THE INDUSTRIAL TRIBUNALS

CASE REFS: 5323/18
17546/18

CLAIMANT: **Peter Kelly**

RESPONDENTS: **1. Department for Communities**
2. Department of Finance

JUDGMENT

The Tribunal unanimously concludes that at all times material to his claim, the claimant was not a disabled person within the meaning of the Disability Discrimination Act 1995. The Tribunal therefore has no jurisdiction to determine his complaints. The claimant's complaints are therefore dismissed in their entirety against both respondents.

CONSTITUTION OF TRIBUNAL

Employment Judge: **Employment Judge Browne**

Members: **Mr T Carlin**
Mr E Grant

APPEARANCES:

The claimant was represented by Mr T Warnock, Barrister-at-Law, instructed by McKeowns Solicitors.

The respondents were represented by Ms Leona Gillen, Barrister-at-Law, instructed by the Departmental Solicitor's Office.

ISSUES AND EVIDENCE

1. The agreed legal issues in this case are:-

   (i) At all times material to this claim was the claimant disabled as defined by the Disability Discrimination Act 1995?; if so;

   (ii) Was the claimant directly discriminated against on the ground of his disability?;

(iii) What are the relevant provisions, criteria, or practices ("PCP") for the purposes of the claimant's claim for failure to make reasonable adjustments?;

(iv) Was the claimant placed at a substantial disadvantage by any relevant PCP?

(v) If the claimant was placed at a substantial disadvantage by any relevant PCP, did the respondents fail in the duty to make reasonable adjustments?

2. Determination of issues (ii) to (v) therefore can only be made if issue (i) is resolved in the claimant's favour, giving rise to a statutory duty upon the respondents. Notwithstanding the fact that the respondents since 2016 had categorized the claimant as disabled for the purposes of managing his sickness absence, they disputed at the hearing that the claimant was in fact disabled for the purposes of the legislation and case law applicable to a Tribunal hearing.

3. It therefore was the claimant's responsibility to satisfy the Tribunal on the balance of probabilities that he was at the material time disabled within the meaning of the 1995 Act ("DDA").

4. The claimant, now aged 38, has since his teenage years suffered from episodes of anxiety, depression, and obsessive compulsive disorder. He initially qualified as a school teacher, but he then commenced working for the Civil Service in 2007, starting as an Administrative Officer in Pensions Branch until 2012, when he moved at the same grade to the Appeals Service until 2016. During his time employed by the Civil Service, he had a number of prolonged absences from work prior to the absence commencing on 12 September 2016.

5. In September 2016, he started sick leave due to work-related stress, and he has not returned to work since that time. He was found to be unfit to work until May 2018, when an Occupational Health doctor recommended that he could only return with permanent adjustments being made.

6. The claimant points to the fact that the respondents categorised him from 2016 as being disabled, due to his mental health issues, which he contends should be a significant factor in determining whether or not the respondents then complied with their duty to make reasonable adjustments.

7. The respondents' case is that it is for the Tribunal to weigh the medical and other relevant evidence, to determine whether or not it concludes that the claimant was at the material time disabled within the meaning of the 1995 Act.

8. The first sick note presented by the claimant was based upon what he had informed his GP was "stress", which he reported was work-related, which formed the basis of the reason given for his continued future sickness absence.

9. In consequence of that situation, following the respondents' Sickness Absence Policy, the claimant was sent a Stress Questionnaire. The claimant did not complete and return it, and on 1 November 2016, again in accordance with the respondents' Sickness Absence Policy, the claimant was contacted by his line manager, to obtain reasons for his absence.

10. To that end, a further Stress Questionnaire was sent to the claimant on 25 November 2016, but the claimant responded on 2 December 2016 by saying that he would not be returning it, as he had instead prepared a written document for the Occupational Psychologist ("OP"), to whom he had been referred on 28 November 2016, as part of his Occupational Health ("OH") assessment process.

11. The claimant was examined by the OP on 19 January 2017, who completed his report to OH on 21 February 2017. On 3 April 2017, the respondents sought an update from OH, to supply to them with a copy of the OP report. They were informed by OH that the claimant was sent a copy of that report on 7 March 2017, but, as a result of his written response to it in early April 2017, including feedback and suggestions for amendments, the OP spent further time liaising with the claimant, and was due to send him an amended copy in mid-April 2017.

