



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Gillett

Respondents: Commissioners for Her Majesty's Revenue & Customs

Heard at: Liverpool **On:** 14 October 2020

Before: Employment Judge Horne, sitting in public

Representatives

For the claimant: In person

For the respondents: Mr A Williams, counsel

Judgment was sent to the parties on 3 November 2020 and the claimant requested written reasons on 5 November 2020. The following reasons are accordingly provided:

REASONS

Introduction

1. The heading to these reasons is marked with the hearing code "V". All this means is that the hearing took place on a remote video platform. Neither party objected to the format of the hearing.

Procedural history

2. By a claim form presented on 17 June 2019, the claimant brought a complaint of failure to make adjustments within the meaning of section 20 of the Equality Act 2010 ("EqA"). That complaint depended for its success on the claimant being able to establish that she had a disability within the meaning of section 6 of EqA.
3. In its response dated 10 September 2019, the respondent asked the claimant to clarify the nature of her alleged disability, the impact of her impairment on her ability to carry out normal day-to-day activities and the point in time when the

impairment started. The claimant replied by e-mail on 23 September 2019. In answer to those particular questions, the claimant stated:

“Back pain, which has since been diagnosed as Cervical Spondylosis Myelopathy. This causes numbness and tingling [in] my left arm and both legs, affects balance as well as shoulder pain, back pain and headaches.

When my back pain is at its worst I am unable to sit for any prolonged period of time and need to stand or move around...

My lower back pain has been an ongoing issue since approximately 2004...”

4. A preliminary hearing took place before Employment Judge Whittaker on 1 October 2019. During that hearing the claimant provided further clarification about the nature of her alleged disability. According to the record of the hearing, which was sent to the parties on 29 October 2019, the claimant confirmed the following allegations:
 - 4.1. that “the respondent failed to make reasonable adjustments to take into account the claimant’s disability of back pain”; and
 - 4.2. that “she was at all material times (July 2018 up to and including the date of her claim form...) a disabled person by way of a physical impairment, namely having something wrong with her back which caused her to suffer back pain.”
5. Employment Judge Whittaker also recorded that “the respondent does not accept that the claimant was a disabled person during those material times”.
6. Having carefully identified the way in which the claimant put her case in relation to her alleged disability, and noted that it was a matter of dispute, Employment Judge Whittaker made further directions for disclosure of disability-related information and listed the case for a further preliminary hearing for case management. That preliminary hearing took place before Employment Judge Allen on 10 December 2019. The claimant’s disability was still in dispute. Employment Judge Allen decided to list the case for a preliminary hearing in public to determine that issue.

The preliminary issue

7. Following the hearing, a case management order was sent to the parties on 6 January 2020. The case management summary stated that the purpose of the next preliminary hearing would be to determine the following issue:

“whether at the relevant time the claimant had a disability... The claimant relies upon her back and back pain, which she has described as cervical spondylosis myelopathy. The relevant time for the purposes of this issue is July 2018 until 17 June 2019.”
8. The case management order was accompanied by schedule which listed the issues in more detail. So far as the claimant’s alleged disability was concerned, the issues were listed as follows:

“At the material time (July 2018 to 17 June 2019), did the Claimant have a physical impairment (namely a back condition causing low back pain)?

Did that impairment have a substantial adverse effect on the Claimant's ability to carry out normal day to day activities (or would it have done, but for the effects of medication)?

Was that effect long-term?"

9. Shortly after the start of the hearing, the claimant confirmed, in answer to Mr Williams' questions, that, for the purposes of her claim, the relevant impairment was "lower back pain".

Evidence

10. The claimant gave oral evidence on her own behalf. She confirmed the truth of an 18-paragraph statement and answered questions. I also considered documents in a 249-page bundle.
11. My impression of the claimant was that she was trying honestly to tell me about her back pain and about the causes and effects of other medical conditions at particular points in time. Nonetheless I found parts of her evidence to be unreliable. The unreliable aspects of her evidence caused me to take a cautious approach to her evidence as a whole. Here are three examples:
- 11.1. On 18 February 2019, the claimant told occupational health that she had been diagnosed with a prolapsed lumbar disc. At that time, she had not received any such diagnosis. On her own account, she had not had any diagnosis from a doctor, but had been told something by her physiotherapist. For reasons which I explain a little more fully, I did not think it likely that the physiotherapist would have given claimant anything as definitive as a diagnosis.
- 11.2. The claimant, when completing a Display Screen Equipment self-assessment form, indicated that she had been offered surgery for carpal tunnel syndrome following nerve conduction tests in 2017. This assertion was inconsistent with what was stated in Mr Gandavaram's report of 25 April 2019, which stated that nerve conduction tests had ruled out carpal tunnel syndrome.
- 11.3. The claimant told me that she had taken dihydrocodeine, having found it in her cupboard where it had been for 6 months. Dihydrocodeine was available only on prescription. It was not on a repeat prescription list. This meant that, for this particular medicine to have got into her cupboard 6 months previously, she would have needed a prescription round about that time. Her medical records do not indicate any such prescription having been given.

