EMPLOYMENT TRIBUNALS

Claimant: Ms M Williams

Respondent: City Academy Arts

Heard at: London Central (by CVP) **On:** 29 & 30 August 2024

Before: Employment Judge Emery

REPRESENTATION:

Claimant: In person
Respondent: Mr R Bidnell-Edwards

PRELIMINARY HEARING IN PUBLIC JUDGMENT

The judgment of the Tribunal is as follows:

Employment status

1. The claimant was an employee of the respondent within the meaning of section 83 Equality Act 2010 at the relevant time. The complaints of disability, sex and race discrimination, including harassment and victimisation, will therefore proceed.

Disability

2. At the relevant times the claimant was a disabled person as defined by section 6 Equality Act 2010 because of ADHD.

3. The complaints of direct disability discrimination, discrimination arising from disability, harassment related to disability will therefore proceed.

REASONS

The Issues

1. Reasons were provided at the hearing, written reasons were requested. The two issues to be addressed are:

    a. was the claimant an employee as defined by s,83 Equality Act 2010 as she contends, or a self-employed contractor as the respondent contends;

    b. was the claimant a disabled person during the period relevant to this claim.

2. The claimant's case is that she has a long-term mental impairment, she describes herself as neurodivergent, having recently been diagnosed with ADHD and being a 'highly sensitive person'; she has been diagnosed with depression and anxiety in the past, she describes her anxiety as ongoing.

3. The respondent accepts that the claimant she has ADHD but denies that it amounts to a disability – not accepting that this condition has a substantial impact on the claimant's ability to undertake day to day activities.

Witnesses and the evidence

4. The claimant provided a statement and a disability impact statement, and gave evidence. Mr Spring, Business Development Manager for the respondent provided a statement and gave evidence.

5. The claimant, a writer, poet and qualified teacher, worked for the respondent as a Freelance Writing Tutor from March 2021 until March 2023. In this time she received five contracts, all of which expressed that she was self-employed; the claimant signed two of these contracts "by signing … you are confirming that you are self-employed…" (e.g. 8 April 2021 contract signed by the claimant).

6. The claimant was responsible for filing tax returns detailing this income, she was responsible for paying tax and national insurance as a self-employed sole trader if her income level merited it.

7. The claimant accepts she was free to teach elsewhere including for similar course-providers.

8. The claimant was required to make "every effort" to attend biannual staff meetings (141); she was provided with some training in technical issues – for example operating cameras if used for teaching. She had a City Academy email address

9. The respondent has a Tutor Handbook (123 – 149). This includes the following policies: "Representing City Academy"; "Teaching Standards and Practices"; Equal Opportunities Policy"; "Personal Harassment Policy" and "Grievance Policy".

10. Tutors are asked to "represent" the respondent for example by saying "I'm X from City Academy" when starting the course; it asks Tutors to make sure they can "commit to 100% of the classes you accept … we will consider the classes as yours".

11. The Policy says the "continuity of tutors throughout a course is extremely important to our students … we understand that, on rare occasions, you may be unable to take a class". If unable to take a class, its process requires the tutor write to their Head of Department explaining the reason for the absence, and for the tutor to find cover, initially using the respondent's "preferred list of tutors … ideally these would be regular City Academy Tutors".

12. Each course is advertised with a named tutor and their biography is available for potential students to read. The claimant's contracts (Schedule 1, for example page 118) states that the tutor is "confirming" availability "to teach of all the classes within the course. Exceptions can be made…". It says that "on occasion … you may not be able to teach a particular class…".

13. There was significant evidence on the right to substitute. The claimant's case is that substituting another tutor after a course started was strongly discouraged and that when she did so in October 2022, she suffered repercussions, including not being given courses.

14. The respondent's position is that all tutors are sent a schedule of courses, and it is for the tutor to accept or decline that work. As put in a question to the claimant, if a tutor accepts a course, that tutor "is expected to complete that course".

15. The claimant points to an email sent by Mr Spring to all tutors on 9 June 2021, saying the following: there had been significant instances of tutor cover, that "sometimes cover is unavoidable" but can risk "unhappy students, negative feedback and refunds rises … This is something that we must reduce as much as possible…". He says tutor change is a "large percentage" of the reason why students do not book again or recommend the Academy; "This is why it is so important to us to minimise cover as much as possible".

