



# EMPLOYMENT TRIBUNALS

**Claimant** Ms M Reilly

**Respondent** Maximus UK Services Limited

**Heard at:** Exeter ( by CVP)

**On:** 3 September 2024

**Before:**

**Employment Judge Goraj**

**Representation**

**The Claimant:** in person.

**The Respondent:** Miss M Polimac, Counsel

## RESERVED JUDGMENT FOLLOWING A PRELIMINARY HEARING

**The judgment of the Tribunal is that:-** the claimant was a disabled person by reason of dyslexia at all relevant times for the purposes of section 6 of the Equality Act 2010.

## REASONS

### BACKGROUND

1. By a claim form presented to the Tribunals on 6 September 2023, the claimant (date of birth – 25/01/1961) brought complaints of unfair dismissal and disability discrimination. The claimant, who was at all relevant times a registered medical practitioner, states on her claim form that she was employed by the respondent between 20 September 1999 and 23 May 2023 as a functional assessor. The claimant subsequently confirmed at the hearing

that she contended that her employment with the respondent ended on 30 May 2023.

2. The claimant commenced the ACAS Early Conciliation process on 28 July 2023 and the EC certificate was issued by ACAS on 29 August 2023.
3. The claimant contended in her claim form that she was a disabled person for the purposes of section 6 of the Equality Act 2010 (“the 2010 Act”) by reason of dyslexia.
4. The allegations are denied by the respondent including, in response to the disability discrimination claim, that the claimant was at any relevant time a disabled person for the purposes of the 2010 Act by reason of dyslexia.

#### **The case management hearing on 29 February 2024**

5. This matter was the subject of a case management hearing (“CMPH”) on 29 February 2024 and the associated Order is at pages 69 -83 of the bundle which was prepared for this hearing (“the bundle”). This matter was listed at that time for a **final hearing for 5 days commencing on 18 November 2024** (including to determine any extant disability discrimination claim). The Tribunal also clarified the Issues in this case and listed the matter for a Preliminary Hearing to determine any ongoing dispute as to disability with associated directions.
6. The Tribunal recorded in the Order that the claimant was bringing claims of disability discrimination pursuant to sections 15 and 20/21 of the 2010 Act (discrimination arising from the claimant’s disability and failure to make reasonable adjustments). The Order recorded that:-
  - (1) The unfavourable treatment relied upon by the claimant for the purposes of section 15 of the 2010 Act is the claimant’s dismissal . The Order recorded that it was the claimant’s case that her dismissal arose in consequence of her disability of dyslexia as she was dismissed for poor performance which further arose because it was difficult for her to maintain the speed and quality of her written work because of her dyslexia.
  - (2) The Order further recorded, in respect of the claimant’s claim that the respondent had failed to make reasonable adjustments, that the PCP relied upon for such purposes was that the claimant had to deliver work within set time frames and of a set quality and that this placed her under a substantial disadvantage compared to someone without her disability as the claimant needed more time / adjustments/ assistance to deliver her work (because of her dyslexia).

7. The claimant subsequently provided a Disability Impact Statement, which is at pages 84 – 86 of the bundle.
8. The respondent subsequently confirmed its position on disability as stated in its email dated 11 April 2024 (at page 87 of the bundle) in the light of such statement. In summary, the respondent accepted that the claimant had dyslexia at all relevant times and that it was a long-term condition. The respondent did not however accept that the condition had a substantial adverse effect on the claimant's normal day to day activities. The respondent confirmed at this hearing that its position continues to be that, on the evidence, the claimant's condition is mild and that its effects on the claimant's ability to carry out normal day to day activities are no more than minor or trivial.
9. The purpose of this Preliminary Hearing is therefore to determine the Disability issue and to deal with any further case management issues. It was agreed, on the basis of the Issues as set out in the Order, that the relevant dates of the alleged acts of disability discrimination are from 31 January 2023 to 30 May 2023 (although, as confirmed above, the respondent accepts the long term nature of the claimant's dyslexia).

### **Documents**

10. The Tribunal has been provided with the bundle which includes the Disability Impact Statement from the claimant referred to above. This statement has been treated as the claimant's witness statement for the purpose of this Preliminary Hearing and the claimant gave evidence to the Tribunal accordingly. The Tribunal has also had regard to the pleadings in this case which were not included in the bundle.

