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CHALLENGING MENTAL HEALTH DISCRIMINATION IN EMPLOYMENT

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ABSTRACT

This article presents findings on mental health litigation brought to the Employment Appeal Tribunal (EAT) in Britain between 2005 and 2012. The data are presented in five main sections: (i) types of discrimination claims made; (ii) number of additional legal claims brought; (iii) categories of persons who bring cases to court; (iv) nature of disability claims subject to legal action; and (v) bases for appeal in EAT cases. The main focus of the study is to identify factors that influence the success or failure of legal action in order to help inform potential litigants as to how to construct a successful appeal.

INTRODUCTION

The incidence of mental health discrimination (MHD) in the workplace has been established in empirical accounts of employee experience and via complaints to employment tribunals (Biggs et al., 2010; Brohan et al., 2012; Campbell, 1995; Doyle, 1996; Hurstfield et al., 2004; Leverton, 2002; Sayce & Boardman, 2008; Stansfeld et al., 2011). In the United Kingdom it is estimated that people with severe mental illnesses have an unemployment rate in the range of 61–73%. There

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is cogent evidence that those with mental health problems find it difficult to gain access to and retain employment (Thornicroft, 2006a, 2006b).

Research using the National Labour Force Survey revealed that in recent years the percentage of the whole adult population who were employed was about 75%; for people with physical health problems the figure was about 65%; while for people with more severe mental health problems the figure was only about 20% (Social Exclusion Unit, 2004). It is common for those suffering depression to be associated with a stigma where individuals find themselves being blamed for being emotionally weak or unproductive (Biggs et al., 2010; Crisp et al., 2000).

Mental health discrimination is recognized as a particular problem, with many people suffering from mental illness encountering unjustified restrictions in accessing and maintaining employment (Brohan et al., 2010). Statistics show that only 12% of people diagnosed with mental health problems are actively participating in the open labour market in the UK (ILO, 2000). The scarcity of good jobs with decent pay for people with mental health needs plays an important role in keeping them from attaining both economic independence and economic prosperity (Thornicroft, 2006a, 2006b).

CASE LAW ANALYSIS

The number of court applications registered continues to rise, and MHD discrimination is one of the most significant categories of litigation in equality law (Senior President of Tribunals, 2010).

This research will add to the existing knowledge in several respects. First, the research will develop an understanding of how the law is operating and the contexts in which individuals use MHD litigation for the enforcement of employment rights. Second, an understanding of who has brought and sustained cases against what kind of respondent, in which kinds of occupations and organizations, can aid in our understanding of how MHD "occurs" in practice in the workplace context. Finally, a study of the case law can reveal factors that are influential in terms of claimant success or failure. This should help potential litigants decide how to craft a successful appeal.

Legal Context

Disability discrimination first entered the legal landscape in 1995. The Disability Discrimination Act (DDA), passed by Parliament in 1995, was amended in 2001 and 2005.

The current provisions are contained in the Equality Act 2010 (hereafter EqA 2010). A disability is defined in the EqA 2010 as a physical or mental impairment that has a substantial and long-term adverse effect on the ability to carry out normal day-to-day activities.

The legislation prohibits several forms of discrimination. First, there is direct discrimination, where people are treated less favourably because of their disability than people without a disability would be treated in the same circumstances. For example, an employer refuses a job application from a person with schizophrenia, but the same employer accepts applications from people who do not have schizophrenia. The employer is treating the person with schizophrenia less favourably than others because of that person's disability. The EqA 2010 introduces an extension to direct discrimination by allowing claims for disability discrimination and harassment to be brought by individuals on the basis that they are perceived to be disabled or because they associate with someone who is disabled. Second, there is indirect discrimination (this is *new* under EqA 2010), which means that an employee will be able to argue that a practice, criterion, or provision (PCP) disadvantages persons sharing the same disability as the applicant. There is no need to show that the employer knew or ought to have known that the applicant was disabled. Third, the EqA 2010 introduces disability discrimination arising from disability. This means that someone is treated unfavourably because of something connected to his or her disability (rather than because of the disability itself), without good reason. For example, an employee with depression has been issued with a disciplinary warning for poor attendance. The employer has treated the employee unfavourably (issued a warning) not because she or he has depression but because of the sickness absence arising from it.

A fourth form of discrimination covered is harassment, which includes behavior that could reasonably be considered as having the effect of violating a disabled person's dignity or creating an environment that is hostile, degrading, humiliating, or offensive.

