



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE C HYDE (sitting alone)

BETWEEN:

MR M TURKMANI

Claimant

AND

PARAGON CUSTOMER COMMUNICATIONS LIMITED

Respondent

ON: 2 December 2019

APPEARANCES:

For the Claimant: In Person
Supported by his father, Mr A Turkmani
For the Respondent: Mr O Isaacs, Counsel

OPEN PRELIMINARY HEARING JUDGMENT

The Judgment of the Employment Tribunal is that: -

1. The claim was struck out forthwith because the Claimant was not a disabled person at the material time, i.e., 22 March 2018 – 15 June 2018, and was therefore not entitled to bring a complaint of disability discrimination under the Equality Act 2010.

REASONS

1. The Judgment above and reasons for it were delivered orally at the end of the hearing on 2 December 2019. Written reasons are provided for the Judgment above pursuant to a request from the Claimant dated 4 December 2019. The written reasons are set out only to the extent that the Tribunal considers it necessary to do so in order to explain to the parties why it reached the Judgment above. Further, they are set out only to the extent that it is proportionate to do so. Finally, all findings of fact were reached on the balance of probabilities.
2. The Claimant presented a claim form on 15 June 2018, and grounds of resistance and response were duly presented by the Respondent on 18 September 2018.
3. This was an open preliminary hearing to determine the primary issue of whether the Claimant was a disabled person at the material times, namely from 22 March to 15 June 2018.
4. The Respondent accepted that the Claimant suffered from a mental impairment. The central issue for the Tribunal to decide was whether the Claimant had established that he was a disabled person specifically in relation to the element of the test of disability which requires the Tribunal to decide whether the substantial adverse effects of the condition or impairment that the Claimant had was such that his ability to carry out normal day to day activities was substantially impaired long-term, as defined in Sched 1, para 2 of the 2020 Act.
5. It is trite law that the definition of 'substantial' in this context is 'more than trivial or minor'.
6. The open preliminary hearing was fixed at a closed preliminary hearing which took place on 24 January 2019 before Employment Judge Nash. She gave detailed directions on that occasion and in an order and summary of the hearing she set out the points which everyone had to address thereafter. This was sent to the parties on 29 January 2019.
7. Employment Judge Nash also dealt with the issue of amending the name of the Respondent, so no further order on that issue was made by me.
8. If the Tribunal found that the Claimant was a disabled person and the disability claim continued, then there was a subsidiary matter which the Tribunal would have to consider and that was whether to allow the Claimant to amend his claim to include the allegation that the termination of his employment after the presentation of his claim amounted to a constructive dismissal as an act of discrimination.
9. There was a bundle of documents prepared by the Respondent for this

hearing which ran to in excess of 300 pages and which was marked [R1]. It contained all the documents that the parties referred to. In addition, the Respondent's Counsel had prepared a note which ran to 3 pages. Here he essentially set out the legal points which the Respondent would be relying on. He also cited the relevant provisions of the Equality Act 2010, App 1 of the Equality and Human Rights Commission Code of Practice on Employment (2011), and of the Guidance issued under the 2010 Act on the definition of disability. In addition, Mr Isaacs produced a photocopy of the case of *J v DLA Piper UK LLP* [2010] ICR 1052, a decision of the Employment Appeal Tribunal. He relied especially on para 45 of the Judgment in which there was guidance about consideration of the situation involving depression which was said to constitute a disability by reason of recurrence: Sched 1, para 2(2) of the 2010 Act.