12. A written document, comprising fourteen typed pages, was received by the respondents from the claimant on 14 February 2017. The Tribunal noted that this was an extremely detailed document, and included a number of bespoke, carefully considered requests for adjustments to enable him to agree to return to work. The Tribunal noted that those proposed adjustments, as set out in detail by the claimant, were strikingly similar to those which later appeared in the OP's initial report, appearing in the claimant's document some three weeks before he was supplied with his copy.

13. The claimant's detailed, focused document also contained an unsparing critique of the respondents' work processes and structure, as well as his unfavourable opinions of his colleagues' ability and work ethic.

14. It also is of note that, at the end of his first consultation with his psychiatrist Dr Paul in January 2019, the claimant provided him with a twenty-eight page document titled "points for consideration by consultant psychiatrist", setting out his difficulties and their impacts on his mental health.

15. The Tribunal noted in that regard the claimant's five pages of detailed handwritten notes made on the same day as he had a lengthy telephone conversation with Ann Valentine from the respondents' HR team, in response to his allegations contained in the claimant's written document of 14 February 2017.

16. There were numerous other examples during the claimant's absence on sick leave of his handwritten notes of lengthy telephone calls made or received by him, during which there was no evidence of any indication from him or those he spoke to that he had or required any third party assistance to make his points or to answer queries.

17. The evidence also included a significant number of detailed emails from the claimant, including a complex claim regarding what he asserted should be his annual leave entitlement, accrued during his sickness absence.

18. Whilst the claimant stated that he had at times received considerable assistance from his long-term partner in compiling written communications, it was uncertain as to what extent. The Tribunal was mindful that the detailed information contained therein could only have come from the claimant, either from his recollection, or from written records made and compiled by him over time.

19. On 15 August 2017, the claimant was sent a letter, inviting him to attend an Inefficiency Sickness Absence review meeting on 1 September 2017.

20. Four days later, 20 August 2017, the claimant emailed a letter and accompanying seventeen page email, declining to attend the review meeting. That document was, by any standard, extremely detailed and wide ranging. It included further, closely argued criticisms of his colleagues, and of the respondents' management practices, cross-referenced to how he perceived these as adversely affecting his wellbeing.

21. The claimant concluded his email by stating that the examples already included were not exhaustive, and that more could be provided by him, if necessary. This was taken by the Tribunal to mean that the claimant was indicating that he either had compiled and kept written records of episodes at work, or that he could provide them from memory.

THE APPLICABLE LAW

22. The meaning of "disabled person" is set out in Section 1 of the Disability Discrimination Act 1995 (hereinafter called the DDA) which provides that:-

> *"(1) Subject to the provisions of Schedule 1, a person has a disability for the purposes of this Act if he has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.*
>
> *(2) In this Act "disabled person" means a person who has a disability."*

Section 2 of the DDA provides in relation to past disabilities:-

> *"(1) The provisions of this Part and Parts II and III apply in relation to a person who has had a disability as they apply in relation to a person who has that disability. ...*
>
> *(4) In any proceedings under Part II or Part III of this Act, the question whether a person had a disability at a particular time ("the relevant time") shall be determined, for the purposes of this section, as if the provisions of, or made under, this Act in force when the act complained of was done had been in force at the relevant time. ...*

(5) The relevant time may be a time before the passing of this Act".

Section 3 of the DDA enables the Secretary of State to issue guidance about the matters to be taken into account in determining a number of issues likely to arise in disability discrimination cases, including whether an impairment has a substantial adverse effect on a person's ability to carry out normal day-to-day activities; or whether such an impairment has a long-term effect.

Section 3(3) of the DDA provides that a tribunal or court determining, for any purpose of this Act, whether an impairment has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities, shall take into account any guidance which appears to it to be relevant.

Paragraph 4(1) of Schedule 1 to the DDA provides that an impairment is to be taken to affect the ability of the person concerned to carry out normal day-to-day activities only if it affects one of the following:-

(a) mobility; manual dexterity;

(c) physical co-ordination;

(d) continence;

(e) ability to lift, carry or otherwise move everyday objects;

(f) speech, hearing or eyesight;

(g) memory or ability to concentrate, learn or understand; or

(h) perception of the risk of physical danger.

(i) taking part in normal social interaction; or

(j) forming social relationships.

23. Sub-articles 4 (i) and (j) were added to the DDA pursuant to the Autism Act (Northern Ireland) 2011. The parties disagreed over their applicability to the mental condition of the claimant in this case.

