



EMPLOYMENT TRIBUNALS

Claimant: Miss N Reekie

Respondent: Dignity Funerals Ltd

RECORD OF A PRELIMINARY HEARING

Heard: By CVP

On: 15 April 2025

Before: Employment Judge Craft

Appearances

For the Claimant: Herself (assisted by her friend, Mr M Cloake)

For the Respondent: Ms C Trayers, Counsel

RESERVED JUDGMENT

1. The Claimant was not disabled within the terms of s.6 Schedule 1 Equality Act 2010 at all times material to her claims.
2. The Claimant's claims of direct disability discrimination, discrimination arising from a disability and failure to make reasonable adjustments are dismissed.
3. The Claimant's claim of unfair dismissal is not affected by this Judgment and will proceed before a Judge alone at the final hearing which is already listed.

REASONS

Introduction

1. This Preliminary Hearing was primarily listed for the Tribunal to determine whether at all times material to the claims she was pursuing the Claimant was disabled by reason of anxiety and depression within the meaning of **s.6 Sch.1 Equality Act 2010 ("EqA")**.
2. The Claimant submitted her claim of disability discrimination to the Tribunal on **19 February 2025**. The Claimant's heads of claim and her grounds for pursuing them are listed in the List of Issues in the Case Management Order of **17 September 2024**. They are direct disability discrimination (s.13 EqA);

discrimination arising from a disability (s.15 EqA); failure to make reasonable adjustments (s.20/21 EqA); and harassment by reason of her disability (s.26 EqA).

3. The Claimant relies on her manager's alleged conduct towards her on **20 and 27 November 2023**, a communication from the Respondent's HR department on **28 November 2023**, an invitation to attend a formal absence meeting on **23 August 2024** and the alleged threatening nature and tone of emails sent to her by the Respondent during her sickness absence.
4. The Respondent denies that the Claimant has established on the balance of probabilities that she had a disability at the material times and submits that her disability claims should be dismissed. The Respondent disputes all elements under the definition of disability, namely whether the Claimant had an impairment, if so whether that impairment had a substantial and adverse effect on the Claimant's ability to carry out her normal day-to-day activities, and whether any such effect was long-term.
5. The Claimant's allegations in respect of the Respondent's conduct are denied by the Respondent. The allegations made by the Claimant and the Respondent's response are summarized at paragraphs 83 and 84 of the Case Management Order of **17 September 2024** and the agreed List of Issues. The Tribunal has made no findings of facts as to those matters in these Reasons.
6. The Preliminary Hearing was held before me remotely on **15 April 2025**. The Claimant was assisted by her friend, Mr Cloake. The Respondent was represented by Ms Trayers, Counsel. There was an agreed bundle of 95 pages (**Exhibit R1**). This included two Impact Statements submitted by the Claimant, her medical evidence which comprised four Fit Notes, three GP consultation notes and a letter from her GP's surgery addressed to "To Whom It May Concern" dated **9 September 2024**.
7. The Tribunal reserved Judgment because there was insufficient time to receive submissions and reach a judgment at the hearing. The representatives were directed to submit written submissions and duly did so (**Exhibits C1 and R2**). The other issues considered at the hearing have been recorded in the Case Management Order already sent to the parties.

Findings of Fact

8. The Claimant adopted her Impact Statements as her evidence in chief after which she was questioned by Ms Trayers. The Tribunal has made the following findings of fact after considering the Claimant's evidence to the Tribunal, the documents in the Bundle to which it was referred and the written submissions submitted on behalf of the parties.
9. The Claimant commenced her employment with the Respondent on **24 August 2003**. In **September 2023** the Claimant was employed by the Respondent in the part-time position of Funeral Service Arranger and Conductor in which she worked 20 hours per week on Monday, Tuesday and Wednesday.

