

News

Applicant with Asperger's syndrome wins 'significant' tribunal case

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By **Annie Makoff**

EAT agrees multiple-choice testing was discriminatory; employers urged to reconsider recruitment practices

Firms may want to rethink their recruitment policies after the Employment Appeal Tribunal (EAT) ruled that a woman with Asperger's syndrome was discriminated against when she was asked to take a situational judgement test.

The case is thought to mark one of the first times a claim for indirect disability discrimination – where a workplace rule or policy that applies to all employees leaves a disabled person at a disadvantage – has succeeded at EAT level.

Terri Brookes, who represented herself in the case, was asked to take the multiple-choice test as part of the first stage of her application to the Government Legal Service (GLS), whose recruitment process is notoriously competitive and often has several thousands of interested legal eagles applying for just 35 places per year.

Brookes, who is now 33 years old and holds a second-class law degree from Sussex University, argued that she should have been allowed to submit short written answers to the questions, as the black and white nature of the multiple-choice test placed her at a disadvantage.

However, the GLS argued that, even if Brookes could successfully show that the multiple-choice test placed her and others with an autistic spectrum condition at a disadvantage, the testing was a proportionate method for sussing out the best candidates for the position.

Brookes, who has paralegal experience, took the multiple choice situational judgement test in July 2015 but was told she had failed and her job application would not be progressed any further a few days later. She scored 12 marks out of a possible 22, and needed 14 or more to pass.

An employment tribunal ruled last year that there was no other reason to identify why she had failed and agreed that she did not pass the test because of her disability. By asking Brookes to take the test as it stood, the GLS had indirectly discriminated against her, had failed to make reasonable adjustments that took into account her disability, and had treated her unfavourably.

Although the tribunal accepted that the testing served a purpose and the multiple-choice format made the assessment process more efficient, the methods used were ultimately disproportionate to the outcome the GLS

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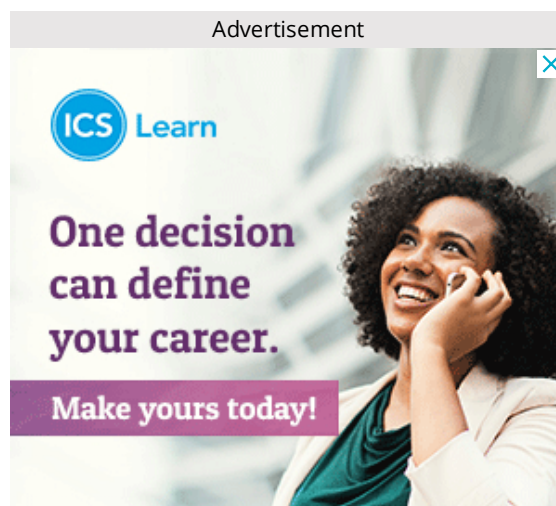
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O'Leary said employers needed to make sure they could demonstrate that their recruitment processes were a "proportionate means" of achieving a legitimate aim, especially if their practices were likely to put a particular group at a disadvantage.

Karen Jackson, managing director at discrimination specialist law firm didlaw, added: "The case shows the dangers of rigid thinking by employers when considering reasonable adjustments during recruitment. Flexibility and a willingness to find solutions are essential in avoiding unlawful discrimination."

But Keely Rushmore, senior associate in the employment team at SA Law, told People Management previous cases that have considered waiving or adjusting assessment processes – which often focus on core competencies – demonstrated that, if a disabled candidate doesn't hold such competences, they wouldn't necessarily be suitable for the role.

However, she urged employers to consider testing for key competencies by other means. "There is a difference between 'watering down' the standards for a role and simply adjusting the means of testing whether an individual meets those standards," she said.



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