Case No. 2406039/2020
RESERVED **Code V**

EMPLOYMENT TRIBUNALS

Claimant: Mrs D Gallagher

Respondent: Marks & Spencer PLC

HELD AT: Liverpool (by CVP) **ON:** 11 January 2021

BEFORE: Employment Judge Shotter

REPRESENTATION:

Claimant: Mr Hayes, solicitor
Respondent: Ms Firth, counsel

RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The claimant was disabled in accordance with section 6 of the Equality Act 2010 with a mental impairment of depression, anxiety and low self-esteem in the relevant period 18 July 2019 to 27 January 2020.

2. The claim of indirect associated disability discrimination brought under section 19 of the Equality Act 2010 is dismissed on withdrawal by the claimant.

3. The claim of indirect sex discrimination brought under section 19 of the Equality Act 2010 is dismissed on withdrawal by the claimant.

REASONS

Preamble

The claims

1. This has been a remote preliminary hearing by video which has been consented to by the parties. The form of remote hearing was Code V: Kinley CVP video fully remote. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the Tribunal was referred to are in a bundle of 364 pages, the contents of which I have recorded where relevant below, in addition to the claimant's unsigned and dated impact statement and the Skeleton Argument of the respondent setting out the undisputed legal principles, for which I am grateful.

2. A discussion took place concerning the listed 3-day estimated length of hearing and the likelihood that it will go part-heard, especially if it takes place via CVP which is probable and to which the parties have agreed. With the agreement of the parties I have extended the length of hearing to 4-days, and the 4th day will take place on **Monday 12 July 2021** immediately following the three days already listed, with assurances that the hearing will not go part-heard. Both parties will confirm one month before the first day of the liability hearing that the case is ready for trial, and if not, the steps which need to be taken, to the Tribunal in writing. A short telephone preliminary hearing may be convened as a matter of urgency at that stage.

3. We also discussed the issues which have been left until 7-days before the liability hearing, and it was agreed (a) an agreed list of issued reflecting the specific issues in this case and not generic issues, would be prepared by no later than **1 February 2021** and lodged with the Tribunal on before this date. The issues will form the basis of all witness statements and witness statements will not regurgitate documents from the bundle but refer to them by their page number where relevant. The parties will also have prepared an agreed chronology/facts and cast list, which together with the list of issues will be provided to the Tribunal in Word format.

Preliminary hearing

4. Today's preliminary hearing is to consider whether the claimant is disabled for the purpose of section 6 on the Equality Act 2010 ("the EqA") and striking out the indirect sex discrimination claim.

5. Mr Hayes indicated that the claim of indirect associated disability discrimination brought under section 19 of the EqA was withdrawal earlier, and the claimant also withdrew the claim of indirect sex discrimination brought under section 19 of the EqA. Both of these claims are therefore dismissed on withdrawal by the claimant as recorded in the judgment above.

6. The remaining claims for the Tribunal to decide at the liability hearing are ordinary unfair dismissal under section 94 and 98 of the Employment Rights Act 1996 as amended, direct associated discrimination under section 13 EqA, section 15 discrimination arising as a consequence of disability and section 27 victimisation.

Claimant's disability issue

7. In order for the complaints of disability discrimination to succeed, the claimant will need to establish that she had a disability within the meaning of section 6 of EqA, and this is the issue before me today.

8. Oral evidence has been heard on oath from the claimant who confirmed the contents of her impact statement was true, together with oral submissions from Mr Hayes and Ms Firth which I do not intend to repeat in their entirety having incorporated a number of the points made in my findings set out below.

9. The claimant's case is that she was disabled by the effects of the mental impairment of low self-esteem, anxiety and depression. The claimant will need to show that she had that disability during the relevant period of time. In this case the parties agree the **"the relevant period"** is either the 18 July 2019, according to Mr Hayes or 12 August 2019 according to the Skeleton Argument submitted on behalf of the respondent, and ends with the termination of the claimant's employment on 27 January 2020.

10. At present, there is a potential dispute about whether or not the claimant had that disability for the whole of the relevant period, the claimant maintaining that she had been suffering from depression for many years since 2010 which the respondent disputed. In the Skeleton Argument and closing submissions Ms Firth concedes that the long-term requirement is proven from the date of the second Occupational Health report dated 3 January 2020 but requires the other elements of the definition to be proven, primarily that the claimant's mental impairment had a substantial and long-term adverse effect on her ability to carry out normal day-to-day activities on 18 July 2020.