24. The tribunal considered the following case law:- ***Morgan v Staffordshire University [2002] IRLR 190 EAT***; ***Hospice of St Mary of Furness v Howard [2007] IRLR 944***; ***Abadeh v British Telecommunications PLC [2001] IRLR 23 EAT***; ***Goodwin v Patent Office [1999] ICR 302 1999 IRLR 4 EAT***; ***ChacÓn Navas v Eurest Colectividades SA [2006] IRLR (ECJ), C-13/05***.

25. In deciding whether a person has a disability within the meaning of the Act, the tribunal must address the four questions set out in the case of **Goodwin v The Patent Office 1999 IRLR 4**, namely:-

Does the claimant have an impairment which is either mental or physical?

Does the impairment affect the claimant's ability to carry out normal day-to-day activities in one of the respects set out in Schedule 1 Paragraph 4(1) of the 1995 Act and does it have an adverse effect?

Is the adverse effect substantial?

Is the adverse effect long term?

The onus is on the claimant to prove that he has or had a disability within the meaning of the 1995 Act at the time of the alleged discriminatory act which gave rise to his complaint (the relevant time). The respondent disputed that the claimant had such a disability.

The duty to make reasonable adjustments arises by virtue of Section 4A of the 1995 Act. It provides:-

> *"(1) Where –*
>
> *(a) a provision, criterion or practice applied by or on behalf of an employer; or*
>
> *(b) any physical feature of premises occupied by the employer places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the employer to take such steps as it is reasonable, in all the circumstances of the case, for him to take in order to prevent the provision, criterion or practice, or feature, having that effect.*
>
> *(ii) The factors to be taken into account by a court or tribunal in determining whether it is reasonable for a person to have to take a particular step in order to comply with a duty to make a reasonable adjustment and a non-exhaustive list of examples of reasonable adjustments are set out at Section 18B of the Act, and we do not repeat them here. Whether something is a reasonable adjustment is for tribunal to decide, objectively, on the facts of the particular case. (See:* ***Smith v Churchill Stairlifts PLC [2006] IRLR 41 CA****.)"*

26. Also, the making of a reasonable adjustment does not lead to the situation where everything remains the same for a claimant (***Taylor v Dumfries & Galloway CAS [2007] SLT 425***.)

27. The duty to make reasonable adjustments is extremely wide in scope. This is clear from the judgment of Baroness Hale in ***Archibald v Fife Council [2004] IRLR 65***.

> *"It is … common ground that employers are only required to take those steps which in all the circumstances it is reasonable for them to have to take. Once triggered, the scope of the duty is determined by what is reasonable, considered in the light of the factors set out in Schedule 6(4) …*

*(iii) Regard must also be had to the guidance given to tribunals in **Environment Agency v Rowan [2008] IRLR (EAT)** where His Honour Judge Serota stated, at paragraph 27, that a tribunal considering a claim that an employer has failed to make a reasonable adjustments must identify:-*

"(a) the provision, criterion or practice applied by or on behalf of an employer; or

(b) the physical feature of premises occupied by the employer; or

(c) the identify of non-disabled comparators (where appropriate); and

(d) the nature and extent of the substantial disadvantage suffered by the claimant. It should be borne in mind that identification of the substantial disadvantage suffered by the claimant may involve a consideration of the cumulative effect of both the 'provision, criterion or practice applied by or on behalf of the employer and the physical feature of premises', so it would be necessary to look at the overall picture."

"In our opinion, an employment tribunal cannot properly make findings of a failure to make reasonable adjustments without going through that process. Unless the employment tribunal has identified the four matters we have set out above, it cannot go on to judge if any proposed adjustment is reasonable. It is simply unable to say what adjustments were reasonable to prevent the provision, criterion or practice, placing the disabled person concerned at a substantial disadvantage."

*(i) The tribunal reminded itself before considering the burden of proof that direct evidence of discrimination (of any type) is rare and courts and tribunals will frequently have to infer discrimination from the facts which they have found. Furthermore, we have kept in mind in reaching our decision that discrimination in the particular context of disability can often take place where an employer makes assumptions, based on stereotypes, about a person's disability. (See : **Aylott v Stockton-on-Tees BC [2010] EWCA Cir 90 CA**.*

(ii) Section 17A(1C) sets out the burden of proof in disability discrimination cases. Following the now common formula set out in legislation outlawing other forms of discrimination, it provides as follows:-

"Where, on the hearing of a complaint, under sub-section (1), the complainant proves facts from which the tribunal could, apart from this sub-section, conclude in the absence of a adequate explanation that the respondent has acted in a way which is

unlawful under this Part, the tribunal shall uphold the complaint unless the respondent proves he did not so act."

