



# EMPLOYMENT TRIBUNALS

**Claimant**

Mr R Hansell

v

**Respondent**

Travis Perkins Plc

**Heard at:** Cambridge

**On:** 9 and 10 September 2019

**Before:** Employment Judge Mr A Spencer

**Members:** Ms J Schiebler and Mr R Eyre

**Appearances:**

**For the Claimant:** In person

**For the Respondent:** Ms R Dawson, Solicitor

**JUDGMENT** having been sent to the parties on 2 October 2019 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

## REASONS

### Introduction

1. This case came before us on 9 September 2019. It was listed for a Full Merits Hearing with a time estimate of 5 days. The Respondent made an application to postpone the hearing due to the absence of a key witness, Mr Masters. We granted that application for the reasons we gave on 9 September 2019.
2. Mr. Hansell's claim includes numerous claims for disability discrimination and rather than make no progress at all with the case, we converted the hearing from a Full Merits Hearing to an Open Preliminary Hearing with the parties' agreement, to deal with a preliminary issue.

### The Preliminary Issue

3. That preliminary issue was whether Mr Hansell was a disabled person at the material time. Mr Master's evidence was not relevant to that issue and therefore it was possible for us to deal with that preliminary issue in Mr Master's absence.

### The Disability and the "Material Time"

4. The relevant health condition that Mr Hansell says made him a disabled

person, is stress, anxiety and depression. Mr Hansell confirmed that all his disability discrimination claims related to a specific period of time. That period is from mid May 2017 to September 2017. The period started with the Respondent instigating investigatory and then disciplinary action against Mr Hansell. It includes the subsequent disciplinary procedure and dismissal and ends with the conclusion of Mr Hansell's Appeal against dismissal in September 2017.

#### Evidence/Submissions

5. We were provided with the hearing bundle that was prepared for the Full Merits Hearing. Only some of the content was relevant to the preliminary issue
6. The key evidence that is relevant to the preliminary issue is the Claimant's impact statement, which is at page 287 of the hearing bundle. Also, parts of the Claimant's main witness statement, in particular paragraphs 6 – 35 were also relevant to the preliminary issue. We have also taken into account the Claimant's medical records, sick notes and a medical report from the Claimant's GP that was prepared in February 2018.
7. We heard evidence from the Claimant who verified the contents of his impact statement and the extracts from his main witness statement under affirmation.
8. We had the opportunity to see Mr Hansell's evidence tested under cross examination and the opportunity to put questions to him ourselves.
9. We have also taken into account the submissions that we heard from both parties.

#### Findings of Fact

10. Having heard the evidence, our findings of fact are as follows:
11. Mr Hansell did not experience any substantial mental health problems prior to about mid 2016. However, Mr Hansell's mental health began to deteriorate in about mid 2016 when he began to experience problems at work including disciplinary issues.
12. There was limited evidence in Mr Hansell's witness statements about the impact his mental health conditions had upon his day to day activities throughout the material time. The most helpful evidence is recorded in the contemporaneous medical records which we accept as accurate.
13. It was on 18 July 2016 that Mr Hansell saw his GP about his mental health problems. He was signed off work. The sick note refers to a stress related problem. Initially he was signed off for a short period of 5 days.
14. Mr Hansell saw his GP again on 28 July 2016 with stress. He was prescribed Amitriptyline which we understand is an anti-depressant. The dosage was 1 x 10mg tablet to be taken daily. Mr Hansell accepted in cross examination that this was possibly a low dose. We have been

provided with manufacturer's information about the drug which confirms that a normal dose is between 50mg and 75mg daily. Although, that can increase subject to medical advice, to a maximum of 150mg – 200mg daily. Mr Hansell was signed off sick at this point for a further 4 weeks and the diagnosis was recorded by his GP as 'stress at work'. The medical records at this stage refer to the health issues affecting Mr Hansell's life at home. However, they do not provide us with any detail as to how they affected Mr Hansell's home life.

