EMPLOYMENT TRIBUNALS

Claimant: Ms A B Punithanathan

Respondent: London Residential Healthcare Limited

Heard at: Croydon (CVP) **On:** 27 November 2025

Before: Employment Judge Wright

REPRESENTATION:

Claimant: In person
Respondent: Mr S Joshi - counsel

JUDGMENT AT PRELIMINARY HEARING

1. The claimant presented a claim form on the 1 February 2024, following a period of early conciliation between the 12 January 2024 and 16 January 2024. She was employed by the respondent as a housekeeper between the 26 October 2021 and 10 February 2024. She claims: constructive unfair dismissal; payments related to when she was absent from work; and unlawful discrimination contrary to the Equality Act 2010 (EQA). She relies upon the protected characteristic of disability per s.6 EQA.

2. The condition the claimant relies upon as a disability is a sensitivity to odours. This hearing was listed on the 18 August 2025 to determine: whether the claimant had a disability for the purpose of s.6 EQA and if so, when the respondent became aware of the disability

3. The Tribunal had the respondent's 173-page bundle served on the morning of the hearing and a witness statement for Ms Tucker, Carehome and Registered Manager at the claimant's place of work (3-pages) served the day before the hearing.

4. The claimant complained that she had not had time to review these documents and she was given 30 minutes at the start of the hearing. It really

is not good enough for the respondent to have failed complied with the Order for Directions of the 18 August 2025. The Directions were not onerous. Lack of compliance causes an unrepresented litigant in person to distrust the respondent against whom a claim is being brought and in addition, lack confidence in the respondent's representatives. It is not in accordance with the overriding objective.

5. The Tribunal had before it the respondent's bundle of 173-pages and the claimant's bundle of 81-pages. Going forward, only one bundle, prepared in accordance with the Order of the 18 August 2025 will be permitted.

6. The Tribunal heard evidence from the claimant. For the respondent it heard from Ms Tucker. Both parties made oral submissions and the respondent provided written submissions which were received after the hearing had ended. Judgment however was reserved.

7. On the 20 November 2024 the claimant was sent the Tribunal's standard Directions in respect of disability. In short, she was directed to provide a statement of information about the disability covered in paragraphs 2.1 to 2.8 (page 166). The claimant provided a two page response on the 28 November 2024 (page 168). The claimant later provided a 4-page statement dated 7 November 2025 (page 44).

8. The Order also directed the claimant to provide copies of relevant GP or other medical records that are relevant to whether she had a disability at the relevant time. That was in addition to any other relevant evidence.

9. On the 6 December 2024 the respondent had taken issue with the evidence provided, describing it as an unsigned letter which did not address the constituent elements within the statutory definition of disability (page 164).

10. The GP letter read (page 56):

> '23-Nov-2023
>
> To whom it may concern
>
> [claimant's personal details]
>
> [The claimant] is a patient at Streatham High Practice.
>
> She is very sensitive to certain smells and odours which at times can cause her to gag and can cause headaches. She works in a residential care home which involves deep cleaning in areas that naturally smell including toilets and wash areas as well as cleaning residents' rooms which too can contain odours that can trigger her symptoms.

> To prevent this, she has been wearing a face mask, which helps her keep smells that she is sensitive to a minimum and allows her to continue working hard doing the work that she has been assigned to do. I understand that there has been a new policy introduced at the care home not allowing her to continue wearing the mask.
>
> I am not certain why her wearing a mask should be an issue given her symptoms and that the mask probably also provides some protection to the residents also, given the possibility of winter viruses and COVID.
>
> I would be very grateful if the above could please be taken into consideration.
>
> Yours sincerely,
>
> Dr [XX]
> STREATHAM HIGH PRACTICE'

11. There was as second GP letter in the bundle dated 20 November 2024 (page 58). This was a to whom it may concern letter. That letter made some general observations about the claimant health and listed her medications. It did not refer to sensitivity to odours. It listed four consultations, between May 2021 and October 2022. None of those consultations referred specifically to any form of sensitivity to smells and odours.

