



**EMPLOYMENT TRIBUNALS**

**BETWEEN**

**CLAIMANT**

**AND**

**RESPONDENT**

**Miss S. Tyrwhitt-Williams**

**Marina Developments  
Limited**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL  
ON PRELIMINARY ISSUES**

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**Held at: SOUTHAMPTON**

**On Monday, the 10<sup>th</sup> February 2020**

**Employment Judge: Mr D. Harris (sitting alone)**

**Representation:**

**For the Claimant: In person**

**For the Respondent: Mr Marc Long (Solicitor)**

## **JUDGMENT ON THE PRELIMINARY ISSUE**

- 1. The finding of the Employment Tribunal is that the Claimant has not established that she had a disability at the relevant time.**
- 2. Accordingly, the Claimant's claims of disability discrimination shall be dismissed.**

## **REASONS**

1. By her Claim Form received by the Employment Tribunal Office on the 23<sup>rd</sup> January 2019, the Claimant brought claims of constructive unfair dismissal, disability discrimination and other monetary claims against her former employer, the Respondent.
2. The disability discrimination claim was particularised by the Claimant in paragraphs 6 and 7 and paragraphs 66 to 76 in the Particulars of Claim attached to the Claim Form.
3. In relation to the claim of disability discrimination, the Claimant's pleaded case on disability was as follows:
  - 3. At all material times and to date I have suffered from anxiety which is a mental impairment that has a substantial and long-term adverse effect on my ability to carry out normal day to day activities. My GP prescribed "Sertraline" antidepressants on the 19 February 2018 and I regularly attend counselling sessions and have done so since 2 August 2018 in order to try and overcome many of the debilitating symptoms.**

4. **The effect of my condition is that I struggle to focus and concentrate, I am unable to deal rationally with many seemingly normal day to day problems and loud noises have a substantial effect on my general ability to function. In addition, it has the effect of making me feel like I have been bombarded with mental overload, my head is about to explode, pressure and tingling and burning sensation in my head.**
  5. **The Company's acts as set out in these Particulars (below) left me feeling isolated, withdrawn, unable to sleep and no longer in control of my anxiety and emotions leaving me feeling hopeless and at times unable to communicate with customers or staff.**
  6. **I believe that I am and was at all material times disabled within the definition set out in section 6 of the Equality Act 2010.**
  7. **The Respondent was made aware of my anxiety in October 2017 when I made my informal complaint that I was not coping. By early 2018 the Respondent ought to have known about my disability because I was signed off with a stress related illness on 6 February 2018 and I constantly updated the Company with how I was feeling and the condition that I was struggling with. I was unable to return to work prior to my employment terminating on 19 September 2018.**
4. In its Notice of Response dated the 25<sup>th</sup> February 2019, the Respondent gave notice that it intended to defend the Claimant's claims for reasons set out in an attached particularised Response.
5. As to the Claimant's alleged disability and its knowledge of the alleged disability, the Respondent's pleaded case was as follows:
4. **It is denied that the Claimant was disabled for the purposes of the Equality Act 2010, as alleged or at all. Therefore, the Tribunal does not have jurisdiction to consider her disability discrimination claims.**
  - ...
  31. **The Respondent was not aware that the Claimant suffered with anxiety nor any other condition that may amount to a qualifying disability for the purposes of the Equality Act 2010, as alleged or at all. It is denied that the Claimant informally complained about or reported her anxiety in June 2016, October 2017 or at any other time, as alleged or at all. It is worth noting that at no point during the grievance procedure or in her resignation letter did the**

Claimant refer to the anxiety or any alleged disability that she now refers so.

...

45. The Respondent denies that the Claimant was disabled for the purposes of the Equality Act 2010, as alleged or at all. The Claimant is put to proof in this respect.

