



# EMPLOYMENT TRIBUNALS

**Claimant:** Mx T Dimitrova

**Respondent:** Fora Space Limited

**Heard at:** London Central (by CVP) **On:** 2 September 2025

**Before:** Employment Judge Emery

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr S Brochwicz-Lewinski (counsel)

## PRELIMINARY HEARING IN PUBLIC JUDGMENT

The judgment of the Tribunal is as follows:

### Disability

1. At the relevant times the claimant was a disabled person as defined by section 6 Equality Act 2010 because of ADHD, depression and anxiety.
2. The current complaints of direct disability discrimination and a failure to make reasonable adjustments can therefore proceed.

## REASONS

1. Reasons were given at the hearing; the request for written reasons was made in time but was only passed to me on 19 November 2025 and it has not been possible to finalise the reasons until now. I apologise for the delay in this judgment being sent to the parties.

## The Issue

2. The claimant says that at the material time they were disabled with depression, anxiety, attention deficit hyperactivity disorder and autism. The respondent does not accept that the claimant was disabled, one factor being a lack of relevant medical evidence that each condition is long term and has a substantial effect.
3. I heard evidence from the claimant.

## Medical and witness evidence

4. The claimant submitted some medical evidence in advance of the hearing. In correspondence the respondent argued that this was insufficient evidence and, very fairly, urged the claimant to submit more evidence. The claimant refused to do so, saying the evidence they had submitted was sufficient. As will be seen below, the respondent argued the claimant had insufficient medical evidence and a lack of examples of substantial impact.
5. In response, during the hearing at 1.00pm the claimant submitted a further seven pages of medical evidence. Following discussion, the respondent did not object to this evidence's inclusion. This evidence is marked with an \*.
6. The medical evidence and other related evidence states:
  - a. \* GP notes 11 November 2019: Anxiousness ... says suffered from depression on the past ... and was on antidepressants in the past. Feels more anxious and stressed lately, studying and ... deadlines
  - b. \* GP notes 22 January 2020: Depressed mood, low ongoing mood. Discussed this last visit, not keen on medications, more interested in counselling. ... only general low mood but still functioning.
  - c. \* GP Notes October 2020: reference to "mental health admin and initial assessment" and requesting a letter saying they have depression.
  - d. GP letter 19 November 2020: C has "been suffering from depression and this may affect her work. She had counselling for it." (100)
  - e. Letter Assistant Director of Studies Anglia Ruskin University 5 December 2020: C was registered with the university Wellbeing Centre "in response to episodes of depression and anxiety which were affecting her studies. This meant she could not focus on her assessments and evidence was provided by her GP confirming that [C] was suffering from anxiety and stress and had previously been prescribed anti-depressants..." (101).

- f. \* GP notes 14 July 2021: Notes record C saying “I've been experiencing low mood and find it difficult to contain my emotions. I believe I should start a course of antidepressants... I currently feel more confident I need them.”
- g. \* GP notes 23 August 2021: C sent ‘Time to Talk referral details and referred to primary care mental health team.
- h. \* GP notes 14 October 2021: C seeking a referral for therapy: referred to mental health team.
- i. \* GP notes 12 December 2023: C concerned about ADHD – difficulty in attention, concentration, struggles to keep with time – deadlines – emotional dysregulation, hyperactive – fidgety – struggles with many things including day to day activities. Referred to Mental health team.
- j. Letter Greenwich Mental Health Hub 15 January 2024: ADHD self-report scale completed, and C referred onto the ADHD team.
- k. GP notes 22 May 2024: Problem - “mixed anxiety and depressive disorder”. C taking sertraline 50mg since February 2024. Told to continue and review medication in August 2024.
- l. Letter Adult ADHD Assessment and Treatment Service Oxleas NHS Foundation Trust 27 June 2025: C “presents with a persistent pattern of inattention and executive dysfunction, including chronic procrastination, distractibility and difficulty completing tasks unless under pressure. They struggle to sustain focus, frequently zone out .. and often abandons tasks midway...” They experience significant internal restlessness, engages in constant fidgeting, and demonstrates impulsivity in conversations and decision making, which affects their relationships and ability to maintain consistent routines.”

The DIVA-5 Assessment: Inattention 5/9 in adulthood and 6/9 in childhood; Hyperactivity/Impulsivity: 9/9 in adulthood and 9/9 in childhood.

Diagnosis: ADHD Combined Presentation – ICD-10 Code: F90.

A “compensative management plan” was agreed with the claimant, including medication (104).