16. As a consequence, the memo says that the respondent "… will be closely monitoring all tutor changes that occur", including the amount of tutor changes per tutor, the amount of notice given, the reason for the tutor change, and the financial impact of the changes. The "precise reason" for the change must now be given and each incident will be logged. The "severity of this incident" will depend on factors including notice provided, the disruption to students, whether there have been prior changes to the course. It states that "consistent requests for cover will

have an impact on the amount of work that you are offered from us in the future. We will be prioritising tutors that have less cover." (378-9).

17. Mr Spring's evidence was that requesting cover is "very admin heavy", that if a "freelancer is continuing to substitute at a high rate, it makes sense to work with other freelancers who are more consistent." He accepted that it was the respondent's "preference" for the same tutor to be advertised and to take that course, that it "would cool the relationship" otherwise. He accepted that this could be seen as saying that the respondent will prioritise tutors who have less cover, saying "when you have accepted a gig we assume you will be teaching most of it".

18. Mr Spring accepted in his evidence that the wording of Schedule 1 of the claimant's contract meant that genuine self-employment was "not clear cut"; he says that exceptions could be made, and that substitution does work well "we have found the balance between tutors who are committed and reliable and teaching. But we are flexible, and we will facilitate cover".

19. The "Teaching Standards" section of the handbook requires tutors to arrive at least 10 minutes before the start time, that teaching is planned and delivered to a high standard. Tutors are required to "make every effort" to attend biannual department meetings, for which they will be paid.

20. Feedback is requested from every student after each course, this is reviewed by heads of department "on a monthly basis" and regularly shared with tutors. If there are "patterns of negative feedback" the HoD will discuss "and where necessary implement changes to assist the tutors … together, we work closely with you to improve the experience being offered to yours students"

21. Mr Spring characterised feedback in his evidence as looking at "patterns rather than complaints". He said most issues are about teaching style, and "We would feedback to assist tutors to adapt their style. We ask tutors to change their approach by giving feedback and if necessary, give coaching."

22. The Tutor Handbook states that Heads of department will observe classes in person, and run workshops with tutors to facilitate learnings and to share approaches to teaching.

23. The claimant describes her experience of negative feedback as being akin to a disciplinary process. She says that after negative feedback from one student she was subject to "punitive" actions against her by the respondent, an allegation of discrimination within her claim.

24. The harassment policy states that if an allegation is made, the complainant will be separated from the individual concerned "to enable an uninterrupted investigation to take place." Mr Spring did not accept this this would be a formal investigation –

"we will call parties to ascertain the nature of the incident and what happened, as due diligence".

25. The Grievance Policy "applies to all tutors"; there are three stages – informal, where a HoD will attempt to mediate any differences; formal which requires a written complaint with a grievance hearing convened by a Director of the respondent; a right of appeal including an appeal hearing.

26. The claimant accepted in evidence that she may be offered work by the respondent but was under no obligation to accept it. However, she did not accept that there were no repercussions if she refused an offer of work.

27. The claimant says that there were "repercussions" when for personal reasons she turned down two courses offered to her in late 2022. She says that she had been allocated work in October 2022 for courses to July 2023; but after she turned down the two courses, she was not scheduled for courses starting later in the academic year. She did continue on courses she had started but says "I lost 80% of my work. Up until time I turned down classes [the respondent] gave me work every week. After turning down this work … the amount offered was reduced by 80%".

28. The records show that the claimant was not paid for any work between 17 October 2022 and 10 January 2023. The claimant then worked 15 sessions from mid-January 2023 to her last shift on 21 March 2023.

29. On 24 March 2023 the claimant was allocated one course for the period June – December 2023, Poetry Writing, commencing in October 2023 for one hour a week. She queried this, saying it was "quite unusual" not to have any Creative Writing requests. In its response the respondent did not address whether such courses were running or otherwise (claimant's additional documents).

30. The claimant believes that Creative Writing courses were being run but she was not being offered them. She points to an internal email request to her in February 2023, asking her "for information" for a student enquiring about two courses - Creative Writing for beginners and Creative Writing level 2 - which it appears from the email were already "on our site" (413). The claimant argued "so there was student demand, but programming was not giving me these classes".

31. The claimant did some work for the respondent outside of tutoring, in particular judging poetry competitions which was governed by a different rate of pay to tutoring. The pay rates were "agreed" before the work started; the amount paid depended on the number of stories which came in which required reading, it was agreed in advance that the fee would be to read four stories an hour, there was a separate fee for providing feedback. The claimant accepted that there was no guarantee that she would be given judging, which was usually an annual

competition. The claimant undertook judging in 2022, she says that she offered and accepted judging in 2023, that this was withdrawn by Mr Spring.

