



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8003107/2025

**Held in Glasgow via Cloud Video Platform (CVP) on 29 July 2026
Deliberations on 3 August 2026**

Employment Judge D Hoey

Ms A Kibria

**Claimant
In Person**

EUI Limited

**Respondent
Represented by:
Mr K Gibson -
Counsel
[Instructed by
Messrs Geraldts
LLP]**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The claimant has failed to establish from the evidence before the Tribunal that she was a disabled person at the material times pursuant to section 6 of the Equality Act 2010. Her disability discrimination complaint is therefore dismissed.

REASONS

1. The claimant brought a claim for disability discrimination and this preliminary hearing had been fixed to determine whether or not the claimant was a disabled person pursuant to section 6 of the Equality Act 2010.

Evidence

2. The parties had produced a joint bundle of 159 pages and the Tribunal heard evidence from the claimant who was able to provide her evidence and be asked relevant questions by the respondent's agent. The legal issues to be determined in light of the facts were understood and both parties were able to make submissions in light of the legal position from the facts set out.

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Facts

3. The Tribunal makes the following findings of fact from the evidence submitted to it, both orally and in writing. The Tribunal only makes findings that are strictly necessary to determine the preliminary issue in this case.
4. The claimant is an articulate and intelligent individual. She is a registered optometrist. She was employed by the respondent as a customer relations executive. Her employment commenced on 12 June 2023.
5. The respondent had a disciplinary and grievance policy which made it clear that the respondent would seek to progress matters fairly and expeditiously.
6. On 29 July 2025 the claimant was told that an issue had arisen with regard to the claimant's conduct which required to be investigated. There were concerns that the claimant had submitted a fraudulent insurance claim. The allegation was potentially gross misconduct if established. The claimant was suspended on full pay to allow an investigation to take place.
7. The work issues created stress for the claimant. She became anxious and depressed. She had low mood and struggled concentrating. She did not wish to engage or socialise as she would ordinarily do.
8. On 4 August 2025 the claimant consulted her GP stating that she thought she was going to lose her job which could mean she could lose her home and husband. She had a very young child and felt depressed with low mood. Self help resources were commended to her.
9. On 22 August 2025 the claimant raised a grievance. It was noted that the claimant had no underlying health issues and that she had not had poor mental health until the current work related issues arose. The respondent told the claimant an independent manager was appointed to deal with the grievance and meeting was arranged for September.
10. On 3 September 2025 the claimant consulted her GP when she said she was struggling with "a depressive phase related to work issues". She felt emotionally and mentally drained and was subject to stress (which was connected with finance, mortgage and finding a new job that accommodated her child care needs). She had taken medication for a short period which had not made any difference. She had recently raised a grievance and felt the investigation was process hostile. Her medication was increased and she was advised to socialise and engage in enjoyable activities.

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11. In mid September the claimant was asked to provide information that would allow an occupational health physician to speak with her and provide a report. The claimant noted that she had started encountering issues with her mental health on 29 July 2025. She said she had first visited her doctor on 3 September 2025.
12. The claimant told the respondent in an email of 8 September 2025 that "since raising my grievance my depression has worsened significantly". She noted she was currently struggling with depression and anxiety. She asked for adjustments to the process to ensure matters could proceed, to which the respondent agreed. The respondent confirmed the grievance would be investigated in writing and it was agreed to proceed with an occupational health physician. The claimant was told that the disciplinary investigation was ongoing and a decision had not been taken as to whether a disciplinary hearing was to be convened which would be made once the investigation had concluded. The grievance the claimant had raised would be considered, with both matters proceeding in parallel which was the fairest and most efficient approach. The claimant noted her grievance was about how the disciplinary investigation had been handled.
13. The claimant believed that the respondent would dismiss her and began to look for alternative sources of income. This included the claimant buying and selling items online for profit.
14. On 29 September 2025 the claimant spoke with an occupational health physician on the telephone and an occupational health report was prepared. It was noted that there were no long term underlying health conditions. The health issues the claimant encountered had been a direct result of the work matters that had arisen. The physician noted that as the work related issues were the cause of the impairment, if the issues were present after 12 months it was likely the claimant would be disabled in terms of the Equality Act 2010. Matters were to be reviewed in 6 to 8 weeks.
15. The claimant was told on 7 October 2025 that her grievance was not being upheld. She appealed against that on 13 October.
16. Around October time the claimant took steps to set up a locum optometrist service whereby she would offer her expertise on a casual basis. That secured income for the claimant and allowed her to work flexibly and at times that suited her (both given her family situation and health issues). The claimant believed that her dismissal from the respondent was imminent.
17. On 17 October 2025 the claimant attended her GP and said that she felt workplace process, including an ongoing grievance was draining. She had