11. Both parties agreed that the two issues to be resolved were:

a. Was the claimant suffering from a mental impairment which had a substantial (more than trivial) adverse effect on her ability to carry out normal day-to-day activities?

b. Was that effect long-term? If an impairment has not lasted for 12 months already at the material time, it must be likely to last for at least 12 months. Likely means could well happen.

The facts relating to the claimant's mental health.

12. In her impact statement the claimant asserted she had suffered from depression "for many years" from October 2010 and has been "under the care of my GP since that time and have been medicated regularly throughout that time.

13. In oral evidence under cross-examination the claimant described how she had "consistently suffered from depression since 2010 and had been on medication. The claimant included in her definition of medication the herbal remedies and CBD cannabis oil provided to her by a relative as an alternative to anti- depressant medication which she explained, prevented her from functioning. She described how in the period from June/July 2019 her conditioned worsened and she came to rely upon the support of her family; her daughter-in law who regularly helped her get out of bed and dressed, her husband who took time off work to support her and her sons who helped care for the claimant's Mother, a task the claimant had carried out before the "relapse "in May/June 2019. The claimant's recollection is that she had been in a depressive state for years and the mental health problems amounted to depression, or at the very least as conceded under cross-examination, she confirmed it was stress related when there was no diagnosis of depression in the early years and explained the severe difficulties facing her family and sister over a substantial period of time.

14. The claimant described how she had felt when taking anti-depressant medication. It made her feel drowsy with no energy and she did not want to get dressed, and as a result she self-medicated through a relative who provided the across the counter medication, and I found there was no reason to disbelieve the claimant that this was the case, her priority being to look after four children, her own and her sisters.

15. The claimant explained she had suffered from post-natal depression after the birth of her second child and this continued with the claimant feeling "low" with poor self-esteem". This is not reflected in the GP records, however, taking the records as a whole there is no good reason why the claimant's evidence cannot be relied upon as a reflection of what she felt at the time.

16. I accepted on the balance of probabilities that the claimant had a history of mental health issues, whilst the GP records do not confirm she suffered from this continuously since 2010 or the birth of her second child, it from the records the claimant was on the occasions set out below, being treated by her GP for mental health issues.

17. Turning to the more recent events the claimant gave oral evidence on cross-examination that she was depressed with suicidal thoughts leading to her attendance at the GP surgery in February 2019 when Fluoxetine was prescribed. The GP record recorded below confirmed the claimant had "no suicidal thoughts, no self-harm" in direct contrast to the claimant's oral evidence. The claimant's position is that she did not tell the GP the truth because she was frightened of being taken away from her family, and only recently disclosed she had suicidal thoughts. I considered whether the conflict in the evidence undermined the claimant's credibility and on balance concluded it had not, given the fact that the GP record reflect the claimant had mental health issues and it is conceivable she was worried about bringing up suicidal tendencies when she had a family and disabled Mother who relied upon her.

18. On the balance of probabilities, in contrast to the submissions made by Ms Firth, I accepted the claimant's evidence that her mental health deteriorated in 2019 and the

fact it may initially have been linked to menopausal symptoms found to be present by her GP in February 2019 were one and the same thing when it came to the effect of her depression on her day-to-day activities. I accepted on the balance of probabilities the claimant's oral evidence that she experienced no difference between the depression she felt and menopausal mood swings the effects of which intermingled.

19. By the 18 July 2019 the claimant was very unwell, and I took the view her deteriorating mental health had taken place over a period of time, accepting the claimant's evidence on this which appeared to be logical and supported by the contemporaneous documentation. The 11.7 18 July 2019 GP entry recorded "feeling low mood for mths no suicidal intent or plans feels negative low esteem and low self-worth poor concentration and sleep disturbed concerns about mental health struggling at work dealing with customers". Fluoxetine was prescribed 40mg daily – 56 capsules under repeat medication and the claimant has been taking anti-depressant medication since through to her dismissal and beyond. I have no reason to doubt the claimant's evidence that the repeat prescription enabled her better "to cope" and without it she could not cope with the result that the effect of depression on day-to-day activities would have had an even greater substantial adverse effect.