(iii) *In **Igen Ltd (formerly Leeds Careers Guidance) and Others v Wong; Chamberlain Solicitors and Another v Emokpae; and Brunel University v Webster [2005] IRLR 258**, the Court of Appeal in England and Wales has set out guidance on the interpretation of the statutory provisions shifting the burden of proof in cases of sex, race, and disability discrimination. This guidance is now set out in full at an Annex to the judgment in the **Igen** case. We therefore do not set out again in full, but have taken it fully into account.*

(iv) *In short, the claimant must prove facts from which the tribunal could conclude in the absence of an adequate explanation that the respondent has committed an unlawful act of discrimination. The tribunal will also consider what inferences it is appropriate to draw from the primary facts which it has found. Such inferences can include inferences that it is just and equitable to draw from the provisions relating to statutory questionnaires, a failure to comply with any relevant Code of Practice, or from failure to discover documents or call an essential witness.*

If the claimant does prove facts from which the tribunal could conclude in the absence of an adequate explanation from the respondent that the latter has committed an unlawful act of discrimination, then the burden of proof moves to the respondent. To discharge that burden the respondent must show, on the balance of probabilities, that the treatment afforded to the claimant was in no sense whatsoever on a proscribed ground (here disability). The tribunal must assess not merely whether the respondent has provided an explanation for the facts from which inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that disability was not a ground for the treatment in question. Since the facts necessary to prove an explanation will normally be in the possession of a respondent, a tribunal will normally expect cogent proof to discharge the burden of proof.

(v) *Although the above logically establishes a two-stage process, it is not to be applied slavishly or mechanically, and in deciding whether the claimant has made out a prima facie case the tribunal must put to one side the employer's explanation for the treatment, but should take into account all other evidence, including evidence from the employer. (See : **Laing v Manchester City Council [2006] IRLR 748 EAT; Madarassy v Nomura International Ltd [2007] IRLR 246; and Arthur v Northern Ireland Housing Executive and Anor [20070] NICA 25**.)*

(vi) *These cases were considered by HM Court of Appeal in Northern Ireland in **Curley v Chief Constable of the Police Service of Northern Ireland and Anor [2009] NICA 8 and Nelson v Newry & Mourne District Council [2009] NICA 24**.*

In the former, Coughlin LJ at paragraph 16 of his judgment emphasised the need for tribunals hearing cases of this nature to keep firmly in mind that such claims are grounded upon an allegation of discrimination (in that case religious discrimination). This was re-emphasised by Girvan LJ at paragraph 24 of the judgment in the latter case.

(vii) *More specifically, in relation to the duty to make reasonable adjustments, the burden of proof was considered in* ***Project Management Institute v Latif [2007] IRLR 579****. In Harvey on Industrial Relations and Employment Law, the position is summarised as follows:-*

> *"… [T]he EAT held that a claimant must prove both that the duty has arisen, and also that it has been breached, before the burden will shift, and require the respondent to prove that it complied with the duty. There is no requirement for claimants to suggest any specific reasonable adjustments at the time of the alleged failure to comply with the duty; in fact it is permissible … for claimants to propose reasonable adjustments on which they wished to rely at any time up to and concluding the … hearing itself."*

28. As Brian Doyle in his leading text book 'Disability Discrimination Law and Practice' stated at Paragraph 2.4.3:-

> "Expert evidence of what the claimant can and cannot do (and the circumstances of that capacity) will be important. Often this will be in the form of a report or evidence from a medical specialist (such as a consultant or an occupational health professional). However, the tribunal must not delegate the decision as to what are normal day-to-day activities to the expert witness. That is a judicial decision, to be arrived at using basic common sense, in the light of the evidence, the statute and the revised guidance. But there is a Catch 22 for many claimants in arguing that they are sufficiently disabled to be covered by the DDA 1995, but not so disabled as to be prevented from carrying out, for example, the duties of employment. Yet, as a matter of principle, evidence of the nature of the claimant's duties of work and the way in which they are performed can be relevant to the assessment of whether the claimant is a disabled person. (***Law Hospital NHS Trust v Rush [2001] IRLR 611; Cruickshank v VAW Motorcast Ltd [2002] IRLR 24*** duties while at work will often encompass normal day-to-day activities. At the very least, evidence of ability or inability to carry out normal day-to-day activities while at work goes to the credibility of any evidence that those activities cannot be carried on outside work (or can only be done so with difficulty)." The Equality Commission for Northern Ireland Disability Code of Practice Employment and Occupation indicated day to day activities, which is not defined, are activities which are carried out by most people on a fairly regular and frequent basis and was not intended to include activities which are normal only for a particular person. In ***Patterson v Commissioner of Police of the Metropolis (2007) IRLR 763***, it was held if the impairment is of the kind described in Paragraph 4 of schedule 1 that it is almost inevitable it will have an adverse effect on normal day to day

activities. In the 2010 guidance, in GB, reference is made, in so far as may be of interest for these proceedings:-

"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."

