Employers for Disability NI

Mental Health Case Law

McLaughlin v Charles Hurst Ltd

Case Details

Marie-Claire McLaughlin was employed since July 2012. She averaged 47.8 hrs/week including Saturday mornings. She had absences due to depression and panic attacks. She asked to reduce her hours to 40 per week because of her disability's impact on her and her colleagues. She believed it would help her cope and improve her performance. It took 14 months to consider and implement the adjustment.

Findings

The tribunal found that her request was not considered in an appropriate manner, with little or no focus on her needs and the treatment compounded and exacerbated her pre-existing condition. When the adjustments were put in place, she found it much easier to cope and had little or no absence from work.

Compensation: £11,840.00

Garner v West Yorkshire Police

Case Details

After a six-week absence due to stress and insomnia, Mr Garner had a return-to-work interview conducted by a Sergeant. When discussing how to inform colleagues of his return to work, the Sergeant commented that Mr Garner had been absent because he "went a bit doolally f*****g tap" (Army slang for 'lose one's mind') and mentioned "One Flew Over the Cuckoo's Nest". Mr Garner claimed disability harassment (unwanted conduct related to disability that has the purpose (intentionally) or effect (unintentionally) of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual).

Unintentional conduct: the tribunal must decide if it is reasonable to conclude that the definition of harassment has been met, considering the 'victim's' perception and the other circumstances of the case.

Findings

The tribunal upheld disability harassment claim. Comments were made without the intention of causing offence, however, the context was important, i.e. the Sergeant determining how his return to work would be communicated. Mr Garner perceived the Sergeant's remarks as being derogatory and negative about his stress-related illness. As this made him feel awkward and uncomfortable, it was reasonable to find that the definition of harassment had been satisfied.

The employer did not take reasonable steps to prevent discrimination – last equal opportunities training was in 2006.

NB: Return to work interviews: care about choice of words, up-to-date training is needed.

Hall v IBC Vehicles Limited

Case Details

Mr Hall had post-traumatic stress disorder and chronic depression. Over the years adjustments were made to accommodate his condition but as a result of an incident following an anxiety attack where Mr Hall acted in an intimidating manner (crying, shouting and throwing things) he was found guilty of gross misconduct and subsequently dismissed. Mr Hall claimed disability discrimination.

Findings

The tribunal stated it was "odd" that, while Mr Hall had been accommodated over a period of several years, the respondent then handled the investigation and disciplinary process in an unyielding manner. The respondents should have considered lessons from his treatment and depression over the years. Suggestions made by Mr Hall and his representatives that he be treated as a disabled person in relation to the incident were rejected. The tribunal found that the provisions of the DDA should have been considered rather than applying normal disciplinary rules. **They directly discriminated against Mr Hall and failed to make reasonable adjustments.** The tribunal found that Mr Hall was "very upset" by the way he was treated and awarded £10,000 injury to feelings. A medical report submitted to the tribunal suggested that Mr Hall's severe condition was exacerbated by the respondent's conduct. In recognising the extent to which the respondent's conduct made the pre-existing injury worse, £5,000 personal injury was awarded.

The reasonable adjustment duty is applied once an employer knows or could reasonably be expected to know that an employee has a mental health disability, because it has been told of this in the past or because of current illness, such as stress or depression, or because of particular behaviour. Even without precise details or clinical diagnosis, employers should take particular note of doctor's certificates referring to stress or depression.

While not carrying out an assessment is not unlawful (Tarbuck v Sainsbury's Supermarket Ltd [2006]), best practice indicates that through investigation, appropriate adjustments will be made and lack of investigation is not a defence to disability discrimination. Similarly, while failing to discuss reasonable adjustments with an employee does not amount to discrimination (Scottish and southern Energy plc v Mackay 2007 UKEAT/0075/06), the effectiveness of these is greatly enhanced if the employee is involved together with other relevant professionals and mental health experts.

Stress is a feature of working life in many occupations and often arises from, or is associated with, particular activities. Employees' stress levels must be recognised and ways to manage, eliminate or reduce this should be implemented.

Marriott v Rolle Medical Partnership

Case Details

Mrs Marriott started working for the respondent GP in 1989 and by 2006 had been office manager for four years working 24 hours per week. For some years she had obsessive compulsive disorder (OCD), experienced negative thoughts, was terrified these would become reality and also had physical symptoms such as nausea and sweating. Due to this she was off work from October 2005 to February 2006.

In a report to her employer, Mrs Marriott's GP stated she was making good progress, would be able to return to work gradually and suggested a four-week phased return which would enable Mrs Marriott to resume former hours without experiencing problems from the "new stress" associated with a return to work after a long absence.