20. The claimant was diagnosed with reactive depression on 29 July 2019. Before and after this diagnosis the claimant, who believed she" suffering from a "relapse" in May/June 2019 was substantially prevented from carrying out he ordinary day-to-day activities. She had and continued to experience "regular sleepless nights" feeling in a "zombie like world" when feeling particularly low, poor concentration, becoming upset and emotional, struggling to care for her disabled Mother, not going out much after May/June 2019, struggling to get out of bed and neglecting personal hygiene, being unable to cook or clean and carry out other daily chores. The position deteriorated to such an extent that the claimant needed the support of her daughter-in-law to help her get out of bed, washed and dressed and the family took over the claimant's other responsibilities, like looking after her Mother, which the claimant, who cried a lot, felt guilty about. The situation with the claimant's family and the assistance the claimant required to function continued throughout the relevant period, beyond the effective date of termination to date.

<u>The medical records</u>

21. There are a number of medical records and reports in the bundle which reflect the claimant's attendance at her GP surgery increased in 2019. I have not set out all of the relevant medical records read by me, having chosen those that best set out the medical background. The medical records, of which there were a considerable number as evidenced by the size of the bundle, to which I was taken to in the bundle included the following:

21,1 30 July 2020-reactive depression; duration 27 July 2020 – 26 October 2020.

21,2 21 July 2020 – "said feeling TATT which is not herself requesting blood tests. Said no energy to do anything, gets tired easily and early in the day. Said she does have trouble sleeping which is ongoing but no issues carrying out ADL in the past. She

is taking Zopiclone. Denies any physical symptoms – has lost weight but she has cut some food from her diet…"

21.3 15 October 2019 – "feeling low in mood has had appear [appeal] in work rejected…no suicidal intent, tearful and crying feels low, let down…sleep disturbed.

21.4 7 October 2019 Fit note…reactive depression NOS, duration 07-Oct-2019 – 21Oct-2019…recent issues with work…still depressive features and loss of confidence anxiety."

21.5 9 September 2019 – reactive depression "on Fluoxetine, states helping with low mood…not able to sleep as worried about the appeal process."

21.6 29 July 2019 – reactive depression "continuing issues with depression low mood negative thoughts no suicidal intent…poor concentration/and struggling to cope with day to day tasks.

21.7 18 July 2019 "feeling low mood for mths no suicidal intent or plans feels negative low esteem and low self-worth poor concentration and sleep disturbed concerns about mental health struggling at work dealing with customers". Fluoxetine was prescribed 40mg daily – 56 capsules under repeat medications.

21.8 15 February 2019 "Fluoxetine…30 capsules…menopause symptoms present…months of hot flushes, mood swings, irritable, occasionally tearful, no suicidal thoughts, no self-harm…in view of predominant mood sx…commence ssri and review 3 weeks but sooner if crisis, adv re: initiation side effects." The claimant relies on this GP entry for her explanation that she did not inform her GP of suicidal thoughts because it was at this meeting the GP explained she may have to go into the crisis centre at Fazakerley Hospital, an explanation unsupported by the evidence given the reference to no suicidal thoughts and a common sense interpretation of the entry which clearly refers to the claimant coming back to her GP if there is a crisis with any side effects of the anti-depressant medication prescribed. The Tribunal on the balance of probabilities did however accept the claimant's oral evidence that she experienced no difference between the depression she felt and Menopausal mood swings which to her the effects of which intermingled.

21.9 15 March 2018 "going through Menopause so has night sweats…no sleep disturbance…Postmenopausal bleeding…doesn't normally have problems with mood."

21.10 10 November 2010 stress related problem – depressed offered counselling, keen for anti-depressants, started Fluoxetine." 28 capsules were prescribed.

21.11 29 October 2010 stress related problem

11.12 "stress related problem…has had some time off requested Med3 for short period – agreed…family stress – week."

11.13 28 February 2003 – anxiety state

Medical reports and occupational health reports

22. In a report dated 27 August 2019 Dr Anten, the claimant's General Practitioner confirmed he had made a diagnosis of reactive depression on the 18 July 2019 "this was secondary to a number of contributory factors, mainly domestic relating to her mounting responsibilities as main carer…She reported low self-worth and low self-esteem and deterioration in concentration and marked sleep disturbance. She admitted that these changes were impacting upon her ability to execute her job. She is on the front line working with customers…I agreed that the best approach would be to start taking the anti-depressant therapy and hypnotic-Zopiclone…she was temporarily unfit to perform her job on clinical grounds…"

23. It is accepted the claimant was issued with a number of Statements of Fitness for Work citing reactive depression and it is notable that reasonable adjustments were not suggested by the claimant's GP.