### **The conduct of the hearing**

11. The claimant had difficulties connecting to the Preliminary Hearing which, with assistance of the Tribunal / her persistent, she was able to resolve. The technical difficulties delayed the start of this Preliminary Hearing and this Judgment was therefore reserved.
12. The claimant was asked whether she required any reasonable adjustments to assist her participation in the Preliminary Hearing but indicated that she did not require any specific adjustments other than that she might require matters to be clarified during the course of the hearing.

### **FACTS**

13. The following facts are made by the Tribunal strictly for the purposes of the Disability Issue.

14. The claimant, who was at all relevant times a registered medical practitioner, worked for the respondent/its predecessors as a medical assessor completing benefit assessments from 1999.
15. The claimant was first diagnosed with dyslexia in May 2018, at the age of 57, following a referral to occupational health by the respondent's predecessors in the light of the difficulties which the claimant was experiencing at work as referred to in the claimant's End of Year Review for 2017/2018. The End of Year Review, which is at pages 35 – 48 of the bundle, recorded that the claimant had been on a formal performance plan for quality and performance since November 2017. It was further recorded that the claimant's average case duration for a Workplace Capability Assessment ("WCA") was 90 minutes which was significantly outside business expectations and that notwithstanding the formal performance improvement plan which had been in place since November 2017 there was no indication that timings were being reduced.

### **Dyslexia Diagnostic Assessment**

16. Pursuant to such referral, the claimant underwent an assessment by Lexxic (adult dyslexia and neuro differences psychological services) in April 2018. Their dyslexia diagnostic assessment report dated 4 May 2018 ("the Lexxic Report") is at pages 5-31 of the bundle.
17. The Lexxic Report advised that:-

"Dyslexia is a specific learning difficulty that mainly affects the development of literary and language related skills. It is likely to be present at birth and to be life- long in its effects. It is characterised by difficulties with phonological processing, rapid naming, working memory, processing speed, and the automatic development of skills that may not match up to an individual's other cognitive abilities (British Dyslexia Association)" and

"Executive function is a set of mental skills that help get things done and are controlled by the frontal lobe in the brain. Executive function helps someone; manage time, pay attention, switch focus, plan and organise, and remember details"
18. The Lexxic Report recorded that the claimant had advised that the assessment had been initiated because of the difficulties which she had experienced using a computer-based system to complete assessments and that her main area of difficulty was with the speed of working whilst maintaining accuracy as she reported taking longer to complete r tasks than her colleagues. The Lexxic Report also recorded that the claimant had reported a number of further difficulties including that she struggled to get her ideas down in writing at speed and had difficulties with time management.

19. The claimant underwent a series of diagnostic tests for the purposes of the Lexxic Report. Details of the outcome of the tests which the claimant underwent are at pages 12 -18 of the bundle. In brief summary, the claimant was scored from average ( in 3 areas) to very superior/ Upper Extreme compared with her peers across the diagnostic tests (pages 12 -18 of the bundle).
20. Overall, the Lexxic Report recognised that the claimant had very superior cognitive processing capabilities in verbal comprehension and superior cognitive processing capabilities in perceptual reasoning, working memory and processing speed in comparison with her peers. The Lexxic Report also advised however that in the light of the claimant's performance on attainment tasks in comparison with the claimant's overall cognitive abilities, the claimant had a specific learning difficulty- namely dyslexia which it described as mild in severity. The Lexxic Report further advised that the claimant had also shown difficulties with executive functioning (page 8 of the bundle).
21. The Lexxic Report advised that the claimant had shown what it described as “ a significant difference at the 0.05 level between her Verbal Comprehension ability, and with her Processing Speed and Working Memory. This shows that she has difficulties processing both auditory and visual information within her short-term memory”. The Lexxic Report further recorded that the claimant had reported difficulties with her visual short term memory including that she struggled to complete computer based assessments accurately at speed and that she had also reported difficulties concentrating with background noise (page 7 of the bundle).
22. The Lexxic Report further advised that the claimant “also shows a significant difference at the 0.05 level between her Verbal Comprehension ability and her Perceptual Reasoning. She had difficulty with tasks that assess nonverbal fluid reasoning and the ability to mentally organise visual information Performance on these tasks also may be influenced by visual spatial perception and visual perception – fine motor coordination, as well as planning ability”. The Lexxic Report further recorded that the claimant had reported life long difficulties with time management and organisation including that she was often late for events and struggled with losing items (page 7 of the bundle)
23. The Lexxic Report further advised that the claimant showed difficulties with phonological processing and decoding of sounds in words that were unfamiliar and complex and with reading sight words at speed in comparison to her overall Verbal Comprehension ability level.