29. Following Patterson it is apparent that evidence about what an individual could or could not do at work can be particularly relevant if some of his or her activities constitute what most would regard as 'normal day to day activities'. In Patterson, it was held that in order to give full effect to European law the term normal day to day activities had to be read so as to encompass the activities which are relevant to participation in professional life. Generally, therefore, normal day to day activities do not include work of any particular kind because no particular form of work is 'normal' for most people.

30. This issue of disability is for the tribunal to determine on the basis of the available evidence and experts cannot usurp the tribunal's role. The tribunal, in light of the foregoing, first requires to assess whether, as a general proposition, the activities in question are normal day to day activities and, if so, the tribunal should then assess whether, in the particular case, the claimant's ability to undertake these activities is substantially adversely affected by the relevant impairment.

MEDICAL EVIDENCE

31. Both parties provided expert medical evidence from consultant psychiatrists, who gave evidence to the Tribunal. The claimant instructed Dr Raymond Paul; the respondents instructed Dr Gerard Loughrey. In short, each provided separate reports and a later joint psychiatric report, but ultimately, they could not agree as to whether or not the claimant was disabled within their understanding of the wording of the DDA.

32. Both experts agreed that the Claimant suffered from a generalised anxiety disorder, which was an historic, longstanding condition, the origins and manifestation of which pre-dated the work-related stress in this case. Both experts agreed that there was, "an element of Post-Traumatic Stress to early life traumas which has contributed to the obsessive-compulsive traits evident." It was therefore agreed that this was a long-term condition.

33. Dr Loughrey, however, concluded that, in his professional opinion, the claimant is not disabled for the purpose of Section 1 DDA, as his examination of the claimant revealed no evidence of an impairment of concentration, learning or understanding, on the basis that his mental state examination revealed no findings of cognitive impairment, and the claimant made no such complaints to him. Dr Loughrey and Dr Paul were agreed that there is no impairment of learning, memory or understanding that would impact upon the claimant's ability.

34. As regards concentration, however, Dr Paul qualified his conclusion by stating that there are times when the Claimant is overwhelmed, such as, at the time of compiling the joint experts' report, just a few weeks before the start of the Tribunal hearing, the claimant was finding it difficult to concentrate. In his opinion, in that situation, whilst:-

> *"… there was no impairment of learning, memory or understanding that would impact on his ability at times of stress such as experienced recently" the claimant "…would be so overwhelmed with stress, anxiety and ruminations that his concentration would be impaired sufficiently as to be considered causing a substantial adverse effect on his ability to carry out normal day to day activities."*

35. Dr Loughrey also addressed the imminent Tribunal case, in that the claimant 'feels almost overwhelmed by the circumstances of the legal case…' , quoting extracts from relevant entries from the claimant's medical notes and records, such as:

> *"Peter reported struggling to prioritise therapy currently due to the demands of paperwork involving a dispute with his current employer..."*

> *"His mental health is suffering significantly with the stress of trying to fight his case..."*

36. It was the respondents' case that the expert evidence made it clear that, whilst the Tribunal proceedings were a situational stressor, they post-date the timeframe of the claims, and are external to his work-related complaints.

37. When asked about the effect of the impairments upon the Claimant's memory or ability to concentrate, learn or understand, Dr Loughrey concluded that:-

> *"These impairments have no significant effect on the claimant's ability to concentrate or to understand or to learn, or any effect on his memory, other than making him somewhat slower than the average person. I would imagine that this could be tested by evidence of the material that he has sent, and how he has dealt with correspondence".*

38. The claimant argued that the addition of paragraphs 4(i) and 4 (j) by the Autism Act 2011 ought also to apply to his case.

39. The Tribunal found little mention of this in the evidence, but Dr Loughrey addressed it briefly in his written opinion. He stated that the claimant's "ability to form social relationships is impaired by his sensitivity, which is predominantly a post-traumatic phenomenon. There is no indication of any impairment arising from a condition on the autistic spectrum".

