EMPLOYMENT TRIBUNALS

Claimant: A

Respondents: 1. B
2. C

Heard at: Liverpool **On:** 29 November 2018

Before: Employment Judge Buzzard

REPRESENTATION:

Claimant: Mr Crossfill, Counsel
Respondents: Ms Danvers, Counsel

JUDGMENT ON PRELIMINARY HEARING

The judgment of the Tribunal is that the claimant is found to have met the definition of disability under the Equality Act 2010 only from 10 October 2017 and not before.

REASONS

The Issues

1. The only issue before this preliminary hearing was whether the claimant was a disabled person within the meaning of the Equality Act 2010 at the relevant times to his claims.

2. The claimant in this case was dismissed on 8 February 2018. Accordingly, the relevant time when the claimant needs to establish that he was a disabled person within the meaning of the Equality Act 2010 was in a period that must end at or around the time of his dismissal. The claimant expressly confirmed that his claim did not rely on any actions or omissions of the respondent which occurred after the initial decision to dismiss him. Specifically, he does not claim that anything which occurred during his appeal against dismissal constituted part of any continuing act of discrimination.

3. Accordingly, the relevant time when determining the claimant's status as a disabled person ends on 8 February 2018.

The Relevant Facts

4. The Tribunal heard evidence from the claimant on his own behalf. In addition, the Tribunal was presented with a succinct bundle of documentation.

5. The evidence before the Tribunal was that the claimant had suffered from three distinct episodes of depression in his adult life, one in 1997, one in 2011 and the most recent one in the period leading up to his dismissal.

6. During cross examination it was put to the claimant that the three episodes of depression which he had referred to were discrete episodes of depression and had been triggered by specific life events at that time. The claimant, under cross examination clearly concurred with this. He accepted that the three episodes arose out of different issues and were distinct instances of depression.

7. <u>The 1997 Depressive Episode</u>

7.1. In 1997, when he was 20 years old, the claimant attended his GP complaining of depression. An extract from the claimant's GP's handwritten medical records from that time stated as follows:

"*Mild depression – requests counselling – try listening ear.*"

7.2. The claimant, during his cross examination agreed that this episode amounted to "*mild depression"* which did not have a significant impact on his ability to carry out day-to-day activities. The claimant gave clear evidence that this was different from the impact of the most recent episode of depression.

7.3. The claimant further stated that the 1997 episode of depression resolved quickly and he had not, subsequently, returned to his GP with any concern relating to depression for many years thereafter. It was put to the claimant that in the period from 1997 until 2011 he had been "*OK*", and the claimant had agreed with this.

7.4. The claimant presented no medical evidence regarding the impact of this depressive episode in 1997.

8. <u>The 2011 Depressive Episode</u>

8.1. The evidence before the Tribunal was that claimant is not recorded as having sought medical advice or assistance with any concern relating to depression until he visited his GP on 3 August 2011.

8.2. At this time the claimant's GP gave him a prescription for antidepressants.

8.3. The Tribunal had the advantage of seeing redacted parts of the claimant's medical records, covering this period. There was nothing within the medical records available to the Tribunal which described the impact, if any, that the claimant's depression in 2011 had upon him. The claimant's GP's medical records from 2011, insofar as they were before the Tribunal, indicated that he had a number of consultations with his GP around that time. Some of these were in person and some were telephone consultations.

8.4. The claimant's records confirm he was, in 2011, diagnosed with a depressive episode and prescribed with citalopram at a dose of 20mg daily. This diagnosis occurred on 3 August 2011. The claimant's GP's records indicate that this prescription was repeated on 31 August 2011. It is unclear if the claimant had a GP consultation in person on this date. On 26 September 2011 the claimant's GP made the following note in his records regarding the claimant:

> "*Depressive episode much better, bright and cheerful. Poss outlook.*"

His GP went on to note:

> "*Happy to carry on as should be able to stop/reduce in 1/12 or SOS.*"

8.5. The claimant appears to have attended his GP again on 31 October 2011 when the prescription which he had been receiving was again repeated. This continued up to a consultation on 16 March 2012 when his GP records as follows:

> "*Drug treatment: want to wean off citalopram, has been stable. Start 10mg daily for two weeks then alternate day. Review four weeks.*"

8.6. The claimant confirmed that there was no further evidence that he had had any contact with his GP, or any other medical practitioner, regarding depressive illnesses up to 30 May 2017 when he consulted his GP again.

