

EMPLOYMENT TRIBUNALS



Claimant

Respondent

Ms C Rushworth

v

**Rotherham Doncaster and South
Humber NHS Foundation Trust**

Heard at: **Leeds**

On: **21 January 2019**

Before: **Employment Judge Knowles**

Appearances:

For the Claimant: **Mr T Rushworth (Claimant's brother)**

For the Respondent: **Mr P Sangha (Counsel)**

HEARING OF A PRELIMINARY POINT RESERVED JUDGMENT

1. The Claimant has not established that she is a disabled person for the purposes of the Equality Act 2010.
2. The Claimant's claims are dismissed.

RESERVED REASONS

Issues

1. The issue for determination at this hearing of a preliminary point is whether or not the Claimant is a disabled person for the purposes of the Equality Act 2010.

Evidence

2. I heard evidence from the Claimant. The parties produced a bundle of documents (96 pages).

Findings of fact

3. I make the following findings of fact on the balance of probabilities. This is not a summary of the total evidence presented. These are my core findings related to the issues.
4. The Claimant attended the preliminary hearing and gave evidence. A copy of the Claimant's statement is contained in the bundle (p74-90).
5. In her statement the Claimant states that she was diagnosed as having dyslexia and dyspraxia at the age of 54. She states she was born on these issues and will have them for life. She states that on the surface it may look like she functions well as other people but her disabilities are hidden and so are her struggles with them. She states her ability to engage with them is variable. She states that most people do not have to invest the same time and energy to function as she does. She states that during her childhood she was always losing and dropping things. She states that at approximately the age of 4 her mother gave her a bracelet and she fell over and lost it and was never allowed to have jewellery again because she could not be trusted. She states that she struggled with literacy throughout to a school career and attended remedial classes from the age of 6. She states she recalls thinking she was stupid and her life was over.
6. She states that aged 6 or 7 she remembers being shouted at in front of a class of children because she was unable to spell her name. She states she remembers her mother getting angry with her because she couldn't tie shoelaces at about the same time. She states that in secondary school she was useless at sports and her peers used to laugh at her. She states she recalls not understanding why she couldn't hit a tennis ball or jump over hurdles other children could. She states that not being able to play sports excluded her and continues to exclude her from a lot of shared interests with others. She states that she was told that the age of 15 to leave school and get a job because she was too stupid to do anything else. She states she had to fight to stay on at school. She states that throughout her childhood her mother used to get angry because she couldn't stand up properly and would constantly lean on things. She states she had pains in her legs during childhood which were dismissed as growing pains but they were, in fact, caused by the dyspraxia. She states that she was extremely anxious as a child and recalls being rendered unable to make a decision about the smallest things because she did not want to make a mistake. She states that her early experiences and stayed with her and contribute to her low mood and lifelong poor self-esteem. She states she knows that she is useless at a lot of things which are documented in the remainder of her statement.
7. She states that the things that affect her on a daily basis or regular basis include short-term and long-term memory although she can sometimes remember things really well. She states she can see a patient in the morning and have forgotten who they are in the afternoon. She states this means she has to repeatedly read notes. She states she worries about messing things up work which puts under a lot of pressure. She states that her memory is so poor

at times that she set fire to herself once because she forgot that she had a gas hob and has had to have an electric hob since.

8. She states that in her personal life she writes everything she needs to remember on her mobile phone and sets alarms. She states she checks her phone obsessively so she does not forget things. She states she is in constant fear of forgetting something important especially now she is the main carer for her father. She states she would be lost without her phone. She states her memory can cause difficulties in interpersonal relationships because it can give the impression she is not interested in other people and that she forgets what they have said to her or what she has said to them.
9. She states she will quite often tell someone something they have told her. She states that she has difficulty with spelling and misspelled words that she knows how to spell such as psychology. She states she uses the spellcheck facility at work all the time and would be lost without it. She states she forgets how to spell the simplest word and has to look it up on her mobile phone. She states she doesn't recognise spelling mistakes. She states that when she makes spelling errors or typing errors she can't see them to correct them. She states she has difficulty processing information. She states she needs to go away and think about something to fully understand it. She states she has been sold cars that she wouldn't have bought on more than one occasion because she doesn't understand in the moment the implications of what she is agreeing to.
10. She states she can lose the thread of what is being discussed in meetings because her processing of information is slow at times. She states that at other times she can process information at the same speed as other people so this is confusing for them. She states that there are times in meetings when she can't follow what is being discussed. She states that she makes a lot of mistakes at these times in order to give her time to process information and to make it appear that she is involved. She states this can be really annoying to other people as it can also be disruptive.
11. She states that she has difficulty filling in forms. She states it once took over a year to apply for a new passport because she was unable to make sense of the form. She states it took a long time to correctly fill in the form for the power of attorney for her father. She states there have been lots of forms to fill in recently with regards to her father. She states if she needs to fill in a form she feels defeated before she has begun because she knows it will be a struggle.
12. She states she can misunderstand what is being said to her which can cause interpersonal difficulties and has caused arguments with family members. She states that the psychologist who has assessed her described her brain as being like a mobile phone connection which is sometimes very clear and sometimes drops out. She states that there are times when she can literally feel her brain switching off and she zones out. She states she once walked into the path of oncoming car because she zoned out. She states the car ran over her foot slamming her body against the wing. She states that a short while later she experienced excruciating back pain which affected her for a number of years. She states that she continues to experience back pain but it is much more

manageable now. She states she is prescribed medication for her ongoing back pain.

13. She states she can't cook. She states she can make simple things like an egg on toast but more complex dishes are difficult for her to do. She states that when she tries more often than not the food she produces is inedible. She states that this is so bad that some of her colleagues have kindly taken to bringing in food for lunch as she tends to eat sandwiches, take aways and ready meals. She states she has burned boiled eggs in the past. She states this inability to cook is embarrassing and contributes to her lifelong weight issues. She states that weight issues are very common in people with dyspraxia.
14. She states that she struggles to focus and to concentrate. She states she has never been able to read a newspaper despite an interest in politics and current affairs. She states she struggles in meetings. She states she is often unable to follow television programmes or films. She states if she goes on training she cannot focused and after about 2 PM she gets tired fidgety and is desperate to leave. She states she stopped listening or drops in and out of listening. She states this means she has to read and reread the handouts or PowerPoint presentations repeatedly at a later date which causes her additional work that she typically does at home. She states she is not very good at interviews due to her difficulties processing information and being able to concentrate.
15. She states that she is nervous and hesitant walking up and down stairs. She states she always needs to hold on to something or will lose her balance. She states she walks up and down stairs one at a time. She states this is embarrassing and humiliating. She states that it annoys people around her because she walked slowly gets in people's way. She states she has fallen downstairs on several occasions and narrowly avoided getting badly hurt. She states that she walks very slowly due to physical fatigue and fear of falling over. She states she has fallen over lots of times and once she thought she had broken both ankles and could not walk for a week. She states she worries if she has to walk somewhere with someone else due to how slowly she walks and how many times she needs to sit down and rest. She states that if she is going anywhere she has to get there very early so that she does not have to rush. She states if she ever has to rush it makes her extremely anxious. She states she was going out with friends recently and was late. She states she became very anxious and got lost which was distressing. She states she almost gave up and went home. She states this impacts on other people as they have things to do within her timescales. She states she is petrified of walking in snow. She says she once fell over in the snow three times walking from her front door to the car. She states that when she is tired or stressed she staggers when she is walking which is embarrassing. She states she is very clumsy and is always walking into things.
16. She states she struggles to a standstill. She states she wobbles lots which is humiliating and embarrassing. She states that when she stands she sometimes lists to one side and almost falls over which is very embarrassing. She states she dreads doing anything that involves standing still such as queueing up for something and will avoid it if she can. She states she can manage for a few minutes but if the queue is more than a few people she will just leave if she can.

