**Psychometric Tests Did Not Discriminate – Need for Flexibility in Recruitment**

Dominic McCanny provides information on making reasonable adjustments when using psychometric tests following the case of Government Legal Service v Brookes (2017).

In the recent case of Government Legal Service (GLS) v Brookes (Great Britain), which has received considerable media attention, the Claimant Ms Brookes, successfully argued that she had been unfairly discriminated against due to her disability. Much of the press reported that it was the psychometric test that discriminated against Ms Brookes. **This was not the case.** The discrimination arose because of GLS’s failure to make reasonable adjustments in using a psychometric Situational Judgement Test (SJT).

This is a timely reminder that it is the employer’s duty to make reasonable adjustments in the recruitment of people with disabilities, whether or not psychometric tests are used. Reasonable adjustments would apply for example, even at interview.

The Employment Appeal Tribunal awarded Ms Brookes £860 compensation. GLS was also recommended to issue a written apology and review its recruitment procedures with a view to greater flexibility in the psychometric testing regime for disabled applicants.

**So, what happened in this case – read on:**

Ms Brookes was a 33-year-old law graduate from Sussex University. She sat the law course from 2008 to 2012, taking a year out when she gave birth to her daughter. She was diagnosed with Asperger’s in 2009. When she sat her finals in 2012, adjustments were made. She achieved a Class 2:2 degree.

In May 2015, the timetable for the trainee solicitor application process was published by GLS. On 26 June 2015, Ms Brookes contacted the recruitment team and requested adjustments on the ground of, among other things, her Asperger’s syndrome. On 30 June 2015, she was told that an alternative test format was not available but that time allowances were; as well as a guaranteed interview scheme **but** only for those who passed all three required tests; that is, the situational judgement test (SJT) and two other subsequent tests.

On 1 July 2015, the application process opened. On 28 and 29 July, Ms Brookes was in contact with GLS, expressing concern about and complaining of a discriminatory impact on her because of the psychometric testing. She took part in the SJT, which did not have a time limit, and submitted it online on 30 July 2015. She was informed on 4 August 2015 that she had not passed the SJT.

SJT, is a multiple-choice test, and is efficient in the sense that there are objectively right or wrong answers to each multiple-choice question. This means marking can be done by a computer without human intervention or judgment. Ms Brookes argued that because of her Asperger’s she was unlawfully disadvantaged by the multiple-choice method of testing. She argued that GLS should have granted her request to be allowed to answer the questions in the SJT in a form of short narrative written answers.

Ms Brookes scored 12 points out of an apparently possible 22, below the pass mark which, after the testing process had been completed, was set at 14. The Tribunal went on to consider the question of whether the provision, criterion or practice (PCP) put people such as Ms Brookes, as a group, at a disadvantage compared to those who did not have Asperger’s; and concluded that it did. The Tribunal went on to find that the PCP put Ms Brookes, in particular, at such a disadvantage.

At the early stages in her academic studies Ms Brookes had been assessed by Professor Critchley who had focused on her personal position and had recommended specific adjustments. These had been made and were relevant to her position as an individual. The Tribunal reports:

“Professor Critchley had specifically said at an earlier stage that ambiguous lines of questioning, for which explicit examiner actions had not been given, would be unsuitable and that exams without reference materials would not be suitable; and

the Claimant had been found to require adjustments in a course that she was undertaking at the London Metropolitan University (LMU) as at January 2016, as was clear from a document that was before the Tribunal;

it was made plain that LMU, for its part, accepted the proposition that where applicable and appropriate, **multiple choice questions should be replaced with questions requiring a short-written answer**.”

The Tribunal was presented with what appeared to be a capable young woman who, with the benefit of adjustments, had obtained a law degree and had come close to reaching the required mark of 14 in the SJT, but had not quite managed it. The Tribunal was right to ask itself why, and was entitled to find that a likely explanation could be found in the fact that she had Asperger’s. The multiple-choice format of the SJT had placed Ms Brookes with an additional difficulty.

**Useful tips when someone presents with a disability?**

As is very clear in this case, disability impacts at an individual level. What adjustments would be suitable for one individual will not necessarily suit another individual. In the case of GLS v Brookes, Ms Brookes provided GLS with Professor Critchley’s evidence that answering multiple-choice questions would require short written answers. The GLS are a very large organisation, with financial resources, and therefore should have made the type of accommodation like that used by LMU. As GLS did not make any accommodation for Ms Brookes their appeal against the original case failed.

* **The very basic rule is to ask the person who presents with a disability how the disability impacts on them. Discuss with them what accommodation they need to undertake the assessment. They are the experts on their disability.**
* Reasonable adjustments generally are not difficult to implement. The accommodation may be as simple as providing the candidate a chair with arms; providing adaptive technology if using computer based testing; allocating additional time to complete a test; having a reader or additional individual write the answers; or making a policy decision that guarantees an interview to an individual with a disability.

**Where can you go to get advice on testing?**

There are many thousands of people who have been trained to administer and provide assessments. It is important to ensure that the advice you obtain is from qualified individuals who maintain their competence and agree to abide by respective codes of practice.

**The British Psychological Society’s (BPS) Psychological Testing Centre** <http://ptc.bps.org.uk/ptc/guidelines-and-information> provides much useful information both for individuals with disabilities as well as in testing for specific disabilities. The BPS is the leading UK national organisation for setting standards in psychological testing. They also provide the official record of all registered test users in occupational, educational or forensic context use. Members on the Register of Qualified Test Users also agree to maintain their competence and abide by the Code of Good Practice in Psychological Testing. To get professional advice check that the individual undertaking the assessment process is registered - <http://ptc.bps.org.uk/register-qualifications-test-use-rqtu>

**The Health & Care Professions Council** recognise the need for individual psychologists ‘to exercise personal judgement by undertaking any necessary training and experience’ to work lawfully, safely and effectively within an area of practice. If an individual presents themselves as a ‘psychologist’ check to see if they are registered on <http://www.hpc-uk.org/check/>

**Additional areas to get information**

It is not possible to know every type of disability. Disability support groups are a wonderful source for practical information on making reasonable accommodations. They have some excellent resources and generally will be very willing to provide advice on making reasonable adjustments.

Information on disability and employment can be found at in Northern Ireland, the Equality Commission – <http://www.equalityni.org> and in Great Britain at the Equality and Human Rights Commission – [www.equalityhumanrights.com](http://www.equalityhumanrights.com) and

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