8.7. The claimant's witness statement, described as a disability impact statement, covered the impacts which his depression has had upon him, and describes a number of impacts. It is noted that only one of these impacts is specifically referenced to the 2011 episode of depression. Specifically, his evidence was that the 2011 episode had adversely impacted his ability to take part in social activities. The claimant states:

> "*Before seeing my doctor in August 2011 I had been off work for 3-4 months so I had completely withdrawn from interacting with any work colleagues. The interaction that I had with people was limited to contact which was absolutely necessary*……"

8.8. Within the bundle the Tribunal had a copy of what was described as a "*discharge form*" from an organisation called '*Self Help Services*' dated 1 November 2011. This discharge form states that the claimant was

discharged without further referral or signposting to a programme, and that he was able to continue his employment.

8.9. In cross examination the claimant was asked why, if he had been unable to work for 3-4 months as a result of his 2011 depressive episode, there was no record of that within his GP's notes. It was the claimant's response that he was not an employee at this time but was a subcontractor, and, when he was out of work, what he meant was that he had chosen not to take work for 3-4 months because of his depression; not that he was certified unfit to work by his doctor.

8.10. The claimant provided no objective evidence to support his contention that he had not worked for 3-4 months by choice, or otherwise. When it was suggested to him that he could have produced such evidence, perhaps in the form of tax returns or evidence of subcontractor work undertaken over a period of time including that period, the claimant indicated that he had simply not realised that such evidence would be relevant.

9. <u>The Most Recent Depressive Episode</u>

9.1. The claimant's most recent depressive episode continued up to and beyond the termination of his employment. The claimant first consulted his GP in relation to this episode on 30 May 2017.

9.2. In addition to the claimant's GP records, the Tribunal was provided with two additional pieces of medical evidence regarding the most recent depressive episode as follows:

9.2.1. A psychiatric assessment report provided by Dr M Al-Amin, Consultant Psychiatrist. This report is based upon an assessment which took place on 21 October 2017.

9.2.2. A letter, addressed to the claimant, from a Dr Peter Dargan, Clinical Psychologist. Whilst undated, this letter referred to a meeting with the claimant which took place on 18 October 2017.

9.3. The report prepared by the Consultant Psychiatrist contained the following relevant observations and opinions:

9.3.1. The claimant had been feeling low in himself for the last 4-5 months as his relationship with his wife had not been good recently.

9.3.2. The claimant was first prescribed citalopram, an antidepressant, six years ago when he felt low in his mood.

9.3.3. Since the claimant's prescription for citalopram in his most recent episode of depression was increased, the claimant stated that his mood has improved. He also reported that in the past he has benefitted from sessions of cognitive behavioural therapy.

9.3.4. That the claimant would "*strongly benefit from cognitive behavioural therapy sessions*" by a psychotherapist, for CBT, dialectical behaviour therapy and IPT.

9.4. The Consultant Psychiatrist goes on to state:

> "*A combined approach of pharmacological and psychological treatment is likely to provide a better response and sustained improvement.*"

9.5. The letter written to the claimant by his Clinical Psychologist states that the claimant had told the psychologist that he had been suffering from an "*extremely low*" mood for around 4-5 months. The letter goes on to state that following discussion with the claimant the psychologist concluded the claimant's mood:

> "*probably began to decline in October-November 2016, but you attempted to push through it. On reflection we noted that you have probably been experiencing episodes of depression over a 6-9 month period*".

9.6. During cross examination, the claimant disclosed that he had been receiving fortnightly treatment from a psychologist privately. The claimant confirmed that there was no record of this anywhere within his GP records because he had not disclosed to his GP that he was receiving this additional treatment. The claimant confirmed that he had not obtained from this psychologist copies of any records of the discussions which occurred at their meetings. Following an adjournment, a further letter was obtained from the psychologist to the claimant, and disclosed to the parties. This letter is again undated but the indication from the claimant's representative was that it was sent in an email dated around May 2018. The letter appears to have been written at the conclusion of the sessions with the psychologist which the claimant had been undergoing.

9.7. This letter contains a number of relevant points. These included a reference to a potential for further treatment should the claimant feel "*at risk of a relapse*". It was also stated that

> "*as the therapy went on it felt like you became much more in tune with this part of you and in turn much more in control of it (in the positive sense)*".