32. The claimant describes suffering from depression since 1997. Her medical records record depression in 2011 and 2012. There is then what the respondent describes as a "long gap" to her next GP visit for depression. Her disability impact statement states the claimant has "Combined ADHD, of which high sensitivity is a part, along with depression and anxiety". She describes this as a "lifelong" condition.

33. The claimant was diagnosed with ADHD during the course of these proceedings; it was suggested that this was not an issue for her prior to this date. The claimant disagrees, saying that she was seeking therapy in 2022. The claimant's formal diagnosis with ADHD in May 2024 states the following: the claimant "meets the DSM-5 criteria for a diagnosis of ADHD. She demonstrates impairments in all 3 domains: inattention, hyperactivity and impulsivity" (255).

34. The respondent's case is that the claimant's ADHD and mental health conditions do not have a negative effect on her, in fact she is "positive" about the effect on her. The claimant accepts that there can be positive elements, for example she is able to "hyperfocus" on her work, it can assist creativity in her writing and teaching, the way her mind jumps around can "create fulsome metaphors and images in writing". But, she says, it is a "debilitating condition"; she describes the effect on her as 80% negative and 20% positive.

35. The claimant's disability impact statement says that she can suffer panic attacks, even in supportive environments, it causes tiredness and fatigue, struggling to sleep and having panic attacks during the night; she has a 'skin-picking' disorder caused she says by stress and ADHD; she struggles to socialise.

36. The claimant describes in her evidence and her impact statement the negative elements as follows: it takes her a long time to organise executive functioning, all writing takes time, she struggles with admin tasks such that her house will become untidy and disorganised when she tries to prioritise admin.

37. The claimant describes issues with working memory, with organisational skills, that a short piece of work may need to be redrafted "80 times". She describes much of writing, including admin "as a real struggle". She says she constantly misplaces items, that she needs to plan to set off for, say, a class as early as possible "If my class is at 6.30 pm, I will be in area at 5.00, I have to plan the whole day to achieve this".

38. The respondent argues that the claimant's hyperfocus means she is able to do her role, her day-to-day activities, well, that there is no substantial effect on her day-to-day activities. The claimant disagrees, that while one of the effects is hyperfocus and attentivity, others include "hyperactivity and compulsivity". This means that

while she is able to focus hard, if she is distracted she will then focus on that distraction, she is unable to focus back on the task at hand. She says that her hyperactivity can be seen as "enthusiasm and bright" but it can equally affect her negatively. The claimant argues that while she could do her job well, it was often to the exclusion of all else in her life – she has had "zero" work life balance in her life because of the effect of her conditions.

39. The claimant gave the following example: when she was having to deal with her Mum's estate, she was unable to deal with anything else but this "this is all I was doing, this was all I could do" at this time; she says the effect of her condition means that she can only concentrate on one thing at a time. This, she says, became such a problem she sought assistance from MIND. This is also why she sought time off from her tutoring in October 2023.

40. The claimant referred to difficulties with noise, that if she is in a room with loud conversation, she will leave the room, she describes being startled easily – as she put it to Mr Spring she can easily "jump out of her skin". She says that she sufferers from tiredness and fatigue as a consequence.

41. The respondent's case is that being able to hyperfocus is not an impairment, that needing time to plan and put together long documents is "no more than anyone would say about admin, or topics they're not interested in. The claimant disagreed, arguing that there are "holes" in her concentration, that her attention goes.

Closing arguments

42. Mr Bidnell-Edwards and the claimant made closing arguments. I address their arguments in the conclusions section below.

The law – employment status

43. Equality Act 2010 s.83 Interpretation and exceptions

> (1) …
> (2) "Employment" means—
> a. employment under a contract of employment, a contract of apprenticeship or a contract personally to do work;
> …

44. Pimlico Plumbers Ltd v Smith [2017] EWCA Civ 51: The applicable principles for a requirement for personal performance:
    (1) "Firstly, an unfettered right to substitute another person to do the work or perform the services is inconsistent with an undertaking to do so personally.
    (2) Secondly, a conditional right to substitute another person may or may not be inconsistent with personal performance depending upon the

conditionality. It will depend on the precise contractual arrangements and, in particular, the nature and degree of any fetter on a right of substitution or, using different language, the extent to which the right of substitution is limited or occasional.