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been suffering panic attacks and had poor appetite. She was anxious and depressed and her medication was increased to deal with the stress which had led to increased weight loss.

18. On 17 October 2025 the claimant was told that a disciplinary hearing would be convened on 3 December 2025. Any issues she had could be raised at that hearing.
19. In November 2025 the claimant advised the respondent that she was currently unfit to attend work. The respondent advised the claimant that the occupational health report had noted the claimant was not fit for work but may be capable of dealing with the ongoing disciplinary and grievance processes. The claimant was told that the internal processes would not be delayed indefinitely if the claimant was on sick leave and that the respondent would adjust the process to ensure matters could progress. The claimant confirmed that she was capable of progressing matters and she was advised that any disputes she had or issues she wished to raise could be raised by her at the disciplinary hearing.
20. On 9 November 20225 the claimant submitted a further grievance.
21. The claimant had been signed off from work from 17 October until 28 November.
22. On 10 December 2025 the claimant's mood had improved but she was not yet fit to return to work with the respondent (albeit she had been working occasional shifts as a locum optometrist).
23. From July to December 2025 the claimant's ability to carry out day to day activities was adversely affected by her mental ill health. She had low mood and lost interest in usual activities. She did not go out on occasion. She lost motivation and became withdrawn. She gave up driving for several weeks and drove only short distances. She found it difficult to focus and respond to complex information, especially when under pressure. She had difficulty sleeping which made her more exhausted and led to weight loss. The claimant also experienced panic attacks and had difficulty coping.
24. The cause of the claimant's mental ill health was the stress that stemmed from the disciplinary and grievance processes (which related to the same issue). As the claimant noted in her impact statement, when the main triggers were ongoing (the grievance and disciplinary process) it was likely the effects would continue. If the stressor was removed, it was highly likely the impairment would cease to have a material effect upon the claimant.

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25. By November 2025 the claimant knew that a disciplinary hearing was fixed for 3 December. She believed she would be dismissed. She was awaiting the appeal of her first grievance and a determination of her second grievance.
26. On 9 December 2025 the claimant was dismissed.

Observations on the evidence

27. The claimant is articulate and intelligent. She was measured and careful in her answers to the questions put before her. She understood the issues and was able to make reasoned arguments in support of her position.
28. There were 2 main areas of dispute. The first was whether or not the claimant had exaggerated the effect the challenges she had faced. The respondent's agent submitted that the claimant had exaggerated the impact of her mental ill health and that any impact upon the claimant's day to day activities had been minor. The claimant's position was that her activities had been substantially affected.
29. I concluded that the claimant had found the ongoing work related processes challenging which led to her mental ill health, there having been no ongoing health issues prior to this. The discussion the claimant had with her GP had shown that her mental ill health had a material impact on her ability to carry out day to day activities. While there may have been some merit in the respondent's agent's submission as to exaggeration, I was satisfied that the claimant had found carrying out some day to day activities difficult and she had become withdrawn. Even although some aspects of the claimant's evidence was exaggerated and less than candid, I was satisfied the impact of the claimant's mental ill health had still resulted in the claimant not being able to carry out some day to day activities in a more than minor or trivial way. This was irrespective of the medical position and that the claimant had secured alternative income.
30. I accepted that the claimant had in places exaggerated her evidence. As the respondent's agent pointed out there were a number of occasions where the claimant's evidence had been adjusted to seek to ensure the outcome fell within the statutory test. The claimant had not been clear in relation to when the impairment commenced, changing her position when the consequences of her admission were put to her. She had also failed to disclose that she had set up her own company and commenced work as a locum optometrist, at a time she was unable to work for the respondent and said to be significantly impaired.
31. The second area of dispute was whether the effect of the impairment was likely to last 12 months when considered at November 2025. The

