



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 8000621/2025**

**Held in Glasgow via Cloud Video Platform (CVP) on 15 July 2025**

**Employment Judge B Campbell**

**Ms M Hunter**

**Claimant  
In Person**

**North Lanarkshire Council**

**Respondent  
Represented by:  
Ms K Howard -  
Solicitor**

### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The judgment of the tribunal is that:

1. The claimant had a disability as defined in section 6 of the Equality Act 2010 by way of Attention Deficit Hyperactivity Disorder (ADHD) combined type at the material time for the purposes of her claim, and
2. The claimant's complaints based on possessing the protected characteristic of disability will proceed to the full hearing as listed.

### **REASONS**

#### **General**

1. This claim arises out of the claimant's employment with the respondent which, the parties appear to agree, ended on 1 November 2024. She alleges constructive unfair dismissal under section 94 of the Employment Rights Act 1996, discriminatory dismissal under section 39 of the Equality Act 2010 ('EqA') and a failure to make reasonable adjustments under sections 20 and 21 EqA.
2. The claimant relies on the protected characteristic of disability within section 6 of EqA. The condition founded upon is Attention Deficit Hyperactivity Disorder (ADHD) combined type. The respondent does not accept she had such a condition to the extent that it qualified as a disability under the Act. In

particular it does not accept that such condition had a substantial and long-term adverse impact on her normal day-to-day activities.

3. This preliminary hearing had the sole purpose of determining whether the claimant was a disabled person in that statutory sense.
4. The period of 3 December 2023 until 1 November 2024 was treated as the 'material time' for the purpose of assessing whether the claimant had a disability. This covers the dates of all events and acts she refers to in support of her complaints.
5. The claimant represented herself at the hearing. The respondent was represented by Ms Howard. The parties had helpfully prepared a joint bundle of documents pursuant to case management orders which had been issued. Where it is necessary to refer to any pages within it below that is done by using the relevant page number or numbers in square brackets.
6. The claimant is a qualified and practising solicitor. She appears in the civil court in the course of her work. She was able to present her case in a clear way. She gave evidence and was cross-examined by Ms Howard in the usual way. After a short break the parties gave oral closing submissions. I said that I would reserve my decision and issue it with reasons in writing, which I now do. I considered the parties' submissions, including relevant case law authorities, in the course of reaching the decision below although they are not referred to in full.

### **Legal issues**

As this was a substantive preliminary hearing on a discrete issue the question to be decided was restricted to the following:

- (1) At the material time, being 3 December 2023 to 1 November 2024, was the claimant a disabled person within the scope of section 6 of the Equality Act 2010, in that:
  - (a) she had a physical or mental impairment;
  - (b) that impairment had an adverse effect on her ability to carry out normal day to day activities;
  - (c) that effect is or was substantial; and
  - (d) the effect is or was also long-term.

### **APPLICABLE LAW**

1. Disability is a protected characteristic under the Act. Section 6 defines disability for legal purposes as follows:

## 6 **Disability**

- (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.*
  - (2) *A reference to a disabled person is a reference to a person who has a disability.*
  - (3) *In relation to the protected characteristic of disability—*
    - (a) *a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;*
    - (b) *a reference to persons who share a protected characteristic is a reference to persons who have the same disability.*
  - (4) *This Act (except Part 12 and section 190) applies in relation to a person who has had a disability as it applies in relation to a person who has the disability; accordingly (except in that Part and that section)—*
    - (a) *a reference (however expressed) to a person who has a disability includes a reference to a person who has had the disability, and*
    - (b) *a reference (however expressed) to a person who does not have a disability includes a reference to a person who has not had the disability.*
2. A person is therefore disabled in a legal sense if they have, or had, a disability as defined.
  3. UK Government guidance has been published covering matters to be taken into account when determining questions relating to the definition of disability. The latest version is published by the Office for Disability Issues and is referred to below as the '**Guidance**'. The Equality and Human Rights Commission has issued an Employment Statutory Code of Practice ('**Code**') which employers and tribunals may also consider when judging whether a disability exists and, if so, the way and extent to which it should be accommodated.