9.8. The claimant's evidence in relation to these sessions with his psychologist were that they were intended to achieve two purposes:

9.8.1. to equip him with tools to identify any potential relapse in his depressive condition; and

9.8.2. to provide him with strategies to assist him with coping with any relapse, or preventing any relapse of his depressive condition.

9.9. The claimant stated that these sessions ended not for medical reasons but because, being that they were privately funded, he could no longer afford to pay for them. The claimant did not present any documentary evidence in support of this contention. The letter referring to the termination of the sessions from the psychologist makes no reference to the reason for the sessions ending.

9.10. It was put to the claimant during cross examination that the report from the Consultant Psychiatrist suggests that his condition was improving. This was based on an inference that the use of the word "*relapse"* in the letter is suggestive that there must have been improvement to relapse from. The claimant agreed that by that time he was feeling better, but explained that, despite this, the impacts on his day-to-day activities at that time were not trivial and that they had never, in fact, returned to normal.

9.11. The claimant attended his GP regarding his depression on 10 October 2017. At this time the claimant's dosage of citalopram had been increased to 40mg daily, which represented a doubling of his dose. The records available to the Tribunal did not record any further visit to his GP regarding depression prior to June 2018, well after his dismissal in February 2018. At the date of his dismissal, the claimant was still taking citalopram.

9.12. The claimant's redacted medical records provided to the Tribunal clearly show that the claimant had consultations with his GP on multiple occasions between October 2017 and June 2018. The reasons for these consultations were redacted, but given the redactions were stated to have been performed with a view to ensuring only records regarding depression and related concerns were visible, it can be inferred that these consultations did not touch on any concern of depression or related illness. On this basis, it is clear that between October 2017 and June 2018 the claimant consulted his GP on multiple occasions, but that the GP made no comment about the claimant having depression or the state of his depressive illness.

Relevant Law

10. The definition of disability under the Equality Act 2010 has several requirements. These are:

10.1. The claimant must have an impairment; and

10.2. That impairment must have substantial adverse impacts on the claimant's ability to carry out normal day to day activities; and

10.3. Those impacts must have lasted, or be expected to last, for 12 months at the date of the alleged discrimination. This is the requirement that the condition is long term.

11. There are other elements to the definition of disability, such as relating to terminal and progressive conditions, which are not relevant to the issue here.

12. It is important to note that the definition of disability does not permit the use of hindsight. The question is not whether it has transpired that the condition was long term, but whether the condition was long term (either having lasted 12 months or at the time being expected to last 12 months) as at the date of discrimination.

13. The Equality Act 2010, at schedule 1 (2)(1)(b) states:

> "*2(1) The effect of an impairment is long term if –*
> *(b) It is likely to last for at least 12 months, …"*

14. Under Schedule 1, paragraph 2(2), it is stated that:

> *"If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur."*

15. The respondent concedes that the claimant has an impairment.

16. The respondent does not concede that the claimant has continuously had that impairment since either 1997 or 2011. It is the respondent's case that this is not one where impacts of an impairment have recurred, but one where there have been three distinct periods when the claimant developed, then recovered from, depression. It is further noted that the respondent did not concede that the claimant had produced any medical evidence that showed that he had suffered impairments which were substantial and adverse during either the 1997 or 2011 episodes of depression. Accordingly, even if the impairment of depression had continued since those earlier episodes, it would not meet the requirements of paragraph 2(2) to qualify as long term.

17. The respondent conceded that the claimant's most recent depressive episode did have, at some point substantial adverse effects on the claimant's ability to carry out day-to-day activities. The concession from the respondent was that this was at most from around 4-5 months prior to October 2017. On this basis the respondent conceded that the impacts of the claimant's depressive illness were substantial and adverse from May 2017 to October 2017.

18. The claimant contends that his depressive impairment should be found to satisfy the requirement of long-term, and, therefore, be a disability, on the following alternative, but not mutually exclusive, potential grounds:

18.1. That his depression has continued since at least 2011 and the current episodes of depression is a recurrence of the same condition. Implicit in this, if it is to assist the claimant, is a contention that he had suffered from substantial adverse impacts on his ability to carry out normal day to day activities in or around 2011 or 1997.

18.2. That the most recent episode of depression first recoded by his GP on 30 May 2017 actually started some months before that date. The claimant was dismissed in February 2018, and, at that date, was still suffering from the most recent episode of depression. Accordingly, the claimant argues that by the date of his dismissal his current episode of depression had, considered alone from his previous history, existed for 12 months, and so meets the definition of long-term. Implicit in this contention is that, not only was the claimant suffering from depression prior to May 2017, but that his depression was having substantial adverse impacts on his ability to carry out normal day to day activities for at least 12 months by that date.