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respondent's agent argued that as the claimant's mental ill health had been dependent upon workplace processes (by the claimant's own admission, which was supported by occupational health), the situation would have been resolved prior to the impact being likely to last for 12 months. The claimant disputed that and argued that it was likely that the internal processes would still continue such as to result in the impact being likely to last for 12 months. The claimant had led no medical evidence on this point. There was limited evidence on this direct point.

32. Having carefully considered the evidence that was led and viewed the contemporaneous records provided, I was satisfied that on the balance of probabilities, from what was known at November 2025, the internal processes were likely to have concluded within a few months of November 2025 and the triggers would have been removed. I concluded also that it was likely that as at November 2025 the impact of the claimant's mental health impairment was not likely to last (in total) for 12 months. It was in fact likely that the impairment and its consequences would have become minor or trivial within that period.

Law

33. Section 6 of the Equality Act 2010 deals with the question of 'disability status' i.e. when a person will be considered to be a disabled person for the purposes of the Act. It provides (as relevant) as follows: " (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".
34. The word "substantial" is defined in s.212(1) Equality Act 2010 as meaning "more than minor or trivial".
35. Section 6 is supplemented by Schedule 1 of the Act and by statutory guidance (Guidance on matters to be taken into account in determining questions relating to the definition of disability (2011)). I had regard to these, and to the EHRC's Code of Practice on Employment, particularly Appendix 1 which deals with the meaning of disability.
36. It is now well-established that a Tribunal making a determination of disability status must focus on what a person cannot do, or can do only with difficulty, rather than on the things he can do easily. As noted in the Code, it is relevant to consider whether an impairment means that a particular activity causes pain and fatigue, even if it does not prevent the claimant from undertaking it entirely.
37. Section D of the Guidance contains some provisions on what amounts to normal day-to-day activities. Specifically, paragraph D3 provides: "In general

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day-to-day activities are things people do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport and taking part in social activities. Normal day-to-day activities can include general work-related activities and study and education-related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents and keeping to a timetable or shift pattern.”

38. The latter part of the guidance reflects case law which has established that activities which are done at work may be “day to day activities” provided that they are general and undertaken by wide sections of the population. A specialist activity – such as playing piano to a professional standard – will probably not be a day-to-day activity, but activities which form part of general participation in professional life e.g. using a computer, answering email
39. The term “normal day to day activities” is better seen as a yardstick, or a measure of seriousness, rather than a requirement to distinguish between activities carried out at work and those carried out away from work.
40. Under Schedule 1 paragraph 5, 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 measures are being taken to treat or correct it, and but for that, it would be likely to have that effect - **Kapadia v London Borough of Lambeth** 2000 IRLR 699.
41. In **Goodwin v The Patent Office** 1999 IRLR 4 the EAT set out four questions to be considered:
 - 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?
42. For impairments that have not lasted 12 months, the Tribunal will have to decide whether the substantial adverse effects of the condition are likely to last for at least 12 months. The Guidance stipulates that an event is likely to happen if it ‘could well happen’ (see para C3). The word ‘likely’ means something that is a real possibility, in the sense that it ‘could well happen’,

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rather than something that is probable or 'more likely than not'. This is the standard I have applied in this case.