24. The Lexxic Report made a number of recommendations going forward (page 19 of the bundle) including that the claimant should obtain a phone based Workplace assessment to identify the support she needed within her job role together with online training to assist the claimant in managing her difficulties, coaching to support the claimant in her job role, the provision of coloured overlays and text to speech software and training. The Lexxic Report further recommended considering giving the claimant (subject to the examining board's discretion) the option of 25% extra time when completing examinations.

#### **The Occupational Health Report dated 25 June 2018**

25. The claimant was the subject of an associated occupational health report dated 25 June 2018 ("the OH Report") which is at pages 32 – 33 of the bundle. The OH Report recorded that the claimant had been referred for an occupational health review in the light of her recent diagnosis of mild dyslexia. The OH Report, which was prepared by a Consultant Occupational Physician, also recorded that the referral had stated that the possibility of a possible diagnosis of dyslexia had been raised as a result of identified performance issues and that this had led to the diagnosis of mild dyslexia and associated recommendations for future working.
26. The OH Report recorded a discussion with the claimant regarding the work being undertaken by her and the difficulties which she reported experiencing when undertaking WCA's on the LIMA (computer) platform. The OH Report further recorded that it appeared that concerns had been raised regarding the claimant's work on WCAs including that it was recognised that she was taking longer to complete the required assessments than was normally allowed and that after trying to work faster quality concerns were raised with regard to her output.
27. The OH Report endorsed the recommendations for future working which had been made in the Lexxic Report and in addition, suggested the consideration of a possible permanent reduction in targets with respect to WCA work given that the claimant was suffering from a permanent condition which acted as a barrier to her achieving what had been requested in the time allocated together with the possibility of a reduction in workload/ the allocation of less WCA work in preference to other areas covered by her job role in respect of which the author of the OH Report was unaware of any performance concerns.

#### **The claimant's End of Year Review for 2017/ 2018**

28. The claimant underwent an End of Year Review for 2017/2018. The associated review document, which is at pages 35-48 of the bundle, recorded concerns regarding the quality of the claimant's WCA work and her referral for testing for dyslexia.

### **The claimant's further work review**

29. The claimant underwent a further work review towards the end of 2018, the associated Review form dated 29 January 2019 is at pages 49 – 56 of the bundle. The review form recorded the ongoing difficulties which the claimant was experiencing completing WCA assessments including that although the claimant's average case duration on WCA was 92 minutes ( 75minutes plus 25% accommodation for her dyslexia) she was still unable to achieve the reduced target of 5 cases a day and that the quality of her reports was below expectations. The review form also recorded that the claimant was reliably on time for her sessions and completed her mandatory training within required time scales.

### **Workplace Assessment Review**

30. The claimant was the subject of a Workplace assessment and associated subsequent report ("the WA Report") by a disability assessor from Ability First in January 2023. The WA Report, the copy of which is undated in the bundle but which the Tribunal understands is dated 31 January 2023, is at pages 57 - 61 of the bundle.

31. In brief, summary the WA Report summarised the background to the claimant's situation including that she was experiencing ongoing difficulties achieving work targets notwithstanding previous adjustments and was currently only achieving 2 assessments per day. The WA Report recorded that the claimant reported that the barriers centred round her typing speed and accuracy and that she spent excessive time editing reports. The WA Report further recorded that the claimant speculated that the impact of her dyslexia on her typing ability and thought to manual output processing speed might be the reason for her inability to achieve her targets and that she anticipated that if she was able to improve the speed of her written work then the spoken element of her assessment would also become more efficient as she would have momentum in her work.

32. The disability assessor recommended that the claimant be provided with the text software Dragon Naturally Speaking to allow the claimant to dictate her written work in order to improve its efficiency. It was further recommended that the claimant be provided with two half day technical training sessions on Dragon and that the adjustment be reviewed after three to six months in order to determine whether additional support was required. The disability assessor also recommended the preparation of a disability passport for the claimant. In April/May 2023 the claimant discussed her work difficulties with the disability needs assessor during the training sessions during which he recommended to the claimant further strategies such as the use of mind maps/spider diagrams and colour coding to reduce the demand on her working memory.

