

Employment

Use of Psychometric Tests in Recruitment Potentially Discriminatory

The Employment Appeals Tribunal (EAT) has recently held that a job applicant with Asperger's Syndrome was discriminated against by being required to sit a psychometric test.

In the case of *The Government Legal Service v Brookes*, Brookes was a law graduate who applied for a trainee position at the Government Legal Service (GLS). Attached to the initial application form was a multiple choice Situational Judgement Test (SJT), which applicants had to pass in order to submit their application.



Brookes contacted the GLS and requested adjustments on the ground of her Asperger's Syndrome. People with Asperger's syndrome tend to have difficulty with social interaction and non-verbal communication and often use unusual or uncommon language when communicating. Brookes asked whether she could submit written answers to the questions instead of sitting the multiple-choice test but was told that an alternative test format was not available (although she was permitted unlimited time to answer the questions). Brookes attempted the SJT but failed and therefore her application did not progress to stage two. She claimed disability discrimination.

The employment tribunal held that the GLS had indirectly discriminated against Brookes by making her sit the test, and not allowing her to do written answers amounted to a failure to make reasonable adjustments. The GLS was ordered to pay compensation as well as issue a formal apology to Brookes and review its recruitment processes. The GLS appealed but the EAT rejected the appeal.

The EAT further acknowledged that whilst the GLS needed to test the core competency of ability of its candidates to make effective decisions; a psychometric test was not the only way to achieve this.

Employers should therefore be aware that making a disabled job applicant sit a test that someone with their disability will struggle with is discriminatory. Case law on this area states employers should adjust the process to compensate for the difficulties some disabled applicants have taking certain tests.

If you have any queries regarding your firm's recruitment practices or any other queries related to employment law, please contact our Employment team.

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