She states she struggles at work if she has photocopying or printing to do or if she has to stand up to do a presentation.

17. She states she trips over words and misreads words when she reads aloud which causes embarrassment especially at work. She states that she often forgets what she is saying in the middle of a sentence. She states she often gives long rambling answers to questions and goes around the houses to the point of losing the thread of what she is saying which is annoying for others and frustrating for her.
18. She states that people complain about her handwriting as they are unable to read it. She states it is too tidy, all uniform or very messy. She states she struggles to read it herself at times. She states she often writes in capital letters. She states she misreads words in her head so gets things wrong for instance she was convinced the application was open only for a week and in fact it was open for 3 weeks. She states she has to read things repeatedly in order to ensure that she has read them correctly. She states that she once turned up for a weekend away a year early because she had misunderstood or misread the information. She states that she can become overwhelmed by the environment especially when she is tired or anxious and this causes her to become confused or zone out. She states she gets tired very easily and needs to pace herself with her activities. She states she often feels exhausted after work and feels unable to do anything. She states that on the odd occasion when she meets a friend after work she can feel unable to hold up her end of the conversation. She states she often feels fatigued. She states she recently attended a wedding and it took a week to recover. She states she managed this by planning her activities carefully.
19. She states she tends to keep in touch with friends and family by text message rather than by telephone calls because she is often too tired to be involved in a verbal conversation. She states she can't tell left from right making it very hard to follow verbal directions. She states that if someone tries to give her directions to somewhere she stops listening because what they are saying makes no sense to her and it gives her a headache. She states this was particularly an issue in June this year when she had to attend two days training on how to use the new computer system. She states she was unable to follow anything that the trainer said. She states she found the training tortuous and had a headache that went on for days afterwards. She states she eats with a knife and fork in either hand and has no idea how to set a table. She states she has poor hand to eye co-ordination often dropping food down herself or poking herself in the eye with her glasses, hitting her head, tripping over and walking into things.
20. She states she always looks disheveled no matter what she is wearing. She states she is useless at ironing so tends to buy clothes that don't need ironing which limits the clothes she can wear. She states this has an effect on her self-esteem. She states she hardly ever wears make-up. She states when she has worn make up she has ended up with it all over the place even waterproof mascara tends to run when she wears it leaving her with the black circles under her eyes. She states this affects her self-esteem. She states that she often puts on her clothes inside out for the wrong way around and doesn't realise until she gets to work and somebody tells her which is embarrassing.

21. She states she has flat feet which is common in people with dyspraxia. She states she needs to wear shoes that support her arches otherwise she experiences pain in her feet. She states she is sensitive to light which gives her a headache and she has the blinds at work closed as often as possible and prefers the lights in the office off which impacts on other people. She states she often wears sunglasses even in the winter which makes her look stupid. She states that she does not like being touched; it makes her feel awkward, apart from very occasionally with a few people. She states that she dreads meeting people and having to shake hands. She states she can become easily frustrated that especially if she feels that people don't understand what she is saying.
22. She states that she has periodic low mood which is very common with people with her conditions. She states that she self-harmed and overdosed when she was a lot younger. She states that she wouldn't do either now but often has suicidal thoughts and images. She states she has low self-esteem and often feels useless and inferior. She states she has been told she is useless by various people throughout her life because she is so inept at so many things. She states she can be quite reassurance seeking at times which is annoying for other people. She states she can become overwhelmed with sadness for no apparent reason and can often be in tears because she feels so sad. She states that in addition to frequent bouts of sadness and melancholy she has suffered from depression on and off since she was a child. She states she was depressed as a teenager and has experienced feelings of worthlessness on an ongoing basis for most of her life. She states that she has been treated for clinical depression by her GP on five or six occasions, the first being in 1987. She states that she has had frequent bouts of low mood and has not sought treatment. She states she has had time off work due to low mood and anxiety.
23. She states she has periodic anxiety which is common with people with her conditions. She states it can prevent her sleeping which makes everything worse. She states that she often thinks she has done something wrong when she hasn't which leads her to catastrophic thoughts. She states that she can have episodic ruminating thoughts at night which prevents her from sleeping. She states that when she is tired or stressed it is harder for her to employ her usual ways of coping because she does not have the energy. She states she has the habit of interrupting people which causes interpersonal difficulties because people get annoyed with her. She states that she repeats herself which causes her embarrassment and causes other people to get angry and frustrated with her. She states that she finds groups of people difficult to cope with even if she knows them all. She states she avoids groups which has an adverse effect on her relationships as she often avoids socialising. She states that this can be a problem at work when she has to go on training days or meetings. She states she struggles to make conversation with other people at times and overcompensates by talking too much.
24. She states that she struggles to read and comprehend things that are written on the computer screen. She states that she has a very wide screen at work which helps to an extent but she has to print complicated documents and read them repeatedly in order to understand and recall.

25. She states that she finds it hard getting in and out of some vehicles such as taxis because she can't work where her arms and legs should go. She states she has this issue in her own car at times. She states she is either very organised or very disorganised. She states that if she has written work such as a project to complete she obsesses about it and ruminates over it. She states that she starts it as soon as she can. She states that when she had assignments to do at college she always started them immediately even if she had three months to complete them. She states this is a coping mechanism which causes her additional work and additional stress. She states that she began writing this document the day she was informed it was required despite having four weeks to complete it and worked on it every day until she submitted it. She states that she can be very defensive at times because she feels attacked and cornered if she can't process information which has caused arguments and bad feeling. She states she can also misinterpret what is being said to her which has caused arguments.
26. She states that she is really bad at anything practical like DIY decorating. She states she can't sew. She states that if she tries to do any decorating she makes a lot of mess. She states that anything practical she attempts to do is slapdash and inadequate. She states that she is self-caring although when her mood is low she can neglect self-care for extended periods going without washing or dressing due to lack of motivation.
27. She states that she struggles with supermarket checkouts. She states that she feels pressures pressured and anxious at the manned checkout and completely flummoxed by the automated one. She states that she can go weeks without going to the supermarket due to lack of motivation and fatigue. She states that she has trouble with maths. She states that she often adds things up incorrectly and struggles to say large numbers for instance she told her friend a house cost £210 instead of £210,000. She states this is embarrassing.
28. She states she can't dance which excludes her from some social situations all makes her look antisocial at events that includes dancing such as the wedding mentioned earlier. She states that because she is so useless at everything she has no hobbies. She states that this creates a degree of social isolation and boredom.
29. She states that she is reliant on other people to help her with anything practical. She states that for instance she has a pile of wood in her garden that needs to be cut and stacked by the shed. She states she can't do it herself as she was she would not be safe using the power tools so is reliant on a brother to do it for her which puts a strain on him.
30. She states that her disabilities mean she has to work harder to do things which take time and energy adding to her fatigue which adversely affects her disabilities. She states she also believes that as she's getting older it is getting harder to manage. She states that in summary throughout her life and for the remainder of her life her disabilities have affected her career and her career progression, interpersonal relationships, her well-being including self-esteem, mood, weight and nutrition and her activity.

31. She states that she works in a stressful environment with people who have complex mental health problems. She states that in addition to which the trust is going through a major change causing ongoing stress for everyone. She states that one of the reasons she applied for the job in IAPT is that it is less stressful than the job she currently does. She states that the IAPT will not be affected by the changes in the trust so they are not subject to the stress and pressure of enforced change and they work with less complexity and risk being a primary care service.
32. She states that at the time she made her application her father had just been diagnosed with multiple infarct dementia. She states that her father is a very intelligent, humane, funny, generous and powerful man. She states that it breaks her heart to see him slowly fading and diminishing. She states that he had been in hospital the previous September during which time he was disorientated and on occasions verbally aggressive to her. She states that whilst in hospital it became clear he had been neglecting himself and needed support and monitoring. She states that at the time she applied for the job he was not cooperating with them. She states that he would sabotage plans he had agreed to which was extremely stressful. She states that at this time he was having investigations for cancer. She states that she is aware that her father's condition will worsen and was eager to reduce the stress she is under so that she had the capacity to care for her father to the best of her capability and that this caring role did not impact on her ability to do her job.
33. She states that she applied for the job during three weeks annual leave. She states that during this leave she had to take her father to numerous medical appointments and sort out lots of issues for him. She states that she applied for power of attorney and struggles to fill in the form having them returned repeatedly as she had missed things out or put things in the wrong place. She states that successfully filling the form took her six months. She states that the three weeks that she had off in March were not restful or restorative they were stressful and tiring. She states that being in dispute with her employers is currently an ongoing stress. She states that she did not want to involve the tribunal and did everything she could to avoid it but felt that she had no choice due to the trust's actions. She states that during the period from March 2018 to the present day she has felt stressed and down at times. She states that there have been times when she has felt she should be off sick and resisted this due to her obligations to her patients, her colleagues and her employers. She states that as the stress she is under at the moment is situational she believes medication would have little if any effect and has not consulted her GP. She states that being a therapist she has developed ways to manage a certain level of stress but that does not mean it does not affect her or exacerbate her disabilities. She states that when she is stressed, tired, low or anxious the effects of her disabilities are more pronounced and she has to work harder to manage them.
34. The Claimant was asked whether there was anything she wished to add to her witness statement and answered no.

35. In answer to questions in cross examination the Claimant confirmed that the spelling issues errors contained in her application form on pages 62-63 are the reasons she went for an assessment for dyslexia. She stated that she has a friend who is a doctor who felt that she may have dyslexia and gave her a form to fill in which suggested that she was highly likely to be dyslexic. She conceded that dyspraxia was not initially a concern and said that she was gobsmacked with the assessment. She disputed the findings in the report at page 63 that she has a good memory. She stated it is variable and that she struggles with names and faces. She stated that she could not remember her childhood well and has to think what she did yesterday. Questioned about the conclusion on page 70 of the report which suggested she had a strong ability to recall facts she stated that she remembers some things. However, she disputes this conclusion. She states she has to write things down. She conceded that that was working memory which is noted in the report has been weaker than a verbal reasoning. The report suggests on page 63 and 64 that she has a high reading averages and minor weaknesses in spelling. The Claimant stated that it depends on how stressed she is.
36. She stated that one issue is she cannot recognise spelling and typing errors. She stated that at the time she made the application she was under a lot of pressure and a lot of stress and she does rely on spellcheck at work. She conceded that she had no problems using spellcheck. She conceded that she did not use a spellchecker when she completed her application form because she did it on her telephone.
37. Asked about the literacy conclusion that she had largely overcome their difficulties, page 64, she stated that at school her reading age was lower than their peers. Asked about her bachelor's and master's degrees and the comment concerning her overcoming the difficulties in the report she stated that if she does a course she has to put a phenomenal amount of effort in. She stated that if she does a project or essay she has to work and fiddle more things about. She states she works really hard. She states she has not overcome difficulties but has found a way around them. She stated this was separate to spelling errors and that she believes she puts in more effort. She stated she takes projects home. She gave an example of an intervention she created for BPH which she took home. She conceded that most of that work was outside of her usual work and completed at home.
38. She accepted that she completed her witness statement and complied with the orders of the tribunal. Asked if she was a thorough person she stated that she had to be due to her disabilities. She referred to her application form stating that she was on annual leave and had to do it on her mobile telephone. She stated that she did not put effort into it. She stated she was under stress due to her father's recent diagnosis. She stated that she was not in the head space to put in her ordinary effort. She stated that she had to put in more effort than other people.
39. She accepted that the report recommendations on page 65 all relate to her dyslexia and added that there is some crossover with dyspraxia for example in terms of her memory and dyspraxia causing tiredness and stress. She accepted that the account she had given during her assessment referred to mostly

childhood activities and that she could do some of them now. She stated that trips and bumps were ongoing and that her friends call her the mountain goat because she falls over. She accepted that she told her assessor that she poor memory.

40. She as referred to her medical records at page 91-96 and stated that she had obtained these through telephoning her GP and went to collect them. She accepts the doctors have been looking for things relevant to stress. She stated that these were related to her dyslexia and dyspraxia because that is very common. She referred to an interview in which at the fourth question she switched off and did not get the job.
41. She stated that her dyslexia and dyspraxia were contributing factors to her depression. The medical records show references to a food and drink diary. She stated this was relating to managing low feeling. She accepted that a doctor has not linked dyslexia or dyspraxia worked with her depression. She accepted that episodes of depression recorded in her medical records showed causes such as her mother passing away, her father in hospital or disciplinary issues. She also accepted that obesity and stress at work were recorded in 2013. She accepted that more recently her medical records on page 92 reflected a workplace problem but could not recall a specific cause. She stated she just felt distressed by work, or at work or in general. She disagreed that these were isolated events and suggested that this had been a lifelong issue of low self-esteem, being told she was stupid and been unable to participate in sport. She stated this all goes back to her dyslexia and dyspraxia.
42. She stated that this has helped to make sense of how she is as a person. She accepted that there were no medical records of bumps or falls. She stated that the accident involving a car was in 2005 or 2006. She disputed the suggestion in cross examination that fatigue was not a symptom of these conditions. She acknowledged that nobody had told her it was. She stated that she had not talked to the expert about that. She accepted that her friend who is a doctor had not discussed that with her. It was suggested to her that her fatigue may be caused by lifestyle and weight issues. She stated that she had been fatigue for her whole life, she had always leaned on things, walked slowly, and these were a symptom of dyspraxia. She accepted that she had never been to the doctor's concerning these issues and suggested it had been put down to depression.
43. She confirmed that she had completed the application form for employment on page 44 on a telephone whilst on holiday at a stressful time without spellchecker. From her application form she was able to recall the periods she spent training (page 48). She recounted the number of days or weeks she spent training and the profile of attendance on those training courses. She would not describe herself as having no issues with attending or completing these courses but did recall one training course everyone going for drinks afterwards but she was too tired. She accepted that a lot of people struggle to focus after 2 PM on a training course. She stated she couldn't think of anything other than going home and disengages. She stated she had not sought to address this previously because she just felt she was tired. She stated that since the diagnosis she has spoken to her manager and told the manager that

she sometimes needs time out. She stated that she had also told people in her life about her condition.