### Other matters

33. The claimant described in her Disability Impact Statement / oral evidence the difficulties which she had experienced at work by reason of her dyslexia including, in particular during the last two years of her employment with the respondent, when she said that her work was focused on WCA work by telephone. The claimant further described that this activity, involved writing real time reports on the computer whilst talking with the client on the telephone and which meant that the information had to be processed quickly with the production of a typed live report. The claimant contended that this magnified the impact of her dyslexia as she found it difficult to undertake this process accurately at speed including as it involved the reading and processing of multiple and often lengthy documents at speed. The Tribunal accepts the claimant's evidence regarding such matters which are consistent with the difficulties previously identified in the Lexxic Report including regarding the claimant's processing speed and working memory and associated difficulties with processing auditory and visual information within her short-term memory.
34. The claimant also described in her Disability Impact Statement / oral evidence the difficulties which she says she experienced in her non work related day-to-day life by reason of her dyslexia. The claimant described difficulties which she experienced sending text messages including that this had led to misunderstandings with people when arranging to meet and that she used emails in preference as she could compose and edit them more clearly. The claimant also described the difficulties which she had experienced with regard to reading and the management of administrative tasks. The claimant described how it typically took her two to three months to finish a paperback novel. The claimant also described how she undertook administrative tasks by telephone wherever possible, used a blackboard for keeping shopping lists (which she then photographed) and used different coloured pens and drew pictures on her calendar to help her to memorise things. The claimant also described difficulties with time management which she said had made her late for social arrangements and disrupted travel plans including missing a ferry because she had lost track of time. The claimant accepted however that she was able to attend for work on time including when it was necessary for her to travel to different venues. The Tribunal accepts that the claimant experienced the contended difficulties as described above which are consistent with the matters identified in the Lexxic Report including in respect of the claimant's difficulties with executive functioning.

### SUBMISSIONS

35. The Tribunal has had regard to the oral closing submissions of the parties which are summarised briefly below.



### The respondent's submissions

36. The respondent confirmed that it accepted that claimant had dyslexia and that it was a long-term condition (including at the agreed relevant times of 31 January 2023 to 30 May 2023). The respondent also confirmed that it had had knowledge of the claimant's dyslexia since May 2018. The respondent however disputed that the claimant's dyslexia, which had been diagnosed as "mild dyslexia" had had, at any relevant time, a substantial adverse effect on her ability to carry out normal day to day activities for the following reasons:-

- (1) The claimant's (mild) dyslexia does not meet the requisite substantial adverse effect for the purposes of section 6 of the 2010 Act as amplified by Section B of the Guidance on matters to be taken into account in determining questions relating to the definition of disability 2011 ("the Guidance") and in particular, paragraphs B1 – B3 and B7 together with the examples of matters which it would and would not be reasonable to regard as having such an effect. The claimant's difficulties do not for example, constitute a persistent and significant difficulty in reading or understanding written material. Further, minor problems with writing and spelling including, an inability to fill in a long detailed technical document and an inability to concentrate on tasks requiring application over several hours, are cited as examples in the Guidance of factors which it would not be reasonable to regard as having a substantial adverse effect on normal day to day activities.
- (2) This case is distinguishable from the authority of **Paterson** in which it was accepted that Mr Paterson was placed at a substantial disadvantage compared with his peers with regard to his participation in the examination process for promotion and required 25% extra time.
- (3) In this case the Tribunal should focus on the things that the claimant says that she can and cannot do as addressed below.
- (4) Reading – the Lexxic Report found that although the claimant had difficulty in some areas her ability was average or above that of her peers. Further, it is stated in the Appendix to the Guidance that it would not be reasonable to treat minor problems with writing or spelling as having a substantial adverse effect on normal day to day activities.
- (5) Again the Lexxic Report found no significant issues with regard to the claimant's writing skills.
- (6) The claimant's evidence with regard to use of a shopping list – the claimant did not show how this was related to her dyslexia / how it had a substantial adverse effect on her normal day-to-day activities.
- (7) The claimant's evidence regarding the use of a calendar - again, it was not clear how the claimant contended that this related to her

dyslexia and/or or how it had a substantial adverse effect on her normal day-to-day activities.