40. Dr Paul made no specific reference to the contents of paras 4 (i) or (j) as being separate measures of a diagnosis of disability, either as autistic traits or with reference to the claimant's condition. Nor was it asserted that Dr Loughrey had incorrectly assessed those criteria only in the context of possible autism, rather

than, as was advanced in the claimant's submissions, as being of more wide-ranging effect than being confined to autism.

41. If the Tribunal concludes that the claimant did not satisfy it regarding paragraphs 4(1)(g), (i) or (j) then the statutory definition of disability is not met.

42. Having determined and examined the relevant law, the tribunal proceeded to apply it to the facts found.

CONCLUSIONS

43. The Tribunal concluded that the experts' opinions provided no clear path towards determining the question of the claimant's disability. Only Dr Paul, the claimant's nominated expert witness, considered that he was in fact disabled, under paragraph 4 (g), but even that finding was based upon the claimant's presumed difficulties in dealing, for example, with this impending Tribunal case. It was of note that, in his examination of the claimant in January 2019, specifically noted that "there was no evidence of cognitive impairment".

44. Dr Paul also expressed the opinion that he the claimant's mental health difficulties "appear to be largely due to his perception of how things are being managed and progressed on the background of his pre-existing difficulties".

45. Dr Paul did not set out in what way the undoubted pressure on anyone in that situation specifically adversely affected the claimant's ability to carry out day-to-day activities. Other than being temporarily distracted, as an unsurprising result of his personal anxieties, which appeared to the Tribunal to form the springboard for his reaction to any form of challenge, the Tribunal concluded that such a time-specific situation was unlikely to provide a sound basis for a determination that the claimant was disabled.

46. Other than, for example, alluding to being "snappy" there was no clear evidence from the claimant that he was so incapacitated in his day-to-day activities (over and above the impact on his daily life) to the point where the Tribunal could confidently accept that he was thereby disabled for the purposes of the DDA.

47. In order to assess the extent of the observable effects of the claimant's mental condition upon his ability to "memory or ability to concentrate, learn or understand", the Tribunal agreed with Dr Loughrey in his written opinion, that examination of written materials from the claimant would be a useful additional tool for the Tribunal panel to apply in its consideration of those criteria.

48. The Tribunal was mindful of the fact that the claimant compiled most, if not all, of those documents away from the stresses of the workplace; and he also had considerable assistance from his partner.

49. The Tribunal concluded however that the length and complexity of the principal documents, for example, his ET1 complaints to the Tribunal; his submissions to the respondents around his OH examinations; his twenty-eight page (unseen) note to Dr Paul; his detailed response to the OP initial report; and his correspondence

about his unpaid annual leave and holiday entitlement, were clear indicators of someone who has a marked ability to concentrate, focus and articulate in a manner which substantially eroded any notion that he is disabled within the Tribunal's interpretation of the legislation. The contents of those documents included not just a recital of events, but included articulate expression of their applicability to the respondents' policies and their implementation.

50. In addition, the Tribunal had the benefit of observing the claimant while he was giving evidence. The Tribunal concluded that there was no evidence that the claimant was autistic, so, if that was the only application appropriate for paras 4 (i) and (j), no finding of disability could be made on those grounds. The Tribunal further concluded that, even if the scope of those paras could properly be opened up to cases with no finding of autism, the evidence in this case fell well short of that to be expected in order to make such a finding.

51. The claimant was regularly described by those who examined him as being pleasant and as engaging fully in their conversations. This was reinforced to the Tribunal in the claimant's demeanor during the hearing. Whilst he had the benefit of regular breaks during the hearing, the Tribunal detected nothing in his presentation which would sit with any degree of ease with what mighty reasonably be expected to conform with paras 4 (i) and (j).

52. The claimant also has had a lengthy and supportive relationship with his partner, and the only reported interpersonal conflicts are with management and colleagues seem to be generated by workplace issues. The claimant's sensitivities around how he is perceived by others appeared to the Tribunal to be inextricably arising from his anxiety issues, rather than as a separate, core part of his mental health issues.

53. The Tribunal therefore concluded that the claimant has failed to satisfy it that he is disabled for the purposes of the DDA. His claim is therefore dismissed in its entirety against both respondents

Employment Judge:

Date and place of hearing: 6-10 January 2020 and 3-4 August 2021, Belfast

This judgment was entered in the register and issued to the parties on: