EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8002974/2025

Held in Edinburgh on 15 May 2026

Employment Judge M A Macleod

Ms K Anderson — **Claimant**
In Person

HBOS plc — **Respondent**
Represented by:
Mr L G Cunningham
- Solicitor

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the claimant was a disabled person within the meaning of section 6 of the Equality Act 2010 by reason of anxiety and depression at the material time.

REASONS

1. In this case, a Preliminary Hearing was listed to take place at the Employment Tribunal, Edinburgh, on 15 May 2026.

2. The purpose of the Hearing was to determine the following preliminary issues:

    a. **Whether the claimant was at the material time a disabled person within the meaning of section 6 of the Equality Act 2010;**

    b. **Any other case management issues which may usefully be discussed at that stage, particularly relating to the draft List of Issues and whether Judicial Mediation should be recommended.**

3. The claimant appeared on her own behalf at the Preliminary Hearing, accompanied by her husband. Mr Cunningham, advocate, appeared for the respondent.

4. A Joint Bundle of Documents was provided to the Tribunal, and relied upon in the course of the Hearing.

5. The claimant gave evidence, briefly.

Application to Amend

6. In relation to the first of the 2 issues to be addressed in this case, Mr Cunningham helpfully advised at the outset of the Hearing that the respondent concedes that the claimant was at the material time a disabled person within the meaning of section 6 of the 2010 Act in respect of Autism Spectrum Disorder (ASD) and Attention Deficit Hyperactivity Disorder (ADHD).

7. However, he confirmed that the respondent still maintains that the claimant is not, and was not at the material time, a disabled person for the purposes of the Act in relation to anxiety and depression. Indeed, he went on to say that the claimant did not include the condition of anxiety and depression within the ET1, and therefore that it should not be considered by the Tribunal.

8. The claimant's response was that she had included a reference to anxiety and depression within the letter she sent (32) in response to the Tribunal's letter of 13 January 2026 seeking further information from her. She pointed out that one of her criticisms of the respondent was that they had not referred her to Occupational Health, even though, as she said, "I was undergoing treatment for anxiety and depression", and "My mental health was deteriorating due to the culture and instability.

9. Against that, when asked to confirm what conditions she relied upon, she referred (36) to AuDHD (Autism Spectrum Condition and combined ADHD)., but not to anxiety and depression.

10. Mr Cunningham, faced with the claimant's application to amend her claim, should that be considered necessary, to add the condition of anxiety and depression, sought time to take instructions from his clients, though he fairly conceded that he was in a position to cross-examine the claimant on her assertion that her anxiety and depression amounted to a disability within the statutory definition. Following a short adjournment, Mr Cunningham confirmed that his instructions were to oppose the application to include anxiety and depression as an additional disability, and in doing so he referred to the Selkent principles.

11. Having considered the matter carefully during the adjournment, although the claimant has not made it as clear as possible in her correspondence that she wished to rely upon anxiety and depression as a disability in this case, and notwithstanding the opposition of the respondent, I confirmed that it was my judgment that the claimant's application to amend should be granted, only to the extent that it added the condition of anxiety and depression as a disability

relied upon in these proceedings. I explained briefly that my reasoning was that the nature of the amendment was relatively brief, that time limits were not of relevance, that the timing and manner of the application to amend came at a relatively early stage in the proceedings and that the respondent was in a position to question the claimant about this condition. Accordingly, I concluded that if I were to refuse the application, the prejudice to the claimant would be considerably greater than that to the respondent if I were to grant it. The claimant would lose the opportunity to pursue a claim on a basis which has been foreshadowed at an early stage of the proceedings, and which would allow the respondent ample time to address that aspect. It does not amount to a new head of claim, and no significant facts are sought to be added.

12. In light of this, the claimant's application to amend was granted.

13. We then moved to hear the evidence of the claimant. Based on the evidence led and the information provided, I was able to find the following facts admitted or proved.

Findings in Fact

14. The claimant's date of birth is 31 August 1984. She worked for the respondent from 2009.

15. On 29 February 2024, the claimant attended at her GP Practice and was seen by Jo Nickson, a Mental Health Nurse. The primary discussion at that time related to whether or not the claimant was living with ADHD or other neurodivergent condition. It was not noted (115) by Ms Nickson that the claimant was suffering from anxiety or depression. Reference was made to catastrophic and black and white thinking, for which she was referred to the Psychology service. It was further recorded that she had "no thoughts of self harm".

16. On 18 September 2024, the claimant saw Ms Nickson again (114). On this occasion, she noted that the claimant was complaining of "feeling depressed". It was recorded that the claimant was "feeling very low", having changed jobs, that she her mood was dipping but not suicidal. It was recommended that the claimant should start taking Sertraline Hydrochloride, an anti-depressant medication, 50mg per day.