43. The question of whether the effects of the impairment are likely to last for more than 12 months is an objective test based on all the contemporaneous evidence, not just that before the employer. The Tribunal is not concerned with the employer's actual or constructive knowledge of the disability — **Lawson v Virgin Atlantic Airways Ltd** EAT 0192/19.
44. It is important to note that the issue of how long an impairment is likely to last should be determined at the date of the discriminatory act and not the date of the hearing — **McDougall v Richmond Adult Community College** 2008 ICR 431.
45. The Guidance stresses that anything that occurs after the date of the discriminatory act will not be relevant (see para C4). It also states that account should be taken of both the typical length of such an effect on an individual and any relevant factors specific to this individual, such as general state of health and age.
46. This Guidance also states that the cumulative effect of related impairments should be taken into account when determining whether the person has experienced a long-term effect for the purposes of meeting the definition of a disabled person (see para C2).
47. In **Royal Borough of Greenwich v Syed** EAT 0244/14 Mr Justice Wilkie observed: '[T]he question which the tribunal has to ask itself is not whether the mental health impairment was likely to last at least 12 months but whether the substantial adverse effect of the impairment was likely to last more than 12 months. That is a different question.'
48. A similar point was made by Her Honour Judge Eady in **Nissa v Waverly Education Foundation Ltd** EAT 0135/18. There the Employment Tribunal erred in its approach to determining whether the adverse effects of a combined set of impairments were likely to be long term because its focus had been on the cause of the impairments rather than their effects.
49. A Tribunal that assumes adverse effects of an impairment are likely to be long term merely from the fact that a medical impairment has already existed for more than 12 months as at the date of the alleged discriminatory act risks falling into error: **Guinness Partnership v Szymoniak** EAT 0065/17. The Employment Appeal Tribunal said the Tribunal should consider how long the effect of the impairment was likely to continue to last, maintaining its focus on the length of time the claimant's condition had already lasted or was likely to last rather than the effect of that condition.

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Discussion and decision

50. The respondent conceded that the claimant had a mental impairment. The first issue to be determined was therefore whether or not the impairment had a substantial impact upon the claimant's ability to carry out day to day activities. I was satisfied from the evidence presented that the claimant's mental ill health had affected her ability to carry out day to day activities in a way that was more than minor or trivial. Her mood had been affected. She was not eating as much and she was not socialising. This had occurred for a number of months from around July 2026. While the effects were not likely to be as significant as set out by the claimant, I was satisfied even with medication the claimant had experienced a few months from August wherein she struggled to carry out day to day activities. The impact had been more than minor or trivial.
51. The key issue in this case was whether or not the impact of the impairment was likely to last for 12 months or more. This is because in order for the claimant to be disabled for the purposes of the Equality Act 2010 the impact requires either to have lasted for 12 months or more or to be likely to be so. Given the effect on the claimant's ability to carry out day to day activities began late July/August, the effect had only been present for around 4 months by November.
52. The parties agreed that the issue was whether it could be said from the information known in November that it was likely that the impact of the impairment would last (at least) for another 8 months or so. I considered this question carefully and in light of the evidence that was led and the legal position set out above.
53. The claimant had made it clear in her impact statement that the cause of the mental ill health was solely the workplace dispute that had arisen. There were no underlying health issues or conditions and this matter was because of the work related triggers. The triggers comprised the matter that led to her dismissal in respect of which she had raised grievances. She was unhappy with the process that was being undertaken and believed she had not done anything wrong. She believed that the respondent intended to dismiss her (irrespective of the investigation). It was clear that the impact of the claimant's mental ill health would continue as long as those stressors were present.
54. Conversely it was clear (and accepted by the parties) that once the triggers had gone, it was likely that the claimant's difficulties would also disappear. The impairment was entirely linked to the workplace dispute. Once that had been resolved (one way or another) it was likely the claimant's health would

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improve and the impact upon day to day activities would no longer be substantial.