Before her return she attended a return-to-work interview which was not normal practice; another employee had been allowed to resume work after sick leave without such an interview. The interview was conducted with the new practice manager, Mr Trett, and one of the practice's GPs. Mrs Marriott was not shown her GP's report but was told he had recommended she work only 10 hours a week. She was also told her position as office manager no longer existed after restructuring. She was offered either voluntary redundancy or work as a secretary for 10 hours per week at a lower rate of pay and told that these hours could be increased in the future. In a letter of 31 March 2006, Mrs Marriott confirmed the secretarial work option was not acceptable and she opted for voluntary redundancy. She then submitted a claim for unfair dismissal and disability discrimination.

Findings

The employer had argued that Mrs Marriott's employment had ended by mutual consent but the tribunal rejected this, finding she was dismissed on 22 March when Mr Trett had told her that her old job was not available. No redundancy situation existed at that time as his restructuring plan was a medium-to-long-term aim.

This had, in fact, been untrue and used as an excuse to change her terms of work.

The other employee who had returned from sick leave was an appropriate comparator for the disability discrimination claim. Her return had been facilitated by the employer. The tribunal found that the employer had dismissed Mrs Marriott on the grounds of her mental impairment thus her direct disability claim succeeded. The employer failed in its reasonable adjustment duty by not permitting the brief phased return to work.

Grylls v Guilford Timber Frame

Case Details

Ms Grylls has a serious depressive disability and paranoid schizophrenia and worked for the respondent on payroll duties and HR activities. She was informed that she was to be payroll officer with no HR role due to centralisation of that function. She brought a grievance and referred to her mental health disability. Her respondent obtained a report from her GP setting

out the diagnosis of her disability.

A discussion took place regarding the proposed changes in the HR function at which Ms Grylls became very emotional and made some remarks that concerned the respondent, e.g., that because she was disabled, she could murder one of them and get away with it. Text messages were subsequently sent from her mobile phone, one reading "blood on the carpet, blood on your hands". When questioned by the manager she questioned the competence of that manager and said words to the effect of "my job or die".

At a disciplinary hearing Ms Grylls screamed, swore, banged the table and said she would "call God". The respondent then informed Ms Grylls that she was summarily dismissed for gross misconduct due to sending the text messages and her behaviour leading up to and at the disciplinary hearing.

Findings

The respondent accepted that Ms Grylls was disabled according to the DDA. The tribunal accepted the reason for her dismissal and concluded that these reasons related to her disability, as her behaviour was related in whole or in part to, or was symptomatic of, her condition. No attempt was made to explore, appreciate, understand or manage the risk posed by Ms Grylls. There was no sound evidence for concluding that her behaviour was bad and/or was a real risk to the health and safety of others.

The disciplinary hearing and the procedure that followed was a practice that put Ms Grylls at a substantial disadvantage in that they led to her dismissal. Reasonable adjustments could have been made or considered.

Possible reasonable adjustments may have included:

- obtaining a proper assessment of the effect of her disability
- conducting a risk assessment
- assessing whether the procedure adopted was appropriate.

Such adjustments might have made the respondent consider that Ms Grylls's behaviour was linked to her disability and should not necessarily have been treated as gross misconduct.

Brooks v The Secretary of State for Work and Pensions

Case Details

Miss Brooks worked as an administrative assistant at a job centre in Manchester. This venue was being rebranded as a JobCentre Plus and Miss Brooks took on the role of "floorwalker", dealing directly with the public, some of whom could be difficult. Miss Brooks had a history of depressive disability and in the summer of 2003 took an extended period of sick leave due to depression. The respondent's occupational health adviser's report was not provided until December 2003 at which time Miss Brooks was off sick again.

Miss Brooks told her employer she did not feel able to return to her work and deal directly with the public.

Her line manager tried, but failed, to get advice from HR. No structured analysis of Miss Brook's needs, aspirations, skills or knowledge was carried out. Two posts were identified but rejected by Miss Brooks as being unsuitable. It Was wrongly assumed that she was seeking work only in the Manchester district. Other vacancies not in this district were available and could have been taken. Miss Brooks resigned.

Findings

The tribunal found that Miss Brooks was placed at a substantial disadvantage in comparison to those without her disability because, due to her disability, she could not cope with dealing directly with the public to any great degree. There were other jobs in the locality which she could have done and which should have been offered to her. She needed a transfer to a less public-facing role and help to cut through the red tape and access such jobs should have been given. Given the existence of suitable vacancies, it was reasonable to redeploy Miss Brooks.

The respondent was found to have "hopelessly failed" to make reasonable adjustments that would have avoided Miss Brook's resignation. This was something that caused the tribunal dismay in light of the nature of the respondent's work and the existence of specialist advisors to help disabled people into work.

Possible reasonable adjustments:

- Primary responsibility for managing her sickness and return to work should not have been left to her line manager
- She should have been given a structured interview to determine what she could do and where she could do it, with the results being written up and agreed.
- Barriers to alternative work should have been overcome.