24. The respondent obtained two occupational health reports; the first dated 2 December 2019 the second 3 January 2020.

25. In the first occupational health report Ian Wharmby, RGN, noted he had been informed by the claimant that "she has been suffering from generalised depression for a number of years and is under the care of her GP and treatment that has been put in place generally helped her manage these symptoms on a day-to-day basis…a change in Mrs Gallagher's working hours…compounded the difficult symptoms she was already experiencing and she became absent from work." He found the claimant was not fit for any form of work "for at least another six to eight weeks…was suffering from reactive depression due to difficult circumstances that occurred in the workplace…this…caused a downturn in her moods…has had recent medication changes that is beginning to have some therapeutic benefit."

26. Mr Wharmby's opinion was that "for many individuals who suffer some significant depressive relapse absences can go on for many months…therefore at this time a likely return to work cannot be predicted."

27. The second occupational health report is dated 3 January 2020 provided by RGN Ginnene Algar who confirmed "Donna explained she has experienced some depression in the past about 3.5 years ago where she recalled having some tablets. She thinks this is recurrence is due to how she perceived she has been treated at work. She described a very low mood with high anxiety…In my clinical opinion…Donna remains unfit for work. Donna remains unsure of things at times and got mixed up with the mental health questionnaire in that she reported suicidal ideation neatly every day in the last 2 weeks. She was reporting this from when she was first absent back in July and not in the last 2 weeks of her life.... showed severe depression and anxiety…I think her clinical care needs to be reviewed given her lack of progress…Depression and anxiety can return in people in 2 ways. The first is a relapse which usually happens within two months of stopping treatment from the initial episode…. People who suffer with depression or anxiety are more likely to be triggered by stressful life situation than someone who has never experienced mental health

issues…" The claimant was found to suffer from a "severe level of anxiety and depression, which suggests her symptoms are interfering with her ability to carry out some normal daily activities…"

28. Ms Firth correctly pointed out the contradictions in the two-occupational health report by the claimant's reference to suffering from a generalised depression for "a number of years" and the reference to three and a half years in the second report. On the balance of probabilities, I took the view that the second occupational report confirmed the claimant was confused and got mixed up, and the phrase a number of years can amount to three and a half years with nothing hanging on the fact the claimant made no reference to ten years. It is clear from the medical evidence the claimant had a history of mental health issues and I have concentrated in any event on the position during the relevant period of her disability discrimination claims.

29. I found the claimant's oral evidence to be credible in the main, she was confusing the depression and anxiety suffered in the past which she genuinely believed continued from 2010 to date, despite the GP evidence which reflected the claimant did not seek treatment for years on end, and made no reference to reoccurring feeling of suicide and not wanting to "be here". The claimant explained that she started taking anti-depressant for lengthy period of time in July 2019 and this was reflected in the medical notes and repeat prescription. The claimant clarified that before this date she had taken the decision not medicate as she found she could not function on anti-depressants and look after four children plus disabled Mother, instead a relative sent her over the counter herbal medication to which there was no reference in any of the GP records or the claimant's impact statement. The claimant was not counselled and nor did she receive any other treatment from the medical professionals until after July 2019. On the balance of probabilities, I found that during the period in early 2019 leading up to and beyond July 2019 through to the effective date of termination, there was a substantial adverse effect on the claimant's ordinary day-to-day activities, but this had not been the case in earlier years or "for many years" and/or since 2010 as the claimant now maintains relying on a muddled recollection of her mental health history. Nevertheless, the claimant was depressed at times prior to 2019, and I accept on balance the evidence that her mental health condition varied and fluctuated.

Law: Disability status

30. S.6(1) of the Equality Act 2010 ("EqA") provides that a person, 'P', has a 'disability' if he or she 'has a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.'

31. Schedule 1 of the EqA 2010 sets out factors to be considered in determining whether a person has a disability. S.6(5) of the EqA 2010 provides for the issuing of guidance about matters to be taken into account in deciding any question for the purposes of determining who has a disability. When considering whether a person is disabled for the purposes of the EqA regard should be had to Schedule 1 ('Disability: supplementary provisions') and to the Equality Act (Disability) Regulations 2010, and the 'Guidance on matters to be taken into account in determining questions relating to

the definition of disability' under 6(5) of the Equality Act 2010 should be taken into account.