A fifth form of discrimination is discrimination by victimisation ("retaliation" in the United States of America) of a disabled person; this arises where a person suffers a detriment following any one of four protected acts: where the person has brought proceedings under the Act, given evidence or information in connection with proceedings, done anything in connection with the Act, or made an allegation that the Act has been contravened.

A final form of discrimination is failure by the employer to make reasonable adjustments to enable a disabled person to work, or the situation in which some condition, criterion, or practice places the disabled person at a substantial disadvantage in comparison with persons who are not disabled. An employer has a duty to take all reasonable steps, in all the circumstances of the case, to prevent that effect. Prior to 2004, employers only had to make a reasonable adjustment in relation to recruiting, promotion, training, or transfers, or in a case where any other benefit was offered. The duty to make reasonable adjustment now focuses instead on whether the adjustment is reasonable or not.

A person who considers that he or she has been discriminated against can make a claim to an employment tribunal. Such a claim must be made within three months of the act complained of. An appeal from an employment tribunal

on a question of law or a mixed question of law and fact can be made to the Employment Appeal Tribunal (EAT).

METHODOLOGY

This article focuses on Employment Appeal Tribunal cases pertaining to mental health discrimination. The term "claimant" is used to refer to the worker who made the original complaint of discrimination, and the term "respondent" refers to the employing organisation defending itself against the claim. Given that this article examines appellate cases, it is important that the findings are set in context. Appeal cases are both important and atypical. The appellate cases tend to deal with questions of law, which may make these cases particularly pertinent and different from the run of the mill disability cases heard by the court of first instance, the employment tribunal. However, the appellate cases also provide a detailed review of the first instance hearing in the employment tribunal and identify the key legal and factual issues. Information on the flow of interpretive case law will, no doubt, continue to engage the attention of claimants' legal representatives, because it can provide important information on what claimants should do to increase their chances of winning.

The population of individual case records with a mental health component was accessed electronically via the BALII database for the period 2005–2012. A stratified random sample of 137 cases implicating mental health discrimination that were decided by the EAT between 2005 and 2012 was selected. Thirty-seven cases were "sifted out" due to a variety of factors including the following: a lack of detail on the initial employment tribunal claim; a situation in which the case dealt with procedural issues rather than substantive legal points, or one in which the case fell outside the area of mental health discrimination. The cases analysed in this study preceded the enactment of the EqA 2010. Case law pertaining to the EqA 2010 is sparse, and a useful area of future study would be to monitor how the changes in the law since 2010 have improved matters and made a difference (if any) with regard to the issues raised in this article.

COMPARISON OF CLAIMANT WIN PERCENTAGE

The findings on MHD litigation are presented in five main sections: (i) types of discrimination claim; (ii) number of additional legal claims brought; (iii) categories of persons who bring cases to the tribunal; (iv) nature of disability claims subject to legal action; and (v) bases for appeal in EAT cases.

(i) Types of Discrimination Claims Brought

With regard to the forms of discrimination prohibited by the law, Table 1 shows that the majority of discrimination claims made related to the failure of an

Table 1. Types of Discrimination Claim

Types of discrimination claim	Number of claims	Percentage of claimants who won
Direct discrimination	41	12%
Indirect discrimination	N/A	N/A
Disability-related discrimination	25	22%
Failure to make reasonable adjustment	53	72%
Victimisation	4	25%
Harassment	7	28%

employer to make a reasonable adjustment (53), followed by direct discrimination (41), disability-related discrimination (25), victimisation (4), and harassment (7). The claimant won 52% of the cases and the employer respondent 48%. However, it should be noted that 38% of the claimants were former employees. The outcome of raising the discrimination complaint for many was that they ended up either resigning or being dismissed from employment prior to litigation being undertaken against the former employer. A much smaller proportion, 8% of cases, involved claimants being transferred or continuing to work in their current roles.

Significantly, cases based on a claim that the employer had failed to make a reasonable adjustment to accommodate the claimant had a much greater win rate than any other type of discrimination.

Whether something is a reasonable adjustment is for a court to decide objectively, on the facts of the particular case (*Smith v. Churchill Stairlifts PLC,* 2006). The duty to make a reasonable adjustment is extremely wide in scope (*Archibald v. Fife Council,* 2004) and places a significant duty on an employer (*Cosgrove v. Caesar and Howie,* 2002).

