



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4104859/2024

Held in Aberdeen by Cloud Video Platform on 7 and 8 July 2025

Employment Judge S MacLean

Ms K J M Senff

**Claimant
Represented by:
Mr J Lawson -
Solicitor**

Halfords Autocentres Limited

**Respondent
Represented by:
Mr R Ford -
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that:

1. The claimant has a disability as defined in section 6 of the Equality Act 2020 by way of chronic colitis and/or undiagnosed bowel or gastric problem at the material time for the purposes of her claim.
2. The claimant's complaints based on the protected characteristic of disability will proceed to a final hearing.

Introduction

1. This claim arises out of the claimant's employment with the respondent between late October/early November 2023 and 12 January 2024. She alleges discriminatory dismissal under section 39 of the Equality Act 2010 (EqA) and brings claims under sections under section 15 (discrimination arising from disability), section 20 (failure to make reasonable adjustments), and section 26(2) (harassment related to sex) of the EqA.
2. The claimant relies on the protected characteristic of disability within section 6 of the EqA. The condition relied upon is chronic colitis and/or an undiagnosed bowel or gastric problem. The respondent disputes that the claimant had a condition qualifying as a disability within the meaning of the EqA.

3. The purpose of this preliminary hearing was to determine whether the claimant was a disabled person under section 6 of the EqA. The findings set out below are limited to the scope of this preliminary issue and are not intended to bind the Tribunal in relation to any other issues to be determined at the final hearing.
4. The period from 30 October 2023 to 12 January 2024 was treated as the relevant time for assessing disability, as it encompasses the events forming the basis of the claimant's allegations.
5. The claimant was represented by Mr Lawson and the respondent by Mr Ford. A joint file of documents was prepared. The claimant gave evidence on her own behalf and referred to supporting materials, including a disability impact statement and medical records. Mr Ford cross-examined the claimant. No witnesses were called by the respondent.

Findings in fact in relation to disability status

6. The claimant was born in 2004.
7. From the age of 10, she experienced recurring lower abdominal pain, typically before and after meals. The pain could persist for hours or the entire day, occasionally causing her to miss school. She used hot water bottles to manage the discomfort.
8. In June 2015, the claimant was referred to paediatric services. At that stage Coeliac disease was ruled out, and medication was prescribed. Despite discharge from hospital care, the claimant continued to experience abdominal pain. She became reluctant to eat, believing the pain was linked to her diet or her menstrual cycle. She also had difficulty tolerating pain relief.
9. By late 2022/early 2023, the pain had become more frequent and severe, occurring most days and lasting several hours. The claimant required urgent access to toilet facilities, experienced faecal incontinence, and carried spare clothing in case of an accident. She avoided eating and socialising, experienced significant weight loss, and developed anxiety around toilet access.
10. In September 2023, she experienced severe abdominal pain and sought medical attention. She was diagnosed with a suspected urinary tract infection and prescribed medication. Investigation continued into the cause of the recurring abdominal pain.
11. On 10 October 2023, the claimant was admitted to hospital where it was recorded that she had sharp abdominal pain, loose stools, and unintentional weight loss. She was diagnosed with acute and chronic colitis and discharged with medication (diclofenac and omeprazole).

12. The claimant was employed by the respondent from late October/early November 2023 as a technician. The claimant had nine sick absences from work.
13. On 4 December 2023, she was reviewed at a gastroenterology clinic. She had received intravenous antibiotics. The claimant reported a fear of eating due to pain. Investigations into her condition were ongoing.
14. The claimant continued to experience pain and incontinence. She was anxious about toilet access, and the pain affected her mobility, sleep, and ability to work. She avoided public transport and social situations due to faecal incontinence and fear of lack of control. The claimant moved in with her mother due to difficulty managing stairs and household tasks.
15. The claimant was dismissed on 12 January 2024.
16. Since dismissal, the claimant reports persistent pain, varying from discomfort to severe immobility. During episodes of intense pain, she experiences difficulty standing and moving. She resides with her mother and reports disrupted sleep due to pain, resulting in fatigue. She struggles with household tasks and social interaction. Ongoing symptoms include faecal incontinence, anxiety, and dietary restrictions. She takes medication, including co-codamol and paracetamol. She must plan journeys in advance, has difficulty driving and continues to avoid public transport.