15. Mr Hansell was seen by his GP for review on 25 August 2016. The medical notes record that he was feeling a bit better, but not yet ready to go back to work.
16. Mr Hansell went back to work in late September 2016. However, he saw the GP again on 7 October 2016.
17. By this stage, the evidence shows that Mr Hansell was suffering problems with stress. He was not coping with work related issues. He had been placed on a low dose of anti-depressants. There was no clinical diagnosis by this stage and insufficient evidence to show that Mr Hansell's health problems were having any significant impact upon his day to day activities. However, Mr Hansell's health clearly took a turn for the worse in November and December 2016.
18. On 11 November 2016, Mr Hansell saw his GP. The medical notes record that he was due to attend a grievance meeting the following week. He was feeling stressed, anxious and experiencing insomnia due to the impending grievance meeting. His dosage of Amitriptyline was increased to 3 x 10mg tablets daily and he was signed off sick. The diagnosis is recorded in the medical notes as insomnia, depression, anxiety and work-related stress. This is the first reference to a diagnosis of depression.
19. Mr Hansell was reviewed again by his GP on 17 November 2016. He was signed off sick for a month. The medical notes refer to '*things not great, low mood, nervous speech, low volume and unable to face returning to work at present time and sleep is better*', indicating that the Claimant had experienced problems with his sleep.
20. The Claimant saw his GP again on 15 December 2017. He was advised to continue with his medication and signed off sick for a further month.
21. On 30 December 2016, the Claimant saw his GP again. The medical notes record '*features of depression*' with a Patient Health Questionnaire (PHQ) score of 9 out of 19. The notes record '*feeling stressed as wages not paid at that time*', the Amitriptyline dosage was increased again and the Claimant was signed off work again.
22. The Claimant's GP records confirm the effects his condition was having on his day to day activities at this point in time. They include having '*fluctuations in his mood for the last three weeks, at home still feels frustrated and restless, some nights he feels he struggles to sleep and feels like he does not want to do much in the mornings*'. They also record that the Claimant had been trying to get back to playing the keyboard but

was finding it difficult to focus on it.

23. The Claimant's answers to the Patient Health Questionnaire also confirm that at this time he experienced many effects which affected him either nearly every day, or more than half of the days. They included feelings of having little interest or pleasure in doing things, feeling down, depressed or hopeless, having trouble falling or staying asleep or alternatively sleeping too much, feeling bad about himself, that he was a failure or had let himself or his family down, having trouble concentrating on things such as reading the newspaper or watching television and either moving or speaking so slowly that other people could notice, or the opposite by being fidgety or restless. Furthermore, on several days the Claimant had thoughts that he would be better off dead or of hurting himself in some way. The Amitriptyline dosage was increased again by the Claimant's GP. By this stage he was taking 4 x 10mg tablets daily.
24. This is the first clear evidence of substantial adverse effects caused to the Claimant's day to day activities by his mental health problems. By this stage, the Claimant had a clear diagnosis of depression and the impact this was having on his day to day activities was more than merely minor or trivial. This was particularly apparent to us from the Claimant's answers to the Patient Health Questionnaire. The adverse effect had become substantial by this stage.
25. We reminded ourselves that when making that assessment we must ignore the effect of medical treatment. The Claimant had been taking Amitriptyline by this stage for several months and notwithstanding this treatment his depression and anxiety was plainly having a substantial adverse effect upon his day to day activities.
26. Whilst we have no medical evidence to tell us how much worse the problem would have been without the medication, we find it more likely than not that the adverse effects would have been more substantial still were it not for the treatment the Claimant was receiving.
27. The Claimant saw his GP again on two occasions in January 2017. Toward the end of January his dosage of Amitriptyline was increased to 60mg daily and remained at that level through to the end of the material time.
28. The Claimant was signed off sick again in February 2017. He saw his GP again on 8 March 2017 and was signed off again. The Claimant's medical records indicate that his health had improved a little by this stage. However, the available evidence and in particular the Claimant's answers to the Patient Health Questionnaire he answered at this stage indicate that he was still experiencing a substantial adverse effect upon his day to day activities as a result of his health problems, notwithstanding the significantly increased dosage of Amitriptyline. The medical notes record that the Claimant had suicidal thoughts and had gone as far as researching suicide. He also confirmed to his GP that there were days when he lacked motivation.
29. Furthermore, in response to a Patient Health Questionnaire, Mr Hansell

confirmed that on more than half of the days he experienced the following: feelings of having little interest or pleasure in doing things, feeling down, depressed or hopeless, feeling tired or having little energy, feeling bad about himself, that he was a failure or had let himself or his family down and having trouble concentrating on things such as reading the newspaper or watching television.