**Knowledge of Disability**

46. The Respondent will show that it did not know, and could not reasonably have been expected to know, that the Claimant was disabled for the purposes of the Equality Act 2010, as alleged or at all.
47. The Respondent was unaware that the Claimant suffered with anxiety, as alleged or at all. The Claimant's sickness certificate received from February 2018 only referred to 'stress' related issues.
48. The Respondent also denies that it was aware of the extent of the symptoms the Claimant asserts she was suffering from, as alleged or at all.

6. A Preliminary Hearing took place by telephone on the 14<sup>th</sup> August 2019. At the Preliminary Hearing, the Claimant informed the Tribunal that she relies on stress and anxiety as the impairment which is said to amount to a disability. She also made clear that though she had previously suffered from cancer, she does not rely upon that impairment as a disability for the purposes of these proceedings.
7. Directions were made at the Preliminary Hearing for there to be a further Preliminary Hearing in order to determine the following issues:
- 7.1 whether the Claimant was a disabled person by reason of stress/anxiety at the times material to this claim; and
- 7.2 whether the Respondent knew, or ought reasonably to have known, that the Claimant was so disabled.

8. It was further directed by the Tribunal that the Claimant shall, by the 27<sup>th</sup> September 2019, serve on the Respondent:-
  - 8.1 any medical notes, reports and any other evidence on which she relies for the purposes of the disability issue; and
  - 8.2 a witness statement dealing with the effect of the alleged disability on the ability of the Claimant to carry out normal day-to-day activities.
  
9. Pursuant to the directions made by the Tribunal on the 14<sup>th</sup> August 2019, the Claimant served an impact statement dated the 27<sup>th</sup> September 2019 and disclosed the following documentary evidence:
  - 9.1 a letter from the Claimant's GP dated the 11<sup>th</sup> June 2019;
  - 9.2 a second letter from the Claimant's GP dated the 5<sup>th</sup> September 2019;
  - 9.3 the Claimant's GP records for the period from the 6<sup>th</sup> March 2012 to the 10<sup>th</sup> June 2019.
  
10. The documentary evidence disclosed by the Claimant and the material relied upon by the Respondent were put together into a 157-page hearing bundle, which was presented to the Tribunal on the morning of the hearing on the 10<sup>th</sup> February 2020.
  
11. In addition to the written material contained in the agreed hearing bundle, the Claimant also produced, on the morning of the hearing on the 10<sup>th</sup> February 2020, the following further material:
  - 11.1 a further witness statement from the Claimant dated the 19<sup>th</sup> November 2019;
  - 11.2 an invoice from a Consultant Otolaryngologist dated the 30<sup>th</sup> November 2004;

- 11.3 notes from a one-to-one meeting with the Respondent on the 15<sup>th</sup> June 2017;
  - 11.4 notes of an investigation meeting held on the 1<sup>st</sup> June 2018;
  - 11.5 a letter from a psychological therapy service (called 'italk') dated the 27<sup>th</sup> November 2018;
  - 11.6 a letter from a Consultant Dermatologist dated the 4<sup>th</sup> February 2020;
  - 11.7 a blank anxiety assessment form (entitled GAD-7 Anxiety);
  - 11.8 a blank depression assessment form (entitled PHQ-9 Depression);
  - 11.9 a print out from an NHS website of some explanatory notes concerning noise sensitivity (hyperacusis).
12. No objection was taken by the Respondent as to the admissibility of the additional witness statement from the Claimant or the additional documents upon which she wished to rely. The Tribunal was therefore willing to accept the additional material into evidence. As a consequence, the hearing bundle was increased to 169 pages.
13. The hearing on the 10<sup>th</sup> February 2020 commenced with the Tribunal spending time on reading the witness statements and the extended hearing bundle. The Tribunal read the two witness statements produced by the Claimant and the statements of the two witnesses relied upon by the Respondent: namely, Emma Coverley (who was the Claimant's line manager from the 11<sup>th</sup> May 2017 until the Claimant's resignation on the 19<sup>th</sup> September 2018) and Kerry Marriott (who is the Respondent's 'Head of Operations').
14. Having completed the pre-reading, the Tribunal heard oral evidence from the Claimant and from Emma Coverley on behalf of the Respondent. Mr Long decided not to call Kerry Marriott to give oral

evidence and so it became a matter for the Tribunal as to how much weight to attach to the evidence set out in her witness statement, bearing in mind that the Claimant did not have an opportunity to challenge that evidence.