- (8) The claimant's evidence regarding her alleged difficulties with time management- the examples which the claimant gave did not relate to her day to day-to-day activities / only happened on limited occasions. It is clear from the review for 2017/2018 (at page 39 of the bundle) that the claimant was able to time manage in general terms. Further the manager's comments in the subsequent disability assessment (at page 54 of the bundle) indicate that the claimant did not have any time management issues which could constitute a substantial adverse effect on the claimant's normal day-to-day activities.
- (9) The claimant's evidence regarding the use of mind maps -the Lexxic Report does not support the claimant's evidence that she had a problem with her working memory. The Lexxic Report (at page 13 of the bundle) states that the claimant performed better than approximately 93% of her peers in this area.
- (10)The claimant's evidence regarding texts - the claimant has not explained how this relates to her dyslexia or how it amounts to a substantial adverse effect on their normal day-to-day activities.
- (11)The main focus of the claimant's case is on the completion of WCAs. The claimant contends that she was able to perform other benefits assessments well. The crux of the claimant's difficulties with the WCA assessments relate to the difficulties which the claimant had in operating the LIMA computer platform which is not related to the claimant's dyslexia / did not have a substantial adverse effect on the claimant's normal day-to-day activities.
- (12)It is not clear why the claimant was allowed to reduce the number of WCAs. The difficulties which the claimants encountered with regard to the WCAs were not because of her dyslexia including as the evidence does not substantiate the claimant's contentions that the problems which she had in relation to the WCAs were related to speed.

37. The respondent further contended that, in all the circumstances, the claimant had not established that her dyslexia had more than a minor or trivial effect on her normal day-to-day activities and had therefore failed to establish that her dyslexia had the necessary substantial adverse effect on her normal day to day activities as required for the purposes of section 6 of the 2010 Act.

### The claimant's submissions

38. In summary the claimant made the following submissions:-

- (1) The Lexxic Report identified difficulties in the claimant's working memory and made various recommendations including coaching to support the claimant with the management of her dyslexia.
- (2) The Tribunal's attention is drawn to paragraph 68 of the Paterson case and in particular, that the proper basis for establishing whether the disadvantage was substantial is to compare the effect on the individual of the disability by considering how he/ she carries out the activity compared with how he/ she would do it if not suffering the impairment.
- (3) The difficulties which the claimant experienced with regard to reading and writing is with respect to the processing of information at speed which is because of her dyslexia.
- (4) Time management - the claimant would leave early in the morning to make sure that she got to any venues on time
- (5) The Lima platform - the issue is not the computer system but the difficulties which the claimant experienced completing the assessments at speed by reason of her dyslexia as was recognised by the OH recommendations regarding the coaching and dragon software.
- (6) The shopping list by way of the use of the blackboard/ colour coding on calendar – the claimant has been using these for a long time as they seem to help her to manage her dyslexia.
- (7) The claimant had been able to deal with face to face assessments. The claimant's difficulties with the assessments intensified when she was required to undertake telephone assessments for WCA which were magnified because of her difficulties in processing information at speed. This was why the claimant was referred back to occupational health in 2023. This is supported by the fact that when the claimant undertook assessments by way of physical examinations she had no problems as the process proceeded at a slower pace because of the physical assessment and because a bigger percentage of time was allowed for the preparation of the associated report.
- (8) The respondent's comments regarding the claimant's writing and reading are taken out of context.

### THE LAW

39. The Tribunal has had regard in particular to the following statutory and associated provisions: -

- (1) Sections 6, 15, 20, 21, 39 and Schedule 1 to the 2010 Act.

- (2) The Guidance (including the list of factors contained in the Guidance which it would be reasonable/ not reasonable to regard as having a substantial adverse effect on normal day to day activities).
- (3) The following legal authorities: -

**Goodwin v the Patent Office [1999] IRLR 4 EAT.**  
**Paterson v The Commissioner of the Police for the Metropolis [2007] UKEAT/0635/06/ LA EAT.**

40. In summary, the Tribunal has reminded itself in particular of the following: -

- (1) It is for an applicant/ employee to establish that they were at the relevant time, a disabled person for the purposes of section 6 of the 2010 Act. The relevant time is the date of the alleged act/s of disability discrimination (in this case the agreed relevant period is 31 January 2023 to 30 May 2023 albeit that the respondent in any event accepts that the claimant's condition was long term) and the evidence should be considered accordingly.
- (2) Where disability is in dispute the Tribunal should adopt a structured approach to the issue namely: - (a) did the claimant have a physical or mental impairment at the relevant time (b) did the impairment have an adverse effect on the claimant's ability to carry out normal day to day activities (which may include the claimant's activities at work) (c) is the adverse effect substantial. Substantial for such purposes means more than minor or trivial (c) is the effect long term. In this case the respondent accepts that the claimant had (mild) dyslexia at all relevant times( and that it is therefore a long term condition) but disputes that it had a substantial adverse effect on the claimant's normal day to day activities.
- (3) The guidance contained in the Guidance including :-
  - (a) A5 – a disability can arise from a wide range of impairments including dyslexia.
  - (b) B1 (meaning of “substantial adverse effect” ) and B2 (the time taken to carry out an activity), B3 and B7/ B10 (modification of behaviour).
  - (c) D3 ( day to day activities) together with D4, D8, D10 and D19.
  - (d) The Appendix to the Guidance setting out matters which it would and would not be reasonable to regard as having a substantial adverse effect on the carrying out of normal day to day activities.