**Relevant facts**

1. It was not the purpose of this hearing to make definitive findings of fact in relation to the claimant's legal complaints. That is part of the role of the tribunal at a future full hearing. However it was necessary to record some matters which were accepted as fact and to make some findings in order to decide the preliminary issue of disability status. As such, the matters below are believed to be relevant to this hearing and that preliminary issue but are not intended to go beyond that and bind a tribunal at a full hearing in relation to the separate issues it will have to decide.
2. The claimant was employed by the respondent for approximately two years, ending by way of her giving notice on 22 October 2024 which took effect on 1 November 2024. She worked as an in-house solicitor. The respondent is a local authority. The claimant became pregnant some time in the second half of 2023 and gave birth to her child in May 2024. She experienced pregnancy related conditions or symptoms which caused her to either be absent from work, or partially fulfilling her duties from home, from the beginning of 2024.
3. The claim centres around an alleged change to the claimant's working pattern which was announced on 3 December 2023 and implemented in April 2024. The claimant was not working at the time because of her health, and then the following month began her period of maternity leave. She says that she expected to return before the end of 2024, but because she could not comply with the working pattern change, and the respondent refused to agree to an adjusted version of it, she resigned.
4. The claimant submits that she has the condition Attention Deficit Hyperactivity Disorder (ADHD) combined type, which is referred to in this judgment as the 'condition'. The condition was diagnosed on 18 July 2022 by a Clinical Nurse Specialist named Carole Hughes, employed by ADHD Direct Limited. This is a private sector company. The claimant sought an assessment for the condition from her GP but was told that as she was not a child it would not be practicable to obtain one via the NHS, and was recommended this company as an alternative.
5. According to Ms Hughes' report of the above date [54-61] a number of recognised assessment tools were used to reach a decision on diagnosis. The claimant said that there had been three meetings with Ms Hughes, at least one of which lasted over two hours. The claimant's mother and fiancée also each completed a questionnaire giving details of how they observed the claimant in the previous six-month period [52-53]. Ms Hughes is described as *'a registered Mental Health Nurse with the Nursing and Midwifery Council (NMC). I have been qualified since 1996 and worked in a variety of NHS CAMHS settings in Scotland and England. I am a qualified Independent*

*Prescriber and have completed training in psychological therapies. My qualification allows me to diagnose and treat ADHS as per Scottish Intercollegiate Guidelines Network (SIGN 112).'*

6. Ms Hughes proposed some follow up sessions with the claimant. There were some telephone calls between the two, but the focus was to become the medication that the claimant might take to alleviate her reported symptoms and she wished to become pregnant, which ruled out the taking of such medication. There was also the issue of ongoing cost.
7. The claimant entered the care of a local authority Community Mental Health Team and consulted with a number of psychiatrists. Owing to her pregnancy and subsequent breastfeeding of her child she did not take any medication until around October 2024 when she began taking the drug Elvanse. She found that its effects did not last the full day and was switched to Xaggitin. She later moved back to Elvanse which she continues to take. The effect is to curb some of her impulsivity, such as craving unhealthy food, and also to regulate her emotional state so that she does not become tearful so often when experiencing some of the effects she describes. It also prevents her becoming as tired. The medication does not prevent the underlying symptoms or situations she experiences, but helps reduce their effect on her mentally, physically and emotionally. By May 2025 she was described by her psychiatrist as 'stable' and was discharged from the mental health team.
8. The claimant provided an impact statement [92-96] which she supplemented by oral evidence. She said that she had 'struggled my whole life with ADHD' and that her parents had sought medical input when she was a child, but a diagnosis was not made. She presented as constantly tired, had delayed speech and was slow to learn despite intelligence appearing normal. As a teenager she recalled she was anxious but was misdiagnosed as suffering from depression. She had to abandon her sixth year at high school, take a year out and return to complete her exams. She went to university to study law, was successful in her first two years and again could not cope in her third, dropping out and coming back to complete the course in a later year. Both times she said the demands were too stressful. She says that she recognises that she had the symptoms described in her impact statement since she became a teen, but they have become magnified as she took on the greater responsibilities of adulthood.
9. Some of the ways in which the claimant says she was impacted by her condition are described in section (b) of her impact statement. Factually they were not challenged by the respondent and they are accepted to be true. The claimant said that this was how she was 'at the time of these events' which she clarified to mean the material time. Only at the end of that period did she

begin taking medication, and after then she experienced the same symptoms, but was able to cope with them better as described above.

10. In short, some effects that the claimant experienced were:

- a. **Poor working memory** – in her personal and work life she was known to be forgetful and lost items repeatedly. She could forget where she left a set of keys more than five times in a day. She struggled to follow longer conversations at work and remember them back afterwards. To help with this she would note down what people said as they went along. She had difficulty taking and following instructions. She forgot key dates and relied on others to remind her, or had to maintain a detailed planner. She would mask her difficulties which was tiring and stressful;
- b. **Inattention** – she repeatedly made mistakes in her work, even when tasks are easy or familiar. She double- and triple-checked work;
- c. **Restlessness and distraction** – she found it difficult to focus on a task for any length of time, such as a hearing or training session. She could not watch a film or a television programme lasting much more than half an hour before becoming distracted or forgetting what she had seen. She would at times speak too quickly and have to try and regulate her speed. She would drift off-topic when speaking and interrupt others. She experienced multiple thoughts constantly which she found difficult to control, and which was tiring. This affected her ability to go to sleep, and if she woke in the night her mind would start up again. She was hypervigilant;
- d. **Impulsivity** – she would say things she knew she should not say to others, which she felt impacted negatively on friendships, relationships with those close to her and colleagues at work. She was poor at managing money and would overspend. As a measure against this she had her earnings paid into a joint account with her partner and then was allocated money to spend.