10. The Claimant's father was taken to hospital on **6 September 2023**. Shortly after his admission he was unexpectedly diagnosed with a terminal illness. The Respondent granted the Claimant five days' compassionate leave and informed her that she should take as much time away from work as she needed to deal with this unfortunate situation. The Claimant's father sadly died on **18 September 2023**. His funeral was held on **10 October 2023**.
11. The Claimant explained that the stress of the bereavement following her father's death and all that was going on arising from it was completely unexpected and a surprise to her. She explained that her GP signed her off from work from the day of the funeral because of this stress and prescribed sertraline to deal with it. Her GP's Fit Note which extended to **11 November 2023** states that she had been signed off from work because of a "stress related problem". This was for unexpected continuing stress due to her bereavement and looking after her mother. The Claimant confirmed that no work-related issues had contributed to her absence.
12. The Claimant met with her Manager, Mrs King, on **8 November** to discuss her return to work. The Claimant considered that she was fit to return to work on the following Monday (**13 November**). However, after discussion with Mrs King about a holiday entitlement that was still due to her it was agreed that she would take a week's holiday before she returned to work on **20 November 2023**.
13. The Claimant returned to work on that day. She resumed her normal duties without encountering any difficulties on **20, 21 and 22 November**. On **20 November** the Claimant met with Mrs King when they completed the required Return-to-Work-Form. They both signed this as an accurate record of what they had discussed and what was stated in the Form. During her evidence the Claimant accepted that the contents of this Return-To-Work-Form were agreed by her and are an accurate record of what was discussed.
14. In the Return-to-Work-Form the Claimant's sickness is described as "stress due to bereavement unexpected". Where asked whether the condition is likely to return the Claimant stated: "Not known". She explained to the Tribunal that although she was confident that she was fit to return to work the unexpected impact of her father's death had left her unsure as to whether the death of another close member of her family might cause the same stress and difficulties for her.
15. She confirmed in the Form that work-related factors had not contributed to her absence. She also stated that she had not fully recovered from her bereavement but confirmed that there were no limitations, restrictions or adjustments required for her to return to work and carry out her usual duties. The Claimant and Mrs King recorded that her bereavement and ongoing support for her mother were factors that the Respondent should be aware of going forward.
16. There is substantial disagreement between the parties as to what happened when the Claimant was working at the Respondent's office on **Monday 27 November**, which was the start of the second week of her return to work. The Claimant told the Tribunal that she was angry and frustrated when she left work on that day. She claims that what was discussed with her during the day resulted in a panic

attack after she left the office. The Claimant was signed off from work by her GP shortly after that until **24 December 2023** although there is no Fit Note in the Bundle dealing with this absence.

17. The Claimant did not return to work for the Respondent after **27 November 2023**. The Claimant remained employed by the Respondent but was absent from work from then until she was dismissed by the Respondent on **6 January 2025**. The Claimant subsequently issued a claim for unfair dismissal which has been consolidated in these proceedings. The Respondent has filed an amended response in which it denies that it unfairly dismissed the Claimant and submits that she was fairly dismissed for her continuing absence (capability) or for some other substantial reason because of her failure to return to work and her intention not to do so.
18. The Claimant's GP issued a further Fit Note on **27 December 2023**. This signed the Claimant off work for a further month to **24 January 2024** and stated that this was for a "stress related problem". The Claimant was signed off from work again by her GP on **20 March** for two months to **20 May 2024** for "work related stress and anxiety". A further Fit Note was issued on **20 June 2024** for a period of three months for the continuing "stress-related problem".
19. The GP's note recording a meeting on **16 January 2024** refers to an ongoing employment tribunal. It records, inter alia: "*feeling very on edge*"; "*does not yet feel that she has grieved properly for Dad*"; and "*likely to need further MED3 until tribunal concluded*".
20. The GP's note of **22 February 2024** confirms a continuing stress related problem. Under the heading of "History" it records inter alia: "*Run down poor sleep, tired in day. Bereaved. Supporting her mother*". "*Tribunal at work. Worried re chest, coughing more and dad died of lung cancer*". It records that several tests were then arranged to investigate the Claimant's concerns about coughing and her chest.
21. The GP's note of **20 June 2024** confirms that the diagnosis remains "stress-related problem". It is recorded under the heading "History", inter alia: "*Work related stress. Anxiety/panic. Has had Talking Therapies. Feels is improving slowly but ongoing anxiety ref return to work.*"
22. The letter from the Claimant's GP's surgery referred to in paragraph 6 above states as follows:

"I can confirm that Natasha Reekie has consulted at the Practice on several occasions and has been signed off work following the death of her father in September 2023

During this she has struggled with her mental health it has been noted on 16 January 2024 that she was feeling very on the edge and that she had not grieved properly for the loss of her father. She has consulted also on 20 June 2024 when she was struggling with ongoing symptoms of anxiety and panic. She reported particular anxieties regarding returning to work and

grievance issues. She was signed off with stress-related problems which were attributed to work”.