10. As there was no challenge to that statement of the law in the document marked [R2], a copy of which was given to the Claimant at the hearing, it is not proportionate to repeat them in these Reasons.
11. A further bundle of papers was put before the Tribunal in relation to an additional application that the Claimant wished to make, to do with disclosure. The bundle of documents in relation to that was marked [C1] but it was agreed that this was a matter which I did not need to trouble with before deciding the 'disability issue'.
12. It was agreed that the Tribunal should pre-read various documents before starting and these were the Claimant's (disability impact) witness statement which was prepared following the directions of Employment Judge Nash (pp107-108), the claim and the response, and various other documents which had been produced by the Claimant in compliance with the direction that he should produce all medical and other evidence that he wished to rely on to establish that he was a disabled person at the relevant time. The Claimant had provided further details of his disability discrimination complaint pursuant to EJ Nash's Order, and the Respondent had provided Re-Amended Grounds of Resistance dated 14 March 2019 (pp58 – 66).
13. The most relevant of these were the Claimant's general practice medical records from the tail-end of 2011 through to 2018. Also, the Claimant relied on a psychiatrist's report and the answers provided by the psychiatrist to questions posed by the Respondent's solicitor. The psychiatrist's report followed a consultation with the Claimant on 15 October 2019. The Claimant also relied on a report dated 11 March 2019 about a CBT process which he had undertaken.
14. There was also a fit note which was produced by the Claimant after having consulted with his general practice in mid-April 2019. He then saw a GP he had previously seen, Dr Khan, and Dr Khan also provided a report.

15. Finally, in terms of evidence adduced, the Claimant gave oral evidence to the Tribunal and was questioned by Mr Isaacs.

Facts Found

16. The Claimant worked for the Respondent from September 2017 as an SQL Developer. The Respondent's office was in Finsbury Circus, London. He was absent from work from 22 March 2018 until his resignation due to travel anxiety. His case in relation to his disability discrimination complaint was that he experienced symptoms of travel sickness and became anxious when travelling on public transport and as a result had been unable to attend work since 22 March 2018 (p13 – ET1 particulars of complaint).
17. Following the presentation of his claim in June 2018, in which he complained of disability discrimination, he resigned from the employment by email on 29 June 2018.
18. The Tribunal was satisfied that the Claimant had had ample notice of the fact that at the Open Preliminary Hearing the Tribunal would be deciding whether he was disabled person or not, given that this was set out in EJ Nash's Order sent to the parties on 29 January 2019. Further, the Claimant had had ample opportunity to adduce all relevant evidence including the contents of his disability impact statement (pp107 – 108), comprehensive directions having been made by EJ Nash for this to be done (pp35 – 36) at para 7 of her Order. The Claimant agreed that this was the case, and that there were no further relevant documents, beyond those in the bundle.
19. In his disability impact statement, he relied first on the contents of a fit note from his GP (p118) dated 27 April 2018 covering the period 22 March 2018 to 31 July 2018 and in which his GP certified that he was suffering from 'anxiety states due to travel in train' and that he may be fit for work if he could benefit from workplace adaptations. The doctor commented that the Claimant had "severe travel anxiety in train".
20. He also relied on a medical report from Dr Kaleem Khan MB ChB, from his GP practice dated 14 May 2018 (pp120 – 121). It appeared that Dr Khan was the GP who had provided the fit note above.
21. Dr Khan's report was provided in response to a request from the Respondent's Human Resources Department. He stated that the Claimant had been diagnosed with anxiety states in September 2011 when he mentioned that he got very panicky and anxious especially in situations where he had to travel on public transport. He reported that Mr Turkmani also suffered from travel sickness and had the constant worry that if he went in a train or bus, he may feel sick or vomit in front of everyone and embarrass himself. The doctor stated that this added to his

anxiety state and the Claimant felt that sometimes the pressure of work compounded his anxiety.

22. The doctor had seen the Claimant on 27 April 2018 with similar symptoms when the Claimant presented as feeling anxious and stressed. Mr Turkmani reported to the doctor that he had not been able to work for about a week as he found that as soon as he sat on a train, he felt anxious, this anxiety being compounded when the train approached a station. Mr Turkmani apparently reported that he started to feel panicky and he felt that he had to get off the train as, if he continued the journey, he may feel sick and vomit thereby embarrassing himself in front of others.
23. Dr Khan reported that he had recommended to the Claimant that he seek help with cognitive behavioural therapy which the Claimant had apparently agreed to do.
24. The report continued as follows:

“I am unable to predict how long the condition will last but I believe that following CBT treatment, his condition can be brought under control. Until his travel anxiety is treated, I cannot see him performing duties in the office in the foreseeable future. However, once he has had the treatment I am very positive that he will be able to commence his normal duties but as mentioned, I am unable to give you a specific time for this. In the meantime, I do believe that [the Claimant] is fit to work from home until therapy is attempted.”