12. Both of these letters are reproduced in the claimant's bundle, but in a different format (pages 42 and 43). They are photographs of the letters. The letter of 23 November 2023 is now from a different GP, there is a signature by the name and there is a surgery stamp. The letter of 20 November 2024 is signed by the original GP and again has a surgery stamp.

13. In respect of the 23 November 2023 letter, the claimant explained that the GP had left, so that another GP had signed the letter. The second GP had not per pro/PP'd (*per procurationem* – for and on behalf of someone else) the letter for the original GP. This was misleading in that the original letter was not from or at the time signed by the second GP. It does appear however that the claimant was seeking to address the respondent's criticisms, surrounding the unsigned original letter (page 56).

14. The claimant had raised a five-and-a-half-page written grievance on the 23 November 2023 (page 50). She said:

> 'As you are aware, in my working environment, I am subject to exposure to people who have various degrees of illnesses and the workplace can be smelly at times as a result. Because of the concerns about my health in that regard, on 20th November 2023 I explained to [Ms Tucker], my manager, that I wanted to wear a face mask to protect myself as she had questioned me about wearing one.

I have since checked her decision with my lawyer and the various health and employment agencies in England and all have confirmed that as a healthcare worker, I do have the right to protect myself and my patients from infectious diseases or airborne pathogens by wearing a face mask and that if I am being prevented from doing so by my employer preventing me from wearing a face mask, my rights are being breached.

In that regard, I am attaching a letter from my GP which is supportive of my right to wear a face mask at work to protect my health.

…

For the 3 days thereafter, as I was not wearing face masks, my level of job performance dropped and I started to get headaches and had to take multiple of mini breaks to get rid of myself of the bad smells at work.'

15. The grievance covered an allegation by the claimant of underpayments and she ended with her stating she was exercising her right to take a leave of absence, which she said she was going exercise from that day.

16. In terms of wearing a facemask, the claimant was assertive, referred to various sources of advice (the HSE and the TUC) and she reserved her option to make a complaint to the HSE. She also said that she was at the point of constructive dismissal, or very close to it. The claimant's letter was forceful in setting out her position.

17. Her focus however was on her right to wear a facemask. It was not the underlying reason for wearing a facemask. She stated she was concerned about wearing a facemask in order to protect herself from infectious diseases.

18. In the grievance, there only reference to odours is the 'smelly' workplace and to (after not wearing a facemask) taking multiple minibreaks to rid herself of the 'bad smells'.

19. In her statement of the 28 November 2024 the claimant repeated these statements, she referred to (page 168):

'2.2. Effect on Day-to-Day Activities:

2.1 - Difficulty completing assigned cleaning tasks in odorous environments without wearing a face mask.

- Increased frequency of headaches requiring unscheduled breaks to recover.

- Impairment in sustained productivity and work performance during tasks involving odorous substances.'

She went onto give two examples.

20. She also said the condition and effects had been ongoing since 26 October 2021.

21. When the claimant was asked whether or not this had been reported to her GP, she said she only went to her GP if it was 'life or death'.

22. There were no GP records produced. The respondent had requested GP record from the claimant in writing on the 25 November 2025 by no later than 26 November 2025 (page 163). This was a request made too late and it was unwarranted in terms of the timing. The claimant would not be able to comply unless she had already obtained her GP/NHS records. If the respondent were going to make such a request, it should have done so and allowed time for the claimant to comply.

23. Notwithstanding that however, the claimant had clearly been Ordered by the Tribunal on the 20 November 2024 to provide the same information within seven weeks (page 167). The claimant asked at the outset of the hearing, was she obliged to provide her GP records and said that she could do so. She had been obliged to provide her records in accordance with the Tribunal's Order. In addition to that, the burden of proof is upon her. She was Ordered to provide her records and had the opportunity to do so. She did not provide the records in breach of the Order.

The law

24. Under s.6 EQA the definition of disability provides:

(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.

25. Under schedule 1

PART 1 DETERMINATION OF DISABILITY

…

Long-term effects

> 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.
>
> (4) Regulations may prescribe circumstances in which, despite sub-paragraph (1), an effect is to be treated as being, or as not being, long-term.

