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## **Court of Appeal decision overturns earlier decision of Industrial Tribunal in disability case**

The Equality Commission welcomes a judgment from the Court of Appeal which clarifies the law on disability discrimination and will be significant for future disability discrimination cases. The Commission supported the case.

Geraldine McGahey, Chief Commissioner of the Equality Commission for Northern Ireland, explained: "The judgment confirms that it is the symptoms of neurodivergent conditions that affect a person's day to day activities that matter, regardless of whether or not they have received a diagnosis. As quoted in the Court of Appeal's judgment, 'There is too much emphasis on attaching a label to the claimant's condition and it is the contents of the jar, not the label, that matters.'

Peter Kelly took his original disability discrimination case to the Industrial Tribunal, where it was heard in 2020 and 2021. The Tribunal dismissed it in February 2022 on the grounds that "at all times material to his claim, the Claimant was not a disabled person within the meaning of the Disability Discrimination Act 1995 and that therefore the Tribunal had no jurisdiction to determine his complaints.

Mr Kelly approached the Commission for support in challenging the Tribunal's decision, and the Court of Appeal has now overturned it, saying: "We consider that the decision was plainly wrong. The determination that the appellant was not a disabled person was not one which a Tribunal, properly applying the law, could reasonably have reached."

The Court said that the Tribunal were incorrect in deciding that Mr Kelly required a diagnosis of autism to avail of the protections of the Disability Discrimination Act 1995 as amended by the Autism (NI) Act 2011.

It concluded: "The Tribunal placed irrational weight on its own assessments of the appellant [Mr Kelly], particularly on documents compiled outside the working environment with the considerable assistance of another person. Accordingly, for all the reasons set out in this judgment we unanimously allowed the appeal."

Peter Kelly said: "I was devastated that the Tribunal dismissed my case and was not persuaded by the very considerable evidence I had presented to support my claim that I was a disabled person within the meaning of the Disability Discrimination Act. The Tribunal decided I wasn't disabled, and my case was dismissed. I'm delighted that the Court of Appeal's judgment recognises that the Tribunal's decision was wrong, and I appreciate the support of the Commission in getting it overturned."

Mr Kelly can now take his original disability discrimination case back to the Industrial Tribunal.