



EMPLOYMENT TRIBUNALS

Claimant: Katie (Robin) Gatt
Respondent: London Brunel International College

RECORD OF A PRELIMINARY HEARING

Heard at: Watford **On:** 3 February 2025
Before: Employment Judge Reindorf KC

Appearances

Claimant: In person
Respondents: Ms S Dervin (counsel)

JUDGMENT

1. The Claimant was not a disabled person by reason of anxiety and depression at the relevant times (for the purposes of s.6 of the Equality Act 2010).
2. The question of whether any of the complaints were presented outside the relevant time limit will be determined at the Final Hearing.

WRITTEN REASONS

INTRODUCTION

3. The Claimant was employed by the Respondent from 7 December 2020 until they resigned with effect on 22 December 2023. By a claim form presented on 3 January 2024, following a period of early conciliation from 2 to 3 January 2024, the Claimant brings complaints of constructive unfair dismissal, direct

and indirect disability discrimination, failure to make reasonable adjustments, indirect sex discrimination, victimisation and harassment. The Respondent defends the claims.

4. The issues for the present hearing include:
 - 4.1. whether the Claimant was a disabled person by reason of anxiety and depression at the relevant times (for the purposes of s.6 of the Equality Act 2010); and
 - 4.2. whether particular complaints of disability related harassment were presented outside the time limits for the presentation of claims and if so whether time should be extended on the just and equitable basis.

DISABILITY

5. In the ET1 the Claimant relied on two disabilities: adenomyosis and anxiety and depression. In the ET3 the Respondent neither admitted nor denied that either condition amounted to a disability for the purposes of s.6 EqA. Following disclosure of medical evidence and a disability impact statement, the Respondent conceded by email on 19 June 2024 that the Claimant's adenomyosis amounted to a disability within the Act at the relevant times. In that email the Respondent gave reasons why it did not accept that the Claimant's anxiety and depression amounted to a disability.

The law on disability

6. By s.6 of the Equality Act 2010 ("EqA"):
 - (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.
7. Sch 1, Part 1 EqA contains the "long-term condition":
 - (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.
8. The burden of proof is on the Claimant to show on the balance of probabilities that he was, at the material times, disabled within the meaning of s.6 EqA (*Morgan v Staffordshire University* [2002] IRLR 190 EAT).

9. There is a four-step approach to determining whether the Claimant was a disabled person by reason of a mental impairment (*Goodwin v Patent Office* [1999] ICR 302):
 - 9.1. Did the Claimant have a mental impairment? Tribunals should be aware of the distinction between clinical depression on the one hand and a reaction to adverse life circumstances on the other (*J v DLA Piper* [2010] ICR 1052). The duration of the illness may assist in distinguishing between the two.
 - 9.2. Did the impairment affect the Claimant's ability to carry out normal day to day activities? The Claimant must provide evidence of the "normal day-to-day activities" which he claims to be less able to carry out (*Mutombo-Mpania v Angard Staffing Solutions Ltd* UKEATS/0002/18 (17 July 2018, unreported)). "Normal day-to-day activities" include ordinary tasks or activities of daily life, such as walking, cooking, shopping or socialising. It may encompass activities which are relevant to participation in working life (*Chief Constable of Norfolk v Coffey* [2019] EWCA Civ 1061 CA). The focus is on the activities that the person cannot do, rather than those they can do.
 - 9.3. Was the adverse condition substantial? A "substantial" adverse effect is one which is "more than minor or trivial" (s.212(2) Equality Act 2010)
 - 9.4. Was the adverse condition long term? This is to be assessed by reference to the facts and circumstances existing at the date of the alleged discrimination (*Richmond Adult Community College v McDougall* [2008] IRLR 227 CA; *All Answers Ltd v W* [2021] IRLR 621 CA). The Tribunal should ask whether at the time it "could well happen" (see paragraph C3 of the statutory "Guidance on Matters to be Taken into Account in Determining Questions relating to the Definition of Disability" (2011)); *Boyle v SCA Packaging Ltd* [2009] IRLR 746). It is possible to satisfy the long term condition by showing that the mental impairment had fluctuating effects which were likely to recur beyond 12 months after onset. In these cases the Tribunal would expect to see evidence of an underlying condition.
10. By Sch 1 para 5 EqA the effect of any treatment or correction of an impairment should be disregarded in determining whether the impairment amounts to a disability. The Tribunal should consider whether the impairment would be likely to have a substantial adverse effect but for the treatment or correction (*SCA Packaging Ltd v Boyle* [2009] ICR 1056 HL).
11. Expert medical evidence is not always necessary but it is more likely to be necessary in cases involving mental impairment. In such cases, the difference between a reaction to adverse life events and a clinical illness may be too subtle to discern without expert assistance: *RBS v Morris* (UKEAT/0436/10/MAA). It is "very much a matter for qualified and informed medical opinion": *Morgan v Staffordshire University* [2002] IRLR 190 EAT.