44. She accepted that she did not plan to return to the GP concerning the conditions. She stated that she did not wish to waste her GP's time. She stated that her condition required learning coping mechanisms and having adaptations work which are being dealt with. She accepts that in the application she described herself as a problem solver and referred to learning new things and how well she performed. She stated that people with dyslexia are often out-of-the-box thinkers seeing things other people do not. She stated that she does like learning she just has to do it at a different pace. She accepted that she listed examples of project work that she had done during her working life in her application and that dyspraxia and dyslexia had not always affected these. She accepted that she performed her job but stated she did so using coping mechanisms. She accepted that others need to keep and read notes but stated that she reads them more often. She stated that she has to print things and other people do not.
45. She conceded that although she mentioned in her witness statement her difficulty working in groups she had described herself in her application form on page 57 as a team worker. She answered that she sits in an office of 9-10 people and if they were all there she would find that difficult. She stated she finds it difficult to walk into a meeting room and becomes anxious. She accepted she gets along with others. She stated she likes people very much. She stated that there are people in the building she does not get on with and sometimes has professional disagreements but works with a really good team.
46. She stated that she does have problems socialising and does not know how to make conversations. She accepted that she had stated in her application form that she could adapt to function and perform but qualified this saying that she can on occasion. She stated that sometimes she performs very well but at times she can't and covers it up.
47. She accepted that she had described herself as motivated and enthusiastic and reiterated this in evidence. She stated that the fatigue was in the mornings and the evenings, that she struggles to get up and has spent her life managing this stuff. She conceded that she stated on her application form that she had no disability and answered that she thought it meant have been diagnosed with a disability. She stated that she thought you had to have had diagnosed disability. She accepted that generally the instances she referred to in her witness statement were discrete events which had not recurred but stated her memory affected her on a daily basis. She again disputed the findings of her dyslexia assessment concerning her memory.
48. She accepted that the trouble with her gas hob happened only once. She related this to her poor memory. She accepted that it had not taken a year to fill in her passport form but that she kept putting it down. She stated it spanned the whole year. She stated she couldn't work out what they were asking her. She denied exaggerating. She did not know whether legal documents with particular requirements were usually complicated. She stated she had filled the forms in incorrectly several times. She stated that poor cooking ability is frequently the

case with people with her conditions. She accepted she had no medical evidence of this.

49. She accepted that she had lifelong weight issues but had no bone injuries. She accepted that she cannot prove she would not have fallen had she not suffered from her conditions in the instances she referred to. She stated that she could at times trip over words in presentations but at other times could do them well. She stated that that is the trouble with dyslexia and dyspraxia, it is variable. She agreed her handwriting had been assessed and stated that many people complain about her handwriting. She stated that it is her tidy handwriting people find it more difficult to read. She accepted the report states her writing is neat and legible. She accepted the results in the handwriting test were average. She was asked whether the problems she listed in her report could have multiple causes and accepted that falling over may have been caused by other things.
50. She confirmed that she has problems telling left from right. She stated that she would zone out when given directions. She conceded that there was no medical evidence concerning treatment for flat feet or linking this to her conditions. She conceded that she had never seen her GP in relation to sensitivity to light. She disputed that she was following the experts report in her witness statement. She felt she was being accused of lying. It was suggested to her that the events that she described were stressful to anyone. She stated that her condition gets worse under stress. It was put to her that if she was completing her application form on a telephone without spellchecker under home stressors this would be difficult for anyone however the Claimant stated that those things exacerbated her conditions.
51. She referred to an example where she had been unable to sew her partner's trousers. She accepted that she drives and does do maths. She cannot recall if she told the expert that she had problems with maths. She accepted that when describing the price of the house she simply left out the word thousand. She accepted that she did not refer this to the expert.
52. In answer to questions from me the Claimant told me that the application form was partly populated through historical applications and certain parts of the form did not need completing. She accepted that the application form would be quite hard to complete in the circumstances she described, i.e. on her mobile telephone. She stated she would normally have done this on her computer at work. She stated that she could not recall speaking to an optician about her sensitivity to light, that she was not sure if she ever had. She stated that she may have mentioned migraines. Asked about the report conclusion that her conditions are relatively mild she agreed. She stated that the way that they affect her is worse when she is stressed and tired.
53. The bundle of documents contains:
 - 53.1. ET1
 - 53.2. ET3

- 53.3. Case management orders 7 November 2018.
- 53.4. Claimant's application form for a new role within the NHS, undated (p44-61). The Application form contains some mistakes, "Ste georges" for "St Georges", "Anglis" and "Angllia" for "Anglia", "Phsycahatric" for "Psychiatric" (although spelt correctly elsewhere in the form), "health" for "Health", "enorlled" for "enrolled" (again spelled correctly elsewhere on the form). There are other instances which might be viewed as typing mistakes, two full stops for example. In answer to the question "according to the definition of disability do you consider yourself to have a disability" the Claimant has answered "No".
- 53.5. Claimant's report of diagnostic assessment by Yorkshire Dyslexic Network, 26 May 2018 (p62-73). The report was prepared by Katherine D' Arey Brown MSc. C.Psychol, Chartered Occupational Psychologist, Registered HCPC practitioner. The report is in two sections, the first "for employer" and second restricted "for employee". The former is an abbreviated report and the latter contains more specific personal details concerning her childhood. The "for employee" report makes the following observations concerning the results of the tests that were undertaken for the purposes of preparing the report:
- 53.5.1. Has well developed verbal reasoning ability, high average range.
 - 53.5.2. Perceptual reasoning task result low average range, visual spatial and perceptual skills are much weaker than her verbal reasoning skills.
 - 53.5.3. Working memory index low average. Basic skills of reading and arithmetic, all of which make demands of working memory, may be less easily acquired.
 - 53.5.4. Processing speed low average. Related to reading and particularly spelling.
 - 53.5.5. Literacy skills above average. Word decoding is at a good level of accuracy.
 - 53.5.6. Single word spelling, average. The report states that "spelling is accurate but it was clear that more effort needed to be applied and she makes occasional errors in recalling spelling patterns... spelling is not quite as good as we would expect given her good verbal reasoning abilities and academic achievements".
 - 53.5.7. Reading comprehension, higher average.
 - 53.5.8. Handwriting speed, low average.
 - 53.5.9. The report concludes "*Assessment has identified that Christine has very good thinking and reasoning abilities when working with*

language concepts theories and ideas. She has strong ability to articulate ideas and is able to think at an abstract and theoretical level. Christine has strong ability to remember facts and recall information. Christine's perceptual and visual reasoning abilities are much weaker than her verbal reasoning skills. For this reason she may take longer to absorb and assimilate visual information and to make sense of non-verbal cues. In addition to this working memory and processing speed is weaker than her verbal reasoning ability. Christine will often need longer to process visual information and sometimes find it difficult to hold sequences of auditory information and instructions. Christine reports a history of difficulty in early development of literacy skills. She has a good academic history and she has developed these skills to a good standard, some slight weaknesses in spelling continue. Christine also finds it difficult to write in a cursive style. She reports a need to edit her work in order to refine her writing. In addition to this Christine has a history of difficulties with motor co-ordination and control and with developing practical skills that entail physical movement. She also continues to have difficulties in balance and also in taking in her environment and responding to it, as a result she continues to frequently trip or lose her balance. Christine's pattern of difficulties is consistent with a complex but now mild specific learning difficulty with features of dyslexia and dyspraxia. Christine has largely overcome her earlier difficulties with reading and spelling. However, writing still requires additional effort and picking up on occasional spelling errors continues to be a challenge".