23. The Claimant's Impact Statements only deal with difficulties which she encountered after she commenced her sickness absence on **27 November 2023**. She says that she has struggled to meet the demands of daily life listing grocery shopping, preparing meals, and dealing with paperwork, such as household bills. She has not, with one exception, particularized the adverse effect on these activities which she relies on. She has also referred to sudden unexpected episodes where she has cried for no reason, stayed in bed, and had panic attacks. She has provided no details of how often such episodes have occurred and the impact they have had on her day-to-day activities.
24. The exception is that she says that she was unable to leave her house unless accompanied due to stress. When asked about this she explained that it had been a problem in the first month of her sickness absence. She could not recall how often, or when this had occurred after that or the extent of interference it had on her day-to-day activities. She has been able to continue to look after and support her mother.
25. The Claimant was asked about Talking Therapies which is referred to in her GP's note of **24 June 2024**. She said that she made her own arrangements to attend counselling with Talking Therapies following a recommendation by her GP. She could not recall when she had attended, the purpose of attending counselling and whether it was successful. The Claimant has not referred to her involvement with Talking Therapies in her Impact Statements.
26. The Claimant stated in her second Impact Statement that she “suffers from depression and anxiety which had previously been managed by medication”. When questioned about what she was referring to she said that she had suffered from depression and anxiety prior to **November 2023** for which she had been prescribed anti-depressant medication for a period of six years.
27. The Claimant provided no details of when such difficulties arose, the symptoms caused by these difficulties, whether a diagnosis was made in respect of them, and the impact, if any, this had on her day-to-day activities, whether medication was prescribed and if so when, and for how long and what effect it had. The Tribunal can make no findings of fact about these matters from such unparticularized and unsatisfactory evidence. The previous problems have not been referred to by her GP in the documents and correspondence from the Claimant's surgery which she has provided to the Respondent and the Tribunal.
28. The Tribunal knows that the Claimant was prescribed Sertraline by her GP on **10 October 2023** to assist her in dealing with her bereavement. On **16 January 2024** her GP considered that this should continue until the conclusion of tribunal proceedings. There is no further reference to Sertraline in the other GP notes or the letter of **9 September 2024**.
29. The GP's letter set out in full above explains that when the Claimant consulted her GP on **20 June 2024** a further Fit Note was issued for stress related problems

attributed to her work. There are no further recorded attendances on her GP, and no further Fit Notes were issued for any continuing problems, after expiry of that Fit Note in **September 2024**.

The Law

30. The definition of disability is given in section 6(1) of the EqA and reads 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.

31. Schedule 1 to the Act sets out the meaning of “Long-term”. Paragraph 2 of Schedule 1 provides, so far as relevant:

(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 of recurring is to be disregarded in such circumstances as may be prescribed

32. Paragraph 5 relates to medical treatment and provides, so far as relevant:

(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 have been 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 prosthesis or other aid.

33. Section C of the Secretary of State's Statutory Guidance gives additional guidance as to the interpretation of “long term”. In particular it states that “likely” should be interpreted as meaning that it could well happen. Paragraph C4 reads as follows:

“In assessing the likelihood and effect lasting for 12 months, account should be taken of the circumstances at the time the alleged discrimination took place. Anything which occurs after that time will not be relevant in assessing this likelihood. Account should also be taken of both the typical length of such an effect on an individual and any relevant factors specific to this individual (for example, general state of health or age)”

34. At the Preliminary Case Management Hearing on **17 September 2024** the parties and the Tribunal agreed the issues that the Tribunal has to determine are as follows:
- i. At the relevant time(s), did the Claimant have a mental impairment, that is, was she suffering from depression and / or anxiety?
 - ii. If so, did that impairment have an adverse effect on her ability to carry out normal day-to-day activities?
 - iii. If so, was that effect substantial (more than minor or trivial)?
 - iv. If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
 - v. Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?
 - vi. Were the effects of the impairment long term, having lasted (or being likely to last or recur) for 12 months?

Conclusions

35. Each case is determined by its own facts. The dates for determining whether the Claimant meets the definition of disability within the Act are the dates of the alleged discriminatory acts. The mental impairment on which the Claimant relies is depression and anxiety. The burden of proof is upon the Claimant to establish that she is disabled for the purposes of the Equality Act 2010.
36. The Claimant was signed off from work by her GP on **10 October 2023** due to the stress caused by her father's death. This absence was unrelated to any workplace issues. The Claimant was able to return to work and resume her normal duties on **20 November** without restrictions or adjustments. Her circumstances at this time were helpfully recorded in the Return-to-Work Form which she completed with Mrs King.
37. There is no oral, documentary or medical evidence before the Tribunal to support a claim that when the Claimant was signed off sick after **27 November 2023** she was suffering from a mental impairment which had recurred or which was likely to last at least 12 months. The Claimant has made no such claim.
38. The Claimant's chronology in her ET1 and her Impact Statements sets out her claim that it was as a result of the Respondent's conduct towards her between

20 and 27 November 2023, and shortly afterwards when she submitted a grievance and in correspondence when she was off sick which caused her continuing sickness absence and her disability due to depression and anxiety.