15. The Claimant's evidence-in-chief consisted of her two witness statements. In paragraph 1 of her impact statement, she sought to extend the scope of her disability that had been discussed at the Preliminary Hearing on the 14<sup>th</sup> August 2019. At that hearing, the Claimant had stated that she relied on stress and anxiety as the impairment which is said to amount to disability. In her impact statement, however, the Claimant stated that the impairment of "*stress, anxiety and sensitivity to certain noises and voice tones*" amounted to disability within the meaning of section 6 of the Equality Act 2010. She stated that her symptoms of stress and anxiety had been exacerbated by events at work: namely, her proximity to a loud photocopier from 2016 onwards and, separately, the Respondent's management of a reorganisation at work from March 2017 onwards. She stated that her symptoms of stress and anxiety made it difficult for her to concentrate at work and that her sleep was adversely affected. She stated that she was signed off work by her GP with a stress-related illness on the 5<sup>th</sup> February 2018 and that she remained signed off work until the 1<sup>st</sup> March 2019. She stated that she had received counselling from 'italk' from the 16<sup>th</sup> April 2018 to the 27<sup>th</sup> November 2018 and she made reference to her anxiety and depression assessments over that period of time. Further evidence about those assessments was provided by the Claimant in her second witness statement.
16. As to the date of onset of her disability arising from her stress and anxiety, the Claimant, in her impact statement, pinpointed the date of onset of her severe anxiety as being March 2017.
17. As to the Respondent's knowledge of her disability, the Claimant stated that she had tried to talk to a manager called Nic Parton countless times, telling him that she was "not coping" and that her "head and eyes are pumping". She stated that there had also been

an occasion when she had been crying in Nic Parton's office on the 16<sup>th</sup> October 2017.

18. In her second witness statement, the Claimant confirmed that her mental wellbeing had suffered since March 2017, which coincided with the implementation of the Respondent's reorganisation plans. In paragraph 11 of the second witness statement, the Claimant set out the way in which her symptoms of stress and anxiety have affected her day-to-day life during the "relevant time". She did not, however, make clear in the second witness statement what she meant by the "relevant time". From the content of the second witness statement, it would appear that the "relevant time" during which the Claimant had suffered disabling symptoms of stress and anxiety was either from March 2017 to the present day or from the 5<sup>th</sup> February 2018 (when she consulted her GP) to the present day.
  
19. In cross-examination, the Claimant agreed that the date of onset of her symptoms of stress and anxiety was the 5<sup>th</sup> February 2018, as documented in her GP records, but went on to say that it had been gradually building up for a while and that she had put off going to see the doctor. She was cross-examined about the anxiety and depression assessments that had taken place in 2018 and she disagreed with the proposition that her symptoms of stress and anxiety had effectively resolved by the end of November 2018. She also disagreed that her detailed 7-page response (dated the 16<sup>th</sup> July 2018) to an investigation by the Respondent into the detailed grievance that she had raised in April 2018 was an indicator that she was able to concentrate on work-related issues, contrary to her assertion that her stress and anxiety prevented her from being able to concentrate. She denied that her account of the day-to-day effect of her stress and anxiety had been exaggerated in her second witness statement.
  
20. The Tribunal then heard evidence from Emma Coverley for the Respondent. She stated in her witness statement that she had seen no behaviour or symptoms from May 2017 to February 2018 that indicated to her that the Claimant was suffering from stress or anxiety.



The first she was aware that the Claimant was suffering from stress was when the Claimant went on sick leave on the 5<sup>th</sup> February 2018. It was her view that the Claimant's sickness absence was "*a reaction to her being dissatisfied with a number of perceived issues at work*".