Observations on evidence

17. I found the claimant to be a candid and credible witness. She described her condition in a measured, understated manner, and made a genuine effort to answer questions honestly.
18. Mr Ford's cross-examination focused on perceived inconsistencies between the claimant's oral evidence and her medical records. He highlighted a gap in the medical history, he said that the incident in September 2023 appeared to relate to a urinary tract infection which was a one off, and he referred to a general practitioner's comment suggesting the claimant's symptoms had mostly settled. He invited me to prefer the documentary medical evidence over the claimant's account.
19. I acknowledged the points raised by Mr Ford. While there was a gap in the medical records, I did not accept that this necessarily indicated an absence of symptoms. To the contrary many people have ongoing/unchanged symptoms but do not attend their general practitioner. I accepted the claimant's evidence that her abdominal pain persisted during that period (2015 to 2023).

20. I appreciated that the claimant was diagnosed with another condition in September 2023 which was resolved. This may have exacerbated her symptoms but that did not mean that she did not have an undiagnosed bowel problem and associated symptoms. The medical investigations continued which in my view inferred that her symptoms also continued.
21. The medical records showed that the claimant was often accompanied by her mother and that clinicians were recording history as reported by her mother. Although some test results in late 2023 suggested the claimant's bowels had stabilised, she remained under investigation. I accepted the claimant's evidence about the range of intensity of her pain and how it impact her sleep, mobility and social engagement.

Conclusions of disability status

22. Section 6 of the EqA defines a person as disabled if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.
23. The test is functional and not a medical test, directed to what a claimant cannot or can no longer do at a practical level.
24. The burden of proving disability lies with the claimant. My assessment of her situation must be taken at the time she says the claims arose. The alleged discriminatory acts took place between 30 October 2023 and 12 January 2024. This is also the material time when establishing whether the impairment has a long term effect. Impairment bears its ordinary and natural meaning and may result from an illness or consist of an illness. There is no need to establish a medically diagnosed cause for the impairment. What is important to consider is the effect of the impairment, not the cause.
25. 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'. The Guidance provides examples rather being prescriptive. The examples given 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.
26. The effect of the alleged impairment must be substantial. Section 212 EqA confirms that substantial in this context means 'more than minor or trivial'. That is not a particularly high threshold.

27. 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.

Did the claimant have a physical or mental impairment?

28. There is sufficient evidence in this case to establish that the claimant had a physical impairment: chronic colitis and/or undiagnosed bowel and/or a gastric problem. She was attending hospital and undergoing investigation by medical practitioners including her GP.
29. It is the effect of the condition which matters. Considering the evidence 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 by abdominal pain, faecal incontinence, disrupted sleep, fatigue, restricted mobility, and dietary limitations.

Did the impairment affect the claimant's ability to carry out normal day to day activities?

30. The claimant requires to show what the effect of that alleged physical impairment is on her own particular ability to carry out normal day to day activities.
31. My focus was not on what the claimant could do but what she could not do or could only do with difficulty.
32. The claimant started a new job. When at work she required to carry with her a change of clothing. She avoided eating so that she would not require to have short notice access to the toilet facilities. In a short period of employment, she had nine days absences due to sickness.
33. The claimant had difficulty completing household tasks and moved to live with her mother. She had difficulty walking upstairs. She avoided social interactions. She had difficulty driving and using public transport. The claimant had disrupted sleep. These are normal day to day interactions
34. Through her own evidence and the documents she provided the claimant was able to establish that her physical impairment had an adverse effect on her ability to carry out normal day to day activities.

Was the effect substantial?

35. Although the claimant had periods of absence from work, this alone was not determinative. Between September 2023 and January 2024, she returned to live at the family home as she had difficulty doing household tasks. She

experienced difficulty driving and was apprehensive about using public transport. She avoided food and social interaction unless she could plan around access to toilet facilities. Her sleep was consistently disrupted.

36. In my view, the impairments had a substantial effect on the day to day activities.

Was the substantial adverse effect long-term?

37. I must consider whether the substantial adverse effect was long-term. The relevant period for this assessment is from 30 October 2023 to 12 January 2024.
38. On the claimant's evidence she was affected as far back as the early 2015. 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 debilitating in later years.
39. By 2023, and with a notable worsening after September 2023, the claimant experienced intensified symptoms abdominal pain, faecal incontinence, fatigue, restricted mobility, disrupted sleep, and dietary limitations which substantially impacted her day-to-day functioning.
40. 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.
41. 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 early 2023. By the time of the events on which the claim is based they had persisted for nearly 12 months and were likely to last 12 months given her chronic condition and ongoing investigation. This met the threshold for being long-term,
42. I concluded that the claimant met the definition of disability during the period from 30 October 2023 to 12 January 2024.

Employment Judge: S Maclean

Date of Judgment: 12 August 2025

Date Sent to Parties: 18 August 2025

