



EMPLOYMENT TRIBUNALS

Claimant: Ms Victoria Gurney

Respondent: Noble Care Ltd

Heard at: Midlands West; by CVP

On: 10 September 2025

Before: Employment Judge Hindmarch

Appearances

For the Claimant: In person – assisted by Miss Jones

For the Respondent: Mr Takhar - Director

JUDGMENT

1. At the relevant times the Claimant was a disabled person as defined by Section 6 of the Equality Act 2010 because of Emotional Unstable Personality Disorder.

WRITTEN REASONS

1. On 10 September 2025 I gave an oral Judgment on the issue of disability. The short form written Judgment was sent to the parties by the Tribunal office on 11 September 2025. On 23 September 2025 the Respondent requested written reasons on the issue of disability and the request was forwarded to me on 24 September 2025.
2. These are the written reasons.
3. This case came before me for a Preliminary Hearing firstly on 24 June 2025 to decide whether the Claimant was a disabled person and to determine the Claimant's application to amend her claim.
4. The Preliminary Hearing had been listed at a Case Management Preliminary Hearing before Employment Judge McCluggage on 4 March 2025 for 2 hours.

It was plain that 2 hours were going to be insufficient so I sat until the afternoon of 24 June 2025 and we went part heard until 10 September 2025.

5. The Claimant was a litigant in person and appeared before me with Miss Jones as support. The Respondent was represented by a director, Mr Takhar.
6. I had a bundle from the Respondent running to 91 pages and an email from the Claimant with several attachments some of which were in the Respondent's bundle.
7. The Claimant says she is disabled by way of Emotional Unstable Personality Disorder. The Respondent accepts the Claimant has the impairment but disputes that it has an adverse impact on her ability to carry out day to day activities or that it is long term.
8. The Claimant commenced employment with the Respondent in June 2016 as a senior support worker and says in her ET1 she was diagnosed with the impairment in July 2023. The ET1 pleads that she commenced sick leave in May 2023 and was ready to return in July 2023. The Case Management Summary at the Case Management Preliminary Hearing conducted by EJ McCluggage records that she alleges she was wrongly prevented from returning to work after that period of sickness. That period will be the relevant time for which I must determine whether the Claimant was disabled.
9. On the morning of the first day we had some technical issues with the CVP format but we were able to hear the Claimant's evidence on disability.
10. On 10 September 2025 I heard submissions and gave an oral decision.
11. The Claimant accepted she was promoted to Senior Care Worker in November 2021 and her responsibilities involved managing staff, prescribing medication and her role required her to deal with service users with challenging behaviours.
12. The Claimant explained in her evidence that she had suffered childhood trauma resulting in a referral to the Child Adolescent Mental Health Team from the age of 10 to approximately 13 years old. She saw a psychologist and therapist and was diagnosed with depression. She says thereafter she suffered from depression and was treated by her GP with antidepressants and she declared that she had depression when she took the role with the Respondent.
13. In November 2021 the Claimant attended a family event which triggered her childhood trauma and suffered a decline in her mental health and in August 2022 her Auntie passed away. She self-referred to Healthy Minds/Talking Therapies but needed more support, so was referred to a Mental Health Team and put on a waiting list for trauma therapy.
14. In March 2023 the Claimant's sister passed away and she says her mental health further deteriorated. Her GP was contacted on 24 May 2023. The ET3 at paragraph 24 refers to the Respondent having cause for concern that the Claimant was crying and talking about not wanting to go on with her life and it

was the Respondent who contacted the Claimant's GP to request a welfare check. Antidepressants were prescribed and on 30 May 2023 the Claimant was referred to the Crisis Resolution Team and remained under their care until 12 July 2023. She was then diagnosed with the impairment in July 2023.

15. Employment Judge McCluggage at the Case Management Preliminary Hearing made standard orders in claims where disability is contested for a disability impact statement and for copies of GP or psychiatric records relevant to the disability issue.
16. The first medical document provided in terms of chronological order was a letter from a psychologist Dr Mulia dated 27 July 2023. It confirms a diagnosis of Emotional Unstable Personality Disorder, that the Claimant is already taking two medications, an antidepressant and an antipsychotic, and that there was no syndrome affective or psychotic disorder. Dr Mulia sets out some "main aspects" of his consultation with the Claimant, namely her spending over £10,000 in the last year or so from July 2022 on gambling and comfort shopping, her calling unknown persons (nearly 100) and having a sexual encounter to seek comfort, and her having a childhood emotional deprivation and a physically abusive father alongside fear of abandonment, low self-worth, poor body image and seeking approval and validation through impulsive behaviour. He states there was at that time no suicidal intent.
17. The next medical document in the timeline is a letter from the Claimant's former GP to the Respondent. She was no longer registered with the practice at the time the letter was sent which is dated 1 May 2024. It confirms the impairment and that the Claimant was last seen by the mental health team in January 2024 and was at that time on the same medications. It says, no doubt as the Claimant was no longer a patient of the practice, that the GP has been unable to assess her ability to carry out normal day to day activities, but that with support she would be able to return to work, suggesting a phased return.
18. In the bundle at page 72 was a second letter dated 1 November 2024 from Mr Mulia, which confirmed that the Claimant had been referred to the Community Mental Health Service in November 2022 and had been diagnosed with the impairment and was being treated with psychotropic medications, psychological work and was having regular reviews with the psychologist. The letter describes symptoms as being low mood and depression, severe anxiety, low self-worth, difficulty with motivation and social avoidance.
19. At pages 73-74 was a letter from a mental health practitioner dated 14 March 2025. It confirmed the diagnosis of Emotional Unstable Personality Disorder and that this was made in July 2023. It explained the Claimant had had a number of traumatic experiences involving loss of close family members, incidents of physical abuse and a lack of secure attachments during childhood. Alongside the symptoms listed by the psychologist further symptoms were set out including body image concerns, disordered eating behaviours including bingeing, feelings of emptiness and abandonment and a tendency to seek validation and approval through impulsive behaviours. The letter stated the Claimant experiences persistent suicidal ideation.