21. In cross-examination, Ms Coverley stated that she had got on fine with the Claimant in the past but things changed when she became the Claimant's line manager. It was Ms Coverley's impression that the Claimant was not happy working under her. She described there being awkwardness between the two of them. It was put to Ms Coverley that the Claimant had been obviously upset during meetings to which Ms Coverley replied that the Claimant would not talk to her at meetings and that she had looked uncomfortable, with folded arms looking at the floor. Ms Coverley repeated her view that the Claimant's sickness absence appeared to be due to the changes that were being introduced at work. She accepted, however, that the Claimant was unfit to work due to ill health. She denied that she had bullied the Claimant.
  
22. In his closing submissions for the Respondent, Mr Long relied upon the written skeleton argument that he had handed up at the start of the hearing and the authorities cited therein. He also handed up a number of authorities (namely, *J v. Piper UK LLP* [2010] ICR 1052, *Aderemi v. London and South Eastern Railway Ltd* [2013] ICR 591, *Pnaiser v. NHS England* [UKEAT/0137/15/LA, *Herry v. Dudley Metropolitan Council* [2017] ICR 610 and *A Ltd v. Z* [UKEAT/0273/18/BA]) but given that he did not refer the Tribunal to any specific passages or propositions of law from those authorities, the Tribunal took the view that the passages from the authorities that Mr Long sought to rely upon were those set out in his skeleton argument. Had he wished to direct the Tribunal to any further passages in the authorities, Mr Long would undoubtedly have done so. The essence of his submission was that the Claimant had not discharged the burden of proving the disability that she relied upon in her claim of disability discrimination. He also submitted that the only evidence that the Respondent had had concerning the Claimant's ill health, prior to disclosure, were the sick notes provided by the Claimant's GP and that the evidence showed, the burden being on the Respondent on this particular issue, that the Respondent had not

had actual or constructive knowledge of the Claimant's alleged disability.

23. In the closing submissions on behalf of the Claimant (presented by her partner), it was submitted that the Claimant had begun to suffer problems with stress and anxiety following the death of her sister some 6 years ago and following her own diagnosis of melanoma. It was submitted that the Claimant had had a real problem with the noise from the photocopier at work, which had caused her a lot of stress and anxiety. As to when the Claimant's disability had started, it was submitted that it was the date when she had had a hearing test, which had been arranged by the Defendant in November 2016. It was submitted that the Claimant suffered from hyperacusis, which, according to the NHS public website on hyperacusis, was a known cause of anxiety. It was submitted that her symptoms of stress and anxiety had fluctuated over time, and it has been exacerbated by the Claimant's ongoing fears concerning a return of her melanomas.
  
24. On the basis of the evidence that it heard and read, the Tribunal made the following findings of fact:
  - 24.1 The Claimant was certified as not fit for work on the 12<sup>th</sup> January 2015 by reason of bereavement.
  
  - 24.2 On the 15<sup>th</sup> January 2015, it is recorded in the Claimant's GP records that she was better but still needed a bit longer off work.
  
  - 24.3 Over the period from 2012 to 2017 the Claimant received dermatology treatment and testing for melanomas.
  
  - 24.4 The Claimant complained in writing to the Respondent about the noisy photocopier in the workplace on the 16<sup>th</sup> June 2016, which she said she was finding unbearable.
  
  - 24.5 The Respondent subsequently arranged for the Claimant to undergo a hearing test, which took place in early November 2016 and which failed to identify any abnormality with the Claimant's hearing.

24.6 There are no documented hearing problems in the Claimant's GP records from the 6<sup>th</sup> March 2012 to the 10<sup>th</sup> June 2019.

24.7 The first reference to a stress-related problem in the Claimant's GP records is dated the 5<sup>th</sup> February 2018. The entry reads as follows:

**stress related problem  
feels is being bullied at work  
stressed tearful  
unable to stop thinking about work  
needs time off  
rv 2 weeks**

24.8 On the same date, the 5<sup>th</sup> February 2018, the Claimant was signed off work by her GP. She remained off work until she resigned on the 19<sup>th</sup> September 2018.