Conclusions on disability

12. The Claimant relied on evidence relating to a period of mental ill health in 2016 and a later period in 2022 / 2023. In 2016 the Claimant had been signed off work sick with a “mood disorder” and “depression”. There is another reference to depression in the Claimant’s medical records for this period. There is no other documentary evidence relating to this period.
13. I cannot draw any reliable conclusions from the evidence about the Claimant’s mental ill health in 2016. It is insufficient to show that the Claimant had an underlying condition which was likely to recur.
14. The Claimant adduced a little more documentary evidence relating to the later period of mental ill health in 2022 / 2023. They submitted an appointment letter for CBT from Hillingdon Talking Therapies on 9 November 2022 and an assessment offer from SPECTRA for counselling on 19 April 2023. In cross-examination the Claimant said that they could have asked their counsellor to provide a statement or some notes of the sessions attended, but was unable to explain why this had not been done in advance of this hearing.
15. In addition, the Claimant relied on their medical records which recorded “reactive depression (situational)” on 4 January 2023 and “adjustment disorder” on 9 January 2023. There was also a fit note for the period 6 February 2023 to 13 February 2023 for “adjustment disorder (work related stress)”. The OH report of 7 February 2023 stated that the Claimant’s “panic attacks and emotional issues will persist and escalate if she returns to on-site work”.
16. On 23 June 2023 the Claimant scored 20 on a Generalised Anxiety Disorder assessment, but did not adduce any expert evidence to interpret this score.
17. The Claimant was prescribed Sertraline from January 2024.
18. From the medical evidence provided, I am unable to conclude that the Claimant was suffering from an impairment within the meaning of s.6 EqA at the relevant time. Whilst I do not doubt that the Claimant was suffering from mental and emotional distress, the medical evidence adduced points considerably more strongly to an adverse reaction to life events than to anything akin to a clinical illness.
19. Even if the Claimant suffered from an impairment in 2022 / 2023 I cannot conclude from the medical evidence that, at that time, the long term condition was satisfied. There is no evidence as to the Claimant’s prognosis other than the OH report, which does not give any time frame for the Claimant’s recovery.
20. Finally, I do not have sufficient evidence of the effects of the Claimant’s anxiety and depression on their ability to carry out normal day to day activities to be able to say that it was a substantial one. The evidence on this point in the Claimant’s disability impact statement did not relate to the relevant time, but to the present time.

21. In these circumstances, I cannot conclude that the Claimant has shown that they were a disabled person for the purposes of s.6 EqA at the relevant time by reason of anxiety and depression.

THE TIME POINT

The law on time limits

22. A complaint of discrimination contrary to the EqA must be presented within three months of the act complained of, allowing for ACAS Early Conciliation (s.123 EqA). By s.123(3) EqA conduct extending over a period is to be treated as done at the end of the period.
23. The essential features of an act extending over a period are that:
 - 23.1. the alleged incidents are linked to each other; and
 - 23.2. they are not a series of isolated and unconnected acts; and
 - 23.3. they are evidence of a continuing discriminatory state of affairs; and
 - 23.4. the Respondent is responsible for that ongoing situation or state of affairs as a result of what it has done or omitted to do in the direction and control of the organisation.

(See *Lyfar v Brighton and Sussex University Hospitals Trust* [2006] EWCA Civ 1548 CA, *Hendricks v Commissioner of Police for the Metropolis* [2003] ICR 530, *Aziz v FDA* [2010] EWCA Civ 304).
24. The indicia of a set of isolated and unconnected acts – the reverse of an act extending over a period – may include the fact that they are committed by different people in different places over a long period (*Aziz*).
25. The Tribunal may extend time for the presentation of the claim if it would be just and equitable to do so (s.123(3) EqA). This is a broad discretion and a matter of fact and judgment (*Chief Constable of Lincolnshire Police v Caston* [2010] IRLR 327 CA). The factors to take into account are set out in *British Coal Corp v Keeble* [1997] IRLR 336.

Conclusions on time limits

26. The Respondent argued that the Claimant's complaints of disability related harassment in late 2022 / early 2023 were a discrete set of complaints which could not be said to form part of a course of conduct with the complaints about other matters, and that they were presented out of time.
27. I concluded that without hearing the evidence in the case I am unable to reach any decision as to whether these complaints were so separate from the other matters complained of that the Tribunal should decline jurisdiction to hear them at this stage in the proceedings. The claim is a complex one relating to a large number of matters, several of which go back to 2022 and some of which are factually connected to the disability related harassment complaints in question.

28. I therefore conclude that the question of whether these complaints were presented within the relevant time limit should be determined at the Final Hearing, along with any other remaining time points.

Approved by
Employment Judge Reindorf KC
Date 7 February 2025
Sent to the parties on:
11/2/2025
N Gotecha
For the Tribunal Office

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