(3) Thirdly, by way of example, a right of substitution only when the contractor is unable to carry out the work will, subject to any exceptional facts, be consistent with personal performance.

(4) Fourthly, again by way of example, a right of substitution limited only by the need to show that the substitute is as qualified as the contractor to do the work, whether or not that entails a particular procedure, will, subject to any exceptional facts, be inconsistent with personal performance.

(5) Fifthly, again by way of example, a right to substitute only with the consent of another person who has an absolute and unqualified discretion to withhold consent will be consistent with personal performance."

45. *Uber BV v Aslam [2021] UKSC 5:* The Autoclenz 'realities' test should be applied; Carmichael v National Power Ltd [2000] IRLR 43 requires tribunals to determine status from an analysis of all the relevant facts:

> " … Autoclenz shows that, in determining whether an individual is an employee or other worker for the purpose of the legislation, the approach endorsed in the Carmichael case is appropriate even where there is a formal written agreement … This does not mean that the terms of any written agreement should be ignored. The conduct of the parties and other evidence may show that the written terms were in fact understood and agreed to be a record, possibly an exclusive record, of the parties' rights and obligations towards each other. But there is no legal presumption that a contractual document contains the whole of the parties' agreement and no absolute rule that terms set out in a contractual document represent the parties' true agreement just because an individual has signed it."
>
> The Uber drivers were workers because: remuneration was fixed by Uber; all other contractual terms were drafted by Uber; once logged into the app, the choice of work was subject to constraints by Uber, including penalties; Uber provided all technology; Uber collected all the fares.

46. Addison Lee Ltd v Gascoigne UKEAT/0289/17: A cycle courier was a worker because (i) the written documentation did not reflect the reality of the relationship and so it was possible to look behind it; (ii) the reality was that once the app was switched on there was an expectation that the individual would take any job offered, meaning there was sufficient mutuality to establish the possibility of worker status: (iii) whether they were workers or otherwise becomes an analysis of all of the relevant facts - the multi-factorial test.

47. Addison Lee Ltd v Lange UKEAT/0037/18: private hire drivers were workers, because once they had logged on as available for work, they had to have a good reason for refusing an offered assignment, or be subject to sanctions – once logged on “there was an obligation for the driver to accept bookings and an underlying obligation to do some work for the Respondent."

48. Independent Workers' Union of Great Britain v Roofoods t/a Deliveroo TUR1/985/2016: Deliveroo delivery riders are not 'workers' within TULR(C)A 1992 s 296 because the evidence showed that there had been examples of actual substitution in the past which, although not common, meant that the clause could not be dismissed as a sham.

49. Stuart Deliveries Ltd v Augustine [2021] EWCA Civ 1514: Issues for a tribunal to consider include whether or not the right to delegate is fettered, and whether or not the right to substitute is really intended to be used.

50. Staffordshire Sentinel Newspapers Ltd v Potter [2004] IRLR 752: there can be a distinction between a limited power to delegate (especially where limited to instances of illness or other incapacity) and a general power exercisable at the individual's will.

The law – disability

51. Equality Act s.6 Disability

(1) A person (P) has a disability if—
a. P has a physical or mental impairment, and
b. the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities

52. Equality Act s.212 **General interpretation**

(1) In this Act—

…
substantial” means more than minor or trivial.

53. Guidance on matters to be taken into account in determining questions relating to the definition of disability

- A3: The term mental or physical impairment 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.

- A5: disability can arise as a consequence of a range of impairments including - 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

- 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 more than would be produced by the sort of physical or mental conditions experienced by many people which have only minor effects. A substantial effect is one that is more than a minor or trivial effect.

- 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.

- 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.

- 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.

54. Aderemi v London and Southeastern Railway Ltd UKEAT/0316/12, [2013]: "… what a Tribunal has to consider is an adverse effect, and that it is an adverse effect not upon his carrying out normal day-to-day activities but upon his ability to do so. Because the effect is adverse, the focus of a Tribunal must necessarily be upon that which a Claimant maintains he cannot do as a result of his physical or mental impairment. Once he has established that there is an effect, that it is adverse, that it is an effect upon his ability, that is to carry out normal day-to-day activities, a Tribunal has then to assess whether that is or is not substantial. … Section 212(1) of the Act means more than minor or trivial. In other words, the Act itself does not create a spectrum running smoothly from those matters which are clearly of substantial effect to those matters which are clearly trivial but provides for a bifurcation: unless a matter can be classified as within the heading "trivial" or "insubstantial", it must be treated as substantial. There is therefore little room for any form of sliding scale between one and the other."