24.9 Over the period from the 5<sup>th</sup> February 2018 to the 6<sup>th</sup> March 2019, there are numerous entries in the Claimant's GP records indicating that the Claimant is continuing to experience ongoing stress related to her work.

24.10 The Claimant was assessed by 'italk' during April 2018 and the assessment indicated that she was suffering from moderately severe depression and severe anxiety. With counselling treatment, her condition improved to mild depression and mild anxiety according to the method of assessment used by 'italk'.

24.11 On the 6<sup>th</sup> March 2019, it is documented in the GP records that the Claimant is really happy, having started work in a new job.

24.12 In a letter dated the 11<sup>th</sup> June 2019, the Claimant's GP gave the following summary regarding the Claimant's state of health:

**I confirm the above named patient suffers from severe anxiety due to significant stress in her previous workplace. She first presented on 5 February 2018 complaining of significant stress in relation to possible bullying at work. At that time she was extremely tearful, she was unable to stop thinking about work and was clearly agitated and was advised to take some time off. At subsequent reviews she remained very anxious with physical symptoms of anxiety such as sweating and**

panic attacks. She elected not to take medication which is perfectly reasonable under the circumstances but she did refer herself for cognitive behavioural therapy.

Throughout this time she remained very tearful and anxious in relation to work although other areas of her life remained stable. I continued to see her on a regular basis; whilst she is improving and making plans to improve her well-being, she is still clearly very affected by the events over this period of time. I would hope that in time she will slowly improve but the extent to which she has been affected by this illness means that her recovery will be ongoing for a number of months yet I would anticipate.

She has no previous history of anxiety or depression and her presentation was vastly different to how I have known her over a number of years.

24.13 In a further letter dated the 5<sup>th</sup> September 2019, the Claimant's GP reported that the Claimant "*continues to experience significant symptoms of stress currently, particularly in relation to the situation with her ex-employer and still appears very anxious and stressed regarding this situation.*"

24.14 The Tribunal found that the effects of the symptoms of stress and anxiety upon the Claimant as of the 5<sup>th</sup> February 2018 were as follows:

- 24.14.1 her sleep was disturbed;
- 24.14.2 she suffered from sweating and panic attacks during the night;
- 24.14.3 the disturbed sleep made the Claimant tired during the day with the consequence that she had difficulty concentrating;
- 24.14.4 she exhibited avoidance behaviour in that she has experienced difficulties, on occasion, in leaving her house, going to work, going to the shops and socialising;
- 24.14.5 she had become socially withdrawn;
- 24.14.6 she struggled to adapt to changes in routine and circumstances.

- 24.15 The Tribunal found that the Claimant's symptoms of stress and anxiety upon the Claimant, as summarised above, showed significant signs of improvement after the 5<sup>th</sup> February 2018 as a result of her absence from work and the counselling treatment that she received from 'italk'.
- 24.16 The Tribunal rejected the Respondent's case that the Claimant had deliberately exaggerated the effect of the symptoms of stress and anxiety upon her. In a case in which the Respondent denied that the Claimant was suffering from a disability and in a case in which the Respondent's two witnesses expressed the view that the Claimant's stress diagnosis was a reaction to her dislike for the situation presenting itself at work, it was entirely understandable that the Claimant would be anxious to convey in her written and oral evidence that her symptoms of stress and anxiety were real and genuine, even if disbelieved by the Respondent. The evidence from the Respondent's witnesses that the Claimant's stress diagnosis was a reaction to her dislike to a situation at work suggested that the Respondent did not really accept that the Claimant was genuinely unwell. The Respondent seemed to have viewed the Claimant as a disgruntled employee who had absented herself from work because she did not like what was going on at work regarding the reorganisation that had begun in March 2017. It was not surprising therefore, that the Claimant would be anxious to convey and persuade the Tribunal that she was in fact genuinely ill. The allegation that she had exaggerated her symptoms, thereby rendering her evidence on the disability issue unreliable, was not accepted. The Tribunal found the Claimant to be an honest and open witness, doing her best to describe a difficult period in her life. The suggestion that her health problems as at the 5<sup>th</sup> February 2018 could be regarded as a simple reaction to adverse circumstances did not stand up.
25. When determining the preliminary issue as to whether the Claimant met the statutory definition of disability during the relevant period, the Tribunal reminded itself that the burden of proof was on the Claimant. The Tribunal also reminded itself of the provisions of Section 6 and Part 1 of Schedule 1 to the Equality Act 2010 and the *Guidance on the definition of disability (2011)*.