In cases relating to the failure to make a reasonable adjustment, a claimant was often successful where it could be demonstrated that an employer had failed to give proper consideration to the making of changes. There was often evidence of poor management practice and rash decision making. In particular, management had a tendency to rush to the conclusion that nothing could be done without considering the range of possible alternatives, such as increased rest breaks, part-time work, and flexible work or job sharing; this was particularly the case with regard to small employers. There was an interesting case of poor management practice where an employee who was off work with depression sought to arrange a meeting with his employer to discuss his situation, but the employer refused, saying it was organisation policy to refuse to have confidential conversations with employees on health issues. The EAT found that this constituted a

failure to make a reasonable adjustment for the employee because of the depression from which he was suffering, and that he needed to speak in confidence (*Cumbria Probation Board v. Collingwood*, 2008). A reasonable employer would have allowed the employee to properly verbalise his concerns and discuss matters.

(ii) Number of Additional Legal Claims Brought

The data reveals that a considerable percentage of claimants do not claim MHD on its own when bringing cases against their employer. In all, 65% of the cases included at least one further type of complaint. Table 2 presents the types of additional complaint brought by workers in our cases. Unfair dismissal was the most common additional claim brought by workers alleging MHD, followed by victimisation.

The significance of the finding of multiple types of complaints in cases involving MHD (i.e., that MHD is not claimed in the absence of other claims) requires further comment. One plausible explanation for multiple claims might relate to the costs of filing claims (which may encourage claimants to maximize the number of claims made in a case) and also to the particular nature of MHD, which often results in dismissal and people feeling victimised. However, it should be noted that the number of multiple claims is considerably lower in respect of disability than in the case of other jurisdictions; for example, in sexual harassment claims, 80% of cases included at least one additional complaint (Lockwood, Rosenthal, & Budjanovcanin, 2011). One reason for this might be that in disability discrimination a significant number of claims are brought by claimants who believe they were denied employment because of disability, rather than because of discrimination during employment. This finding reflects a significant body of research, which demonstrates the difficulties disabled people have when trying to break into the labour market, never mind retaining employment (Thornicroft, 2006a, 2006b).

In some appellate level cases, the EAT commented negatively on claimants who made multiple claims arising out of the same incidents: in one case the

Table 2. Number of Additional Claims Brought

Number of additional claims brought	Number of cases	Percentage won
0	35	86%
1	33	54%
2	15	27%
3	13	0%
4+	4	0%

claimant, in addition to the mental health disability discrimination claim, also made claims for wrongful dismissal, unfair dismissal, and sex discrimination in the employment tribunal. In the mind of the EAT, the multiple claims undermined the credibility of the claimant and suggested that the litigation was unfounded and speculative in nature, and therefore strengthened the position of the employer respondent (*Jezierska v. Solicitors in Law Ltd.,* 2008).

Claimants who claim only mental health discrimination have a greater likelihood of success, and the success rate falls sharply where more than one additional claim is made.

(iii) Categories of People Who Bring Mental Health Discrimination Cases

Fifty-eight percent of the claimants were female. The majority of workers bringing claims of MHD were females working in high stress occupations, such as nurses, teachers, and doctors. Women employed in manual jobs where low pay and long hours constituted a prominent feature also brought a significant number of claims. The gender skew might be explained by the particular demands placed on women workers, since they often have a double burden, juggling paid employment with child care and domestic responsibilities. They are also more likely to be working unsocial hours and caring for the elderly and disabled. Balancing these conflicting demands presents significant risks to mental health. Women, therefore, are much more likely to experience both role conflict and role overload. It was evident that many female claimants felt they had to take on too many things at once and were not always successful in doing so, resulting in stress, anxiety, and depression.

Research has revealed that one in six women and one in nine men are likely to require treatment for a psychiatric illness during their lifetime (Parliamentary Office of Science and Technology, 2007). Nevertheless, the fact that 58% of the claimants were female is particularly remarkable, given that men and women are not equally present in the workforce. However, this finding is consistent with a survey of occupation and mental health in a national UK survey carried out by Stansfeld et al. (2011). Stansfeld et al. (2011) found that women had a higher prevalence of common mental disorder than men across all major standard occupational classification groups. For example, women in professional occupations had almost twice the prevalence of common mental disorder in men in professional occupations (Stansfeld et al., 2011).

Table 3 shows that claimants' occupations ranged across a wide spectrum, with the largest proportion of claimants working in the professional category, followed by the associate professional and technical occupational category, followed by administrative and secretarial roles. The analysis indicates that the category of professionals is strikingly overrepresented. It has been reported that many professional workers who either resign from employment or take a

Table 3. Who Brings Cases to the Tribunal?

