



# EMPLOYMENT TRIBUNALS

**Claimant**

Miss Richenda Jaggard

v

**Respondent**

Ely Diocesan Association for Deaf People

**Heard at:** Bury St Edmunds

**On:** 9 December 2019

**Before:** Employment Judge Laidler

**Appearances**

**For the Claimant:** Mr A Magee, Counsel.

**For the Respondent:** Mr A Palmer, Managing Director.

## RESERVED JUDGMENT

1. The claimant was suffering from severe anxiety which was a disability within the meaning of Section 6 of the Equality Act 2010 at the time of her employment with the respondent and her claims of disability discrimination will continue.
2. A full merits hearing with a 3 day time estimate will be listed in the period June – September 2020. The parties are to provide dates to avoid within 14 days of the date on which these reasons are sent to them.

## REASONS

1. This matter was last before Employment Judge Ord on 17 June 2019 when the issues were clarified. As the claimant had not accrued 2 years' service to bring an unfair dismissal complaint that was withdrawn by her at that hearing. This left only disability discrimination complaints. The respondent does not concede that the claimant was disabled within the meaning of the Equality Act 2010. Orders were made for the claimant to release copies of her medical records and to provide an impact statement. A preliminary hearing was listed for 7 October 2019 to determine the issue of disability. That hearing had to be postponed and was relisted for this date.

2. Although the claimant is represented by solicitors, she had prepared an impact statement on her own with very little assistance it appears from the solicitors, and it did not provide sufficient detail. Counsel asked for leave to ask further question of the claimant in evidence. Whilst this was not really an acceptable way to proceed bearing in mind that the claimant had solicitors, it was determined that it was in accordance with the overriding objective that the matter not be adjourned further. Time was given to Mr Palmer to consider what had been said prior to him putting any questions to the claimant.
3. Evidence was heard from the claimant and from Rachael Dance, Managing Advocate on behalf of the respondent. From the evidence heard the tribunal finds the following facts.

### **The facts**

4. The claimant was employed by the respondent from 24 July 2017 to 24 July 2018.
5. The Tribunal is satisfied that the claimant first started experiencing anxiety when she was about 17 years old. She did not seek help from doctors until 2015 when she was first provided medication. This has been steadily increased up to 150mg of Sertraline per day. She needs to take this every day around the same time. If she misses the medication or takes too much, she can experience heart palpitations and feel very sick. She finds the medication suppresses her everyday worries and allows her to lead a more normal working life. Depending on her level of anxiety she can still experience problems on a daily basis including but not limited to: -
  - (i) Panic attacks;
  - (ii) Shortness of breath;
  - (iii) Feeling sick;
  - (iv) Feeling of uncontrollable worry;
  - (v) Headaches;
  - (vi) Tightness in chest;
  - (vii) Sweating;
  - (viii) Biting gums;
  - (ix) Sleep problems.
6. Her anxiety has affected her social life. She finds it difficult to go out and struggles to do so.
7. The Tribunal heard evidence from the claimant as to how her life would be without the medication. It accepts her evidence that she would lack motivation to carry out normal activities, to leave the house and to get up and do normal things. She relies on the medication to help her to do this. She would feel like a bit of a recluse otherwise. The claimant has had periods of insomnia and struggles when anxious to get off to sleep and can be awake until the early hours. This can result in her being over-tired and lacking in motivation.