Facts

12. At all relevant times the claimant worked as a Higher Officer for the respondent.
13. In 2002 the claimant experienced low back pain following the birth of her child. She managed the pain by taking painkillers and anti-inflammatories which she purchased "over the counter".
14. Her back pain took a long time to improve. In 2004, the claimant started using prescription painkillers to manage the condition.
15. It is hard to know how, if at all, the claimant's back affected her between 2004 and 2010. There are no contemporaneous records. I accept the claimant's

explanation that, in 2010, she moved GP surgery and her pre-2010 records were left behind.

16. Between 2010 and 2013 the claimant did not mention any back pain to her doctor. During 2012, the claimant visited her GP four times complaining of shoulder pain, but did not mention her lower back. On 2 July 2013 she had another GP appointment where she mentioned problems with arm pain, but not back pain.
17. On 20 August 2013, the claimant visited her GP again. This time she did mention low back pain. She raised it again with her doctor in February 2014.
18. There is no contemporaneous record of how the claimant's lower back affected her between February 2014 and 24 July 2018.
19. On 23 January 2017 the claimant went to see her GP, this time to complain of parasthesiae (pins and needles). The record does not indicate the part of her body in which she experienced these symptoms, but it is almost certain that they affected her left arm.
20. On 31 May 2018, the claimant underwent a Display Screen Equipment assessment at work. The assessment was carried out largely on the basis of information supplied by the claimant on a self-assessment form. One section of the form asked a series of questions to which the claimant gave the following answers:

Do you experience any musculoskeletal discomfort whilst working at your PC, or at home afterwards?	Yes
How far into the working day does this occur	Daily
How long does it normally last	All day
Is it linked to an existing disability and/or ill health/injury	Yes
If yes, please give brief, non-confidential details	Tendonitis, Carpal Tunnel Syndrome
Have you sought medical/specialist assistance and/or treatment for this?	Yes
If yes, please give brief, non-confidential details	Consultant wanted to operate. I refused, a splint has been provided, however I am now getting pins and needles up and down my left arm.

21. The claimant's answer about carpal tunnel syndrome was incorrect. The claimant's subsequently-obtained orthopaedic consultant's report made clear that, some time before July 2018, carpal tunnel syndrome had been ruled out following nerve conduction tests.
22. The claimant did not mention difficulties with her lower back anywhere in the section regarding musculoskeletal discomfort or anywhere else on her self-assessment form.
23. On 2 July 2018 the claimant started to experience low back pain after sitting at a low desk. She raised the issue with her group Senior Officer. She carried on working at the same type of desk. At this stage I am not concerned with the question of whether she should have been given a different desk at which to work. On 23 July 2018 the claimant worked again at the low desk. She experienced more pain than usual. That evening, she was retrieving an item from her fridge when she experienced a sudden onset of severe back pain. The following morning she found it too painful even to get out of bed. Early on 24 July 2018, she telephoned the office early in the morning to say that she had "put her back out" and could not come into work. She telephoned her GP, complaining of lower back pain. She was given prescription painkillers and anti-inflammatories. Later that day she texted her manager to say that she had "sprained" her back and could not drive. She was absent for about 4 days. She later completed an ACC1 accident report describing the cause of her back injury as I have just related it.
24. The claimant attended a return to work interview on 31 July 2018. She said that she was still in pain with her back. They discussed adjustments to enable the claimant to return to work. The identified adjustment was a "desk with appropriate desk raisers".
25. In August 2018, the claimant obtained a fit note from her doctor. The note indicated that she would be fit to return to work if adaptations were made to her workplace.
26. On 30 October 2018, the claimant returned to her GP complaining of low back pain. She was referred for physiotherapy. In conversation, the physiotherapist told the claimant that she thought that she may have a herniated disc. I think it is unlikely that the physiotherapist told the claimant definitively that this was the cause of her back pain. The physiotherapist had no X-ray or MRI scan of the claimant's lumbar spine and would have been unlikely to have given the claimant a diagnosis of spinal damage based on examination alone.
27. The claimant e-mailed her manager on 3 December 2018 giving an update about her state of health. She said that at that time she was struggling to get up the stairs.
28. The claimant visited her GP again on 3 December 2018 and 4 February 2019 giving a further history of lower back pain. After 4 February 2019 she did not mention back pain to her doctors again.
29. On 18 February 2019 the claimant attended an occupational health appointment with Mr Greg Smith. The purpose of the appointment appears to have been to investigate what adaptations would be needed for the claimant's workstation. The claimant knew that Mr Smith did not have access to any of the claimant's records. The claimant told Mr Smith that she had suffered chronic