18.3. That, as at the date, that the adverse impacts on the claimant's ability to carry out normal day to day activities became substantial, the claimant's condition was likely to last for 12 months and thus meet the definition of disability.

19. It is noted that the claimant's claims of discrimination refer to discriminatory acts over a period of time prior to his dismissal. If it is found that by the date of his dismissal the claimant met the definition of disability, it does not follow that at earlier points where he complains of discriminatory acts he will have met the definition. In that circumstance, it will be necessary to determine whether the claimant was disabled at all or at any relevant times to the claimant's claim.

20. The claimant's complaints of discrimination appear potentially to have commenced in or around August 2017, when he disclosed to the respondent that he was suffering from depression.

21. Accordingly, it is necessary to determine whether, in August 2017, the claimant had a condition which met the requirements of "*long-term*". If he did, then he must be found to have been disabled throughout the periods relevant to his claims. If he did not, but by the date of his dismissal he did, the date following which the claimant began to meet the definition of disabled under the Equality Act 2010 will have to be determined.

Submissions and Findings

22. <u>Has the claimant suffered depression as part of an ongoing condition with 'flare ups' since either 1997 or 2011?</u>

22.1. The respondent's representative directed the Tribunal to a written skeleton argument and two authorities in support of their submissions. The first of these was **Mr R C Williams v Leukemia and Lymphoma Research UKEAT/0493**. The second authority provided was the case of **J v DLA Piper UK LLP UKEAT/263/09**.

22.2. It was the respondent's position that, considering these authorities alongside the guidance provided in relation to the definition of disability, the claimant's bouts of disability did not amount to a recurrence of the same impairment but was, in fact, three distinct episodes of the same

impairment. This is consistent with the comment of the claimant's psychologist that, as of October 2017, the claimant had been suffering from depressive episodes for 6-9 months, not as the claimant now contends, for around 20 years.

22.3. The claimant's position was that he had been suffering from depression since 1997. The claimant's representative contended that the claimant's depression, or his vulnerability to depression, is evidenced in the medical evidence. Specifically he referred to the report provided by the claimant's Consultant Psychologist, identifying the depression as having been rooted in issues in the claimant's early life. It was submitted that these gave the claimant a propensity to suffer from depression, and the fact that that illness was triggered on different occasions by different and discrete events, does not make the illness a different illness; it is merely a recurrence, or flare-up, of the same illness.

22.4. The claimant's submission on this point is not persuasive. Without medical evidence to support the contention, it does not appear appropriate to draw an inference that just because someone has a vulnerability to a particular illness, each occasion they develop that illness is a "*flare up*" of the same underlying condition. The claimant would need to have produced medical evidence to support the contention that he had an underlying, ongoing, impairment. On the contrary, the medical evidence did not suggest that there was any ongoing illness between the three episodes.

23. Were there substantial adverse effects on the claimant's ability to carry out normal day to day activities in 1997 and/or 2011?

23.1. The respondent went on to submit that the claimant had not in any event suffered from substantial and adverse effects to his ability to carry out day-to-day activities in 1997 or 2011. Accordingly, on the respondent's submission, even if it was the same illness, it had not had substantial and adverse effects on the claimant's ability to carry out day-to-day activities for a period which would qualify as "*long-term*".

23.2. The claimant produced very little, if any, medical evidence regarding the impact of his depressive episode in either 1997 or 2011.

23.3. In 1997 there does not appear to be much evidence that would support a conclusion that the claimant was suffering adverse effects on his ability to carry out normal day to day activities. None of the impacts described in the claimant's statement appear to be related specifically to 1997. None of the impacts suggested in his statement are reflected in his medical records.

23.4. If there were substantial adverse impacts in 1997, the duration of the episode would preclude these from being long term.

23.5. The claimant, in his witness statement, identified two specific impacts flowing from the 2011 episode of depression, namely:

23.5.1. he had been unable to work for a 3-4 month period; and

23.5.2. he had withdrawn from social activities.

23.6. It is noted that the claimant, in his statement referred, in addition to his concerns regarding taking part in social or work related activities, to difficulties getting washed and dressed, preparing and eating food, reading and substantial weight loss. The claimant does not, however, specifically refer to any of these issues in relation to the episode in 2011.