25. A letter from Ms Jackson, HR Business Partner dated 30 April 2018 (p119), which preceded Dr Khan’s response quoted above, requested in relation to the statement in the fitness certificate that the Claimant was fit to work from home: “given the medical certificate provided, can you advise if Mr Turkmani’s condition prohibits him from travelling on other forms of transport?”
26. In his disability impact statement, the Claimant did not cite any particular text from either the doctor’s note or the medical report. He merely referred to them as being attached to the statement. In his statement, he gave scant further factual detail about the effects on him as an individual of the condition. He addressed the statutory definition of disability and what were day to day activities, and gave examples of this from apparently either the guidance or the code of practice. He went on also to quote text from another document in relation to “recurring conditions”.
27. The last section on the second page of this document (p108) concluded in the following terms:

“It is well known that when the travel anxiety surfaced the sufferer

would experience any or all the following side effects:

- 1) Panic Attacks
- 2) Nausea
- 3) Rapid Heart Rate
- 4) Light Headedness
- 5) Hyperventilation
- 6) Excessive sweating
- 7) Vomiting
- 8) Avoidance of going to public places

The Claimant believes that the condition will reoccur in the future as despite having Hypnotherapy, and Endoscopy to scan his stomach for stomach ulcers, researched the viability of CBT, been prescribed pain killers and taken a lot of other therapeutic steps, including breathing techniques, pressure bands, positive thinking, the issue keeps coming back in the right conditions. This condition has been on and off since the Claimant was three years old as witnessed by the Claimant's parents. This condition has also resulted in the Claimant visiting the doctor multiple times throughout his life. These are not side effects experienced by people without the condition to this severity when using public transport."

28. It was only in that last paragraph that the Claimant appeared to describe the effect on himself of the condition.
29. The Claimant described travel anxiety as officially called Agoraphobia. This was a diagnosis which had been made of the Claimant by Dr A Chatziagorakis, Consultant Psychiatrist, having apparently interviewed the Claimant online on 15 October 2019 (pp 123C-123F). The Claimant agreed that in that doctor's report was a description of the Claimant's condition on that date. The doctor worked for an organisation called Psychiatry-UK, the National Online Psychiatry Service. The report by Dr Chatziagorakis was also supplemented by his answers to a questionnaire which had been submitted to him by Messrs Ward Hadaway, Solicitors, acting for the Respondent in this case (pp 123G-123I). Those answers and the Claimant's evidence confirmed that the doctor's opinion was based on the information provided to him by the Claimant during the online assessment but did not include a review of any medical or psychiatric records of the Claimant.
30. The Tribunal was therefore satisfied that the report simply contained a description provided to the psychiatrist by the Claimant of the symptoms that he had and was of limited evidential value. They were not independently verified by the psychiatrist. Thus, the Claimant reported to this doctor that he had had this condition throughout his life and that he had never been symptom free. He also reported that even if he made a

ten-minute drive from where he lived that he suffered adverse symptoms and that his life was therefore restricted to travelling only such short distances.