low back pain and sciatica in her left leg, with symptoms present for 8 years. She also told him, incorrectly I find, that she had been diagnosed with a prolapsed disc. The claimant indicated to Mr Smith that she had other medical conditions including carpal tunnel syndrome and Raynauds.

30. By February 2019, the claimant was experiencing pain affecting her neck and shoulder, as well as the pins and needles in her hand that she had been experiencing since July 2019 (and possibly before).
31. The claimant went back to her GP on 27 February 2019 and was given a referral to an orthopaedic consultant. The reason for the referral was not back pain, but for the pain and pins and needles in her left hand. The consultant was asked to investigate the possibility of carpal tunnel syndrome. Had the claimant still been experiencing substantial pain or limitation with her lower back at that time, I would have expected the back pain to have been mentioned in the referral. An orthopaedic surgeon would be well placed to consider lower back disorders.
32. From February 2019 to September 2019 the claimant visited her GP several times. She did not mention any back pain to her doctor during those visits. She took over-the-counter painkillers and anti-inflammatories about 5 days per week during this period. This medication was needed for the claimant's shoulder pain.
33. On 24 April 2019 the claimant was examined by Mr Gandavaran, the orthopaedic consultant. She told him what her symptoms were. She told him in detail about pins and needles affecting her left hand. She denied having any neck pain. Mr Gandavaran recommended an MRI scan.
34. Mr Gandavaran addressed the question of whether the claimant had Carpal Tunnel Syndrome. He observed that the claimant "was seen in Mr Kumar's clinic a few years ago when the nerve studies had ruled out carpal tunnel syndrome."
35. There is no record of the claimant having mentioned any back pain to Mr Gandavaran. I find the absence of reference to back pain to be significant. It is, of course, quite possible that, if the claimant mentioned any symptoms that Mr Gandavaran considered to be completely irrelevant to the referral, he would not have bothered to note them down. But if that was the reason for Mr Gandavaran not recording any back symptoms, it tends to suggest that there was nothing in the GP's referral that hinted at any difficulty with the claimant's lower back.
36. Following the claimant's MRI scan, Mr Kumar, another orthopaedic surgeon, reported on 18 July 2019. He observed that the MRI showed disc bulges impinging on the nerves in the cervical spine. He referred the claimant on to a spinal surgeon. She attended the spinal surgery clinic in August 2019 where she spoke to a nurse. The claimant told me that the nurse informed her that the cervical disc bulge would affect anything below the compression point. I found it difficult to attach any weight to this piece of evidence. There is nothing in the claimant's records to substantiate it. No doctor has ever recorded any opinion that any problems in the claimant's lower back might have been caused by bulges in the cervical spine.