26. The case law was more fully and helpfully set out in Mr Joshi's written submission. In addition to references to the Equality Act 2010: Guidance on matters to be taken into account in determining questions relating to the definition of disability: "Guidance Relating to the Definition of Disability". The submissions were considered although they are not reproduced here.

27. Satisfying the Tribunal that a claimant's condition amounts to a disability for the purposes of the EQA is not a particularly onerous burden. It does however require that some relevant medical evidence relating to the material time is before the Tribunal and some evidence, in this case of the particular adverse effects on the claimant's ability to carry out day-to-day tasks. The burden is upon the claimant to show that there is an adverse effect on her ability to carry out day-to-day tasks that is both substantial and long term.

Conclusions

28. The only evidence there is of a form of 'hypersensitivity to smells and odours which cause severe headaches, gag reflex, and general discomfort, nausea' is the claimant's own statement (page 168). There is no medical evidence. At best, the GP referred to the claimant being 'very sensitive to certain smells and odours which at times can cause her to gag and can cause headaches' (page 56). Even this statement was qualified ('at times' and 'can cause'). Those statements were in support of the claimant wearing a facemask and that was the thrust of the claimant's grievance, which this GP letter sought to support. There is not indication of any examination or treatment. It seems the

GP accepted the word of his patient to whom he owes a duty of care. He owes no duty to the respondent or to the Tribunal.

29. The respondent submitted at paragraph 20:

> *'Normal human sensitivity to malodour is a function of the olfactory systems's ability to detect and responds to malodorous substances. The statutory framework envisages conditions that undermine human function, not the proper operation of sensory systems. There is a wide range of smells that can trigger the gag reflex, for example, rotting meat, decomposing corpose, putrefying fish, spoiled diary and rotten eggs.'*

30. It is not accepted that a hypersensitivity to smells and odours is a physical or mental impairment. By definition, foul odours are repulsive, that is why they are foul. Different odours cause different reactions. They include nausea, gagging and headaches. Those reactions may be a physical reaction to the foul odour, but they are not a physical impairment.

31. The effect upon the claimant's ability to carry out day-to-day tasks is not adverse. A general reaction to a foul odour would be to remove oneself from it. To open a window. To use some method to obscuring the nasal passage so as not to breath in the odour. There was no evidence of the claimant not being able to carry out her day-to-day activities. Accordingly, there was no substantial adverse effect, never mind *an* adverse effect.

32. Although the claimant has stated the effects had been ongoing since the 26 October 2021, there was no medical evidence supporting this. The first time wearing a mask was discussed with the respondent was on the 20 November 2023. Ms Tucker's evidence was the claimant never mentioned any sensitivity to odour and said that she wanted to wear a mask to avoid catching a virus. The first time the claimant mentioned a 'smelly workplace' was in her grievance of the 23 November 2023 (page 50). There was nothing in either the exchange on the 20 November 2023 (even if it happened as per the claimant's version of events) or in the grievance letter on the 23 November 2023 to alert the respondent that there was an 'impairment' which could last for at least 12 months.

33. There is no adverse effect on the ability to carry out day-to-day tasks.

34. On the issue of the respondent's knowledge, there was nothing in the claimant's statements or in her GP's letter to alert the respondent to any possibility of her having a disability under the EQA. At most, the respondent would have been aware of a standard aversion to foul odours and steps taken to alleviate that if it could not be avoided. For example, human waste or rotting food will undoubtably have a foul odour. In any event, the claimant did not complain about these matters in her grievance. She referred to resident's illnesses which cause the workplace being 'smelly' at times (page 50).

35. The outcome is that the claimant did not have a physical or mental impairment which amounted to a disability for the purposes of s.6EQA. Furthermore, there was no impairment so as to fix the respondent with any knowledge of any condition (whether or not it was a disability). All the respondent knew was that the claimant objected to foul odours which unfortunately were part of the working environment. This was akin to knowing an employee did not like working in a hot environment (for example a kitchen) or in a cold environment (for example outside during the winter). It was no more than that.

36. As a result of that determination, the claimant is not disabled for the purposes of the EQA. The result is the claimant cannot pursue her claims of unlawful discrimination under the EQA.

Employment Judge Wright

27 November 2025

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

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