(4) The guidance contained in the EAT authority of **Paterson** including that although the Judgment predates the 2010 Act ( and therefore considers the provisions of predecessor Disability Discrimination Act 1995 ) and that there are factual differences between the cases, it nevertheless continues to provide useful guidance on the question of whether an impairment such as dyslexia had a substantial adverse effect on the ability to carry out normal day to day activities in the context of professional work activities. The Tribunal has had regard in particular to paragraphs 22,24, 26, 27,32, 68 and 70. (including that when assessing the adverse effect what is required is to compare the difference between the way in which the individual in fact carries out the activity in question and how he/ she would carry it out if not impaired.

## **THE CONCLUSIONS OF THE TRIBUNAL**

41. As stated previously, the respondent accepts that the claimant had, at all relevant times, the impairment of (mild) dyslexia) and that it was/ is a long term condition. The other elements of section 6 of the 2010 Act are however disputed.
42. The Tribunal is therefore required to consider whether the claimant's condition of dyslexia had an adverse effect on the claimant's ability to carry out normal day today activities and if so, whether such adverse effect was substantial.
43. When determining this issue, the Tribunal has considered the matter in accordance with the approach advocated in the Guidance and authorities referred to above.

### **Did the impairment of dyslexia have an adverse effect on the claimant's ability to carry out normal day to day activities at the relevant time?**

44. The Tribunal has considered first whether the claimant's condition of dyslexia had an adverse effect on the claimant's ability to carry out normal day to day activities.
45. In this case the relevant normal day to day activities relied upon by the claimant are principally work related activities namely, the undertaking of WCA assessments and the preparation of associated reports together with non-work related activities such as organising administrative tasks and shopping, sending texts, and attending social events/ departing for holidays on time.

46. It is the claimant's case that she struggled to complete computer-based assessments, which formed part of her normal day to day work related activities, accurately at speed because of difficulties in particular with her processing speed and working memory because of her dyslexia. It is also the claimant's case that she has difficulties carrying out the other day to day activities identified above because of difficulties with her executive functioning by reason of her dyslexia. The respondent disputes that the claimant's dyslexia, which was diagnosed as mild, was the cause/ in any event had an adverse effect on any of the claimant's normal day to day activities as summarised in the above submissions.
47. The Tribunal has considered first whether the worked related activities relied upon by the claimant namely, the undertaking of WCA assessments and the preparation of the associated reports can properly be regarded as a normal day to day activity for the purposes of section 6 of the 2010 Act. This is disputed by the respondent who says that this is a specialised activity which falls outside the ambit of the 2010 Act.
48. After giving the matter careful consideration, the Tribunal is satisfied that the claimant's normal day to day activities included her duties as a functional assessor undertaking telephone WCAs and preparing the associated reports.
49. When reaching this conclusion, the Tribunal has taken into account that whilst the 2010 Act does not define what is to be regarded as a normal day to day activity, D3 of the Guidance states that day to day activities are "things that people do on a regular basis" with examples such as reading and writing. D3 of the Guidance further states that normal day to day activities can include general work-related activities such as using a computer and preparing written documents.
50. Further, the Tribunal is satisfied that D8 of the Guidance (relating to specialised activities) does not preclude the work undertaken by the claimant from being considered as a normal day to day activity as notwithstanding the specialised subject matter of the assessments and reports, the activities involved in the undertaking of the assessments and preparation of the reports involve normal day to day activities such as using a computer/ telephone, reading/ reviewing and preparing written documents.
51. The Tribunal has gone on to consider whether the claimant has established that her dyslexia had an adverse effect on her ability to carry out the day-to-day activities relied upon, including the work-related activities identified above, which is disputed by the respondent.
52. The Tribunal has considered first whether the claimant has established that her dyslexia had an adverse effect on her work-related activities namely, on

her ability to undertake the telephone computer based WCA assessments / prepare the associated reports accurately at speed including, for such purposes, how she carried out the activity compared with she would have done so if not having dyslexia.