17. She continued to take Sertraline, with some variation in its effectiveness, until on 10 November 2025, she saw Ms Nickson again (111). The problem (new) was said to be Anxiety with depression. She was described as very stressed and angry, partly due to her work situation and partly due to difficulties her son was experiencing at school.

18. Her medication was increased to 200mg daily.

19. On 7 October 2024, the claimant was seen by Dr J Ferguson, Consultant Psychiatrist, and a report was produced dated 10 October 2024 (147).

20. Dr Ferguson noted that the presenting complaint was that "Karen is looking to improve long-standing problems with anxiety and low mood". He noted that she had suffered from anxiety since her teenage years, and that in her adult life she had episodes were her anxiety became particularly intense and disabling, usually in response to life events. Such episodes could last for several weeks.

21. Having considered her mood, her past psychiatric and medical personal and family history, Dr Ferguson noted his impression:

    "At interview, Karen was relaxed and at ease. She gave a clear and coherent account of her history. There was no evidence of any mental state disturbance at interview.

    I explained to Karen I though there were two main possibilities to account for her problems with low mood and anxiety. It is well established in individuals on the autistic spectrum and also with ADHD often experience comorbid anxiety disorders. It may therefore be that treating such a primary anxiety disorder, with a combination of antidepressant medications (such as Sertraline) or psychological therapy such as CBT (or both) would be indicated. I suspect that her problems with low mood are secondary to the significant anxiety and hypervigilance to threat she experiences consistently.

    A second possibility is her symptoms are largely a consequence of the combination of ADHD and ASD. I explained to Karen that individuals with untreated ADHD usually have a very busy brain, which makes managing anxiety and worry very difficult. Often patients will experience feeling much calmer when their ADHD is treated. Her hypervigilance to threat may be a consequence of her longstanding history of making social errors and never feeling quite safe in the social world. This would be a consequence of autism."

22. A number of treatment options were considered, and the claimant was given time to decide which option she wished to adopt.

23. She was then seen by Dr Ferguson on 31 March 2025 and his report was dated 6 April 2025 (140).

24. Dr Ferguson confirmed that the claimant's diagnosis was ASD, ADHD and Recurrent Anxiety and Depression. He advised, in addition, that she was on 100mgs of Sertraline daily, and Equasym 20mgs daily.

25. He noted that the claimant had found a definite improvement with the increased dose of Sertraline, that she was finding it easier to focus and to enjoy life.

26. The claimant continued to see Dr Ferguson. A report dated 11 December 2025 by Dr Fergusion was produced (120).

27. Dr Ferguson said that the claimant had been well until October 2025, when she was told that her role at work was at risk of redundancy, which triggered a worsening of her mental state, resulting in an increase to 150mg of Sertraline daily, and shortly thereafter to 200mg daily.

28. The result of the increased dose was reported by the claimant to be "emotional numbness" – "just not angry".

29. He noted that the claimant's mood had significantly deteriorated since the beginning of October, which she attributed to her work situation, feeling worse than she had previously and not feeling happy. There was reference to a single, fleeting thought about suicide while driving, after which she had immediately contacted her doctor. It was a single, isolated incident upon which she took action. She described a general lack of enjoyment, low mood and feelings of irritation and anger.

30. She also described feeling anxious, at a level of 6/10 (10 being the highest level), having endured a spike in anxiety after being informed about the potential redundancy.

31. In her disability impact statement before this Hearing, the claimant spoke of the mental health deterioration which was caused by the respondent's actions (215).

32. The claimant described in evidence the manner in which her mental health difficulties have affected her. She said that she worries about everything, including how she had performed in meetings, and about comments made to friends afterwards. She had a tendency to catastrophise when a colleague would ask her to have a word about something.

33. She felt that Sertraline allowed her a period of stability, but that she deteriorated quite quickly as she felt her line manager was not willing to provide feedback which she was asking for. Her evidence was that she tried to maintain a positive attitude and to keep going at work, but that she would be short-tempered and easily tired at home, going to bed straight after coming home from work, and avoiding social situations.

34. The claimant was only occasionally absent from work due to ill health, having 4 days' absence over an extended period of time. She "pushed through" and did not "let people down".

35. The claimant was unable to say whether the deterioration in her mental health was related to her ASD or ADHD.

Submissions

36. For the respondent, Mr Cunningham made a short and helpful submission laying out the principles to be applied by the Tribunal in this matter.

37. The claimant made a short submission in response.

38. The terms of the submissions are incorporated, where appropriate, in the decision section below, and are not summarized here.

The Relevant Law

39. The definition of disability is set out as follows in section 6(1) of the 2010 Act:

"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."

40. Schedule 1 to the 2010 Act provides further clarification of the definition of disability, together with the Equality Act 2010 (Disability) Regulations 2010 ("the 2010 Regulations"). In addition, reference is made to the Equality and Human Rights Commission Code of Practice on Employment (2015) ("the Code").

