at the outset about the evidence which the claimant had submitted for the Tribunal. Despite clear and unambiguous direction from EJ Lumby, the claimant had not prepared an impact statement containing relevant material, and so the Tribunal had before it only the medical evidence contained in the Bundle. The claimant had also been referred to the case management orders made by EJ Lumby in correspondence from the respondent.
11. The Tribunal was referred, by Mr Baker, to Daniel McNicol v Balfour Beatty Rail Maintenance Limited [2002] EWCA Civ 1074, in which Mummery LJ

states, at paragraph 26: “As to the function of the tribunal it was submitted that it should adopt an inquisitorial and more pro-active role in disability discrimination cases, as they can be complex and involve applicants, whose impairment leads them to minimise or to offer inaccurate diagnoses of their conditions and of the effects of their impairment. I do not think that it would be helpful to describe the role the Employment Tribunal as “inquisitorial” or as “pro-active.” Its role is to adjudicate on disputes between the parties on issues of fact and law. I agree with the guidance recently given by Lindsay J in *Morgan v. Staffordshire University* [2002] IRLR 190 in paragraph 20. The onus is on the applicant to prove the impairment on the conventional balance of probabilities. In many cases there will be no issue about impairment. If there is an issue on impairment, evidence will be needed to prove impairment. Some will be difficult borderline cases. It is not, however, the duty of the tribunal to obtain evidence or to ensure that adequate medical evidence is obtained by the parties. That is a matter for the parties and their advisers. Sensible and sensitive use of the tribunal's flexible and informal procedures and its case management powers enable it to do justice on this issue by reminding the parties at the directions hearing of the need in most cases for qualified and informed medical evidence, bearing in mind that an unrepresented person may need some explanation about what is involved and what is required and also bearing in mind the cost of obtaining such evidence, the need to keep costs down and the limited resources available to many parties in the Employment Tribunal. The tribunal may also grant an adjournment where it is appropriate for evidence to be obtained on the issue of impairment.”

12. The claimant wanted to refer to documents which were not before the Tribunal. In the circumstances, the Tribunal decided that the claimant should not be allowed to submit any new evidence during the Tribunal hearing as that would be a prejudice to the respondent and therefore not in the interests of justice, when the Record of Preliminary Hearing had carefully set out exactly what information the claimant was required to give and the claimant had been given additional time with which to comply with the orders. In addition, the claimant had been referred to the case management orders made by EJ Lumby by the respondent in an email.
13. However, the claimant had sent in to the Tribunal a number of letters on 29 September 2024, which were referred to. These were letters dated 5 March 2024 addressed “To whom it may concern”; 3 April 2023 from St George’s University Hospital; 3 November 2023 addressed “To whom it may concern”; 17 January 2023 from Dr Murphy; and an undated letter from Dr Ali.

Facts

14. The claimant was diagnosed with Crohn’s disease in April 2019, though the first entry in the medical records provided by the claimant was on 14 August 2018. That entry simply states: “Crohn’s disease”.
15. There are also a number of entries from 2018 which say “fistula in ano” which is a complication of Crohn’s disease and which may need to be drained and dressed. It is a small tunnel which develops between the bowel and other organs.

16. Another symptom of Crohn's disease was needing the toilet a lot as it can cause constant diarrhoea. The claimant used co-codamol to "bung [him] up".
17. In March 2020, the claimant's medical records report "worse sexual function since Crohns".
18. On 19 July 2021, the claimant's medical records report that "Crohns is well controlled", and on 21 July 2021, the claimant reports fatigue and the notes state "has Crohns disease bowels open reg slightly more that normal but no blood pain or mucus."
19. The claimant took adalimumab 40mg every other week according to a letter from Dr Murphy on 17 January 2023, though he says that has now been increased to weekly. Without it the claimant said he would be in severe pain and may have had to have his bowel removed. That letter also reports a flare up of the claimant's symptoms: "he has had almost constant bloody diarrhoea since yesterday lunchtime which was the last time he managed to eat anything. My colleague prescribed him some prednisolone yesterday which unfortunately he has been unable to take because he hasn't been able to eat anything. He is getting abdominal cramps and feels his abdomen is bloated." The claimant was referred to the gastroenterology department.
20. On 3 April 2023, an Inflammatory Bowel Disease (IBD) nurse wrote "to whom it may concern" to confirm the claimant's diagnosis of inflammatory bowel disease and explain that it is a "chronic debilitating illness characterised by severe abdominal pain, gastrointestinal bleeding, infections, diarrhoea and constipation. Extra-intestinal features include significant fatigue, oral ulceration, skin rashes, joint pain and inflammatory eye conditions." It continued: "previous medical studies have shown that the illness can have a significant impact on a patient's life including their ability to work/study as well as psychosocially. The illness is long term and characterised by disease flares and periods of remission with a lifetime risk of surgery of approximately 75% which may require multiple operations and endoscopic procedures. Treatments can be effective and may involve certain mediations which may have some side effects as well as drug infusions which necessitates regular radiological and blood test monitoring as well as hospital visits. Having had a discussion with Anthony, it seems like he is having difficulty with the physical demands f his day to day job as well as always having access to a toilet when needed. The thought of needing a toilet while out with service users case him a lot of stress and that impacts a lot on Crohn's patients."
21. There was a further flare up on 25 May 2023. The claimant's medical notes state: "Currently off sick for Crohn's flare: employer hasn't been helpful restricting his access to the toilet."
22. An entry on 30 May indicates that the claimant was "unsure of flare of Crohns, doesn't find it easy to contact IBD nurse."
23. On 6 July 2023, the claimant missed an appointment to monitor his blood for the effects of Crohn's medication.
24. During the hearing the claimant continuously referred to the way he was

treated by the employer rather than the effects of Crohns on his day to day activities. He did however stress the need to be near to a toilet due to his inability to be able to control when he needed to go to the toilet.