8. Even whilst taking medication when the claimant is anxious, she does not eat. For example, she explained that due to having to come to the Tribunal today she had not eaten all day. She needs to be motivated by someone else or to be provided with food in order to eat.
9. The claimant explained that she puts a façade on at work and is encouraged by helping others and this helps her to try and push her own worries aside. Even though she did that whilst at the respondent's she was still having difficulties getting up and getting to work at times.
10. The claimant feels very anxious about going out and being in unfamiliar places. She gets very nervous and her heart is pounding. She does not feel confident on public transport and tries not to use it. She drives everywhere that she can. She dwells on the worst possible thing that can happen. She is not good at queuing and having people around her. She is given a lanyard at airports, so she does not have to queue and she is recognised as having a hidden disability.
11. Rachel Dance for the respondent gave evidence that the claimant had socialised with work colleagues and stayed at their colleague, Ruth's house. The claimant accepted that she had done so but explained that this was someone that she knew, and this had only been on a few occasions.
12. The expert report commissioned on the claimant's behalf was provided by Doctor Konstantinos Loumidis, Consultant Clinical Psychologist and Cognitive Behavioural Psychotherapist. The report followed an examination on the 21 September 2019 and was dated 10 October 2019, after the employment had ended on 24 July 2018. The report started with a reciting of the general practitioner's notes that had been seen and examined prior to the termination of employment, and then after the termination of employment. This recorded the Sertraline medication as already noted. There was then an assessment of the claimant and an analysis of her psychological complaints. Psychometric testing was also undertaken.
13. There was then a section headed 'Diagnosis and Opinion on Condition'. This covered the following conditions:-
  - (i) Diagnosis on personality disorder – in the expert's opinion the claimant displayed some 'mal-adaptive personality traits' but not sufficient for a formal diagnosis of a mental disorder. The claimant displays some self-beliefs of low self-esteem. She has 'anxious (avoidant) personality traits characterised by persistent and pervasive feelings of tension and apprehension, beliefs that she is inferior to others, and fear of disapproval...'
  - (ii) Diagnosis on mental disorder – the report acknowledged that before the incident on 24 July 2018 the claimant had had a long history of

psychological symptoms for which she was treated with medication and psychological therapy. She had attempted suicide in 2012. In 2014 she had sleep problems. In 2015 she had symptoms of anxiety and was suicidal and would self-harm. In 2016 she was treated with medication as she was in 2017. The expert however did not feel that the claimant satisfied all the necessary criteria for a formal diagnosis of a stress related disorder.

- (iii) Diagnosis on current condition – the expert believed that the claimant “who has mal-adaptive personality traits of low self-esteem, anxious (avoidant) and emotionally unstable personality traits is still experiencing psychological symptoms of anxiety and post-traumatic stress but I do not believe that these symptoms satisfy the diagnostic criteria for a mental disorder as defined by DSM-5 or ICD-10”.
  - (iv) Other diagnosis considered – the expert had considered that a range of possible other diagnosis. He had not found evidence of clinical signs of depressed mood or markedly diminished interest or pleasure in all or almost all activities satisfying the duration and severity criterion for such a diagnosis.
14. ‘DSM’ is referenced as Diagnostic and Statistical Manual of Mental Disorders (American Psychiatric Association, 2000) and ‘ICD- 10’ as the Classification of Mental and Behavioural Disorders, Clinical Descriptions and Diagnostic Guidelines, World Health Organisation.
  15. Whilst the expert accepted that the issue of whether the claimant was disabled within the meaning of the Equality Act was a matter for the Employment Tribunal he had found “no clinical evidence to suggest that Miss Jaggard would be likely to satisfy the criteria of being a disabled person”. He did not believe that she had a mental impairment (such as a diagnosable mental disorder) using ICD-10 or DSM-5 criteria because he believed that Miss Jaggard had mal-adaptive personality traits of low self-esteem, anxious (avoidant) and emotionally unstable personality traits but not a personality disorder. He did not find evidence of her symptoms having an adverse effect on her ability to carry out normal day to day activities. He accepted there was evidence her psychological symptoms had been long term, he did not believe they were substantial.
  16. The solicitors acting for the claimant put questions to the expert which were answered in a letter of 15 October 2019. The first question was regarding the claimant’s medication and whether this had been considered. The expert stated that as a clinical psychologist the purpose, prescription and appropriateness of medication is for the medical experts to comment upon. He stated however that the prescription of medication in his experience was not evidence of a presence of a mental disorder.
  17. The second question was whether there was any indication within the claimant’s records that would support a previous diagnosis of anxiety or

anxiety disorder. The expert acknowledged that the general practitioner notes stated anxiety and anxiety disorder, but he did not find that the absence or presence of such was necessarily proof that psychological symptoms were present.

### Relevant Law

18. The statutory definition is contained in s.6 of the Equality Act 2010 which 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...

19. Schedule 1 of the Act, Part one provides further definitions that are relevant to the consideration of disability.

Section 2 – Long term effects provides as follows:-

- “(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
  - (a) 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.”