11. The claimant said that she relied heavily during this period on her mother, who is retired, and her partner. Both undertook activities daily such as cooking and cleaning for her as she was constantly exhausted.

12. As stated, Ms Howard did not substantially challenge the claimant's evidence, but focussed on whether it was sufficient to meet all of the criteria of the definition of disability in section 6. She put to the claimant that:

- a. more medical material could have been provided but was not;

- b. the material which was provided fell outside the relevant time (coming either before or after the events relied upon in the claim);
- c. the questionnaires provided by her mother and partner were not consistent with each other as to observed symptoms and effects;
- d. the claimant had not differentiated any effects of her condition from those of either being pregnant or the mother of a newborn baby;
- e. the claimant's recollection of events was not fully reliable;
- f. many of the effects she described are things which the population generally experience, without qualifying as a disability;
- g. she effectively used coping mechanisms; and
- h. that the claimant was able to function at a high level in a number of ways, such as holding meetings, appearing in court and prioritising her workload according to deadlines.

### Discussion and decision

13. The legal question to be determined was whether the claimant was a disabled person at the material time for the purposes of her claim, being between 3 December 2023 and 1 November 2024.
14. As is made clear by the Employment Appeal Tribunal in ***Goodwin v Patent Office [1999] IRLR 4***, an employment tribunal should approach the four key questions relating to disability status in order. The questions are:
  - a. Does the claimant have a physical or mental impairment;
  - b. Does the impairment have an adverse effect on their ability to carry out normal day-to-day activities;
  - c. Is that effect substantial; and
  - d. Is that effect long-term?
15. It was later added in ***J v DLA Piper UK LLP UKEAT/0263/09*** that it can in some cases be helpful to consider the effect of an alleged impairment before deciding whether there is an impairment. This may be so particularly in cases involving a claimed mental impairment which is disputed.
16. The onus is on the claimant to establish that each factor was present at the material time. She submits that she has met the requirements of EqA since becoming a teenager, and at least since 18 July 2022.

### Physical or mental impairment

17. It is the impairment itself which matters in a legal sense rather than the existence of a medical condition by name, or a diagnosis. In other words, 'ADHD' could amount to a mental impairment or not depending on the details and circumstances of the particular case.
18. The Guidance suggests that the term 'impairment' should be given its ordinary meaning (paragraph A3). It does not go on to provide a definition, but the word is commonly understood to mean a reduction or weakness in a particular thing.
19. As stated above, it is for the claimant to show that she had a mental impairment at the material time. The respondent denies that she had. The Guidance recognises that impairments can exist in different ways, and specifically gives as an example:
  - developmental, such as autistic spectrum disorders (ASD), dyslexia and dyspraxia,
  - 'Mental health conditions with symptoms such as anxiety, low mood, panic attacks, phobias, or unshared perceptions; eating disorders, bipolar affective disorders, obsessive compulsive disorders, personality disorders, post traumatic stress disorder, and some self-harming behaviour;' and
  - 'Mental illnesses such as depression and schizophrenia' (para A5).
20. There is sufficient evidence in this case to establish that the claimant had a mental impairment. She had been diagnosed with ADHD in 2022 by qualified and experienced individual, which subsequent medical practitioners including her GPs and treating psychiatrists did not question.
21. That said, it is the effect of the condition which matters. Considering the evidence in light of the guidance in ***Goodwin and J v DLA Piper*** and focussing on the material time for the purposes of this claim, the claimant's evidence of the symptoms she experienced was more than adequate to qualify as an impairment. This was manifested in ways such as poor memory and concentration, making mistakes, heightened anxiety, exhaustion, a tendency to be distracted and impulsiveness.

#### **Effect of impairment on ability to carry out normal day to day activities**

22. In this claim, consideration of the effect of the claimant's alleged impairment is closely related to the existence of the impairment, as was recognised may be the case in ***J v DLA Piper***. The impairment founded upon does not have a universally recognised set of symptoms or effects which all apply equally to each person diagnosed, although some are common. She requires to show



what the effect of that alleged impairment is on her own particular ability to carry out normal day to day activities.

23. Through her own evidence before the tribunal and the documents she provided the claimant was able to establish that her mental impairment had an adverse effect on her ability to carry out normal day to day activities.
24. The EqA does not define 'normal day to day activities'. The Guidance says that in general they are *'things people do on a regular or daily basis'*. Examples given there include reading and writing, watching television, having a conversation, preparing and eating food, carrying out household tasks and taking part in social activities. They can also include some of the more universal work-related actions such as interacting with colleagues, following instructions, preparing documents and keeping to a timetable. The claimant's evidence points to each of those activities being adversely affected.
25. The Guidance provides examples rather being prescriptive. The claimant was nevertheless able to provide evidence of a number of affected activities which are normal day to day activities. It is therefore accepted that the claimant was adversely affected in her ability to carry out a sufficient number of normal day to day activities by her alleged impairment.