55. Paterson v Commissioner of Police of the Metropolis [1997] IRLR 763: The correct approach for deciding on the severity of a condition involves inquiry as to 'how the individual carries out the activity compared with how he would do it if not suffering the impairment. If that difference is more than the kind of difference one might expect taking a cross-section of the population, then the effects are substantial. In addition, day to day activities can encompass “the activities which are relevant to participation in professional life”.

56. Sobhi v Commissioner of Police of the Metropolis [2013] EqLR 785: a loss of memory about events in the past may have be a “relatively small gap in past remote memory” may not affect the day to day functioning of her memory nor did it have any implications for her ability to perform her role; notwithstanding this, that loss of memory had an adverse and long term effect on any activity of hers which required her to recall events during this period, in this case this was an activity which impacted on her effective participation in her professional life.

57. Banaszczyk v Booker Ltd [2016] IRLR 273, EAT: An employee with a back condition meaning he could lift and move items weighing up to 25kgs but not the pick rate of 210 cases per hour. The EAT found that the back condition rendered his work rate slower, which hindered his full participation in his working life, meaning he was disabled.

58. Constable of Norfolk v Coffey [2019] EWCA Civ 1061: the phrase “normal day to day activities” should be given an interpretation which encompasses the activities which are relevant to participation in professional life.

59. Patel v Oldham Metropolitan Borough Council [2010] IRLR 280: “cause is not relevant to establishing an impairment, but … requires the establishment of a causative link between an impairment and the adverse effect”.

60. J v DLA Piper UK LLP [2010] EAT IRLR 936: There is a legitimate distinction between a case where a person suffers from low mood and anxiety due to clinical depression which would amount to an impairment under the DDA, and where the same symptoms were a reaction to an adverse life event, which would not amount to an impairment for the purposes of the DDA 1995.

61. Igweike v TSB Bank Plc [2020] IRLR 267, EAT, the substantial effect on normal day-to-day activities may be established if there is a requisite effect on normal day-to-day or professional or work activities, even if there is none on activities outside work or the particular job.

62. Leonard v Southern Derbyshire Chamber of Commerce [2001] IRLR 19 EAT: an individual may be able to accomplish many normal day-to-day activities, but who is unable to sustain an activity over a reasonable period of time because of tiredness

associated with her depression, including finding domestic tasks difficult to achieve within a normal time span, may be a disabled person.

63. Ahmed v Metroline Travel Ltd ULEAT/0400/10: "As a matter of principle it is impermissible for an Employment Tribunal to seek to weigh what a Claimant can do against what he or she cannot do and then determine whether or not the Claimant has a disability by weighing those matters in the balance".

64. Ministry of Defence v Hay UKEAT/0571/07: A Tribunal may find a person is disabled based on all the symptoms they identify, even if they are not all medically attributable to a particular illness. As long as each party is aware of the principal allegations to be made, for examples symptoms referred to in pleadings and statements, all symptoms may be relied on.

Conclusions on the evidence and law

Employee status

65. Mr Bidnell-Edwards argues that the claimant does not meet much of the irreducible minimum requirements in Ready Mixed Concrete of the requirement for personal service; mutuality of obligation and control over the claimant. He argues there is a "very loose relationship", with no control of the curriculum or the contents of the lessons. The respondent does not train, or observe, it is "taken for granted" that they can perform the role.

66. I accept that there are some factors which may point away from s.83 employee status. For example, there is little control by the respondent in the subject of the course, the information given in lessons, how they are delivered, beyond a requirement that tutors teach the course competently and do not gain negative feedback.

67. I note also that in contemporary workplaces professionals may have a significant degree of autonomy other their work and how they do it, that this may not be inconsistent with s.83 employee status.

68. There is however a degree of control over tutors by the respondent, for example the grievance process – tutors can complain or be the subject of a grievance which includes a formal process. In addition, there is a performance-related process: as Mr Spring agreed there would be discussion with the tutor and assistance to improve. I conclude that if the tutor chose not to engage with a grievance or performance process, the likelihood is they would not be booked again. This fact – a requirement to engage with an internal process as a precondition of gaining future bookings – is not inconsistent with worker status, but it is not consistent with genuine self-employment.