The respondent could not justify its failure to find suitable alternative employment and the tribunal found that Miss Brooks was unlawfully discriminated against.

Reverend Irvine v Gloucestershire Hospitals NHS Trust

Case Details

Reverend Irvine was employed as a chaplain at Cheltenham General Hospital. From 1997 he had a depressive disability which impacted on his work from late 2001. At that time, following complaints of "inappropriate behaviour" from staff and patients, Reverend Irvine went on sick leave. In his occupational health report, it was stated that his judgement was impaired by his disability and that he should be considered disabled within the meaning of the DDA.

The respondent kept informed of Reverend Irvine's condition. At the same time, it disciplined him for the inappropriate behaviour. Following a meeting with the claimant, Mr Shaw, Director of Human Resources, issued him with a final warning letter stating that a repeat of the behaviour would result in dismissal. (Note: these events were not part of the discrimination claim but did provide the tribunal with background information and an idea of the respondent's attitude.)

At a meeting following further unrelated complaints about the claimant in July 2003, Mr Shaw suspended Reverend Irvine pending a referral to the occupational health physician. The evidence from this was confusing to Mr Shaw; on one hand the disability produced "uncontrollable swings of mood", and on the other hand "with appropriate treatment the claimant could make a full recovery". Further medical evidence was then sought. Reverend Irvine was now on sick leave rather than suspended on full pay. Three months later he was diagnosed as having an "atypical depressive condition" and would remain off work for at least a further two months.

In January 2004, Mr Shaw and Dr Kitchin, the occupational health physician, met with Reverend Irvine and his wife. Mr Shaw told the claimant that there must be a "robust" return to work, that Reverend Irvine must show he could "hack" the job and if not, he would be dismissed. Discussions on a return to work failed and Reverend Irvine claimed disability discrimination.

Findings

The tribunal found the respondent justified in suspending the claimant in July 2003. However, the behaviour of the Trust in January 2004 amounted to less favourable treatment and a failure to make reasonable adjustments such as:

- acknowledging Reverend Irvine's disability
- exploring a gradual return to work.

The total award made was £66,797. This was in part made up of £20,000 injury to feelings – the highest of all the disability cases, £8,000 for personal injury and £29,853 for future loss. The employer knew perfectly well what the claimant's situation was and the effect of the discrimination on the claimant was "catastrophic".

In deciding the personal injury part, the tribunal found that the claimant's ability to cope with life and work was severely impaired.

Sheppard v Brighton & Hove City Council

Case Details

Mrs Sheppard worked as a bailiff for the respondent and had anxiety-related stress and depression. In 2002, after periods of sick leave, she was placed in a "redeployment pool" until a "safe working environment" could be provided and was informed that capability procedures might be employed if no suitable job could be found.

Mrs Sheppard wanted to return to her own job as a bailiff and argued she was strong enough to do so. The Council agreed at first but subjected her to trial periods at various lower-grade unsuitable jobs. She was dismissed on grounds of capability.

Findings

The employment tribunal found that Brighton & Howe City Council discriminated against Mrs Sheppard by failing to comply with the reasonable adjustment duty and dismissing her for a reason relating to her disability. The tribunal stated:

"It would have been a reasonable adjustment to allow the claimant to return to her substantive post, and that she could have been given retraining and extra support in this role and monitored to ensure that she was able to carry out her duties – which she had been carrying out satisfactorily for more than seven years".

The tribunal considered that the redeployment method used was a failure to make reasonable adjustments and that the respondent did not provide an appropriate level of training and support for a disabled person moving into a new area of work, with a history of periods of sickness absence. The tribunal found that the process leading to dismissal was "deeply flawed" and that proper consideration of reasonable adjustments means there would not have been "any realistic prospect of dismissal on the grounds of capability, conduct or for any other reason." The tribunal believed Mrs Sheppard would have performed her duties with the appropriate support. The tribunal considered that the effects of the discrimination on Mrs Sheppard were great, therefore compensation for injury to feelings was awarded at £20,000 within the top Vento band. The tribunal accepted that Mrs Sheppard's psychiatric condition was linked to both her workplace problems and the poor level of support she received, certainly after 2001. The discrimination added to the psychiatric injury already suffered and extended the recovery period. Therefore, an award for personal injury of £11,000 was made.

Mrs Sheppard was also awarded for loss of earnings, future loss of earnings, pension losses and interest, leading to the total award of £161,531.

McFaul v The Social Security Agency, The Department for Social Development and The Northern Ireland Civil Service

Case Details

The claimant, Mr McFaul, telephoned the SSA's Staff Care Unit and said that he was feeling harassed. At a later meeting he indicated that he felt that he was unable to work in his branch because he considered he was being constantly harassed and put under pressure by his line manager, Mrs Johnstone. The claimant was told to report for work as normal on 4 May 2001 and arrange to meet Carol Dougan to go through his complaints. There followed a series of meetings and communications involving the grievance. Mr McFaul was unhappy about people being involved in the grievance complaint also being involved in the investigation. The management ignored the objections and continued with the grievance procedure, which ended up in disciplinary proceedings against the claimant.