- 53.6. The Employers Report, as noted above, is a summary of the Employee Report, but adds recommendations to the employer as follows:

Recommendations

As a formal job analysis has not been completed the following recommendations are based on information gathered during the diagnostic assessment. It is recommended that these are discussed and agreed with Christine. A workplace consultation may be helpful for the employer to ensure that they are clear about the nature of difficulties and how to help Christine.

It is recommended that

- Appropriate technological support is provided in order to enable Christine to produce written information efficiently. This would include use of a specialist word processor with a spell checker.*
- Christine should be given more time to absorb text and to process questions in any learning or recruitment situation. More time in any formal test or examination should be provided. One method would be to allocate 25% extra time; another would be to allow Christine to do a test in her own time and record the amount of extra time needed.*

- *On practical tasks, Christine may need more time to read briefing notes and to absorb written policy and legislation.*
- *Techniques such as mind mapping are useful methods for improving the structuring and retention of new information when studying, in addition to being a particularly useful technique for getting one's thoughts onto paper quickly under time constraints. The works of Tony Buzan, Use your Head and The Mind Map Book by BBC Books are recommended reading. In addition, Dyslexia in the Workplace by Diana Bartlett and Sylvia Moody, ISBN 1-86156-172-5, is also recommended, both for Christine and for her employer.*
- *A recent publication, That's the way I think, by David Grant and published by David Fulton, ISBN: 1-84312-375-4 is highly recommended. This is a slim volume that is aimed at the lay audience and it gives a very clear and accessible introduction to dyslexia in particular that is very helpful in giving insights into typical effects of the condition.*
- *Christine may benefit from having her written work proofread and also from learning how to proof read her work. Specialist tuition may also help and be available via Yorkshire Dyslexia Network.*

- 53.7. Claimant's witness statement concerning the impact of her disability, November 2018 (p74-90).
- 53.8. Extracts from the Claimant's GP records, various dates (p90-96). These contain references to being depressed in 1987, and being prescribed antidepressants. Low mood and self-esteem are recorded as issues and eating and drinking alcohol. A stress related problem, mother died recently, is recorded in 2008 and the prescription of anti-depressants. A stress related problem, disciplinary at work, is recorded in 2009 and the prescription of sleeping tablets and at second consultation anti-depressants. Obesity and low-mood/anxiety are recorded in 2013 and anti-depressants prescribed. A final entry in 2017 records low-mood and the prescription of anti-depressants but there appears not to have been the follow up that was planned at 4 weeks.

Submissions

54. The Respondent submitted that the Claimant had made out that her impairments of dyslexia and dyspraxia were long-term. They submitted the issue was whether or not they affect was substantial, and whether or not there was a causal connection between the effects. The conclusion of the expert as that the conditions are mild and were more pronounced in earlier years. The Claimant refers in evidence to issues which are at odds with the mild diagnosis given. She was diagnosed aged 54 and describes her disabilities as hidden. There is no independent evidence of anything other than low mood prior to the expert's report. The Claimant is able to perform at work well and has a long working history of being a Psychiatric Nurse then Therapist. There is no evidence of approaching her GP or line manager over most of the issues she

has mentioned. She was unaware of the conditions when she applied for a new job with the Respondent, and her application was well put together other than spelling errors and it common for these to be looked at critically. The Claimant refers to dyspraxia not being a reason for her referral, to being gobsmacked when she received the diagnosis and to being surprised that she had dyslexia. This is because she cannot connect the impairments. She refers to taking more time on written work, and suffering trips. The affects are mild and at the bottom end of the scale. They are minor matters. The expert does not support the Claimant's suggestion that her memory is poor, the independent evidence is that it is generally OK. The recommendations all relate to her dyslexia. Her medical records support only that she has suffered from low mood in the past, but none of the other issues that she refers to. The Claimant states that stress and anxiety exacerbate her condition but there is no medical evidence to draw that link. Each episode of low mood has against it a discrete cause not linked to dyslexia or dyspraxia. It is accepted that medical evidence is not required but in its absence the causation question is begged. The Claimant is making a leap to connect her stress/anxiety to her dyslexia and dyspraxia. The Claimant has no evidence that either condition is the cause of her fatigue. The reality is that the day-to-day impact is not present. There are other causes of fatigue which she would not rule out, and it is common to feel tired in training courses by 2 PM. The witness evidence contains some exaggeration, her passport application taking a year to complete, her application for the job and completing the power of attorney. Her road traffic accident cannot be linked to her conditions. The Claimant makes an issue of her handwriting but this is not supported by the expert. The Claimant recognises that stressors reflected in her medical evidence would all cause low mood. She has not mentioned problems with being touched or being sensitive to light to any specialist. The incident with the gas hob was agreed to be a one-off event. The Claimant attempts another leap to connect these matters to her dyspraxia. The Claimant has the burden of proof to establish that she meets Section 6. Her mild conditions have a mild impact on her spelling and tripping but do not affect her day to day.

55. The Claimant submitted that the medical records mention low mood, anxiety and stress and these exacerbate her conditions. The conditions of dyslexia and dyspraxia may be relatively mild, and were perhaps mild on the day of assessment. But they would be more pronounced if the Claimant was low or anxious. She may or may not see her spelling mistakes. She can misconstrue things and become defensive and did so in the hearing today when she felt she was being accused of lying. Many of the fields in the application form for employment were pre-populated. She had to keep going back to her passport form over a year. She focusses on the boxes due to her conditions. Throughout her life she has been told she is stupid and this affected her self-esteem. Dyslexia and dyspraxia were not spoken about then, you wouldn't visit the doctor. She has symptoms of falling over. The Claimant is clumsy, it is said if she sat on the floor she would fall over. She has learned coping mechanisms. She has attained a lot academically, but it takes her 25% extra time. Workplace adjustments have been recommended. The trust has made concessions and put in place reasonable adjustments. The Claimant cannot cook, and has trouble with clothing. These things make sense now. They aren't every day and aren't all the time. But they have a significant impact on her life. She relied

on take away food. She has low mood and comfort eats. People have decided to help her with food. She cannot cope with large crowds of people. If her brother did not shop with her she would not go to the shops and would not buy fruit and vegetables. Stress and anxiety exacerbate her symptoms. She is easily distracted and her friends make allowances for her. Previously we thought it is the way she is now it makes more sense. With her coping mechanisms she manages most of the time to operate just below 75%. When she is tired, fatigued, stressed or anxious that exacerbates the problem.