20. Section 5 – Effect of medical treatment provides as follows:-

- “(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.”
21. The Tribunal has also given regard to the Guidance on the Definition of Disability (2011). Section A3 of the Guidance makes it clear that the term mental or physical impairment within the statute should be given its ordinary meaning. It is not necessary for the cause of the impairment to be established nor does the impairment have to be the result of an illness. A disability can arise from a wide range of impairments which can include:
- “mental health conditions with symptoms such as anxiety, low mood, panic attacks, phobias or unshared perceptions, eating disorder, bi-polar affected disorders, obsessive compulsive disorders, personality disorders, post-traumatic stress disorder and some self-harming behaviour”. (A5)
22. It may not always be possible nor is it necessary to categorise a condition as either a physical or 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 (A6).
23. Section B1 of the Guidance reminds that a substantial effect is one that is more than minor or trivial as stated at section 212(1) of the statute. Consideration should be given to the time taken to carry out an activity, the way in which an activity is carried out and the cumulative effects of an impairment.
24. Again, as reminded at section B12 the Act provides that where an impairment is subject to treatment or correction the impairment is to be treated as having a substantial adverse effect if but for the treatment or correction the impairment is likely to have that effect. The guidance gives the following example at B14:-
- “A person with long-term depression is being treated by counselling. The effect of the treatment is to enable the person to undertake normal day-to-day activities like shopping and going to work. If the effect of the treatment is disregarded the persons impairment would have a substantial adverse effect on his ability to carry out normal day-to-day activities.”

25. The meaning of long-term is that it has lasted at least 12 months or where the total period for which it last from the time of first onset is likely to be at least 12 months or likely to last the rest of the life of the person effected.
26. The Act does not now define what is regarded as normal day-to-day activities. In general, however they are things that people do on a regular basis and examples include shopping, reading and writing, having a conversation using the telephone and watching television, dressing, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport and taking part in social activities (D3).

### **Conclusions**

27. The respondent seeks to rely on the medical report as supporting its contention that the claimant does not satisfy the statutory definition. That is not accepted. From the evidence heard, the claimant's anxiety has a substantial and adverse effect on her ability to carry out normal day-to-day activities. She has difficulties even with medication. Without the medication it is quite clear that she would be even more disadvantaged by her condition.
28. The determination of whether the claimant's condition falls within the Equality Act is as the expert recognised, a legal definition. The expert has endeavoured to categorise the complaints from which the claimant undoubtedly suffers into the categories prescribed under various medical guidelines. That is not the task of this Tribunal. It must consider whether the claimant has an impairment which she clearly does of severe anxiety. This has gone on now several years. It has affected the claimant in all walks of life, from her home life with eating and sleeping to socialising and her work environment. It was quite clear from her evidence that she needs encouragement to perform normal day-to-day tasks and even for this hearing had not been able to eat because of her anxiety. She is assisted to a degree by medication. She is however clearly also still suffering from the effects of the condition and was at the time of the events complained of.
29. The expert acknowledged that the claimant 'has had a long history of maladaptive personality traits' which gave rise to psychological symptoms' since' 2011. It is clear from the medical records that the claimant was suffering from issues with anxiety from 2011 and that it was then having a substantial and adverse effect on normal day to day activities and continued to do so. In December 2011 is an entry 'concerns re self harm' and in 2015 'bad anxiety, recently, panic attacks, had always had anxiety...' the notes record that symptoms continued during the claimant's employment.
30. From the claimant's evidence the tribunal accepts that even with medication the condition has an substantial and adverse effect on normal day to day activities. Not being able to use public transport is a normal

day to day activity as is eating. The difficulties the claimant experiences clearly have an adverse effect on these normal day to day activities.

31. The claimant struggles with sleep and getting up. This can result in excessive tiredness. She is not motivated to go out and needs to be encouraged to do so. She finds socialising difficult.
32. The Tribunal is satisfied that the claimant does fall within the statutory definition and that her claims of disability discrimination will continue.

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Employment Judge Laidler

Date: .....02.01.20.....

Sent to the parties on: ....08.01.20....

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For the Tribunal Office