31. Against this account, the Tribunal had regard to evidence which was not in dispute that the Claimant was living in Surrey and had been for nearly twenty-five years, and was at the time of the hearing about 34-35 years old. Between his date of birth and the age of nine, he had lived abroad. Thereafter in the UK he had lived in the area between Purley and Kenley, south of Croydon.
32. Between April 2010 and August 2012, he had worked as an E-Services Developer at John Ruskin College based in New Addington. Further, between November 2012 and November 2013, he had worked for an organisation called Paradigm Change Capital Partners based in central London. At that time, he was also working at SOAS and doing extra contract work. He worked for SOAS from September 2012 to October 2013. He agreed that his time with both SOAS and Paradigm involved working in central London and therefore commuting by train from Purley to Victoria and then taking the underground to his places of work.
33. His employment between October 2013 and December 2013 involved working also as an E-Developer for City College, Coventry. When he did that employment however, he worked from home.
34. Further, between January and August 2014, the Claimant had worked for an Investment company which was based in Purley Way. This was a ten-minute walk and he was living in Purley at the time.
35. He also worked from September 2014 to January 2015 as a Database Developer for an organisation called Mort 2 Limited which was based in Southwark in London. Travelling to work required taking a train to London Bridge and then taking the underground to Southwark. He accepted that this involved only one stop on the underground but he elected to take the tube for the journey.
36. In April 2015 the Claimant started to work with another organisation, "Overton". They were initially based in Purley then they moved to Croydon next to the fly-over.
37. Between August and September 2018, the Claimant had worked at Capel Manor College, also working from home. This had only been a one-week contract.
38. He agreed therefore in summary that he had occupied a couple of work positions in Croydon/Purley and also two in London from November 2012 to November 2013 and then again from September 2014 to January 2015.

39. In a document headed "acts of harassment presented by the Claimant" provided by the Claimant on 12 February 2019 in compliance with Employment Judge Nash's order, the Claimant had set out the details of the acts of harassment that he was complaining about (pp 49-54). In that narrative he agreed that he identified a date namely 22 March 2018 as the date on which his disability re-surfaced (p 51, para 3). He accepted that the natural inference from the statement was that the symptoms had gone away but he contended that they then came back.
40. It was also accepted by the Claimant that there were no GP records disclosed prior to 2011 and that there was no written evidence apart from the Claimant's evidence in relation to travel anxiety going back to his childhood. It was further put that there was no support from the GP's records to corroborate that this was an issue during his childhood. The Tribunal accepted this contention on the face of the evidence.
41. The GP records before the Tribunal which had been disclosed by the Claimant covered the time frame from September 2011 to May 2018 (pp 106A-106O).
42. In that time frame, there were records that when the Claimant travelled he suffered from travel sickness. Specifically, in September 2011 there was a reference to the Claimant experiencing light-headedness but there was no suggestion that it affected his ability to travel.
43. Based on the information provided by the Claimant, his General Practitioner's approach had been to refer the Claimant to reading material and not to any medication. The Claimant did not then revert to the GP after September 2011 for the rest of that year in relation to travel anxiety.
44. There was then a reference in January 2012 (p106I) to the Claimant having experienced vomiting. There was no suggestion from the records that this was brought on by travel.
45. Although the Claimant then made a number of visits to his General Practitioner in 2012 and 2013, there was no further reference in those years to travel anxiety. This time frame coincided with a period when the Claimant was commuting on the train to Victoria and then using the underground. The Claimant accepted that at this time when he was working at SOAS and Paradigm, there were no issues.
46. The first reference after 2011 to travel anxiety was in November 2014 (p 106D). The GP recorded notes of a consultation on 11 November 2014 following an episode of vomiting on the train the previous day on the way to work. The Claimant reported to the GP that he had had travel anxiety and in the past Hypnotherapy had helped, and that his symptoms had gone away. The Claimant agreed that this was an accurate record. There was a further consultation with his GP on 27 November 2014 recording

ongoing symptoms of vomiting in the mornings. There was no express reference to this being related to travel.