- m. Letter from R Fox Registered Psychotherapist – undated: Confirming C has been attending regular psychotherapy sessions since 12 January 2024 and will continue to do so.

7. The claimant's disability impact statement goes into some detail about disclosures they say they made to their employer about their medical conditions, which was not relevant evidence to determine whether the claimant met the legal definition of disability.
8. The claimant's statement also refers to a self-assessed diagnosis for autism and attributes some of their symptoms to autism. On their own account they have not been medically diagnosed with this condition; there are no medical records relating to it. I do not take account of the prospect that the claimant may be autistic in this assessment of disability.
9. The statement describes the following symptoms which manifested at work:
  - a. Time blindness, making it difficult to perceive time accurately, plan realistically or stay on schedule. The claimant says that this impacts on their ability to adjust to changes in routine.
  - b. Time management difficulties
  - c. Cognitive processing difficulties, including difficulties sustaining attention and, for example, complete training materials;
  - d. Needing additional time to understand the respondent's internal systems
  - e. Their conditions affect their ability to interpret tone and office dynamics (note that these symptoms are said to result from autism and anxiety)
  - f. A lack of emotional resilience and ability to recover from stressful experiences.
10. In their evidence the claimant accepted that they could not say which condition caused each substantial adverse effect; they believe that it is a combination of conditions which result in these symptoms.

## **Closing arguments**

### The respondent's case

11. The respondent argues that the claimant has failed to provide relevant medical records, that the claimant argued in correspondence that they need not do so, saying that the records they disclosed were sufficient. On the evidence "the claimant fails to make out disability." The respondent accepts that the claimant may have had "some issues" with depression, there is a "late diagnosis of ADHD", but the claimant "fails to discharge the burden showing a substantial adverse effect." - the claimant must provide evidence of the substantial adverse effect and they have failed to do so.

12. The respondent says that the claimant has failed to give any examples of the effect on day-to-day activities. The respondent's initial argument was that the claimant turned up late for work only on one occasion – clear evidence that there is no substantial effect on day-to-day activities as "evidence of time blindness would see the claimant routinely turning up for work late."
13. Following a break, the respondent conceded that the claimant had been late for work "repeatedly".
14. The respondent argues that there is no evidence of substantial impact on processing information – all the claimant says is that they need to follow-up with additional questions. Again, not evidence of substantial impact, as the claimant can ask questions and then get on with their work. The fact they got a good degree is evidence of a lack of substantial impact.
15. The claimant mentions effect on social interaction – but does not say they fail to turn up or are late for events – a "striking omission" showing there is no impact on time or ability to socialise.
16. Communication: again, there is no evidence of substantial impact - there is no evidence they were unable to communicate at work, or that they misread cues.
17. Attention and focus: the respondent's position is that the claimant can manage this by blocking off time - "so [C] can undertake work activities". The claimant does not address substantial impact and does not give examples of the effect on them.
18. The respondent accepts that the claimant may have difficulties with attention and focus "but plainly this is not sufficiently far enough along the range of impacts to be substantial". There is no evidence in the claimant's statement of substantial impact.
19. Emotional regulation and mental health: The respondent accepts that throughout their employment the claimant had anxiety and depression and was taking sertraline and had counselling. But there is no evidence the claimant was affected by issues at work. For example, crying at work when receiving critical feedback is not indicative of a substantial adverse effect – and the claimant has given no examples. At most the claimant "asserts" that there is a substantial effect, but without specific examples.
20. Even discounting the effects of medication, there is no evidence of impact on the claimant's ability to undertake day-to-day activities. The tribunal must not fall into the trap of "filling the vacuum" that because the claimant is on medication there must be a substantial impact without medication – this is "absent from the evidence" and the tribunal must not speculate that there would be a substantial

impact. The medication is at a low level of 50mg. There is no evidence that discounting this medication would mean they were substantially impacted. Similarly with the psychotherapy sessions – there is no evidence the claimant was substantially impacted simply because they had these sessions.