The Law

56. The Equality Act 2010 contains the definition of disability and provides:

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.*

(2) *A reference to a disabled person is a reference to a person who has a disability.*

(3) *In relation to the protected characteristic of disability—*

(a) *a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;*

(b) *a reference to persons who share a protected characteristic is a reference to persons who have the same disability.*

(4) *This Act (except Part 12 and section 190) applies in relation to a person who has had a disability as it applies in relation to a person who has the disability; accordingly (except in that Part and that section)—*

(a) *a reference (however expressed) to a person who has a disability includes a reference to a person who has had the disability, and*

(b) *a reference (however expressed) to a person who does not have a disability includes a reference to a person who has not had the disability.*

(5) *A Minister of the Crown may issue guidance about matters to be taken into account in deciding any question for the purposes of subsection (1).*

(6) *Schedule 1 (disability: supplementary provision) has effect.*

57. Schedule 1 sets out supplementary provisions including:

Paragraph 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.*

Effect of medical treatment

Paragraph 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.*
- (2) *“Measures” includes, in particular, medical treatment and the use of a prosthesis or other aid.*
- (3) *Sub-paragraph (1) does not apply—*
 - (a) *in relation to the impairment of a person's sight, to the extent that the impairment is, in the person's case, correctable by spectacles or contact lenses or in such other ways as may be prescribed;*
 - (b) *in relation to such other impairments as may be prescribed, in such circumstances as are prescribed.*

58. The burden of proof is on the Claimant to show that he or she satisfies this definition. The standard of proof is on the balance of probabilities.

59. The Government has issued ‘Guidance on matters to be taken into account in determining questions relating to the definition of disability’ (2011) under S.6(5).

60. The guidance states:

Section A – Definition of disability

A5. A disability can arise from a wide range of impairments which can be:

...

impairments with fluctuating or recurring effects such as rheumatoid arthritis, myalgic encephalitis (ME), chronic fatigue syndrome (CFS), fibromyalgia, depression and epilepsy; developmental, such as autistic spectrum disorders (ASD), dyslexia and dyspraxia; learning disabilities; mental health conditions with symptoms such as anxiety, low mood, panic attacks, phobias, or unshared perceptions; eating disorders; bipolar affective disorders; obsessive compulsive disorders; personality disorders; post traumatic stress disorder, and some self-harming behaviour;
mental illnesses, such as depression and schizophrenia;

A6. It may not always be possible, nor is it necessary, to categorise a condition as either a physical or a mental impairment. The underlying cause of the impairment may be hard to establish. There may be adverse effects which are both physical and mental in nature. Furthermore, effects of a mainly physical nature may stem from an underlying mental impairment, and vice versa.

A7. It is not necessary to consider how an impairment is caused, even if the cause is a consequence of a condition which is excluded. For example, liver disease as a result of alcohol dependency would count as an impairment, although an addiction to alcohol itself is expressly excluded from the scope of the definition of disability in the Act. What it is important to consider is the effect of an impairment, not its cause - provided that it is not an excluded condition.

A8. It is important to remember that not all impairments are readily identifiable. While some impairments, particularly visible ones, are easy to identify, there are many which are not so immediately obvious, for example some mental health conditions and learning disabilities.

Section B - Meaning of 'substantial adverse effect'

B1. The requirement that an adverse effect on normal day-to-day activities should be a substantial one 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 one that is more than a minor or trivial effect. This is stated in the Act at S212(1).

The time taken to carry out an activity

B2. The time taken by a person with an impairment to carry out a normal day-to-day activity should be considered when assessing whether the effect of that impairment is substantial. It should be compared with the time it might take a person who did not have the impairment to complete an activity.

The way in which an activity is carried out

B3. Another factor to be considered when assessing whether the effect of an impairment is substantial is the way in which a person with that impairment carries out a normal day-to-day activity. The comparison should be with the way that the person might be expected to carry out the activity compared with someone who does not have the impairment.

Cumulative effects of an impairment

B4. An impairment might not have a substantial adverse effect on a person's ability to undertake a particular day-to-day activity in isolation. However, it is important to consider whether its effects on more than one activity, when taken together, could result in an overall substantial adverse effect.

B6. A person may have more than one impairment, any one of which alone would not have a substantial effect. In such a case, account should be taken of whether the impairments together have a substantial effect overall on the person's ability to carry out normal day-to-day activities.

Example - A person has mild learning disability. This means that his assimilation of information is slightly slower than that of somebody without the impairment. He also has a mild speech impairment that slightly affects his ability to form certain words. Neither impairment on its own has a substantial adverse effect, but the effects of the impairments taken together have a substantial adverse effect on his ability to converse.

B7. Account should be taken of how far a person can reasonably be expected to modify his or her behaviour, for example by use of a coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day-to-day activities. In some instances, a coping or avoidance strategy might alter the effects of the impairment to the extent that they are no longer substantial and the person would no longer meet the definition of disability. In other instances, even with the coping or avoidance strategy, there is still an adverse effect on the carrying out of normal day-to-day activities.

...

B9. Account should also be taken of where a person avoids doing things which, for example, cause pain, fatigue or substantial social embarrassment, or avoids doing things because of a loss of energy and motivation. It would not be reasonable to conclude that a person who employed an avoidance strategy was not a disabled person. In determining a question as to whether a person meets the definition of disability it is important to consider the things that a person cannot do, or can only do with difficulty.

B10. In some cases, people have coping or avoidance strategies which cease to work in certain circumstances (for example, where someone who has dyslexia is placed under stress). If it is possible that a person's ability to manage the effects of an impairment will break down so that effects will sometimes still occur, this possibility must be taken into account when assessing the effects of the impairment.

B11. Environmental conditions may exacerbate or lessen the effect of an impairment. Factors such as temperature, humidity, lighting, the time of day or night, how tired the person is, or how much stress he or she is under, may have an impact on the effects. When assessing whether adverse effects of an impairment are substantial, the extent to which such environmental factors, individually or cumulatively, are likely to have an impact on the effects should, therefore, also be considered. The fact that an impairment may have a less substantial effect in certain environments does not necessarily prevent it having an overall substantial adverse effect on day-to-day activities.

Section C – Meaning of ‘long-term’

C3. The meaning of ‘likely’ is relevant when determining:

- whether an impairment has a long-term effect;*
- whether an impairment has a recurring effect;*
- whether adverse effects of a progressive condition will become substantial; or*
- how an impairment should be treated for the purposes of the Act when the effects of that impairment are controlled or corrected by treatment or behaviour.*

In these contexts, ‘likely’, should be interpreted as meaning that it could well happen.

Section D – meaning of ‘day-to day activities’

...

D3. In general, 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 a shift pattern.

...

D10. ... many types of specialised work-related or other activities may still involve normal day-to-day activities which can be adversely affected by an impairment. For example they may involve normal activities such as: sitting down, standing up, walking, running, verbal interaction, writing, driving; using everyday objects such as a computer keyboard or a mobile phone, and lifting, or carrying everyday objects, such as a vacuum cleaner.

...

D17. Some impairments may have an adverse impact on the ability of a person to carry out normal day-to-day communication activities. For example, they may adversely affect whether a person is able to speak clearly at a normal pace and

rhythm and to understand someone else speaking normally in the person's native language. Some impairments can have an adverse effect on a person's ability to understand human non-factual information and non-verbal communication such as body language and facial expressions. Account should be taken of how such factors can have an adverse effect on normal day-to-day activities.

D18. A person's impairment may have an adverse effect on day-to-day activities that require an ability to co-ordinate their movements, to carry everyday objects such as a kettle of water, a bag of shopping, a briefcase, or an overnight bag, or to use standard items of equipment.

...

Example - A young man who has dyspraxia experiences a range of effects which include difficulty co-ordinating physical movements. He is frequently knocking over cups and bottles of drink and cannot combine two activities at the same time, such as walking while holding a plate of food upright, without spilling the food. This has a substantial adverse effect on his ability to carry out normal day-to-day activities such as making a drink and eating.