47. There was in sum, no diagnosis by the doctor of travel anxiety, but rather a record of an account of physical symptoms of vomiting at that time.
48. There was then no further apparent recurrence of the symptoms recorded by the GP or necessitating a GP visit for the remainder of 2014, nor in 2015, 2016 or in 2017.
49. The Claimant applied to work for the Respondent in 2017 which involved completion of an equal opportunities form on 10 September 2017 (p 81A). In answer to the question (p 81B) whether he had any disability, which was followed by a two-line statement of the definition of disability, the Claimant selected the answer "no". He confirmed in his oral evidence that as at 10 September 2017, he did not believe that he had a mental impairment which met the definition of disability under the 2010 Act.
50. Further, when the Claimant applied for the position with the Respondent, he was aware that it was in central London and that performing his job would require him to commute to central London. He further confirmed that if, at the time he had believed that the issues in relation to travel anxiety would have precluded his commuting, he would have said so. He did not believe that they were relevant at the time.
51. In the event, having started work with the Respondent in mid-September 2017, the Claimant set up access by computer from home (p 124). However, in his email to his managers about this (p 124), sent on 18 October 2017, the Claimant described that he was a little tired that morning after the extra time spent getting his home access set up the previous night. He continued that as he had missed the train and did not want to drag out the journey by taking a later one, he would work from home if this was alright. There was no reference to an anxiety attached to travelling by train, or that being the reason for the request to work from home.
52. The Respondent agreed to the request on that occasion, but asked that in future the Claimant agreed this with his management beforehand.
53. Once again it was not in dispute that there were a number of occasions subsequently on which the Claimant worked from home. One example of this was on 8 March 2018 when the Claimant had a problem with piles and haemorrhoids (p 106B).
54. The Claimant's absence from employment then started on 20 March 2018 (p 110). In the absence form prepared in relation to this absence and dated 21 March 2018, the reason for the absence was said to be "severe stomach and headache". There was also a note of a return to work

interview in relation to this absence which was dated 21 March 2018 (pp 111-112). The symptoms were described as “severe stomach and headache attributed to laxatives”. The absence had not involved a visit to either hospital or a doctor.

55. The form provided a space for information about the employee’s last three absences from work due to illness, including dates, length of absence and reason (p 112).

56. These were: -

i.	14 March	6 days	stomach-ache, anxiety and haemorrhoid bleed;
ii.	1 February	1 day	feeling very poorly;
iii.	21 and 22 November	2 days	stomach pain.

57. The Claimant confirmed that the reference to the reason for his absence being symptoms of severe stomach-ache and headache being attributed to laxatives was an accurate record of what he reported to his manager.

58. In the time frame from the beginning of the Claimant’s employment to 20 March 2018, there were the following episodes of absence from work and the reasons given: -

i.	18 October 2017	1 day	tired
ii.	7 November 2017	1 day	delivery
iii.	10 November 2017	1 day	delivery
iv.	20 November 2017	3 days	sickness
v.	8 December 2017	1 day	unable to get on train
vi.	15 December 2017	1 day	sick
vii.	8 January 2018	1 day	
viii.	23 January 2018	1 day	
ix.	1 February 2018	1 day	very poorly
x.	19 February 2018	1 day	sick when on train
xi.	26 February 2018	1 day	ICE
xii.	6 March 2018	6 days	panic attack on train
xiii.	20 March 2018	1 day	stomach-ache

59. It was put to the Claimant that from March 2018, he started working on his own account as a Live Streamer from home. The Claimant disputed this and said that he had been doing this for the last six years.

60. The Tribunal accepted that the proposition put to the Claimant about working on his own account from home accurately reflected the position, however, as it was taken from the Claimant’s own account to Dr Chatziagorakis as reflected in his report (p 123D). This information was also repeated in another section of the doctor’s report (p 123E). The Claimant accepted that he must have told the doctor this in order for this

to have found its way into the report.