Law

25. Under s6 of the Equality Act 2010 (EqA), a person is disabled if they have a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. s6 EqA says as follows:

(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.

26. Schedule 1 Part 1 of EqA says:

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.

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.

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

27. The onus is on the claimant to produce medical evidence Woodrup v London Borough of Southwark [2003] IRLR 111.

28. When balancing its role in determining this issue, the ET should avoid adopting an inquisitorial and/or a proactive role in disability claims. Mummery LJ in Mc Nicol v Balfour Rail Maintenance Ltd [2002] ICR 1498, CA reaffirmed that the ET role of an adjudicator on disputes as presented

by the parties and that it is not the ETs role to *‘to obtain evidence or to ensure that adequate medical evidence is obtained by the parties’*.

The statutory guidance

29. B1. The requirement that an adverse effect on normal day-to-day activities should be a substantial one reflects the general understanding of disability as a limitation going beyond the normal differences in ability which may exist among people. A substantial effect is one that is more than a minor or trivial effect.
30. B2. The time taken by a person with an impairment to carry out a normal day-to-day activity should be considered when assessing whether the effect of that impairment is substantial. It should be compared with the time it might take a person who did not have the impairment to complete an activity.
31. B3. Another factor to be considered when assessing whether the effect of an impairment is substantial is the way in which a person with that impairment carries out a normal day-to-day activity. The comparison should be with the way that the person might be expected to carry out the activity compared with someone who does not have the impairment.
32. B12. The Act provides that, where an impairment is subject to treatment or correction, the impairment is to be treated as having a substantial adverse effect if, but for the treatment or correction, the impairment is likely to have that effect. In this context, ‘likely’ should be interpreted as meaning ‘could well happen’. The practical effect of this provision is that the impairment should be treated as having the effect that it would have without the measures in question (Sch1, Para 5(1)). The Act states that the treatment or correction measures which are to be disregarded for these purposes include, in particular, medical treatment and the use of a prosthesis or other aid (Sch1, Para 5(2)). In this context, medical treatments would include treatments such as counselling, the need to follow a particular diet, and therapies, in addition to treatments with drugs. (See also paragraphs B7 and B16.)
33. C12. The Act provides that a person who has had a disability within the definition is protected from some forms of discrimination even if he or she has since recovered, or the effects have become less than substantial. In deciding whether a past condition was a disability, its effects count as long-term if they lasted 12 months or more after the first occurrence, or if a recurrence happened or continued until more than 12 months after the first occurrence (S6(4) and Sch1, Para 2).
34. D3. 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. Normal day-to-day activities can include general work-

related activities, and study and education- related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or a shift pattern.

Conclusions

35. The claimant has failed to discharge the burden of demonstrating that his impairment falls within the meaning of s6 EqA.
36. The claimant submitted an impact statement which contained no information whatsoever about the impact on the claimant's normal day to day activities of Crohn's disease. This was despite clear instructions given in the Record of Preliminary Hearing about what was needed in the impact statement, and despite the claimant being referred back to those case management orders in correspondence from the respondent. The Tribunal is satisfied that the claimant can have no valid complaint about the fairness of the procedure followed at the directions hearing and about the clarity of what he was required to provide.
37. The only impact that the claimant has mentioned or which appears from the medical evidence is a need to be near a toilet. Without more, this does not satisfy the Tribunal that Crohn's has a substantial adverse effect on the claimant's ability to carry out day-to-day activities.
38. Further, the Tribunal is aware that the claimant is on medication, but there was no evidence of the effect on the claimant of Crohn's disease without medication, other than a general statement that he would be in severe pain and may have to have his bowel removed, or of the effect of the medication on him.
39. Whilst the IBD nurse gives some information about the impact of IBD, her letter talks about symptoms generally which Crohn's can have, rather than which they do actually have on the claimant.
40. As of July 2021, the GP record at [77] which says the claimant's Crohn's is 'well-controlled' however the claimant does not provide any context in relation to this, such as, what (if any) treatments were in place to control his impairment or how his 'normal day-to-day activities' were affected by his impairment at all material times.
41. It was not the respondent's obligation to cross examine the claimant on matters which were omitted from his evidence in chief. Further, the Tribunal, following McNicoll, notes that it is not the Tribunal's duty to ensure that there is sufficient evidence, that being a matter for the parties, even when a litigant in person.
42. There are insufficient particulars from the claimant to show how his condition, whether with or without medication, had a substantial adverse effect on his ability to carry out normal day-to-day activities.

43. The claimant is not a disabled person within the meaning of EqA and his s13 complaints are dismissed.
44. A further preliminary hearing has been listed to deal with the claimant's amendment application and for case management.

Approved by:

Employment Judge Rice-Birchall

15 May 2025

JUDGMENT SENT TO THE PARTIES
ON
30 May 2025

FOR THE TRIBUNAL OFFICE

P Wing

P Wing

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/