Category	Number of claimants	Percentage won
Managers and senior officials	9	55%
Professional occupations	27	74%
Police officer/prison officer	11	54%
Associate professional and technical	20	65%
Administrative and secretarial	15	33%
Skilled traders	3	0%
Personal service occupations	4	25%
Sales and customer service occupations	7	14%
Process, plant, and machine operatives	4	25%

medical leave related to a mental illness episode, such as depression, experience difficulty maintaining a stigma-free relationship with their employers. Those returning to the same work environment find that performance and behavioural difficulties, which initially interrupted their work, have altered their employers' and co-workers' perception of their professional abilities (ILO, 2000).

Professional groups of occupations have been identified n a number of studies as having high rates of mental disorder. Occupations involving a degree of responsibility and frequent contact with the public have been linked to problems with mental health. It has been suggested that such emotional labour can be damaging to the mental health of workers (European Foundation, 2009; Stansfeld et al., 2011; Tennant, 2001; Wieclaw et al., 2006). The analysis of case law in the current study reveals that professional/associate professional claimants who brought lawsuits against public sector organisations experienced a higher success rate than claimants in other occupational groups.

The EAT cases analysed in the study reflected a wide range of workplace and organisational settings. In all, 44% of cases were associated with private sector organisations compared to 51% that were linked to public sector organisations. In relation to the private sector, a quarter of cases were found to involve allegations of MHD against the owner of the organisation, clearly reflecting a problem in small workplaces. A large number of cases arise in the National Health Service (NHS), in government departments, local authorities, and the prison/police service. The large number of claimants in the NHS and the police and prison service is a disturbing finding and warrants further research. In relation to these public services, there is a significant degree of responsibility, and frontline staff will have to deal with possibly unpredictable, aggressive, or upset individuals,

which might have a negative impact on the mental health of staff members (Stansfeld et al., 2011).

In respect to the health service, figures vary, but research suggests that doctors have a higher rate of mental disorders than the general population and problems with alcohol, drugs, and depression are particularly common. Suicide rates are higher, particularly among female doctors, anaesthesiologists, GPs, and psychiatrists (NHS Employers, 2008). The number of cases in the public sector, in particular the NHS and police, is of concern. Overall, there are a number of factors that may explain the overrepresentation of the public sector, which may include the following: the fact that there are more organisations of large size; occupational distribution between sectors; staffing cutbacks; significant reorganisations, greater union density, and the nature of the work. It is evident that claimant success in cases was strongly associated with good legal advice and representation. This was much in evidence in the public sector and the professions where claimants had access to advice and legal support through either trade unions or professional associations. The link between legal representation and success should not be underestimated. This is of particular concern, given the lack of public funds to support such discrimination cases. Professional claimants working in the public sector should be encouraged to appeal against unfavourable decisions.

(iv) Nature of MHD

The majority of MHD appeals consisted of a claim of discrimination pertaining to stress or depression or similar mental health problems. These types of claim give rise to some of the most difficult issues of law (Senior President of Tribunals, 2010). Claimants with mental illnesses that have high win percentages should be encouraged to appeal.

The fact that the most common types of MHD suffered by claimants are related to stress, anxiety, or depression is revealed by Table 4. This finding is consistent with the occupation and mental health survey undertaken by Stansfeld et al. (2011), which reported that mixed anxiety/depressive disorder had the greatest prevalence and was also more frequent in women than men across

Table 4. Nature of the Disability

Nature of the disability	Number of claims	Percentage won
Clinical depression	34	44%
Schizophrenia	1	0%
Chronic stress/anxiety/ depression syndrome	39	69%
Other mental health problems	26	38%

all major Standard Occupation Classification groups. In only 1% of cases was schizophrenia referenced. The high number of depression cases could be explained by the fact that there is a complex legal issue in terms of deciding whether, in a given case, the condition is one that constitutes a medical condition for the purposes of meeting the definition of disability. There are significant evidential hurdles that have made it difficult for claimants in their task of establishing themselves as disabled on the grounds of their mental impairment, such as depression. When a worker commences litigation on the grounds of disability discrimination, a common response from an employer is to contend that the condition does not meet the definition of disability within the Act. If employers succeed with this argument, individuals lose their chance to have their main case heard. Due to the need to provide medical expert evidence, claimants can find such cases difficult to sustain. There have been particular difficulties in depression cases, where evidence has suggested that an episode of depression has "gone away" and that a subsequent depressive episode is regarded as a different impairment, not the recurrence of a fluctuating condition. Evidence of, for example, on-going treatment and/or medication can be helpful in challenging this type of claim.