53. Having given the matter careful consideration, the Tribunal is satisfied that the claimant has established that her dyslexia had an adverse effect on her ability to carry out the work-related activities identified at paragraph 52 above. The Tribunal is further satisfied that, in the light of the claimant's high level of achievement recorded in the Lexxic Report in respect of the activities not effected by her dyslexia, she would, on the balance of probabilities, have been able to carry out the telephone computer based WCA assessments and associated reports to the required speed/ standards if she had not had dyslexia.
54. When reaching this conclusion, the Tribunal has taken into account that the claimant's dyslexia was diagnosed as mild in the Lexxis Report, together with the overall high scores/ level of attainment achieved by the claimant in the tests undertaken by Lexxis. The Tribunal has also taken into account that it was recognised in the Lexxis Report that the claimant had very superior cognitive processing capabilities in verbal comprehension and superior cognitive processing capabilities in perceptual reasoning, working memory and processing speed in comparison to her peers (pages 5-31 - including at page 8 of the bundle).
55. The Tribunal has however balanced against the above, its findings concerning the nature of the difficulties experienced by the claimant when undertaking the work related WCA activities as described at paragraph 33 above which are consistent with the associated findings in the Lexxic Report. Further, it is stated in particular in the Lexxic Report (page 7 of the bundle) that the claimant showed significant differences (at the 0.05 level) between her verbal comprehension ability and her processing speed and working memory which indicated that the claimant had difficulties processing auditory and visual information within her short-term memory.
56. The Tribunal has also taken into account the associated recommendations / adjustments which were made by the respondent in respect of the claimant's work related WCA activities in recognition of such difficulties. These included the increases in time allocation / reduction in the number of assessments (including the suggestion in the OH Report ( page 33 of the bundle) that the respondent should consider a permanent reduction in the claimant's targets with respect to WCAs given that the claimant had a permanent condition which acted as a barrier to what was being asked of her in the time allocated together with a possible reduction in the number of allocated cases ). Both of these adjustments were implemented by the respondent ( 25% extra time

allocations per assessment to accommodate the claimant's dyslexia and reduced target from 6 cases to 5 case per day – page 52 of the bundle).

57. Further, the Tribunal rejects, in the light of its findings at 55- 56 above, the respondent's contention that the claimant's difficulties with the WCA9 assessments arose because of her inability to operate properly the LIMA computer system rather than her dyslexia. The Tribunal has taken into account for such purposes, that no specific LIMA related difficulties are identified in the documentation including that there is no reference to any LIMA related training being requested or offered to the claimant in the OH Report (page 33 of the bundle) or in the subsequent WA Report (pages 57 – 59 of the bundle).
58. The Tribunal has gone on to consider the effect of the claimant's dyslexia on the claimant's remaining day to day activities identified above. The Tribunal is satisfied on the evidence, that the claimant's dyslexia had at all relevant times an adverse effect on the claimant's day to day activities identified at paragraph 34 above (including compiling and sending texts, the undertaking of administrative tasks and attending social events/ holidays). When reaching this conclusion, the Tribunal has taken into account its findings at paragraph 34 above which are consistent with the findings/ conclusions contained in the Lexic Report that including that the claimant showed difficulties with executive functioning (page 8 of the bundle).
59. In all the circumstances the Tribunal is satisfied that the claimant's dyslexia had an adverse effect on her ability to carry out normal day to day activities for the purposes of section 6 of the 2010 Act.

**Were such adverse effects substantial ?**

60. The Tribunal has therefore gone on to consider whether such adverse effects (or any of them) were also substantial for the purposes of section 6 of the 2010 Act.
61. When determining this matter, the Tribunal has reminded itself in particular that "substantial" is defined in section 212 (1) of the 2010 Act as "more than minor or trivial".
62. The Tribunal has also had regard to the associated guidance contained in section B of the Guidance/ the Appendix thereto and the guidance contained in the authority of **Paterson** referred to above.
63. The respondent disputes that the claimant's dyslexia had (in any event) more than a minor or trivial effect on her normal day to day activities as referred to above including by reference to the examples contained in the Appendix to the Guidance of factors which it would not be reasonable to regard as having a substantial adverse effect on normal day to day activities such as minor



problems with writing or spelling / the inability to fill in a long, detailed, technical document in a person's native language without assistance.