41. Schedule to the 2010 Act provides, in clause 2, that the effect of an impairment is long-term if it has lasted for at least 12 months, is likely to last for at least 12 months or is likely to last for the rest of the life of the person affected.

42. The Code provides, at paragraph 2.8 to 2.20, guidance as to the determination of an individual's condition as a disability. At paragraph 2.15, it is provided that "Substantial means more than minor or trivial."

43. I had regard to the following authorities.

44. In **Goodwin v The Patent Office [1999] ICR 30-2, EAT,** the Employment Appeal Tribunal stated that the Tribunal required to consider the evidence by reference to four different conditions:

a. Did the claimant have a mental and/or physical impairment?

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

c. Was the adverse condition substantial?

d. Was the adverse condition long term?

45. In **Woodrup v London Borough of Southwark [2002] EWCA Civ 1716,** the headnote states:

"Paragraph 6(1) [of Schedule 1 to the then Disability Discrimination Act 1995] provides that someone is to be treated as disabled even though they are not in fact disabled (in that they suffer no substantial adverse effect on their ability to carry out normal day-to-day activities) if, without the medical treatment they are in fact receiving, they would suffer that disability. The question to be asked is whether, if treatment were stopped at the relevant date, would the person then, notwithstanding such benefit as had been obtained from prior treatment, have an impairment which would have the relevant adverse effect?

In any deduced effects case of the present sort, the claimant should be required to prove his or her alleged disability with some particularity. Ordinarily, one would expect clear medical evidence to be necessary. Those seeking to invoke the peculiarly benign doctrine under para. 6 should not readily expect to be indulged by the tribunal of fact."

46. In **Royal Bank of Scotland plc v Morris UKEAT/0436/10**, at paragraph 63, the Employment Appeal Tribunal found:

"We accordingly hold that it was not open to the tribunal on the evidence before it to find that the Claimant was disabled during the relevant period. It might well be that the Claimant could have filled the evidential gap by agreeing to the suggestion made during the case management process that expert evidence be sought which directly addressed the questions which the contemporary reports did not cover. But he made a deliberate – and perfectly rational – choice not to do so: see para 55 above. The fact is that while in the case of other kinds of impairment the contemporary medical notes or reports may, even if they are not explicitly addressed to the issues arising under the Act, give a tribunal a sufficient evidential basis to make common-sense findings, in cases where the disability alleged takes the form of depression or a cognate mental impairment, the issues will often be too subtle to allow it to make proper findings without expert assistance. It may be a pity that that is so, but it is inescapable given the real difficulties of assessing in the case of mental impairment issues such as likely duration, deduced effect and risk of recurrence which arise directly from the way the statute is drafted."

47. The well-known case of **J v DLA Piper UK LLP [2010] IRLR 936,** in considering whether a claimant suffering from depression was disabled within the meaning of the Act, stated at paragraph 42:

"The first point concerns the legitimacy in principle of the kind of distinction made by the tribunal, as summarised at paragraph 33(3) above, between two states of affairs which can produce broadly similar symptoms: those symptoms can be described in various ways, but we will be sufficiently understood if we refer to them as symptoms of low mood and anxiety. The first state of affairs is a mental illness – or, if you prefer, a mental condition – which is conveniently referred to as 'clinical depression' and is unquestionably an impairment within the meaning of the Act. The second is not characterised as a mental condition at all but simply as a reaction to adverse circumstances (such as problems at work) or – if the jargon may be forgiven – 'adverse life events'. We dare say that the value or validity of that distinction could be questioned at the level of deep theory; and even if it is accepted in principle the borderline between the two states of affairs is bound often to be very blurred in practice. But we are equally clear that it reflects a distinction which is routinely made by clinicians – it is implicit or explicit in the evidence of each of Dr Brener, Dr MacLeod and Dr Gill in this case – and which should in principle be recognised for the purposes of the Act. We accept that it may be a difficult distinction to apply in a particular case; and the difficulty can be exacerbated by the looseness with which some medical professionals, and most laypeople, use such terms as 'depression' ('clinical' or otherwise), 'anxiety' and 'stress'. Fortunately, however, we would not expect those difficulties often to cause a real problem in the context of a claim under the Act. This is because of the long-term effect requirement. If, as we recommend at paragraph 40(2) above, a tribunal starts by considering the adverse effect issue and finds that the claimant's ability to carry out normal day-to-day activities has been substantially impaired by symptoms characteristic of depression for 12 months or more, it would in most cases be likely to conclude that he or she was indeed suffering 'clinical depression' rather than simply a reaction to adverse circumstances: it is a commonsense observation that such reactions are not normally long-lived."