69. I accept that the claimant was booked on fewer courses after she turned down two courses; the claimant wasn't booked on any courses beyond March 2023,

despite courses being advertised to prospective students. While there may have been operational difficulties within the respondent as described by Mr Spring, the claimant was given one course, which suggests that the issue with booking had been resolved; the claimant was not told at this time of any difficulty with booking tutors, her request for details of Creative Writing courses being run was ignored.

70. The claimant concludes that a significant reason she was not booked to tutor other courses was because she turned down courses. I accept on balance, given the claimant was booked on one course and received no information on why she was not booked on Creative Writing courses, that there were no operational difficulties at this time. I accept that the claimant's explanation is more likely than not to be a significant reason. There was therefore a fetter on the claimant's right to accept or reject work with the respondent without penalty.

71. A significant reason for my conclusion the claimant is a s.83 employee is the clear fettering of the claimant's right to substitute her labour. While tutors' contracts give a right to substitute, I conclude that once the tutor has accepted a course, if they substitute for a reason the respondent deems unacceptable or if they substitute too often, they are unlikely to be offered courses in the future. In practice, the claimant's very qualified right to substitute falls into the third example given in Pimlico Plumbers, above.

72. I conclude that the right to substitute became, in practice, a very qualified and very occasional right for a reason acceptable to the respondent, i.e. sickness or an emergency. But even exercising this qualified right may lead to less work in future. The evidence for this can be seen in Mr Spring's email in 2021 – the reasons for and the amount of absence will be considered in allocating courses.

73. In practice therefore, if a tutor wanted a continuing relationship with the respondent, they would not substitute someone to do their role unless on grounds of sickness or emergency; and substitution for these reasons could well have a detrimental effect on future bookings.

74. I conclude that this is not a genuine substitution clause, it has significant penalties attached if it is exercised. In practice the respondent wanted personal service during each course and would not tolerate substitution unless in very occasional and exceptional circumstances.

75. For these reasons: the fettering of any right to substitute without penalty, the fettering of the right to turn down courses without penalty, plus the respondent's degree of control over quality, and the requirement to be subject to grievance and harassment procedures if, say, an allegation is made against that tutor, I find that the claimant was a worker of the respondent as defined in s.83 Equality Act 2010.

Disability

76. I conclude that the claimant has during the period of her employment with the respondent a mental health condition which causes a substantial effect on her day-to-day activities. The condition is ADHD, combined with symptoms of anxiety and depression. The claimant has referred to ADHD, being an 'extremely sensitive person' as well as symptoms of depression and anxiety in her impact statement; the respondent has been able to challenge her account.

77. The respondent mounted no sustained challenge to the contents of the claimant's impact statement. I accept as accurate the claimant's account of the effect of the medical conditions on her day-to-day activities. I accept that she had more than minor – substantial – difficulties with being aware of passing of time, meaning that to be at, say, work on time, she needed to engage in extensive planning, and left home far earlier than she needed – a system of ADHD and anxiety.

78. I accept that the claimant took significantly longer organising many of the essential aspects of her life, including work as a tutor and personal admin, such that she had no time to organise or participate in social activities, again a substantial adverse impact on day-to-day activities.

79. I accept that the claimant's ADHD causes inattentiveness, leading to forgetfulness, meaning that many work-related and domestic tasks took far longer than they otherwise would. I accept that the claimant had panic attacks, often at night, causing tiredness which further exacerbated symptoms of ADHD.

80. The respondent argues that many of the claimant's struggles relate to her writing, that such struggles with artistic endeavours are not the same as a substantial effect on day-to-day activities. I accept that such struggles are not necessarily related to a disability. However, the claimant describes writing 80 drafts of a short story; I accept that the claimant's symptoms of ADHD means that it may take her far longer to finalise a creative piece of work that it would have otherwise taken her. This effect is also present in non-creative work, i.e. admin described above, it is not because of the nature of the claimant's work as a writer.

81. The claimant describes some symptoms which occurred after termination of her engagement with the respondent. I accept that her symptoms were worse during this period, however the test is whether the claimant was disabled during the material period, and I have concluded from the substantial effect on her day-to-day activities during her engagement with the respondent that she was a disabled person throughout this period.

Employment Judge Emery

27 November 2024

Judgment sent to the parties on:

28 November 2024

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For the Tribunal:

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