55. As at November 2025 the parties knew the internal processes were reaching a conclusion. A disciplinary hearing had been fixed for 3 December and the claimant believed her dismissal was inevitable (to the extent she had set up a company in October and already been carrying out locum shifts). A very lengthy investigation had taken place in respect of which grievances had been lodged. The claimant had been told that she could raise any issues she had with the process at the disciplinary hearing in December. Her first grievance had been refused and an appeal was outstanding and she had raised a further grievance. From the claimant's perspective she believed that the respondent was looking to dismiss her and that the process was not likely to last longer.
56. As at November it was likely the claimant and respondent would consider the internal processes would be concluded within, at the latest, 4 or 5 months. There was no reasonable basis upon which it could be said that it was likely that the internal processes would be continuing beyond May 2026.
57. The claimant believed that her dismissal had been predetermined and in November she believed that she would be dismissed at the hearing in December. Any appeal against dismissal would take at the most a couple of months. The investigation had taken time due to the issues arising with regard to the claimant's ill health and grievances. These had been dealt with and managed. While the claimant argued that a similar lengthy period was could follow from December, that was not at all likely. It was entirely likely that from what was known in December, the entire process would be concluded by May.
58. The respondent had spent a lengthy period investigating matters (which process had been interspersed with the claimant's ill health and discussions as to adjustments and internal matters). The respondent had concluded the investigation. Any further investigations as to appeal points would have been completed within a short space of time. The claimant's concerns as to the process would have been dealt with as part of the dismissal process, whether at the December hearing or the appeal thereafter. It was highly unlikely that the outstanding grievances and appeals would take any more than a couple of months, which the claimant accepted.
59. Once the stressors or triggers go, it was likely the impact upon the claimant would similarly change. This was an unusual case in that there were no underlying medical issues. The sole cause of the impairment and its effects were the internal processes. Once those processes were complete, the claimant's mental ill health was likely to significantly improve such that the

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impact upon the claimant's ability to do day to day activities was no longer likely to be substantial.

60. Looking at matters in November from what was known at the time, internal processes were likely to have concluded by April or May time – at the latest. It is entirely possible the major stressors would have disappeared prior to that time. It is likely that at that time the stressors would no longer be present. While the outcome may not have been in the claimant's favour, it is likely the matters that led to the claimant's stress would have been removed. The claimant had already been looking for other work and was securing other sources of income. As the stressors are likely to have been removed, it was likely the impact upon the claimant's ability to carry out day to day activities would no longer be substantial after May (at the latest).
61. The question is not whether the mental health impairment was likely to last at least 12 months but whether the substantial adverse effect of the impairment was likely to last more than 12 months. From the evidence the effect was not likely to last 12 months, in the sense of being a real possibility or could well happen. The focus is on the effect of the impairments. I have considered how long the effect of the impairment was likely to continue to last, maintaining focus on the length of time the claimant's condition had already lasted or was likely to last rather than the effect of that condition.
62. From what was known in November, it cannot be said that the impact upon the claimant's ability to carry out day to day activities was likely to last 12 months or more. As indicated above, the Tribunal should consider how long the effect of the impairment was likely to continue to last, maintaining its focus on the length of time the claimant's condition had already lasted or was likely to last rather than the effect of that condition. Having done so, it is clear that the evidence presented has shown the effect of the impairment was not likely to continue to last for a period that would result in the effect lasting 12 months.
63. The onus is on the claimant to establish that the effect of the impairment was likely to last for 12 months at the material time. There was no medical evidence that made this clear. From my assessment of the evidence provided, I am satisfied from the evidence provided that the legal test has not been satisfied such as to result in the claimant being a disabled person for the purposes of section 6 of the Equality Act 2010 at the material times.
64. In reaching this decision it is important not to take into account matters not known or reasonably likely to have been known after November. The legal question is whether from what was known in November, was it likely that the impact of the impairment would have lasted for another 7 or 8 months such that the impairment was likely to last for 12 months or more. From the

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evidence before this Tribunal, it was not likely that the impairment would have lasted for 12 months or more.

65. The claimant has not shown that she was a disabled person in terms of section 6 of the Equality Act 2010 and accordingly the disability discrimination claim is dismissed.

Next steps

66. The parties should have a discussion as to the remainder of the claim with a view to agreeing suitable dates for the hearing and exchange of documents, the preparation of a statement of agreed and disputed facts and a list of issues setting out the issues to be determined in respect of the complaints proceeding to the Hearing. If the parties are unable to do so by agreement, they should set out in writing what has been agreed and what is outstanding and case management orders can be issued.

Date sent to parties10 August 2026