26. The issues for the Tribunal to consider were identified to be as follows:
- 26.1 what were the relevant date or dates for assessing whether the Claimant met the statutory definition of disability under section 6 of the Equality Act 2010?
  - 26.2 at the time of the relevant date or dates, did the Claimant have a physical or mental impairment?
  - 26.3 if so, did the impairment have a substantial effect on the Claimant's ability to carry out normal day-to-day activities;
  - 26.4 if so, at the time of the relevant date or dates, had the impairment lasted for at least 12 months;
  - 26.5 if the impairment had not lasted for at least 12 months at the time of the relevant date or dates, was the impairment likely to last for at least 12 months?
27. The relevant dates for the discrimination claim, as identified at the Preliminary Hearing on the 14<sup>th</sup> August 2019, are as follows:
- 27.1 June 2017, being the time when it is alleged by the Claimant that threats were made against her of disciplinary action;
  - 27.2 from March 2017 to the date of the Claimant's resignation, being the period when it is alleged by the Claimant that attempts were made by the Respondent to move her away from her sales role;
  - 27.3 from April 2016 to the date of the Claimant's resignation, being the period when it is alleged by the Claimant that the Respondent failed to implement reasonable adjustments in respect of the Claimant's exposure to noise from the photocopier;
  - 27.4 from the 24<sup>th</sup> April 2018 to the date of the Claimant's resignation, being the period when it is alleged by the Claimant that the Respondent failed to deal fairly or properly with the

grievance procedure that she had initiated on the 24<sup>th</sup> April 2018.

28. Turning next to the question whether the Claimant has established that she had a physical or mental impairment at the time of the relevant dates identified above. Dealing first of all with the question whether the Claimant has established a physical impairment arising from her self-diagnosed hyperacusis when exposed to the noise from the photocopier and/or by voice tones, it is the judgment of the Tribunal that the alleged physical impairment has not been established. In the absence of any medical evidence whatsoever in relation to her alleged hearing problem, it was very difficult for the Claimant to establish that she had a physical impairment relating to that problem. Even if the Claimant had been able to demonstrate a physical impairment arising from her sensitivity to certain specified noises, the Tribunal would not have found that the impairment, which only appeared to persist for the duration of the exposure to the specified noises, had a substantial adverse effect on her ability to carry out normal day-to-day activities. There was also the additional problem for the Claimant that she had not mentioned this alleged impairment at the Preliminary Hearing on the 14<sup>th</sup> August 2019. The impression that the Tribunal was left with, was that the Claimant had raised this issue at a late stage in the proceedings without providing any supportive medical evidence. I should add that the NHS website material concerning hyperacusis did not assist the Claimant in the absence of a diagnosis of hyperacusis in her case.

29. The next question to consider was whether the Claimant had established a mental impairment. The first point to note in relation to that issue is that though some evidence was given by the Claimant about symptoms of anxiety related to her melanomas, she had conceded at the Preliminary Hearing on the 14<sup>th</sup> August 2019 that her cancer was not an impairment that she relied upon. Having made that concession, it was difficult for the Claimant to argue that her cancer had given rise to a persistent mental impairment going back to 2014 and beyond. In any event, however, the evidence, and, in particular, the GP records, did not show that the anxiety attributable to the melanomas had given rise to a mental impairment that had a

substantial adverse effect on the Claimant's ability to carry out normal day-to-day activities.