32. The relevant time to consider whether a person was disabled is the date of the alleged discrimination; see the well-known case of McDougall v Richmond Adult Community College *[2008] IRLR 227,* [2008] ICR 431.

33. On behalf of the respondent the Tribunal as referred to Latchman v Reed Business Information [2002] ICR 1453 stated: *"the likelihood falls to be judged as it currently was, or would have seemed to have been, at the point when the discriminatory behaviour occurred… it is not what has actually later occurred but what could earlier have been expected to occur which is to be judged."*

34. Ms Firth submitted that it is particularly important with mental impairments that the claimant adduces evidence to prove that the same will be likely to last for at least 12 months. See, for example Royal Bank of Scotland v Morris UKEAT/0436/10/MAA: *"The Claimant could in principle still argue that the (serious) impairment from which he did unquestionably suffer in October 2006 was – judged at that date (as required by the* **Richmond Adult College** *case (above)) – likely to last for at least twelve months, so as to fall under head (b). But again the evidence did not in our view justify such a conclusion. Dr O'Donovan's contemporary note simply diagnoses a "severe depressive episode", with no prognosis of any kind: see paragraph 56 (3) above. The Tribunal could not without expert evidence form any view on the likelihood of that impairment (at the necessary level of seriousness) continuing for at least a year.*

35. Paragraph 5(1) of Schedule 1 to the EqA provides that an impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if measures are being taken to treat or correct it and, but for that, it would be likely to have that effect. In this regard, *likely* means 'could well happen' — the well-known case of Boyle v SCA Packaging Ltd (Equality and Human Rights Commission intervening) [2009] ICR 1056, HL In assessing whether there is a substantial adverse effect on the person's ability to carry out normal day-to-day activities, any medical treatment which reduces or extinguishes the effects of the impairment should be ignored.

36. For any claim to succeed, the burden is on the claimant to show, on the balance of probabilities, something an 'impairment' whether it is a mental or physical condition and the Tribunal was referred to the court of appeal decision in Kapadia v London Borough of Lambeth [2000] IRLR 699 (CA)). In the case of Millar v ICR [2005] SLT 1074, [2006] IRLR 112, the Court of Session held that a physical impairment can be established without establishing causation and, in particular, without being shown to have its origins in any particular illness. The focus should be on what the claimant cannot do, and this test is particularly relevant the claimant's case, especially in relation to the February menopausal symptoms resulting in depression.

37. It is not appropriate to have an examination for the purposes of discovering the causes of an alleged disability, since, whatever the cause, a disability which produces the effects specified in legislation will suffice. In considering what amounts to an 'impairment', its effect, not cause is what is of importance. This approach is set out in the Guidance issued under the EqA 2010, where (at para A8) it is stated that 'it is not

necessary to consider how an impairment is caused, even if the cause is a consequence of a condition which is excluded.

Conclusion – applying the law to the facts

The claimant's disability issue

38. The claimant's case is that she was disabled by the effects of the mental impairment of low self-esteem, anxiety and depression, and on the balance of probabilities I find that the claimant has discharged the burden to show she has an impairment which falls under section 6 of the EqA during the relevant period 18 July 2019 to 27 January 2020.

39. For the reasons set out above I found the adverse effect on ordinary day-to-day activities was substantial and the condition long term. I noted short-term conditions do not qualify under section 6 of the EqA even they are severe and very disabling while they last, for example, severe depression, but was satisfied on balance that by 18 July 2019 under para 2(1) of Schedule 1 to the EqA, the effect of an impairment was likely to last for at least 12 months and therefore long term taking into account the claimant's mental health history, the fact she was prescribed in the short-term anti-depressant medication in February 2019 for depression and again from 18 July 2019 which continued throughout and beyond the relevant period.

40. For impairments that have not lasted 12 months, the test is whether the substantial adverse effects of the condition are likely to last for at least 12 months i.e. that an event is likely to happen if it 'could well happen' as set out the well-known House of Lords' decision in Boyle cited above.