30. The Claimant accepted, in cross examination, that his anxiety improved in about April 2017. By this time the disciplinary and grievance procedures were behind him.
31. The Claimant saw his GP on 7 April 2017. At this stage there was a discussion about a phased return to work. The medical records show the improvement in the Claimant's health, referring to "*resolving anxiety and depression related to work issues*". The Claimant accepted that his health was improving by this stage. Shortly after this he returned to work on a graduated return in the first instance. The medical records for the Claimant's visit to his GP on 9 May 2017 show that his work-related stress has improved and that the Claimant's anxiety had resolved by that stage. However, the Claimant was still taking 6 x 10mg tablets of Amitriptyline daily and the diagnosis at this point in the medical records refers to ongoing depression.
32. The incident that led to the Claimant's dismissal took place on 17 May 2017. The Respondent instigated an investigatory process almost immediately and the Claimant was suspended. A disciplinary procedure followed.
33. The Claimant's mental health deteriorated significantly after these events began. There is little information in the Claimant's medical records beyond this point, for reasons that we will come to. However, the Claimant saw his GP on 18 and 19 May 2017. He was prescribed Diazepam tablets in addition to the Amitriptyline which is indicative of a further deterioration in the Claimant's health.
34. There is nothing in the Claimant's medical records beyond 19 May 2017 through to the end of the material period in September 2017. We asked the Claimant in evidence about this apparent gap in which he had no recorded visits to his GP. He confirmed that it was not indicative of a significant improvement in his health problems. In fact, the reverse was true. The Claimant described a substantial deterioration in his state of health after the disciplinary issues arose in May 2017. He described himself as "*hitting rock bottom and giving up hope*". His anxiety returned and he struggled to motivate himself to do anything, including seeking assistance or treatment from his GP. We are satisfied that the absence of medical treatment between May 2017 and January 2018 is for this reason and not because the Claimant's health improved in this period. We find that the Claimant's state of health worsened significantly in this period.
35. The Claimant's witness statement contained very little about the impact upon his day to day activities caused by his anxiety and depression during the material period. Paragraph 17 of his witness statement states,

*“It was between the period of November 2016 and December 2017 that I would describe myself as being at my very lowest to which I really struggled with normal day to day activities such as getting out of bed, washing and cleaning my teeth, every little thing felt like such a big task.”*

36. We accept this evidence from the Claimant, at least in part. We accept that this accurately reflects the Claimant’s position at some stages within the period November 2016 to December 2017. It accurately reflects the Claimant’s state of health when he was at his worst in late 2016 and from about May 2017 onwards. There is, however, a period in early 2017 before the Claimant’s return to work, in about May 2017, in which the Claimant’s state of health was improving and he was not, to use his words, “at my very lowest”.

### Conclusions

37. Applying our findings of fact to the relevant law, our conclusions are as follows.
38. The protection against disability discrimination given by the Equality Act 2010 (“the Act”), applies only to those who fall within the Act’s definition of a disabled person.
39. Section 6(2) of the Act defines a disabled person as a person who has a disability.
40. Section 6(1) of the Act states that a person has a disability if he or she has a physical or mental impairment which has a substantial and long term adverse effect on his or her ability to carry out normal day to day activities. The burden rests upon the Claimant to show on the balance of probabilities that he satisfies that definition. In applying that definition, we must take into account, where relevant, the Guidance on Matters to be Taken into Account in Determining Questions Relating to the Definition of Disability (2011) which we will refer to as “The Guidance” and the Equality and Human Rights Commissions Code of Practice on Employment 2015, which we will refer to as the “EHRC Employment Code”.
41. The time at which we must assess the disability is the date of the alleged discriminatory acts. This is also the material time when determining whether an impairment has a long-term effect. In this case, it is agreed that the various alleged discriminatory acts occurred between May 2017 and September 2017 and therefore this is the material time.
42. Section 6(1) Act requires the Tribunal to deal with the evidence by reference to four different questions, or conditions. They are,
- (i) did the Claimant have a mental and / or physical impairment?
  - (ii) if so, did that impairment affect the Claimant’s ability to carry out normal day to day activities?
  - (iii) if so, was that adverse effect substantial? and

- (iv) if so, was the substantial adverse effect of the impairment long term?