30. The Tribunal was, however, satisfied that by the 5<sup>th</sup> February 2018, when the Claimant consulted her GP regarding stress, that she was suffering from a mental impairment arising from the symptoms of stress and anxiety. The Claimant's mental health had, in the judgment of the Tribunal, been gradually declining in the months leading up to consultation with the GP on the 5<sup>th</sup> February 2018 and the Tribunal was satisfied that by that date the Claimant had a mental impairment.
31. The next question was whether the mental impairment as found by the Tribunal had a substantial adverse effect on the Claimant's ability to carry out normal day-to-day activities. The Tribunal found that the mental impairment, based on the Claimant's evidence and the GP records, had that effect on the 5<sup>th</sup> February 2018 but that the adverse effect gradually reduced over the ensuing months as her symptoms improved as documented by the 'italk' material.
32. It follows from the Tribunal's findings as to the date of onset of the mental impairment that had a substantial adverse effect on the Claimant's ability to carry out normal day-to-day activities that the mental impairment had not lasted for a period of 12 months at the time of the relevant dates.
33. The question then for the Tribunal was whether the Claimant had established that the mental impairment, as found by the Tribunal, was likely to last for at least 12 months as at the time of the relevant dates.



- 34 In determining that question, the following passages from the *2011 Guidance* were informative:

**Meaning of 'likely'**

- C3. The meaning of 'likely' is relevant when determining:**
- whether an impairment has a long-term effect ...
  - whether an impairment has a recurring effect ...
  - whether adverse effects of a progressive condition will become substantial ...
  - how an impairment should be treated for the purposes of the Act when the effects of that impairment are controlled or corrected by treatment or behaviour ...

In these contexts, 'likely', should be interpreted as meaning that it could well happen.

- C4. In assessing the likelihood of an effect lasting for 12 months, account should be taken of the circumstances at the time the alleged discrimination took place. Anything which occurs after that time will not be relevant in assessing this likelihood. Account should also be taken of both the typical length of such an effect on an individual, and any relevant factors specific to this individual (for example, general state of health or age).**

35. On the evidence before it, the Tribunal was not satisfied that the Claimant had demonstrated that the mental impairment as found by the Tribunal was likely to last for at least 12 months. Taking the date of the Claimant's resignation as the last possible date on which the alleged discrimination had occurred, the Tribunal was not satisfied that the mental impairment, as it existed at that time, was likely to last for 12 months from its date of onset (as found by the Tribunal). By that stage the Claimant's symptoms had improved, as documented by the 'italk' records, and though there had not been a full resolution of the symptoms of anxiety and stress, the GP noted on the 10<sup>th</sup> September 2018 that the Claimant's other areas of life, apart from her work for the Respondent, were good. In those circumstances, the Tribunal was not satisfied that the mental impairment that had manifested itself in February 2018 could well continue until February 2019, when judged as of the 19<sup>th</sup> September 2018.

36. Having found that the Claimant had not established that her mental impairment, at the time of her resignation, was likely to last until February 2019, it is the judgment of the Tribunal that the Claimant has not established that she fulfilled the statutory criteria for the definition of disability at the time of the relevant dates.
  
37. Accordingly, it is not necessary for the Tribunal to go on to consider whether the Respondent had actual or constructive knowledge of the Claimant's disability. The finding of the Tribunal, for the reasons set out above, is that the Claimant, at the time of the relevant dates, did not satisfy the statutory criteria for the definition of disability. The consequence of that finding is that the claims of disability discrimination shall be dismissed.
  
38. The case shall now be relisted for a further Preliminary Hearing by telephone to case manage the proceedings to a final hearing.

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**Employment Judge David Harris**

Dated: 24<sup>th</sup> February 2020