23.7. The respondent's representative pointed the Tribunal to the medical records of what the claimant had told his psychiatrist and psychologist about his depression in 2011. The claimant did not appear to have informed either of these individuals that he was unable to work in 2011, or that the condition at that point amounted to more than "*low mood*". It is further noted that the claimant's GP's records make no reference to the claimant being too ill to work for a period of 3-4 months in 2011. The claimant's representative submitted that that was not surprising, as a GP is unable to record everything that is said during a consultation, in the brief medical records they make. That submission is clearly correct, a verbatim record is not expected or likely. However, to omit from a record the fact that a patient is so ill that they are unable to work, for a period of 3-4 months, would be a surprising and significant omission.

23.8. It is correct to say that the claimant has failed to provide any direct medical evidence, either contemporaneously recorded or later obtained, regarding the impact of his condition in 2011.

23.9. It was put to the claimant that what he had told his medical professionals in 2017, regarding the impact of his depression in 2011, was not consistent with his statement of evidence for the Tribunal hearing. The claimant's position was that when speaking to his doctors he had sought to play down or minimise his condition, and it is only recently that he has obtained the ability and perspective to understand how much the depression he suffered from was impacting upon him.

23.10. It is the respondent's submission that the claimant has not established that he suffered any substantial adverse impact on his ability to carry out normal day-to-day activities in 2011. Accordingly, the respondent invites the Tribunal to find that the claimant's depressive episode in 2011 does not assist the claimant in establishing his status as disabled at the relevant times for his claim.

23.11. In addition, the respondent submitted that any adverse impacts in 2011, substantial or otherwise, could not have lasted 12 months, so were not long term.

23.12. Considering the above, the Tribunal has not heard evidence to suggest that the claimant was suffering from substantial adverse impacts on his ability to perform normal day to day activities in or around 2011. The only evidence presented that could support such a conclusion comes from the claimant himself, and is not consistent with what he told his doctors

in 2017. Further, it is not consistent with what would be expected to be recorded by his GP at that time, specifically in relation to him being too unwell to work. For this reason it is found that the claimant was not suffering from substantial adverse impacts on his ability to carry out normal day to day activities in or around 2011.

23.13. In addition it is clear that the episode, and thus any potential impacts, were not long term.

24. Were there substantial adverse effects on the claimant's ability to carry out normal day to day activities as at the date of his dismissal?

24.1. The claimant gave clear evidence regarding the impacts on his ability to carry out normal day to day activities at the time of his dismissal. These included difficulties getting washed and dressed, preparing and eating food and reading, as well as social and work activities. These impacts were there despite the claimant being on medication at the time, the effect of which medication should be discounted.

24.2. The Tribunal lacked medical evidence or opinion regarding the effect of the medication. However, it would be a reasonable inference that it helped the claimant to cope with daily life, and thus these activities.

24.3. In any event, the respondent did not appear to challenge that these were substantial adverse impacts at the date of the claimant's dismissal.

24.4. Accordingly, it is found that as at the date of his dismissal the claimant's depression did cause substantial adverse impacts on his ability to carry out normal day to day activities.

25. When did the substantial adverse impacts on the claimant's ability to carry out normal day to day activities in the most recent episode of depression start?

25.1. The respondent accepted that, for at least part of the claimant's most recent episode of depression, it had substantially impacted on his ability to carry out normal day to day activities.

25.2. The respondent submitted that the claimant's depressive episode in 2017 commenced, at the earliest, around May 2017. This submission was based upon the information the claimant is recorded as having given to both his psychiatrist and his psychologist in 2017.

25.3. The claimant contended that this had started up to nine months prior to October 2017, i.e. since January 2017. This is based on the comments of his psychologist, stating that at a consultation of October 2017 his then current episode of depression had been ongoing for 6-9 months. The psychologist appears to conclude that the claimant's perception that his depression had been ongoing for 4-5 months was inaccurate, and the more likely period was 6-9 months.

25.4. The claimant's evidence to the Tribunal was that he had been suffering with this depression since October or November 2016. This is not

consistent with any medical record or evidence before the Tribunal, or the recorded conclusion of any medical professional.

25.5. The only medical opinion available to the Tribunal is that the claimant's depressive episode started 6-9 months prior to October 2017. It does not give any indication of when the substantial adverse impact on his ability to carry out normal day to day activities began. This, not the date when the illness began, is the relevant question.