#### The claimant's submissions

21. The claimant reiterated that the respondent's initial submissions on lateness "are factually incorrect"; one of the reasons for their dismissal was "persistent" and "frequent" lateness. The respondent's defence refers to their "persistent lateness" as a reason for dismissal.
22. At the outset of their employment they were late "frequently" but after "multiple reprimands" they did their best to arrive on time, but "I was struggling with this daily, getting out of bed and making sure I get ready within a timeframe – but due to time blindness would "rush and run, a daily struggle."
23. The reason why they were able to get a degree is because "I was persistently supported"; they were always struggling to meet deadlines, and they were given extensions. They received support from the University's Wellbeing team.
24. The claimant argues that they were treated poorly at work, for example being asked to set up meetings, but the dates they suggested were always blocked; the effect of this was to increase their anxiety and emotional dysregulation which "made it difficult to do my role.", and that the resulting stress caused insomnia, leading to a deterioration in their health.
25. The claimant pointed to their history of depression and panic attacks. That when stress is introduced their anxiety and depression increases "this makes it difficult for me to self-regulate and my symptoms are worse."
26. The claimant argued that requiring time to process and ask follow-up questions was effectively a reasonable adjustment, but they were ignored or they were told to bring it up at a meeting. But this was an adjustment they needed to address time sensitive issues; that if they were not given this support, they could not perform their role properly. A lack of additional support including the ability to ask questions meant they were unable to work "to the expected levels. The disability makes me struggle and a lack of support means I do not perform."
27. The claimant did not accept that a lack of performance was simply an issue of capability. They argue that they have a First-Class degree, and "where I receive support, I will excel". They point to their current role, where they were given appropriate time to learn the role and go over training material "and I then exceeded the target of the whole team".

28. The claimant argues that they started counselling in 2018/9, that they have an issue with emotional dysregulation; that this affects their ability to concentrate, interact or complete tasks. For example, if they are interrupted doing a task, it is unlikely they could complete it. The claimant refers to the diagnostic summary in the DIVA-5 Assessment, that they have a “persistent pattern of intention”.
29. The claimant argues that as ADHD is neurodevelopment condition they could not develop this suddenly; it was present throughout their life. The fact that this has only recently been diagnosed is irrelevant to the issue of disability. They argue that the diagnostic report shows that they have “all the symptoms” they put in their statement. The claimant reiterated that they were “struggling to manage ... struggling to survive” in work and private life. The symptoms, they say, has led to relationships failing “I cannot support others if I don’t know how to support myself.”

#### The respondent's reply

30. Mr Brochwicz-Lewinski responded, in part to the new medical records and in part a reply to the claimant. The respondent accepts that there would have been symptoms of ADHD from early 2024; again, there is no evidence of impact on day-to-day activities; however, the respondent accepts that there is a “possibility” that this condition caused some effect on day-to-day activities.
31. The respondent also accepts that there appears to be a correlation between the claimant's impact statement and the ADHD diagnostic report “a persistent pattern...”. However, this is “an extreme picture”, and there is no evidence of impact at work. The fact that the claimant excelled at their degree “shows” that they did not have issues working and sustaining attention and focus and was able to perform well.
32. The HR system shows that the claimant was late 6 times, this does not show a chronic inability to attend work on time “this is insufficient to make a finding of disability”. This shows they were late approximately 10% of their working time showing that if there are issues, they only have “some impact” and not a substantial impact. The claimant has been unable to articulate examples of adverse impact on them.

#### **Relevant law**

33. Equality Act 2010:

##### s. 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.

Schedule 1 – Disability: Supplementary provisions

*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(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.

*Effect of medical treatment*

- 5(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 are being taken to treat or correct it, and
  - (b) but for that, it would be likely to have that effect.
- 5(2) "Measures" includes, in particular, medical treatment and the use of a prosthesis or other aid.
- 5A(2) References in the relevant provisions to a person's ability to carry out normal day-to-day activities are to be taken as including references to the person's ability to participate fully and effectively in working life on an equal basis with other workers.

- 34. Guidance on matters to be taken into account in determining questions relating to the definition of disability:
- 35. B1: "The requirement that an adverse effect be substantial reflects the general understanding of "disability" as a limitation going beyond the normal differences in ability which may exist among people. A "substantial" effect is more than would be produced by the sort of physical or mental conditions experienced by many people which have only minor effects. A "substantial" effect is one which is more than "minor" or "trivial"."