61. In addition, in the doctor's report, he recorded that the Claimant was currently self-employed and worked as a Live Streamer from home and that this had been the case since March 2018. The Claimant indicated that it was not his choice to become self-employed from March 2018. The Tribunal also accepted that this was accurate because in the first reference in Dr Chatziagorakis's report to the Claimant being a Live Streamer (p 123D) the doctor continued "his income has reduced since then". It was not simply a comment made in isolation or out of context. The Tribunal therefore accepted it on the balance of probabilities as being accurate.
62. The Claimant confirmed in his oral evidence that he had said to the doctor that this was what he was doing to make ends meet. The Claimant's case before me was that he had made this decision to earn a living from live streaming after he was off work and he was not allowed to work.
63. In an email sent by Mr Turkmani to his managers (Messrs Morgans and Crush) on 20 March 2018 at 07:22 (p 143), he reported that he was currently on laxatives to help him with an illness that he had the week before and that generally things had been improving although he still had some symptoms. He then referred to work tasks that he was completing or going to complete as well. He continued: "I would like to arrange a meeting to discuss the anxiety that has appeared since the snow and what we can do to sort it. Physically I think that once I am off this round of medication, I will start getting back to normal quickly." He then continued with a couple of short comments about on-going work. He accepted in oral evidence that at that point he was not suggesting that the reason for any physical difficulties was to do with the condition which he had experienced since childhood but that it was to do with the prevailing weather conditions. This had been the position for about a month previously. He accepted that this was the case. He also acknowledged that he was indicating that once he had finished the current medication that he would be back to normal quickly. He accepted that he did not suggest that any condition or impairment would be long-term or recurring.
64. There was no dispute that the Claimant was only entitled to Statutory Sick Pay during his sickness absence.
65. The Respondent raised with the Claimant during a telephone discussion on 3 April 2018 among other matters that it was not appropriate for the Claimant to work permanently from home, given the Respondent's performance concerns about him. 3 April 2018 was also the date on which the Claimant gave in his particulars of claim (p 15) as the date on which he first connected his illness with his work. In the chronology supporting his complaint, he referred to having been taken ill on the train on 22 March 2018. Against 3 April 2018, he stated: "Asked for a review

meeting ... I also indicated that because of stress I had already lost 5kg in weight because I was not allowed to work from home.”

66. Although there was a discussion about how the absence was to be treated, i.e., holiday or sickness absence, the Claimant did not provide a fit note until after seeing his GP on 27 April 2018.
67. There was a further informal meeting between the Claimant and his manager on 6 April 2018 at which the Claimant was informed of several performance issues (pp 13 & 61). This was not in dispute. The Claimant understood as a result of that conversation that the Respondent had restricted any new annual leave and ability to work from home until the performance issue was sorted out.
68. A further discussion, by telephone, took place on 23 April 2018 between the Claimant, a manager and a human resources assistant. The Claimant became distressed about the Respondent’s lack of, as he saw it, “recognition, empathy or flexibility ...” in relation to his health issues.
69. On 25 April 2018 he informed the Respondent’s human resources that he would be taking legal action for disability discrimination because of the Respondent not having sorted this issue out.
70. Thereafter, the Claimant also presented a grievance which was addressed by the Respondent following its presentation on 26 April 2018. The initial outcome was notified to the Claimant on 14 May 2018 and the appeal was dealt with on 4 June 2018.
71. The Claimant gave a similar description in his claim form of the symptoms set out above - nausea, light headedness and excessive sweating and rapid heart rate (pp 14-15). He then continued in the particulars of his original complaint: “This is suspected to be caused more by the fact that I have weak vision, wear glasses, and am more prone to motion sickness.” The Tribunal noted that if that were the case, that is not a mental impairment.
72. Also, in his particulars of claim, (p 15) the Claimant indicated that he had had this issue “on and off my entire life.” The first diagnosis he relied on however was by his GP on 27 April 2018. This is confirmed in the document referred to above. He contended however that this was a deterioration of the condition and that he had previously had discussions with his GP about the same issue in 2013. The Tribunal has set out above the findings about the Claimant’s reported state of health in that time frame.
73. In his claim form (p15), the Claimant listed the dates of all absences from work which were due to his condition as follows: -

8 December 2017 - worked from home
8 January 2018 – worked from home
23 January 2018 – worked from home
1 February 2018 – worked from home
19 February 2018 – worked from home
6 March 2018 – worked from home
20 March 2018 – didn't work from home
22 March 2018 to today – have been prevented from working from home