D19. A person's impairment may adversely affect the ability to carry out normal day-to-day activities that involve aspects such as remembering to do things, organising their thoughts, planning a course of action and carrying it out, taking in new knowledge, and understanding spoken or written information. This includes considering whether the person has cognitive difficulties or learns to do things significantly more slowly than a person who does not have an impairment.

61. The time at which to assess the disability is the date of the alleged discriminatory act (*Cruickshank v VAW Motorcast Ltd* 2002 ICR 729 EAT).
62. The words used to define disability require a tribunal to look at the evidence by reference to four different questions (or 'conditions', as the EAT termed them):
 - did the Claimant have a mental and/or physical impairment? (the 'impairment condition')
 - did the impairment affect the Claimant's ability to carry out normal day-to-day activities? (the 'adverse effect condition')
 - was the adverse condition substantial? (the 'substantial condition'), and
 - was the adverse condition long term? (the 'long-term condition').

(*Goodwin v Patent Office* 1999 ICR 302 EAT).

63. There should be a causative link between the condition or conditions, where they are identified, and symptoms that the condition or conditions produce (*Morgan Stanley International v Posavec* EAT 0209/13). It need not be a direct link (*Sussex Partnership NHS Foundation Trust v Norris* EAT 0031/12).

64. The term 'mental impairment' covers learning disabilities.
65. In *Dunham v Ashford Windows* 2005 ICR 1584 EAT, a case involving the condition of dyslexia, the EAT accepted that a Claimant is unlikely to establish a mental impairment solely on the basis of 'difficulties at school' or because he or she 'is not very bright'. Expert evidence as to the nature and degree of the impairment is required, although in a case involving learning difficulties, evidence from a doctor is not essential. Medical evidence is not required in every case, especially where there is appropriate expert evidence as to the type and nature of impairment.
66. In *J v DLA Piper UK LLP* 2010 ICR 1052 EAT, the EAT held that tribunals should be aware of the distinction between clinical depression and a reaction to adverse circumstances.
67. These principles were applied in *Appleby v Governing Body of Colburn Community Primary School and anor* EAT 0334/15 where a period of normal grief reaction unlikely to last 12 months or more did not amount to a mental impairment.
68. If the impairment is not long-term, the next test is whether it is likely to be long-term. The relevant test then whether or not it "could well happen" (*SCA Packaging Limited (Appellants) v Boyle (Respondent) (Northern Ireland)* [2009] UKHL 37). The IDS Handbook on Discrimination states that "*establishing that the effect of dyslexia is long term will not normally be a contentious issue, since it will generally have been present from an early age, even if undiagnosed until later in life*".
69. In *Goodwin v Patent Office* 1999 ICR 302, EAT, concerning 'substantial' the EAT said '*What the Act is concerned with is an impairment on the person's ability to carry out activities. The fact that a person can carry out such activities does not mean that his ability to carry them out has not been impaired. Thus, for example, a person may be able to cook, but only with the greatest difficulty. In order to constitute an adverse effect, it is not the doing of the acts which is the focus of attention but rather the ability to do (or not do) the acts. Experience shows that disabled persons often adjust their lives and circumstances to enable them to cope for themselves. Thus, a person whose capacity to communicate through normal speech was obviously impaired might well choose, more or less voluntarily, to live on their own. If one asked such a person whether they managed to carry on their daily lives without undue problems, the answer might well be "yes", yet their ability to lead a "normal" life had obviously been impaired. Such a person would be unable to communicate through speech and the ability to communicate through speech is obviously a capacity which is needed for carrying out normal day-to-day activities, whether at work or at home. If asked whether they could use the telephone, or ask for directions or which bus to take, the answer would be "no". Those might be regarded as day-to-day activities contemplated by the legislation, and that person's ability to carry them out would clearly be regarded as adversely affected.*'

70. "Substantial" is defined in S.212(1) EqA as meaning 'more than minor or trivial' and unless a matter can be classified as within the heading "trivial" or "insubstantial", it must be treated as substantial (*Aderemi v London and South Eastern Railway Ltd* 2013 ICR 591).
71. In *Paterson v Commissioner of Police of the Metropolis* 2007 ICR 1522 the EAT held that in order to be substantial '*the effect must fall outwith the normal range of effects that one might expect from a cross section of the population*', but '*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* although in *PP and anor v Trustees of Leicester Grammar School* 2014 UKUT 520, Upper Tribunal (Administrative Appeals Chamber) the Upper Tribunal's held that the statutory definition of 'substantial' in S.212(1) should be applied without any additional gloss.
72. *Kay v University of Aberdeen and anor* EATS 0018/13 low mood was held to be not severe enough to amount to a disability.

Conclusions

73. *Did the Claimant have a mental and/or physical impairment?*
74. It is agreed between the parties that the Claimant has learning difficulties of dyslexia and dyspraxia. These were identified by the expert following an assessment and report 26 May 2018, which the Claimant arranged after making an application for employment 25 March 2018 and receiving, she asserts, feedback indicating that she was not shortlisted on 4 April 2018 but was instead rejected for reasons including her spelling errors in her application form.
75. There is no dispute between the parties, in the light of the particular impairment and its known profile, that the impairment identified on 26 May 2018 would have also been present at the relevant time, when she made an internal application for another role in IAPT on 25 March 2018.
76. The Claimant has mentioned low esteem, anxiety, depression and presented her medical records which record her reporting low mood to her doctor in 1987, 2008, 2009, 2013 and 2017. However, the Claimant has not stated that she meets the definition of a disabled person by reason of these episodes of low mood. Her claim is that her learning difficulties, in the form of her dyslexia and dyspraxia, will be more pronounced when she is stressed or feeling low. There is no evidence of another underlying impairment such as clinical depression or any other impairment therefore I understand the Claimant decision not to suggest that she meets the definition of a disabled person due to her episodes of low mood over the last 30 or so years.
77. The Claimant has referred to life-long obesity also in her evidence but places this in the context that it is a symptom of her learning difficulties.

78. Having considered all of the evidence in my conclusion the Claimant has established on the balance of probabilities the impairment condition, namely her learning difficulties which feature dyslexia and dyspraxia, at the relevant time.
79. *Did the impairment affect the Claimant's ability to carry out normal day-to-day activities?*
80. The Respondent does not assert that the adverse effect condition has not been met by the Claimant; they submit that the issue in the Claimant's case is the substantial condition, namely the degree to which her ability to carry out normal day-to-day activities is affected.
81. The Respondent does not refute the Claimant's expert report indeed they rely on its content heavily in defending her claim to be a disabled person.
82. I do not consider that it is necessary to go into detail and set out every manner in which there is adverse effect arising from the Claimant's learning difficulties which feature dyslexia and dyspraxia impact normal day-to-day activities. The Claimant's expert report refers to visual spatial and perceptual skills, working memory, processing speed, spelling, handwriting speed as being low average and to impact on motor co-ordination, physical movement and balance.
83. In the light of it being agreed between the parties that the Claimant meets the impairment condition in relation to her learning difficulties which feature dyslexia and dyspraxia, in my conclusion it follows that the adverse effect condition has been met by the Claimant on the balance of probabilities. Her expert has identified the ways in which her abilities are impaired, and the ways identified are in my conclusion all more likely than not to impair normal day-to-day activities that involve reading, writing, the time it takes to complete activities, shopping, preparing food, socializing and general work activities such as training, interacting with colleagues and digesting and following instructions, using a computer and preparing written documents and keeping a work schedule.
84. *Was the adverse effect substantial?*
85. The substance of the dispute between the parties as to whether or not the Claimant meets the definition of a disabled person at the relevant time for the purposes of the Equality Act 2010 is here.
86. The Respondent disputes that the substantial condition is met. The Respondent's challenge to the Claimant's evidence comes in two main forms, firstly that the matters that the Claimant raises do not cross the threshold of anything other than minor, and secondly that even if they did then the Claimant has not demonstrated that on the balance of probabilities the matters raised by the Claimant are a product of her impairment, learning difficulties which feature dyslexia and dyspraxia.