64. The Tribunal has considered first the claimant's work-related activities.
65. Having given the matter careful consideration, the Tribunal is satisfied that the claimant's dyslexia had a substantial, that is more than minor or trivial, effect on the claimant's ability to carry out her normal day to day work related activities relating to WCAs/ reports which as explained above involved normal day to day activities such as using a computer and reviewing and preparing written documents.
66. When reaching this conclusion, the Tribunal has taken into account the submissions of the respondent/ the matters referred to at paragraph 54 and 63 above.
67. The Tribunal has however balanced against such matters/ submissions that it was recognised in the OH Report (in the light of the findings and recommendations of the Lexxis Report ) that the claimant's dyslexia was acting as a barrier to what was being requested of her in the time allocated in respect of the WCAs which formed an important aspect of her normal day to day work related activities. Further, the claimant was accordingly permitted a 25% increase in time allocation and a reduction from 6 to 5 cases a day in recognition of such difficulties ( paragraphs 27 and 29 above and pages 33 and 50 of the bundle). Moreover, notwithstanding such adjustments the claimant was still unable to meet the respondent's requirements (page 50 of the bundle) and it is recorded in the subsequent WA Report dated 31 January 2023 (paragraph 30 above and page 59 of the bundle) that the claimant was currently achieving only 2 WCAs a day which was significantly outwith the time allocation/ standards required of the claimant and her peers.
68. The Tribunal has also taken into account that Section B2 of the Guidance ( relating to the time taken to carry out the activity) advises that "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."
69. In this case the claimant was unable, throughout the relevant period, to achieve not only the daily WCA targets (6 per day) expected of her and her peers but also the reduced target of 5 per day notwithstanding the increased time allocation/ the reduced targets permitted by the respondent in recognition of her diagnosis of dyslexia and the barriers which it caused in her ability to meet the required time allocation.

70. Further, whilst the Tribunal appreciates that the examples of factors which the Appendix to the Guidance recognises as factors which it would not be reasonable to regard as having a substantial adverse effect on normal day to day activities, (as relied upon the respondent), includes the matters referred to at paragraph 63 above. The Tribunal has also taken into account however that the factors which the Appendix to the Guidance recognises as it being reasonable to regard as having a substantial adverse effect on normal day to day activities includes a persistent and significant difficulty in reading or understanding written material because of a learning disability. The Tribunal is satisfied that this applies, as previously explained above, to the claimant's difficulties with her work related activities of preparing WCAs in accordance with the targets/ standards expected of the claimant by reason of her dyslexia.
71. Accordingly, having balanced all of the matters referred to above the Tribunal is satisfied that, having regard to the matters identified at 67 to 70 above, the claimant's dyslexia had a substantial, that is more than minor or trivial effect, on her ability to carry out her normal day to day work activities relating to the undertaking of WCA assessments / preparing the associated reports.
72. Finally, the Tribunal has considered whether the claimant's dyslexia had a substantial adverse effect on the remaining non work related day to day activities relied upon by the claimant.
73. Although the Tribunal is satisfied for such purposes that the difficulties which the claimant experienced as identified at paragraph 34 above, which were related to the claimant's difficulties with executive functioning caused by her dyslexia, had an adverse effect on the claimant's ability to carry out day to day activities such as sending texts and the carrying out of administrative tasks, the Tribunal is not satisfied on the evidence that they individually or collectively, had a standalone substantial adverse effect on the claimant's normal day to day activities for the purposes of section 6 of the 2010 Act.
74. When reaching this conclusion, the Tribunal has had regard in particular to the fact that the claimant's evidence regarding such matters was unparticularised together with the ways which the claimant had developed of mitigating such effects for example, by sending emails rather than texts and using the telephone to carry out administrative tasks. In such circumstances the Tribunal is not satisfied that claimant has established that the adverse effects of her dyslexia on her non work-related day to day activities (individually or cumulatively) were, considered on a standalone basis, more than minor or trivial. The Tribunal is however satisfied that such non-work-related difficulties, nevertheless contributed to the overall adverse effect on the claimant of her dyslexia.

75. In conclusion the Tribunal is satisfied, in the light its above findings concerning the substantial adverse effect which the claimant's dyslexia had on her ability to carry out her normal day to day work related activities namely to undertake her WCA work related activities that the claimant has established that she was a disabled person for the purposes of section 6 of the 2010 Act at all relevant times by reason of dyslexia.

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Employment Judge Goraj  
Date: 26 September 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON  
12 October 2024 By Mr J McCormick

FOR THE OFFICE OF THE TRIBUNALS

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1. Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge.
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[Practice Directions and Guidance for Employment Tribunals \(England and Wales\) - Courts and Tribunals Judiciary](#)