However, the present study found that a significant number of MHD cases failed because the court took the view that the claimant was suffering from only mild depression and that, on the basis of the evidence provided, some of the symptoms referred to were exaggerated.

The requirement that the impairment should be substantial and long term also acts as a barrier to claimant success. It is evident from an analysis of case law that in some cases of mental illness, an individual may be severely impaired but only for a relatively limited period, and therefore the condition may not come within the definition of disablement because of the requirement that the impairment be long term. In regard to this, the mental health charity MIND observed that it had to regularly advise employees who had been dismissed because of mental breakdowns, but who were well enough to return to work after a few months, that they had no cause of legal action/legal protection due to the long-term requirement contained in the legislation (Human Rights Joint Committee, 2009).

In several of the cases studied, the claimant was diagnosed as having a mixed personality disorder with anxious avoidant dependent personality traits. These cases often led to the claimant making complaints about the working environment, which gave rise to legal disputes over the issue of what constituted reasonable adjustment in the workplace. There was also evidence that anxiety syndrome illnesses arose during employment in two particular types of situation. The first situation arose where claimants asserted that the pressure associated with their posts, responsibilities, and circumstances had a detrimental effect on their health. In such cases, the working environment was a significant aetiological factor in the development of mental illness. The second situation arose where working long hours resulted in pressure and difficulties in domestic life resulted in mental

illness. In these circumstances, problems of communication flow between employer and employee were evident, with issues not being tackled until late in the day, leading to an irretrievable breakdown of relationships, with a loss of trust and confidence, ultimately resulting in a discrimination claim.

An analysis of successful cases reveals that claimants were able to identify an evident culpable want of care on the part of either a line manager or a human relations (HR) department. There was evidence of a failure to deal with long-standing problems or a failure to undertake investigations into grievances when complaints were made. It seems clear that, in many cases *lost* by an employing organisation, there was a failure across an extended period to pay proper attention to complaints from the employee in the workplace.

This left claimants feeling victimised by the fact that their complaints had not been taken seriously or resigning from employment leading to a claim of constructive dismissal. Claimant success was increased if the claimant had made a formal complaint using workplace grievance procedures. In respect to those who bring cases while in employment, the number of legal cases might suggest that internal organisational grievance procedures are either not being used to resolve grievances or are not working effectively in producing an internal solution to the problem. A confrontational approach develops, which is costly for both the organisation and the individual. This is a situation that has been identified in other areas of discrimination, for example, in sexual harassment litigation in the UK (Hunt et al., 2007; Lockwood et al., 2011).

(v) Bases for Appeal in EAT Cases

The nature of the appeal is relevant because a claimant will not want to pursue a basis for appeal that has a low win percentage. As shown in Table 5, the majority (58 cases) of the MHD appeals brought relied upon an error in the application of the law/procedure as the basis for the appeal, with 27 cases citing perverse findings as the basis and 15 cases citing both legal error and perversity. Appeals based on an error in law/procedure had the highest win rate.

In terms of the administration of justice, one issue of concern raised by the research was the significant variation in detail and quality of employment tribunal judgments. It was not unusual for the EAT to observe in cases where it allowed

Table 5. Based for Appeal in EAT Cases

Basis for appeal	Number of appeals	Percentage won
Error in law/procedure	58	60%
Error of fact/perverse finding/bias	27	33%
Both bases	15	53%

an appeal or remitted it for a fresh hearing that "in their view the employment tribunal's fact finding was economical, explanation for decisions were lacking in detail and reasons for particular conclusions or inferences drawn were not fully explained" (*Secretary of State for Work and Pensions v. Heggie*, 2008). Such a state of affairs does the legal system no credit and is a problem for all the actors involved in the process. This might suggest that the time has come for tribunals to provide a standard form of judgment requiring more detailed explanations and information underpinning judgments in the interest of process and justice. The lack of a standard form of judgment may also go some way to explaining the increase in the number of appeals in recent years.

CONCLUSION

The results of this study show that the claimant won 52% of cases and the employer respondent 48%. In order for claimants to maximise their chances of winning, there are some important points for claimants and their representatives to consider in crafting an appeal.

First, claimants who made a formal complaint to the employer prior to resorting to legal action tended to have a greater likelihood of success. This is a particularly interesting finding in the light of the research by Pollert (2008), who examined workplace grievances taken to Britain's employment tribunals. This research found that only 14% of workers who took legal action used formal grievance procedures in an attempt to avoid recourse to legal action. Furthermore, research by Lockwood et al. (2011) into sexual harassment litigation found that claimants' chances of success were heightened if an internal complaint had been made prior to commencing legal action.