He was sent for a medical and the report from this stated that the unresolved management issues required addressing to enable Mr McFaul to return to work and that, if unresolvable, a transfer may be an option. His GP also sent a letter supporting this assessment indicating that the claimant would benefit from an internal transfer to resolve his stress symptoms. This was ignored and Mr McFaul was eventually dismissed.

Findings

The tribunal recognised that Mr McFaul was a vulnerable individual with a history of difficulty with his mental health. The common message in all medical reports was that the claimant was fit to return to work provided that the issues he had raised were dealt with. The respondent ignored the latter part of the report, focusing only on Mr McFaul's fitness for work. The tribunal considered that the respondent failed abjectly to consult properly concerning the condition of the claimant, both with the claimant and with medical opinion. There was an unhesitating readiness on the part of the respondent to accept only the first part of the diagnosis, which was not deemed proper consultation.

The tribunal found that at the very least the respondents had constructive knowledge of a possible disability situation and as such the relevant questions they should have been asking were:

- What steps are to be taken to find out the situation?
- Can the person return?
- How can the return be best managed?
- If there is a lack of clarity, is further clarification needed from medical professionals?
- Has consideration been given to a proper assessment of what is required to eliminate the disabled person's disadvantage?

The claimant wanted to return to work in a job that would not cause him ill-health. He was so concerned by his chain of management that he could not bear to be anywhere near the persons that comprised it. He wished to transfer out of his job, but the offers of transfer were not to appropriate locations. One was to a team in which a person involved in his line management had been involved in the complaint he had originally made. That this move was considered shows the respondent's failure to properly engage with the medical advice. The respondent is a large organisation; therefore, the two offers of alternative employment were not reasonable adjustments. The claimant suffered an injury to his feelings which led to a serious psychiatric condition, caused by repeated failure over a period of six months to properly address his situation and culminated in the claimant being sacked for inefficiency.

The tribunal stated:

"We do not consider that the stress and anxiety to which this claimant has been subjected over a period of months is in any way trivial. It is particularly offensive that the claimant was sacked for inefficiency when reasonable adjustments discussed in the decision, i.e., properly engaging with the claimant and trying to come to grips with the points he was making and allowing him support from representatives throughout the process, or, if that was not possible, transferring him away from the source of difficulty, were feasible adjustments."

The tribunal awarded £24,063.73 (injury to feelings: 13,077.26, unfair dismissal: £10,986.47)

Palmer v The Social Security Agency

Case Details

The claimant, Mr Palmer, was diagnosed with depression in May 2000. He was absent from work due to his disability for a number of weeks in September/ October 2004. As a result of this absence, his managers in the office in which he was then working, the Department for Employment and Learning (DEL), issued him with a written warning on 23 February 2005 in respect of his sickness absence. This was because his absence from work had been for a period of days, which, under the employer's Disciplinary Code, triggered an automatic written warning. The claimant appealed against that warning and explained that he had clinical depression. As a result of this and supporting medical evidence the written warning was withdrawn. The officer who heard the appeal recommended that a less rigorous application of the absence triggers be applied although his attendance should continue to be monitored and consideration will be given to the issue of a warning in future if necessary.

Between 23 January 2006 and 12 May 2006, the claimant was absent from his work, by this time from the respondent Agency to whom he had transferred prior to January 2006. This absence was as a consequence of his disability. On his return to work the claimant had a work resumption interview and on the same day a "cause for concern" interview. Each interview conducted by his line manager, Ms Tracey.

The claimant was then off work for another 10 days during 2006. This absence had nothing to do with his disability but was as a result of sinusitis. On his return he had a work resumption interview with Ms Tracey.

Ms Tracey was aware that the claimant was the subject of the earlier "cause for concern" interview and after a further absence she would have to pass the matter up to the department which managed attendance of officers for consideration of a written warning. This she did with a note stating that, since his recent illness was not related to his earlier one, she recommended that a written warning should not be given. However, this was ignored and a warning was issued.

Findings

The tribunal held that the respondent should have taken the claimant's disability into account when processing the return to work of the claimant after his lengthy absence for depression and his subsequent shorter absence for sinusitis. The tribunal, taking account of the guidance in Dunsby, appreciated that the respondent was not precluded from taking DDA absences into account in its absence calculations, but considered that an adjustment of the managing attendance policy was called for in this case.

The tribunal held that the respondent had failed to make a reasonable adjustment by applying the sickness absence rules too rigorously. Award of compensation: Loss: £960.16.