## 36. Relevant case law

- a. Paterson v Comr of Police of the Metropolis [2007] IRLR 763". "... when assessing the effect, the comparison is not with the population at large". What is required is to compare the difference between the way in which the individual in fact carries out the activity in question and how he would carry it out if not impaired.
- b. Elliott v Dorset County Council [2021] IRLR 880, EAT. In Paterson, Elias J said: "There is a potential internal inconsistency between an adverse effect being something that is "more than minor or trivial" and looking for a "limitation going beyond the normal differences in ability which might exist among people". [...] The starting point is to remember that the statutory definition of the word "substantial" is "more than minor or trivial". If the adverse effect has a more than minor or trivial effect on the ability of a person to carry out day-to-day activities the definition is met; no consideration of the abilities of some group of people, or section of the population, can alter that determination.'. The ... adverse effect of an impairment on a person is to be compared with the position of the same person, absent the impairment. If the impairment has a more than minor or trivial effect on the abilities of the person compared to those s/he would have absent the impairment, then the substantial condition is made out.
- c. Ahmed v Metroline Travel Ltd UKEAT/0400/10, [2011]: 'as a matter of principle it is impermissible for an Employment Tribunal to seek to weigh what a Claimant can do against what he or she cannot do and then determine whether or not the Claimant has a disability by weighing those matters in the balance'. But, 'where there is a factual dispute as to what a claimant is asserting that he cannot do, findings of fact as to what a claimant can actually do may throw significant light on the disputed question of what he cannot do.'
- d. All Answers Ltd v W [2021] EWCA Civ 606: when to assess the likelihood of the adverse effect lasting for 12 months? This assessment must be made as at the date of the alleged discrimination and must not take into account anything only known or occurring after that time. Therefore, whether the issue under consideration is if a condition is 'recurring' or 'long term', or if there is a substantial adverse effect, the approach must be the same, namely to assess what would have been the position as understood at the date of the alleged discrimination.
- e. Parnaby v Leicester City Council UKEAT/0025/19: The tribunal must consider the question of likelihood – whether it could well happen that the effect would last at least 12 months or recur – at the time at which the decision to dismiss was taken.

- f. SCA Packaging Ltd v Boyle [2009] UKHL 37, [2009] - the word 'likely' to recur means that "it could well happen".
- g. Connor v Chief Constable of South Yorkshire Police [2024] EAT 175: what must be likely to recur is a substantial adverse effect, and it is not enough that the impairment recurs; however, the likely recurrence of substantial effects need not involve the same effects from one occurrence to the next.
- h. Sullivan v Bury Street Capital Ltd [2022] IRLR 159, EAT: Spells of adverse effect caused by the condition prior to the alleged discrimination may, depending on the facts, be relevant in assessing whether at that point in time the claimant had an impairment in relation to which a substantial adverse effect was 'likely to recur'.
- i. 'Swift v Chief Constable of Wiltshire Constabulary [2004] IRLR 540 EAT: is the condition likely to recur? The tribunal need not be satisfied that the recurrence is likely to last for at least 12 months. Thus if the impairment has ceased to have a substantial adverse effect, it 'lasts' for the purpose of para 2(1) for as long as its substantial adverse effect is likely to recur.
- j. Stedman v Haven Leisure Ltd [2025] EAT 82: a medical diagnosis is relevant to the question of substantial adverse effect. The diagnosis reflects a clinical judgment; and the tribunal must take a clinical diagnosis of ADHD into account as evidence as to the impact of that impairment. It does not follow that the tribunal must accept the clinical view in answering the question on disability. It must still consider what led to that diagnosis and make findings about the claimant's ability to carry out day-to-day activities. Tribunals are familiar with the Equal Treatment Benchbook, and with the principle that a diagnosis broadly reflected a clinical judgement that someone was significantly different from the norm as regards the area of functioning covered by that diagnosis. If a clinician has judged a claimant's difficulties to be significant enough to merit a diagnosis, a tribunal would need to engage with that view in its reasons when dealing with the question of "substantial adverse effect"

## Conclusions on the evidence and the law

- 37. I conclude that the claimant is disabled with the conditions of ADHD, anxiety and depression at the material time.
- 38. I accept that there may be evidence that the claimant has autism, but there is no evidence that the symptoms they attribute to this condition are in fact because of this condition. The claimant's self-assessment is not a medical diagnosis. I do not take account of this condition.