Second, claimants who obtained access to legal advice and resources at an early stage of the dispute process had a better chance of success. This finding is consistent with previous research by Ozcan (2007) into judicial outcomes of disability discrimination cases at appellate level. Good quality legal advice at an early stage in the process is a significant factor in aiding the construction of any subsequent court action.

Third, claimants who made more than one additional complaint together with the disability discrimination claim were less likely to win. In the mind of the EAT, the multiple claims undermined the credibility of the claimant and suggested that the litigation was unfounded and speculative in nature.

Fourth, claimants who had disclosed their disability to an employer had a greater likelihood of success in subsequent legal action. Many claimants referred to their reluctance initially to inform their employer that their absence from work was due to a mental health problem, because of the stigma the claimants believed would be attached to such information. This confirms research by Brohan et al. (2012) and Lyons, Hopley, and Horrocks (2009), which reveals that for those suffering a mental health illness there appears to be a dilemma as to whether to

reveal the mental health problem or to conceal it. The present study indicated that late disclosure or nondisclosure of a medical condition by the claimant to the employer is often considered by a tribunal or court as a lack of cooperation with an employer's attempts to ascertain the person's true medical situation, and this then impacts negatively on the claimant's case.

Fifth, claimants who had used the questionnaire procedure prior to taking legal action in the employment tribunal had a greater likelihood of success. The questionnaire procedure provides a claimant with a crucial opportunity to gather the evidence that is necessary to prove his/her case. The evidence available to this study indicates that it is more difficult to win an MHD case where no questionnaire has been used. It could be considered negligent for an adviser/legal representative not to consider and advise a claimant on the use of a questionnaire (Lewis, 2012).

Sixth, in relation to reasonable adjustment discrimination cases, significant probing of the reason for refusing/not implementing a reasonable adjustment was a profitable strategic weapon for a claimant to deploy. Management will often look for excuses with regard to making alterations to the workplace because of the inconvenience of making changes, and it is important for courts to guard against such situations in order to accommodate/maintain disabled workers in employment. As Employment Judge Jones observed in *Lancashire Care NHS Trust v. Reilly* (2010: paragraph 12):

> In obviating any discriminatory provision, criterion or practice, employers usually have to depart from any arrangement they regard as ideal. It is a question of proportionality, and balancing the disadvantageous effect of the discriminatory practice to the employee against any disadvantage caused to the employer's organisation. We are not satisfied that this was an exercise the employer [in this case] had undertaken properly or at all.

Finally, the evidence from the study indicates that professional and associate professional claimants from the public sector, who obtained legal advice and representation at an early stage, claiming reasonable adjustment in the workplace, had the best chance of prevailing in legal action.

In order to give claimants a better chance of being successful in mental health discrimination cases in future, the government could consider the following reforms to the system.

First, one reason for high levels of claimant failure in MHD cases is the difficulty claimants have in establishing that they meet the definition of disability under the law. Significant evidential hurdles have made it difficult for claimants to establish themselves as disabled on the grounds of their mental impairment, such as depression. Not being able to show that they are disabled is the main hurdle at which many claimants fail. Greater protection of for those who suffer from more temporary and intermittent conditions would be helpful.

Second, financial support for advice centres, so that substantive advice is easily accessible to those who believe they have suffered MHD, would be valuable.

However, this would seem an unlikely development, given that the current Conservative-led coalition government's reform of legal aid has resulted in the removal of financial support on most employment matters, meaning that claimants will no longer be able to get financial assistance for the following: advice in advance of employment tribunal hearings; representation for employment matters heard outside the tribunal system; and representation in appeals to the EAT.

Finally, a significant criticism of the current legislation is that it requires an individual person to bring a claim under the Act rather than for a group of claimants who are all affected in the same or similar way by discriminatory treatment to bring a claim. This has led to calls for the government to introduce representative actions. Representative (the term used in the UK) or class (used in the United States) actions are essentially the same and can be taken where groups of people with the same common legal interest collectively bring a claim to a tribunal or court. The EqA 2010 made no provision for representative actions despite the fact that they would assist in many forms of discrimination claim. Representative actions are not common in the UK, and particularly not in employment law; they are still thought of as a feature of the American legal system. Their implementation in Europe has been frustrated by traditional legal systems in member states that are based on individual rights (Gow & Middlemiss, 2011).

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