39. The Claimant was not suffering from a disability in the period between **20–27 November 2023** because she was not at that time suffering from a mental impairment which was having a substantial long-term adverse effect on her ability to carry out day-to-day activities. Ms Trayers is correct in submitting that, as established by the undisputed evidence before the Tribunal the Claimant had been able to return to work and her subsequent sickness absence was a consequence of workplace issues that arose after her return and not a cause of them.
40. The Claimant contacted Acas on **30 November 2023**. This means that she was considering issuing Employment Tribunal proceedings within three days of being signed off from work. She also referred to tribunal proceedings when she attended on her GP on **16 January 2024** and issued those proceedings on **19 February 2024**.
41. She also informed her GP at that consultation that she did not yet feel that she had grieved properly for her father. She refers in her ET1 to the continuing impact on her of her bereavement where she states: *“In 20 years I have done nothing wrong and it is only the speed of this circumstances with my father’s diagnosis and subsequent death that cause recent episodes of stress and anxiety”*.
42. The stress diagnosed by her GP in October 2023 was a natural and understandable reaction to her father’s death which often arises in such circumstances. Her return to work demonstrated that her bereavement issues had been substantially resolved although it is understandable that recent events continued to cause her stress and anxiety. The Claimant submitted a grievance due to her disagreements and unhappiness with her work colleagues and then issued Employment Tribunal proceedings for which her GP suggested continuing a prescription of Sertraline although the Tribunal does not know whether that was continued or not.
43. The Claimant remained employed by the Respondent and it was necessary for the Claimant and the Respondent to keep her ongoing absence and potential return to work under review. The Claimant was also upset and angry about her work colleagues and had to manage the necessary demands of the Tribunal proceedings she had issued.
44. These stresses and strains from the events briefly described above do not establish that the Claimant was at that time suffering from an underlying condition or mental impairment. The GP notes reflect this position with a continuing medical opinion that the Claimant is suffering from a stress related problem attributable to work. There has been no evidence from the Claimant that she sought help from her GP for depression. The Fit Notes and GP notes make no mention of it. There is no evidence that the Claimant raised any concerns with her GP about any difficulties she was encountering with day-to-day activities.

45. The references to anxiety in the GP Fit Note of **24 March 2024** and note of **20 June 2024** refer to ongoing anxiety which are considered by her GP to relate to her circumstances at work and anxiety about a potential return to work on which there has apparently been correspondence from the Respondent to which the Claimant objected. The Appellant made no further referrals to her GP after **20 June 2024** and the letter of **9 September 2024** makes no reference to any ongoing concerns.
46. The remaining issue for the Tribunal is whether during the period from shortly after the Claimant commenced her sickness absence to the end of **August 2024** she was at any time suffering from a mental impairment which was having a substantial and long-term adverse effect on her day-to-day activities and which was more likely than not to last for at least 12 months. The Tribunal in considering this issue must not consider the nature, extent and duration of any impairment after the discrimination is alleged to have occurred.
47. The Tribunal emphasizes that in its deliberations it has reminded itself that it is not necessary for a claimant to be diagnosed with a recognized medical condition to establish an impairment. The Tribunal have concluded while recognizing the strains and stresses which events had caused for the Claimant in the period which has been under consideration she has not established that she was suffering from underlying condition or mental impairment in the period of her ongoing absence up to **23 August 2024**.
48. Furthermore, the stress (which is not of itself an impairment) combined with her anxiety as recorded by her GP which she had to deal with was not, giving careful consideration to all the evidence before the Tribunal having a substantial long-term adverse effect on her ability to carry out day-to-day activities. This means that even if the Tribunal had concluded that she was suffering from a mental impairment the Claimant would still not have established that she was disabled at the material times within the terms of the Equality Act 2010.
49. This means that the Claimant's claims of direct disability discrimination, discrimination rising from a disability and a failure to make reasonable adjustments are dismissed. The Claimant's claim of unfair dismissal is unaffected by this Reserved Judgment. It will proceed to a full hearing before a Judge Alone on the dates already fixed for that hearing.

Employment Judge Craft

Date: 11 July 2025

Sent to the parties on

26 July 2025

Jade Lobb

For the Tribunal Office