#### **Was the effect of the impairment substantial**

26. The effect of the alleged impairment must be substantial. Section 212 EqA confirms that substantial in context means 'more than minor or trivial'. That is not a particularly high threshold.
27. The effects of the claimant's impairment are deemed to be substantial on the evidence in this case. Most if not all occurred on a continuous basis. Together they affected her quality of daily life. They were frustrating, tiring and stressing.
28. The claimant relied on various coping mechanisms, such as allowing herself more time to complete work tasks, having work reviewed by others, entrusting family finances to her partner and relying on him and her mother to carry out daily domestic tasks. However, those did not completely negate the effects of the condition. For example, they did not prevent her from being anxious or hypervigilant, or at times exhausted or unable to concentrate on a television programme, or from misplacing objects in her home.
29. Taking medication from October 2024 was recognised to improve the claimant's ability to cope. But it did not 'cure' the symptoms, and the correct test to be applied is one which takes medication out of the equation – paragraphs B12-17 of the Guidance.

30. The tribunal accepted that the claimant could have presented outwardly as less significantly affected by her condition. However, the additional time she had to spend on work and the effects of masking behaviour were particularly tiring for her and had the effect that she could not deal with other activities in her home life, such as cooking, washing and cleaning. That is relevant, as the Guidance points out, for example at paragraphs B2 and B3. The overall effect may have been more substantial than the respondent was reasonably able to detect by observation. This may be a matter for evidence in the full hearing however.

### **Was the effect long term**

31. Long term in this sense equates to having lasted at least 12 months, or being likely to last 12 months at the time the test is applied, or being likely to recur or to last for the remainder of the individual's life.
32. On the claimant's oral evidence she was affected as far back as the early 2000's, although that came only from herself (in this hearing at least, although she explained how her mother had similar thoughts). This evidence lacked detail as to the nature and extent of its effect, so that it could not be said to meet all of the criteria of a disability at that time. Clearly however the condition became more permanent and debilitating in later years.
33. By 2022 and the time of the diagnosis the picture had become clearer. The claimant had already been experiencing the symptoms to some degree for some 20 years, she had failed to complete her sixth year at school and then her university degree at the first attempt. She was affected on a daily basis.
34. Importantly, it is the substantial effect of the impairment which must be shown to be long term, not the underlying condition itself, which is likely to have lasted longer but with a lesser effect. Based on the evidence provided, it can be ascertained that on the balance of probability the claimant's condition had a substantial effect on her normal day to day activities from 18 July 2022, if for no other reason than the position was documented at that time as such as part of the diagnosis process. By the time of the events on which the claim is based that had persisted for two years. It had therefore become long-term by then.

### **Conclusion**

35. I did not find any of Ms Howard's arguments, though well presented, to be sufficiently persuasive in displacing the clear evidence of the claimant. A finding of disability status is made on the balance of probability, and the amount of material produced by the claimant, together with her own evidence, was sufficient for that purpose. She did not require to go further by, for example, producing raw data which fed into the report of Ms Hughes, who on

the face of it was adequately qualified to conduct her assessment. The questionnaires completed by the claimant's mother and partner were not contradictory, but merely expressed a thematically similar picture from two different viewpoints. The claimant's recollection was not unreliable as was suggested, and it was detailed enough to show that the claimant experienced the symptoms relied upon both before and after pregnancy and becoming a new mother. Her evidence showed clearly that what she experienced went beyond the commonplace failings and frustrations of people at large, such as misplacing items, forgetting important dates and losing concentration when dealing with mundane tasks. The reference to the claimant's ability to fulfil some of the more skilled and demanding aspects of her role as a solicitor risked falling foul of the advice in the judgment of the EAT in ***Stedman v Haven Leisure Limited [2025] EAT 82***, referred to by both parties, as well as earlier authorities, that *'it is not permissible to weigh up a claimant's ability to carry out one day-to-day activity against another day-to-day activity in order to arrive at some overall assessment of ability to carry out day-to-day activities generally'*.

36. The claimant has provided sufficient evidence to establish that she was a disabled person within section 6 of EqA since at least 18 July 2022. In all likelihood she met the criteria before that diagnosis date, but it is not necessary to go further back as it is sufficient for her complaints under EqA to proceed that she was disabled for the whole of the material time, which she clearly was. Those complaints will now be decided at a full hearing which is understood already to be listed for dates in August 2025.

**Date sent to parties : 24 July 2025**