41. When evaluating the 'long-term' nature of a claimant's incapacity, the Tribunal must base its decision on all the objective evidence before it including the medical evidence relating to her conditions of depression, anxiety and low self-worth. In the occupational health reports obtained on behalf of the respondent the occupational health advisor accepted the claimant was suffering from reactive depression and the history she gave of her mental health condition. Mr Wharmby's opinion as at 2 December 2019 was that "for many individuals who suffer some significant depressive relapse absences can go on for many months…therefore at this time a likely return to work cannot be predicted." Based on Mr Wharmby's objective medical opinion, bearing in mind he was preparing a report for the respondent, I am satisfied that as at July 2019 the substantial adverse effect of the claimant's mental health condition could well last 12-months taking into account that by the 2 December 2019 when the report was compiled the claimant had been taking anti-depressant medication since July, which Mr Wharmby recorded the "recent medication changes…is beginning to have some therapeutic benefit."

42. Mr Wharmby was of the view the claimant "due to the length of time Mrs Gallagher has had a diagnosis of depression and more recently reactive depression…it is likely she would be afforded protection under the Equality Act 2010…ultimately not a medical decision but a legal one." I have disregarded Mr Wharmby's view of the claimant being protected under the EqA. I accepted Ms Firth's

submission that Mr Wharmby's conclusion cannot be accepted at face value as he depended upon the information provided to him by the claimant, and after a careful analysis of the GP records it is apparent that they did not fully reflect the claimant's understanding of her medical history, which may have been confused over time and as her feeling of depression deteriorated in early/mid-2019 when informed about the change in her shift pattern that allegedly impacted upon the caring role she had for her Mother.

43. In the second occupational health report dated 3 January 2020 prepared on behalf of the respondent, RGN Ginnene Algar's opinion was "people who suffer with depression or anxiety are more likely to be triggered by stressful life situation than someone who has never experienced mental health issues…Some research shows people have a significantly higher chance of depression/anxiety recurring if they experience 2 or more episodes in the 1st few years." The claimant was found to suffer from a "severe level of anxiety and depression, which suggests her symptoms are interfering with her ability to carry out some normal daily activities…"

44. Based on the "management advice" set out in the uncontradicted 3 January 2020 report, the earlier report of 2 December 2019 together with the contemporaneous evidence before me including the claimant's oral evidence, I am satisfied on the balance of probabilities the substantial adverse effects experienced by the claimant with and without anti-depressant medication was likely to last at least 12-months from the 18 July 2019 and beyond the effective date of termination. In arriving at this decision, I did not accept Ms Firth submission that it is particularly important with mental impairments the claimant adduces expert medical evidence to prove that the same will be likely to last for at least 12 months relying on the UKEAT decision in Royal Bank of Scotland v Morris cited above. In that case the EAT (the then President of the EAT, Mr Justice Underhill, presiding) held that there was simply insufficient evidence before the tribunal for it to draw any conclusions on essential elements of the definition of disability, including the duration or likely duration of M's impairment. A psychiatric registrar's report indicated that on 19 October 2006 M had a mental impairment that substantially affected his ability to carry out normal day-to-day activities. But this evidence did not justify any finding about how long this was the case. There was no evidence of serious continuing symptoms, and on 16 November 2006 the same doctor saw M again and reported that his condition was much improved. The EAT acknowledged that this improvement might only be as a result of the medication M was taking, so that he could rely on a 'deduced effect.' In the EAT's view, this was 'just the kind of question on which a tribunal is very unlikely to be able to make safe findings without the benefit of medical evidence'. Similarly, it would be difficult for the tribunal to assess the likelihood of the risk of recurrence, or the severity of any such recurrence, without expert evidence." The claimant's case can be differentiated in that I took the view there was sufficient evidence from the medical reports obtained by the respondent coupled with the GP records and the fact Mrs Gallagher's mental impairment did not improve, unlike Mr Morris. Mr Hayes submitted that Mr Morris, unlike the claimant, was offered a specialist medical report to comment on the long-term issue, and he actively refused it in contrast to the claimant's case where the Tribunal has been given all of the evidence.

45. In conclusion, the claimant was disabled in accordance with section 6 of the Equality Act 2010 with a mental impairment of depression, anxiety and low self-esteem in the relevant period 18 July 2019 to 27 January 2020.

11.01.2021
Employment Judge Shotter

JUDGMENT AND REASONS SENT TO THE PARTIES ON

27 January 2021

FOR THE SECRETARY OF THE TRIBUNALS