48. This passage was quoted in **Herry v Dudley Metropolitan Council [2017] ICR 610,** and the EAT then added:

"This passage has, we believe, stood the test of time and proved of great assistance to employment tribunals. We would add one comment to it, directed in particular to diagnoses of 'stress'. In adding this comment we do not underestimate the extent to which work-related issues can result in real mental impairment for many individuals, especially those who are susceptible to anxiety and depression."

Discussion and Decision

49. The issue before the Tribunal is whether or not the claimant was, at the material time, a disabled person within the meaning of section 6 of the 2010 Act, in relation to the condition of Anxiety and Depression.

50. The material time is of importance in determining this matter. In this case, the material time being considered is, in my judgment, from 9 September 2024 until her notice of redundancy issued on 30 April 2026. Neither party addressed me on the relevant period, but I consider this to cover the time when the claimant was complaining that she suffered from anxiety and depression.

51. The claimant did suffer from a mental impairment, namely anxiety and depression, and while she maintained that she suffered from that condition prior to 18 September 2024, she was prepared to accept that that was the point at which she was formally diagnosed with the condition. The respondent accepts that she received this diagnosis at that time.

52. The next question, then, is whether it affected her ability to carry out normal day to day activities. There is no doubt that on the claimant's own version of events her condition deteriorated in October 2025 due to the intimation that she was at risk of redundancy. However, it is clear that she suffered from low mood, anger and frustration throughout the period under consideration, worsening from October 2025 to the point where, briefly, she expressed suicidal ideation. Her energy levels were markedly affected, to the point where she would return home from work and go straight to bed, thus reducing her enjoyment of leisure time. She also became short-tempered at home, affecting her family life.

53. Was the effect on her ability to carry out her normal day to day activities substantial, or more than trivial? In my judgment, it was. It must be borne in mind that the claimant was subject to the medication regime prescribed to her by her doctor, especially an increasing dose of Setraline, an anti-depressant medication, and without that the Tribunal must consider what impact her condition would have had upon her. It is plain that the medication did help reduce the extremes of her condition, rendering her calmer and less anxious, but without it, it is legitimate to conclude that the claimant's anxiety would have remained at the higher levels to which it had reached. While the claimant's evidence was that her suicidal ideation was brief and fleeting, it seems clear that the medication she was prescribed had a successful part to play in improving her everyday mood and ability to attend work.

54. It is clear, from the evidence, that the claimant's absence record was generally very low, and that she found a way to continue at work in order to "push

through", as she put it. The claimant emerged from evidence as an honest and straightforward witness, and I was content to accept that she attended work on occasions when she was suffering from depression and anxiety, assisted by the medication.

55. It was more than a trivial impact that the condition had upon her on a day to day basis, though it fluctuated throughout the relevant period.

56. The final issue is whether or not it was a long term condition. In my judgment, it was, and is. It was diagnosed on 18 September 2024, and lasted throughout the relevant period. The claimant remains on Sertraline to the date of the Hearing.

57. Accordingly, it is my conclusion on the evidence that the claimant's condition of depression and anxiety was a mental impairment which, throughout the relevant time, had a substantial, adverse, long-term effect on the claimant's ability to carry out normal day to day activities.

List of Issues

58. There was a discussion about the terms of the parties' respective Lists of Issues, which are not agreed. Mr Cunningham's submission was that the claimant's List of Issues contains a number of matters which are not included within the claimant's pleadings.

59. In the claimant's draft List of Issues, she referred to a Judge's direction to include both allegations and evidence. It is not clear to me where that direction was issued to the claimant – it does not appear in the earlier Preliminary Hearing Note, and in my view it is not an accurate description of a List of Issues – and accordingly I am concerned that the claimant's List is distorted by the inclusion of matters which do not belong therein.

60. The purpose of a List of Issues is to set out, in broad terms, the questions which the Tribunal requires to consider in order to determine the claim which has been pled by the claimant. Its purpose is not to allow the claimant to expand their claim beyond those terms, nor to provide answers to the questions: that is, essentially, the job of the Tribunal in issuing its judgment.

61. It appears to me that there are substantial disagreements between the parties as to the terms of the final List of Issues, but that those disagreements could not be fully ventilated at this Hearing because the exchange of the drafts took place very close to that Hearing.

62. Rather than carry out what would be a largely paper exercise to try to identify the List of Issues, it appears to me appropriate to list this case for a further 2 hour case management Preliminary Hearing in order to finalise the List of Issues following discussion, and to be clear about the areas of dispute. I

encourage parties – and particularly the claimant – not to use this as an opportunity to direct criticism at the respondent for their handling of the List of Issues, but to seek to achieve agreement prior to the Preliminary Hearing, so that at that Hearing only those areas which are in dispute are raised and addressed.

63. Accordingly, date listing letters will be issued to parties for this purpose.

Date sent to parties **16 June 2026**