43. We have considered the four questions sequentially. Our conclusions in relation to each of the four questions are as follows:

43.1 Question one – we considered whether Mr Hansell had a physical or mental impairment for the purposes of the Act. We are satisfied on the evidence that Mr Hansell had anxiety and depression throughout the material time. His medical records and the other medical evidence show that these conditions were diagnosed by November 2016. We find on the evidence that they were present throughout the material time. Both anxiety and depression fall within the scope of the term ‘mental impairment’.

43.2 Question two – we considered whether that impairment affected Mr Hansell’s ability to carry out normal day to day activities. We find that it plainly did. At various times the Claimant’s anxiety and depression affected his day to day life and activities in numerous different ways. For example, it affected his ability to undertake personal care, his sleep, he experienced low mood and mood fluctuations, he spoke nervously and at low volume, he had suicidal thoughts, he suffered from a lack of motivation and restlessness, he took little interest or pleasure in daily activities, he had trouble concentrating and he felt tired with little or no energy. It is clear to us that the impairment affected Mr Hansell’s ability to carry out day to day activities.

43.3 Question three – we considered whether those adverse effects were substantial. The word “substantial” is defined in Section 212(1) of the Act as meaning more than minor or trivial. We refer to our earlier findings as the effects that Mr Hansell’s anxiety and depression had upon his day to day activities. We find that the cumulative effects of the impairment were such that those effects touched most aspects of Mr Hansell’s day to day life, and when taken together, plainly result in a substantial adverse effect upon his ability to carry out day to day activities.

43.4 Question four – we considered whether the substantial adverse effect of the impairment was long term. Under paragraph 2(1) of Schedule 1 of the Equality Act 2010, the effect of an impairment is long term if either it has lasted for at least 12 months or it is likely to last for at least 12 months, or it is likely to last for the rest of the life of the person affected. The substantial adverse effects of Mr Hansell’s anxiety and depression started by about November or December 2016, consequently they had not actually lasted for 12 months either by the start of the material time in May 2017, or by the end of the material time in September 2017. Further, there is no evidence to suggest that those substantial adverse effects were likely to last for the rest of Mr Hansell’s life. It follows therefore, that the key question in this case is whether those substantial adverse effects were likely to last for at least 12 months. With regard to the work ‘likely’, the Guidance stipulates that an event is likely to

happen if it could well happen. This was reflected in the decision of Boyle v SCA Packaging Ltd. [2009], which Miss Dawson cited in which the House of Lords agreed with the Court of Appeal that a Tribunal, when addressing the degree of likelihood required under the Act should ask whether the substantial and adverse effect could well happen. This is a relatively low hurdle for a Claimant to overcome. We find that Mr Hansell was suffering significantly from his anxiety and depression by late 2016. This appeared to be triggered by an inability to cope with the disciplinary and grievance issues that he was experiencing at work. He then recovered to the extent that he could return to work in May 2017. However, he was still taking medication for his condition even by this stage. By the time Mr Hansell's symptoms began to improve in spring 2017, he had experienced anxiety and depression for more than 6 months and his medication had been increased steadily throughout that period. Furthermore, he was still taking medication at the highest dose that he had reached. We find that had the question been asked at this point in 2017 as to whether the substantial and adverse effects were likely to reoccur, the answer to that question would be that it could well happen, particularly if the Claimant experienced further problems at work, as indeed he did from May 2017 onwards.

44. It follows from these conclusions, that we find that all the essential elements of the Section 6(1) definition are made out in this case and Mr Hansell was therefore a disabled person as defined by the Act throughout the material time. It follows that he does have the protection of the Act with regard to his right to pursue complaints of disability discrimination.

Employment Judge Mr A Spencer

Date: 01.11.19.....

Judgment sent to the parties on

.....08.11.19.....

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For the Tribunal office