74. It did not appear to the Tribunal that the Claimant had provided any explanation why his alleged condition should have led to difficulties on those specific dates and not on all the intervening dates and indeed on the previous extended periods when he commuted historically.
75. The Tribunal rejected the Claimant's denial that the reason for wanting to have the fit note identifying travel anxiety as a diagnosis was because he was working as a Live Streamer at home and he did not wish to have to attend the Respondent's premises. The Tribunal accepted this on the balance of probabilities. In reaching this conclusion, the Tribunal took into account the background dispute between the Claimant and the Respondent about the classification of his time off and also the text cited above about what had been said to Dr Chatziagorakis.
76. The Claimant also produced a letter from Anna Daniel, Talking Therapies (pp 122-123). This was produced after a telephone assessment which took place with Ms Daniel on the same date – 11 March 2019. The letter was described as a brief summary of the outcome of the discussion. It was as a result of this assessment that what was referred to as a course of individual cognitive behavioural therapy was deemed to be suitable to help the Claimant with his presenting problem of depression and anxiety. The Tribunal noted that this letter and the assessment took place a good nine months after the Claimant had resigned and approximately one year after he was last at work. It was not therefore a material piece of evidence on this issue.

Closing Submissions

77. At the end of the oral evidence, the Respondent addressed the Tribunal. Mr Turkmani responded. The Respondent then made some points in reply and Mr Turkmani also made some further points.
78. The Claimant's case was supplemented and elaborated upon considerably during his closing submissions in a way which was not supported by the evidence that was placed before the Tribunal. I therefore explained to him during these submissions that the Tribunal would need to proceed on the basis of information which had been adduced in accordance with the Tribunal's directions and also about which the Respondent had had notice and had had the opportunity to question

the Claimant when he was giving his evidence.

79. There were effectively two limbs to the Respondent's argument. One was what Mr Isaacs characterised as the standard argument in relation to whether the Claimant was a disabled person in the particular time frame - the three months between 22 March and 15 June 2018. The second limb was whether the Claimant should be treated as a disabled person during the relevant timeframe even if he did not reach the threshold during the relevant time, by virtue of the other episodes of the condition on which he relied: the recurrence argument.
80. It was therefore very important to have regard to the historical evidence which was put before the Tribunal.
81. I also had regard to the position in law that the burden of proving that the Claimant was a disabled person lies on him.

Conclusions

82. In summary, I accepted Mr Isaacs' submissions in relation to all aspects, and found that the Claimant had failed to establish that he was a disabled person on each of the limbs on which he could argue that his impairment met the statutory definition.
83. I was satisfied that the Claimant had not established on the evidence, that he was a disabled person between March and June 2018.
84. I took into account the contemporaneous medical and other evidence of the Claimant's impairment and its effects on him in that timeframe. There was no evidence that there was a substantial adverse effect on the Claimant's ability to carry out normal day to day activities in that time frame which had lasted 12 months. He therefore did not meet that limb of the test: Sched 1 para 2(1)(a).
85. Case law however has established that the Tribunal is required to consider also whether, based on information available at the time, the substantial adverse effect was likely to last at least twelve months, or for the rest of the Claimant's life: Sched 1, paras 2(1)(b) and (c).
86. On the balance of probabilities, I did not accept all the evidence provided by the Claimant himself about the effect of his condition on his ability to carry out normal day to day activities, as appears from my findings above. This was because it appeared to be exaggerated and/or uncorroborated in material respects. Further some of the evidence on which he relied was irrelevant to the assessment by the Tribunal in that it described matters substantially after the end of the relevant period, i.e. the report dated 15 October 2019.