ADHD

39. The chronology shows that in January 2024 the claimant's symptoms of ADHD were such that a preliminary assessment provided a tentative diagnosis of this condition leading to their referral by their Mental Health Hub to the ADHD team. The evidence shows that they chased this diagnosis in June 2024. I infer from the claimant's chasing that in June 2024 they were sufficiently concerned about their symptoms to want to speed up the referral. They were diagnosed with ADHD in July 2025.
40. The report refers to a "persistent pattern" of symptoms – i.e. symptoms have been sustained over time. The report refers to multiple symptoms which have persisted from childhood into adulthood to the present.
41. I accept also that this it is likely that this diagnosis was based on a detailed history, which includes questions asked of their mother. I accept that the diagnostic basis of ICD 10 Code F90 references a condition which is clinically "characterised by an early onset (first five years of life)". For the claimant, this condition has been present since childhood.
42. I do not accept the respondent's contention that this is a diagnosis of symptoms at a 'snapshot in time' based on the claimant's presentation on 27 June 2025. In fact, the report is the opposite: it is a clinical diagnosis which makes it clear that the claimant has had a persistent pattern of symptoms since childhood.
43. I accept that the claimant's impact statement does not give concrete examples of the day-to-day effect of these symptoms on them. It does not say 'for example I could not complete X'; instead, it is very generalised.
44. Noting *Stedman*, I conclude that the medical diagnosis of ADHD contains evidence of substantial impact on the day-to-day activities of the claimant – chronic procrastination, distractibility, struggle to maintain focus, zone out, abandon tasks. Relationships are affected. This is all evidence of substantial impact, and the claimant refers to these impacts in their impact statement: difficulties with attention, needing more time to process information, time blindness.
45. We explored the issue of timekeeping. The respondent concedes that the claimant was regularly late for work, even after they had been warned. I accept that the claimant's condition caused them significant issues with timekeeping such that they are unable to arrive at work on time, even after receiving a warning. Such persistent lateness was a reason for their dismissal. It clearly had a substantial impact during their employment.
46. The respondent's defence to this claim also provides an insight into the effects on the claimant which correlate with the impact statement and ADHD diagnosis.

The claimant refers to distractibility and inability to maintain focus. The diagnosis refers to inattention, executive dysfunction, distractibility, difficulty completing tasks. The respondent's defence lists 18 ways in which the claimant did not meet performance targets in their probation. These include: not engaging with training; failing to follow basic processes and carry out simple tasks; failing to follow instructions and repeatedly making the same mistakes; an inability to take decisions; a lack of communication; persistent lateness, inability to adhere to agreed schedules.

47. The adverse effect on the claimant is to be compared with the position without this impairment. The evidence – including the respondent's defence – shows that there was a substantial effect on their ability to perform these days to day activities. I accept the claimant's case that the effects on her outlined in the defence are substantially related to ADHD. They had a more than minor or trivial effect on the abilities of the claimant.
48. I am satisfied on the evidence that the claimant's statement plus the medical documentation shows that ADHD, as a standalone condition, is a long-term lifelong condition which had a substantial impact during the material period on day-to-day activities including the ability to maintain attention, time blindness, ability to focus, ability to follow instructions, and repeating errors.

#### Depression/anxiety

49. The evidence shows that the claimant has suffered from depression and anxiety since at least late 2019. This has, at times, had a substantial impact on them. This can be inferred from the evidence of their university which recognised the impact such that it adjusted their schedule. The claimant saw their GP on several occasions in 2020 and 2021 because of depression. The claimant did not take medication during this period (they had in the past), but they did undertake therapy.
50. The claimant accepts that depression and anxiety intermittently affects them. At times, for example when they were at university, it had a substantial impact, such that they required adjustments. I accept that these conditions had a significant impact on them from 2019 to 2021. There was then a period when the claimant was less affected by these conditions.
51. By December 2023 the claimant was sufficiently concerned about their symptoms to go to their GP about ADHD. By January 2024 the claimant was receiving counselling and by February 2024, despite prior reluctance to taking anti-depressants, they were prescribed sertraline.
52. The claimant's impact statement describes 'long-lasting distress' caused by events at work which affected their ability to concentrate, interact or complete tasks. I accept that these were the effects; on their own but particularly when

combined with symptoms of ADHD they had a substantial effect on the claimant from December 2023 to the end of their employment on 19 July 2024.

53. Were the effects likely to last 12 months? There is no medical report on this likelihood, which must be considered at the date of dismissal, discounting what has occurred since. I have considered the length and nature of the claimant's prior incidents of anxiety and depression (per *Sullivan*), which lasted for at least two years. I have also considered the fact that the effects on them were sufficiently substantial to seek medication which they had previously resisted. I also note the seriousness of the claimant's symptoms at the date of dismissal. I also note that I must discount the effects of medication which may reduce or ameliorate the symptoms of depression.
54. Taking these factors into account, I consider that there is evidence to show 'it could well happen' that the claimant's symptoms of anxiety and depression would have had a substantial adverse effect on them for over a year, considered at the date of dismissal.

Approved by:  
**Employment Judge Emery**  
**2 September 2025 and**  
**11 December 2025**

Judgment sent to the parties on:

12 December 2025

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For the Tribunal:

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