25.6. On balance, given the paucity of evidence, the most probable position is that whilst the claimant did not perceive any impact, which would correlate with when he told his doctors that he felt his depression started, it is unlikely that any adverse impacts on his ability to carry out normal day to day activities was substantial. On this basis, the impacts would have started at most five months prior to late October 2017, namely around late May 2017. This correlates with the first date during the most recent depressive episode that the claimant went to see his GP, which was 30 May 2017.

25.7. Accordingly, the claimant is found to have started to suffer from substantial adverse impacts as a consequence of his depression from no earlier than May 2017.

26. In May 2017, were the substantial adverse impacts on this claimant's ability to carry out normal day to day activities expected to last for 12 months?

26.1. The respondent submitted that if the substantial adverse impacts from the claimant's depression started in May 2017, then by August 2017, when the events about which the claimant complains began, the impacts would have only continued for a short period.

26.2. The respondent's submission was that, given the claimant had previously recovered from depressive episodes in far less than 12 months, there was no evidential basis that would allow the Tribunal to speculate that at that point a similar recovery period was not likely. The claimant produced no medical opinion regarding how long the impacts were likely to persist

26.3. The claimant's representative referred to the fact that, at this point, the claimant was taking medication which was significantly reducing his symptoms, and thus the impacts. The claimant's representative correctly submitted that the effect of any medication must be disregarded.

26.4. The Tribunal raised with the claimant's representative a concern that no medical evidence, or expert opinion, regarding the effect of the medication had been provided. Specifically, the Tribunal is not in a position of expert medical practitioner and, accordingly, cannot infer anything from the dose of antidepressants the claimant was taking, whether the antidepressants were in the form of treatment or were in the form of symptoms management or the potential impact of any other treatments, such as cognitive behavioural therapy which the claimant received, on the speed of his recovery.

26.5. The claimant's representative submitted that the test for the Tribunal to apply was a low one. Whilst it was conceded by the claimant's representative that specific medical evidence on this point had not been produced, his submission was that when determining if something was likely to last for 12 months the question the Tribunal should ask is whether that "*could well happen*". It was the claimant's representative's contention that it is a matter of common sense that, from August 2017 at the latest, the claimant's condition was such that it could well impact on his ability to carry out normal day to day activities for a total of 12 months, noting that it already had done so for a number of months. The claimant invited the Tribunal to make this finding despite the lack of any specific medical evidence.

26.6. Whilst agreeing that the threshold to establish "*likely to last*" is not a high one, it does require some evidential basis to reach that conclusion. The evidence provided was that the claimant had been ill with depression before, and had always recovered in significantly less than 12 months.

26.7. It is noted that on this occasion the claimant's medication was increased to a higher dose on 10 October 2017. Based on previous episodes of depression, it was around this point (5 months since the onset of symptoms that were noticeable enough to motivate the claimant to see his GP) that the claimant has in the past recovered. Whilst it is not clear why the claimant's medication was increased (to suppress symptoms or treat the underlying condition), it is clear from this point that he was not recovering as he had previously.

26.8. Accordingly, given the paucity of medical evidence, on balance, it is found that from 10 October 2017 the substantial adverse effects of the claimant's depression on his ability to carry out normal day to day activities became likely to last for 12 months

Summary and Conclusions

27. The claimant is found to have had three distinct episodes of depression, one in 1997 and one in 2011, prior to the most recent episode. These were found not to have been "*flare ups*" of a single ongoing condition.

28. In any event, the claimant is not found to have suffered from any substantial adverse impacts on his ability to carry out normal day to day activities prior to May 2017.

29. Neither of the depressive episodes in 1997 or 2011 lasted for 12 months. Accordingly, even if there were substantial adverse effects on the claimant's day to day activities at the time, these could not have been long term.

30. The substantial adverse effects on the claimant's ability to carry out normal day to day activities commenced in May 2017. Based on past recovery from depression, it was not, at that time, likely that these impacts would continue for 12 months.

31. From 10 October 2017 it became apparent that the claimant was not recovering. From that date, it is found to be likely that the substantial adverse effects which he was coping with would continue until beyond May 2018, i.e. for 12 months.

32. Accordingly, the claimant is found to have met the definition of disability under the Equality Act 2010 only from 10 October 2017.

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Employment Judge Buzzard

Date 12 February 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

19 February 2019

FOR THE TRIBUNAL OFFICE