87. In relation to the evidence about the relevant timeframe, I considered that the Claimant's account to Dr Chatziagorakis reflected what the Claimant clearly believed he would be able to present to the Tribunal as expert evidence, to support his case that he had "always" had anxiety related to travelling, or that he had never been "symptom-free". Importantly, there was no medical evidence before the Tribunal to support the Claimant's contention that this was a condition from which he had suffered since childhood. In making this finding, I had regard to the very careful directions which had been given on this issue, and the Claimant's evidence about this as set out above.
88. Thus, the first entry in the Claimant's GP records was as cited above, in September 2011. The record did not constitute anything more than an indication that the Claimant had become panicky in a travel situation. It certainly did not provide an adequate basis for a finding that he suffered with anything more serious which affected his ability to travel. As set out above, no medication or other follow-up was prescribed by the GP, save for the suggestion about appropriate reading. This evidence did not provide an adequate basis for a finding that the Claimant suffered with a condition which had the necessary effects for the whole of his life, as he contended. Further, it was not disputed by Mr Turkmani that the GP records contained no reference to sickness related to travel, for substantial periods of time. Nor did the evidence of his commuting and travelling to London support his case that this presented continuing issues for him.
89. Further, the Claimant is required to show that the impairment had a substantial adverse effect on his ability to carry out normal day to day activities in the relevant time frame - between March and June 2018. The evidence before the Tribunal based on the information in the report of Dr Chatziagorakis about his decision to take up self-employment through live streaming from March 2018 appeared to the Tribunal to be a remarkable coincidence. It appeared to be inherently unlikely that the Claimant would have started to suffer from travel anxiety, with the absence of any assessment of the future course of the condition, just as the Claimant took up self-employment. The Tribunal noted that the Claimant did not seek a medical opinion until 17 April 2018, and then did not see his regular GP, Dr Khan, until 27 April 2018.
90. Third, the Tribunal considered the evidence about whether as at the end of June 2018, there was any adequate evidence to support the contention that any substantial adverse effect was likely to long-term. The only evidence presented by way of fit notes (p118) only supported any adverse effects lasting up to 21 July 2018, the expiry date of the fit note. This clearly did not support a finding that the effects would last or were likely to last 12 months.
91. Similarly, in the report from Dr Khan dated 14 May 2018 (p120), in answer

to the question about the likely duration of the Claimant's condition, whilst saying he was unable to predict this, he expressed the opinion that following the course of CBT, the Claimant's condition could be brought under control. He went on to state in that context that he felt "very positive" that the Claimant would be able to commence his normal duties after the CBT. This evidence did not support a finding that the definition of 'long-term' under the Act was met.

92. In summary therefore, I was satisfied that the Claimant had not established that his condition had substantial adverse effects on his ability to carry out normal day to day activities; nor had he established, on the basis of contemporaneous evidence presented, that as at the end of June 2018, there was a substantial adverse effect which was likely to last 12 months, or the rest of his life.
93. The Tribunal considered further, whether the Claimant had established that the condition was likely to recur, i.e., that this "could well happen".
94. It was relevant in this context also, that there were many assertions made by the Claimant in closing which went beyond the evidence that he had previously relied on in the hearing and about which he would have needed to have provided cogent and consistent evidence.
95. In respect of the 'likely to recur' assessment, the Tribunal had regard to the helpful analysis in the *DLA Piper* case, referred to above, and contrasted this with C-9 of the Guidance as set out in the 27th edition of Butterworths Employment Law handbook at p2746. The Tribunal had to take into account not just the medical, but all the relevant evidence in order to decide if there was a single condition which produced recurrent symptoms, or whether the evidence fell short of establishing that. It was relevant here also that on the Claimant's own account, there was a variety of reasons given by the Claimant to the Respondent prior to March 2018 for his working from home (pp124 – 130, 132, 134 135, 137, 139, 140).
96. In this context also, the Tribunal's adverse findings about the evidence on which the Claimant relied were relevant. Further I found that parts of the Claimant's case were uncorroborated by medical evidence, e.g. the contention that as a matter of fact he suffered from one condition with recurrent episodes. In particular, there was no medical evidence to support the contention that at any time there was a likelihood of recurrence between one episode and another.
97. The contemporaneous medical evidence presented by the Claimant amounted to no more than an account of an incident in 2011 which appeared not to have had any substantial adverse effect etc. There was then a further reference to what appeared to be a discreet issue in 2014, lasting three weeks. This did not assist the Claimant to satisfy the Tribunal on the balance of probabilities that there was a likelihood of

recurrence in 2018.

98. Further, I accepted Mr Isaacs' submission that even if the 2018 episode met the test, there was no adequate evidence before the Tribunal by which the earlier (2014) and later (2018) incidents could be linked.
99. Thus, the Claimant had not discharged the burden of proof, and had failed to establish that he was a disabled person under the 2010 Act at the material times.
100. I was therefore satisfied that the appropriate order was to strike out the claim because the Claimant cannot bring a disability discrimination complaint if he is not a disabled person.

Employment Judge Hyde

Dated: 4 May 2020

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