20. The letter went on to explain the Claimant was facing difficulties with motivation, struggles with daily activities such as personal care, maintaining a balanced diet and social interactions, was isolating herself from friends and family and having difficulty with sleep.
21. The letter confirmed the Claimant was still taking medication without which there would be a decline in her mental health and an increased risk of suicidal behaviour.
22. The Claimant told me in evidence she was in receipt of Personal Independence Payments.
23. In her evidence at the hearing the Claimant told me more about her mental health issues. She explained she had self-harmed and that she lost confidence in her appearance. She says things were deteriorating from around November 2022. She described struggling to get to sleep due to being unable to switch off and then over sleeping. She described long days in bed, not washing herself or brushing her teeth for a number of days at a time. She told me she would engage with unsafe relationships with people she met on the internet. She would engage in expensive and unaffordable shopping habits. She had an unhealthy relationship with food and would either overeat or not eat at all.
24. On the morning of the second day of this hearing I heard submissions on the issue of disability. These took 90 minutes. I then took an hour to deliberate. I want to thank the parties for their helpful submissions whilst I considered carefully.
25. The definition of disability is in Section 6 of the Equality Act 2010 which provides:
 - “(i) 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. There is Guidance on matters to be taken into account in determining questions relating to the definition of disability (Equality Act 2010 Guidance) to which I have had regard.
27. The Respondent accepts the Claimant has the impairment which was diagnosed in July 2023 after her sick leave had commenced. The Respondent disputes it has the effect required or that it is long term.
28. The impairment must have the long-term effect as at the date or dates that the alleged acts of discrimination are committed.

29. The relevant date is the onset of sick leave until the filing of the claim form on 18 June 2024. The Claimant was on her case during that period seeking a return to work. It is clear to me both from the Claimant's evidence and the medical evidence that the condition was long term. It had lasted about 12 months by June 2024 and continues. The most recent medical evidence of March 2025 confirmed the diagnosis remained in place.
30. The main issue is whether the impairment has a substantial and adverse effect on the Claimant's ability to carry out day to day activities. The primary focus should be to consider the effects on the individual employee. Substantial means more than minor or trivial. The Equality Act does not define day to day activities but the Guidance points us to activities people do on a regular basis, including getting washed and dressed, preparing and eating food and having conversations. They include activities that are required to maintain personal wellbeing or to ensure personal safety. The Tribunal should focus on what the employee cannot do because of their impairment, rather than what they can still do, despite their impairment.
31. The Guidance suggests consideration of whether the effects of the impairment have an impact on whether the person is inclined to neglect basic functions such as eating, sleeping or personal hygiene or to exhibit behaviour which puts them at risk.
32. Where a person is having treatment, in this case taking medication and/or having therapy, the effect of the impairment on day to day activities is to be taken as that which the person would experience without that treatment.
33. Put another way, an impairment will be treated as having a substantial effect on a person's ability to carry out normal day-to-day activities if measures are being taken to treat it and, but for the measures, the impairment would be likely to have that effect.
34. Mr Takhar's submissions were largely based on what he categorised as insufficient medical evidence from the Claimant in her Disability Impact Statement or in the medical reports that were before me. The law is clear that whether a Claimant is disabled for the purposes of the Equality Act is not a medical question but rather a legal one. It is for a Judge to decide if the legal test is met having regard to all the evidence, not only that in the Disability Impact Statement and medical records but also in the evidence given at the hearing.
35. Mr Takhar submitted that the letter of Dr Mulia of 27 July 2023 which stated the Claimant was not at that time presenting with syndromal affective or psychotic disorder meant there was no diagnosis sufficient to warrant a disability. Of course that was the earliest piece of medical evidence and the first time the Claimant met with Dr Mulia. Matters are somewhat overtaken by more recent medical evidence and the Claimant's own evidence.
36. There was some suggestion on the part of the Respondent that because the Claimant was wanting to return to work in August 2023 and her GP had said in

May 2024 that she may be able to do so with support in a phased return, this limited the contention that she had a disability. I do not accept this – plenty of people with disabilities are able to work albeit with accommodations. I have to focus on what the Claimant is not able to do rather than on what she can or could do.

37. It is not in dispute that the Claimant started CBT therapy in January 2024 but did not complete this due to a further bereavement and her losing her home. I do not find this meant she was getting better or was not engaging with her mental health support. There were genuine and calamitous reasons for this and after missing two sessions she was taken off the programme and had to wait for another referral, but her evidence was that she instead did a six week managing emotions programme.
38. My conclusion is that the impairment does have the substantial and adverse effect required. I accept the Claimant's evidence supported by that of her mental health practitioner that she has tendencies that put at risk her financial and personal safety, that she struggles to form appropriate personal relationships, that she struggles with normal day to day activities – sleeping, washing and eating. I accept that without mental health support and medication these would be worsened and there would be a resurfacing of serious suicidal ideation. On her last day of working for the Respondent, the Respondent was concerned the Claimant was talking about not wanting to go on with her life. That had been curbed by the end of July when she had undergone treatment and was receiving medication from the home treatment team and by the time she saw Dr Mulia for the first time, but it is also clear by March 2025 these risks could resurface.
39. For the reasons above I conclude the Claimant is a disabled person as defined by section 6.

Employment Judge Hindmarch

Approved on: 8 October 2025