87. I note that the Claimant raises a lengthy list of issues in a long statement of impact. However, I also note that other than her low mood and anxiety and life-long obesity the Claimant was unable to refer to ever having felt that the matters required investigation or that she needed support from medical practitioners.
88. For example, the Claimant refers to having difficulty with light, in normal lighting conditions. Asked if she had ever mentioned this to her GP she replied no. She wore spectacles at the hearing and I asked whether or not she had mentioned that to her optician and she could not state that she ever had.
89. The Claimant refers to poor short-term and long-term memory however this conflicts with the expert's opinion, which the Claimant disputes. The Claimant refers to examples such as setting herself on fire through forgetting that she had a gas hob. This is an isolated event some time ago which does not readily lend itself to being a product of her impairment.
90. The Claimant refers to it taking a year for her to complete a passport application form however her evidence I find selective and incomplete in that the Claimant acknowledges that it did not take a whole year and that she picked it up and put it down over a year. There is no evidence of how long she actually spent attempting to complete the form.
91. She refers to difficulties in completing complex legal documents such as applications for a power of attorney. However, many people seek support with complicated documents.
92. The Claimant has not referred, in my conclusion, to impairments in completing everyday forms.
93. The Claimant refers to using her mobile phone to remember things and fearing forgetting things. The Claimant does not refer to the nature of matters she needs reminders for or give any other evidence which would indicate anything other than keeping a diary through her mobile telephone.
94. The Claimant refers to difficulties spelling but has acknowledged that this is overcome at work through ordinary spell check on her computer. No specific adaptations had been made at the relevant time; her impairments had not been diagnosed.
95. The application for employment made in March 2018 was made at a time that the Claimant was on leave attending to stressful matters concerning her father and his care. She mistakenly thought she had 3 weeks to complete the form but had only one. She completed the form using a mobile telephone rather than a desktop computer. It is difficult to assess to any extent the manner in which her impairment impacted her spelling in her application form given the wider context she has explained to completing the application form.

96. The Claimant states that she can zone out however her evidence is vague and does not indicate a particular frequency to her zoning out. Her specific examples involve an accident where she walked into the path of a car in 2005 or 2006 but in cross examination she would not entertain any suggestion that this isolated example may not be related to her impairment.
97. The Claimant has referred to being unable to cook complex dishes. I note that she uses the word complex. I do not consider that the Claimant has given full disclosure of her day-to-day cooking. She refers only to being able to make simple things like egg on toast. In submissions her brother referred to taking her shopping otherwise she would not purchase fruit and vegetables. On the evidence before me, I cannot conclude that the Claimant has established anything other than she finds herself unable to cook complex dishes of food.
98. The Claimant refers to having difficulties in interviews and in learning but this is in the context of someone who has been successful in her career and learning.
99. The Claimant refers to mobility difficulties. I note she has previously discussed her life-long obesity with her GP. The Claimant has provided examples such as falls but they are not stated to be of a particular frequency nor has she ever received treatment for a fall in the past or felt the need to have her balance investigated by medical professionals. When asked about this further in cross examination the Claimant refers to slipping three times in the snow trying to get into the car. The examples that the Claimant gives when questions are not ones that can readily be ascribed to her impairment as opposed to other environmental factors.
100. The Claimant refers to needing more time to complete her studies and to undertake projects and reports for work. However, the Claimant appears to me to be making an assumption that she needs more time in comparing herself to others. She has not provided any specific examples of comparison in support of the assumption. She refers to having to start things early and fiddle around with them more but has not provided evidence which indicates that this is either more than other (which I find is the assumption she makes) or more than she would but for her impairments.
101. The Claimant was questioned concerning her fatigue but refused to acknowledge that these may have been a product of other lifestyle issues and not directly related to her impairments. The Claimant believes that they are common in people with her impairment therefore that the impairment is the cause and the only cause. She refused to acknowledge any possibility of another cause albeit that there is no specific medical or expert evidence which links fatigue or obesity to her impairments.
102. The Claimant asserts that her impairments are pronounced during periods of stress or low mood but there is no medical or expert corroboration of this assertion specific to her impairment. The Claimant acknowledges in cross examination that her periods of low mood reported to her GP were a result of specific stressors.

103. Considering the Claimant's evidence in the round, I find that the Claimant has as the Respondent submits provided an account of matters which are exaggerative and conflict with the expert evidence provided.
104. I do not consider that the matters the Claimant has referred to in her witness statement are, in the round, complete and full evidence concerning how her impairments impact her day-to-day activities.
105. I find the Respondent's submission that the Claimant's evidence and the issues she raises lack persuasive evidences that her impairments are the cause of the problems to which she refers.
106. For the reasons stated above, I consider that limited weight should be attached to the Claimant's description of matters which she asserts are caused by her impairment of learning difficulties which feature dyslexia and dyspraxia.
107. I do attach weight to her expert's reports. These have been produced by a competent and skilled person following recognised testing techniques.
108. I find that, considering the evidence in the round but attaching particular weight to the expert evidence, the Claimant, at the relevant time, had mild specific learning difficulty with features of dyslexia and dyspraxia, has largely overcome her earlier difficulties with reading and spelling, but that writing still requires additional effort and picking up on occasional spelling errors continues to be a challenge. I note the recommended adjustments; more time to consider briefing notes and to absorb written police and legislation. 25% more time is suggested as a potential approach but I do not consider that this is a specific assessment of the time the Claimant takes on such matters, the alternative suggestion is seeing how much time the Claimant needs. A specialist spell checker is recommended however the Claimant's evidence is that she manages with an ordinary spell checker at work.
109. Considering all of the evidence in the round, the Claimant's evidence, the documents before me and the submissions from both parties in my conclusion the Claimant has not shown on the balance of probabilities that she has an impairment to her normal day-to-day activities arising from her learning difficulties which feature dyslexia and dyspraxia which is more than minor or trivial. The substantial requirement is not met on the particular facts of the Claimant's case.
110. *Was the adverse condition long term?*
111. This is not in dispute between the parties and is consistent with the recognised profile of learning difficulties which feature dyslexia and dyspraxia. It is, in my conclusion, more likely than not that the Claimant has a life-long impairment.

112. *Conclusion*

113. In my conclusion, the Claimant has not met the burden on her to establish that she is, on the balance of probabilities, a disabled person for the purposes of Section 6 of the Equality Act 2010.
114. The Claimant's claims are all made under the Equality Act 2010 and are all dependent on her establishing that she met that definition at the relevant time.
115. In the light of my finding that the substantial condition is not met, it follows that the Claimant's claims are not well founded and should be dismissed at this preliminary stage.

Employment Judge Knowles

Date 14 March 2019

Note

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.