37. On 5 September 2019, the claimant's GP recorded that the claimant's problem was cervical spondylosis myelopathy. He did not attribute any back pain to that condition. The absence of any mention of back pain is unsurprising. All the focus over the previous 7 months had been on the claimant's shoulder and left hand.
38. In about October 2019 the claimant made a written statement describing the effect of her impairment on her ability to carry out day-to-day activities. She stated that she was struggling to sleep and had shooting pains. Without medication, she said, she would not be able to sit, stand, drive or climb out of bed. It is unclear from her statement which of these difficulties were the effects of low back pain and which were caused by other conditions such as her shoulder pain and pins and needles in her arm. There is no doctor's opinion before me to confirm how the claimant's symptoms would affect her if she did not take medication.
39. I return to the periods between 2004 and 2013, and between 2014 and 2018. These are the gaps in the timeline where no contemporaneous records are available and I only have the claimant's word to go on. In my view, it is important to try and make findings about how much, if at all, the claimant experienced low back pain during these periods. If the claimant's back pain affected her day-to-day life continuously from 2002 to 2018 (or would have done so but for the beneficial effects of medication), the long history would be highly relevant to the question of whether the effects of her back pain were long-term between July 2018 and June 2019.
40. The claimant says that, from 2002 until the present time she has taken over-the-counter medication "constantly". There have been no exceptions apart from "maybe a day or two". I do not think that the claimant's version is accurate. Her specific piece of evidence about taking old dihydrocodeine is inconsistent with the medical records. I also think that if the claimant was taking constant daily pain relief, she would have visited her doctor more often in an attempt to manage the underlying cause. The claimant did frequently visit her GP in relation to other medical conditions, including orthopaedic conditions. If the claimant was on constant medication for her back, I do not think she would have gone for years at a time without seeing her doctor about it.
41. I am also unpersuaded that the claimant actually experienced substantial difficulties with lower back pain between 2010 and 2013 or between 2014 and July 2018. Again, I would have expected the claimant to have visited her GP to discuss such problems if they existed at those times.
42. I am satisfied that, between July 2019 and February 2019 the claimant's back pain represented a significant enough intrusion for her to visit her doctor regularly about it. During this period, her back pain made it difficult for her to sleep, work at a low-level desk, and, initially, get out of bed.
43. For this period, it is not necessary for me to make a finding about what the effect of the claimant's back pain would have been if she had not taken medication. I have considered whether or not to make such a finding for good measure. I decided not to do so. Without medical evidence it is difficult to know. I did not find the claimant's oral evidence reliable enough for me simply to take her word for what would have happened without medication.

44. From February 2019, I find, the effects of the claimant's back pain were relatively slight. By this time, she had had physiotherapy. She did not mention her back pain to her doctor after 4 February 2019. She continued to seek treatment and investigation, and continued with painkilling medication, but this was for her shoulder and the pins and needles in her hand.
45. It is possible that the claimant may have suffered from some lower back pain from February 2019 to June 2019 if she had not taken pain-killing medication for other ailments. In my view, if she did not take medication, it is unlikely that the effect of the pain would have been more than minor. I reach this conclusion because:
- 45.1. There is no medical evidence about what the effect of her back pain at this time would have been if the claimant had not taken medication;
- 45.2. The claimant did not take medication every day – her estimation was 5 days per week. Had her back pain caused more than minor difficulties for the claimant on those two days, I would have expected her to have said something to her doctor.
- 45.3. I cannot infer what the claimant's back pain would have been like from the fact that she took the painkillers so regularly. This is because she took the painkillers for other painful conditions.

Relevant law

46. Section 6 of EqA provides:

(1) A person (P) has a disability if- (a) P has a ... mental impairment, and (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

...

(5) A Minister of the Crown may issue guidance about matters to be taken into account in deciding any question for the purposes of subsection (1).

47. According to section 212(1) EqA, "substantial" means "more than minor or trivial".

48. Schedule 1 to EqA supplements section 6. Relevant extracts are:

2. Long-term effects

(1) The effect of an impairment is long-term if- (a) it has lasted for at least 12 months, (b) it is likely to last for at least 12 months, or....

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

...

5. (1) 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—

(a) measures are being taken to treat or correct it, and

(b) but for that, it would be likely to have that effect.

(2) "Measures" includes, in particular, medical treatment ...

PART 2 - GUIDANCE

10. Preliminary

This Part of this Schedule applies in relation to guidance referred to in section 6(5).

11. Examples

The guidance may give examples of- (a) effects which it would, or would not, be reasonable, in relation to particular activities, to regard as substantial adverse effects...

12. Adjudicating bodies

(1) In determining whether a person is a disabled person, [a tribunal] must take account of such guidance as it thinks is relevant.

49. The relevant guidance is to be found in the Secretary of State's *Guidance on Matters to be Taken Into Account in Determining Questions Relating to the Definition of Disability (2011)*. The following passages appear to be helpful:

B1. The requirement that an adverse effect on normal day-to-day activities should be a substantial one reflects the general understanding of disability as a limitation going beyond the normal differences in ability which may exist among people...

B12. The Act provides that, where an impairment is subject to treatment or correction, the impairment is to be treated as having a substantial adverse effect if, but for the treatment or correction, the impairment is likely to have that effect. In this context, "likely" should be interpreted as meaning, "could well happen"...

C3. The meaning of "likely" is relevant when determining

- whether an impairment has a long-term effect ...
- whether an impairment has a recurring effect...

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...

...

D2. The Act does not define what is to be regarded as a 'normal day-to-day activity'. It is not possible to provide an exhaustive list of day-to-day activities, although guidance on this matter is given here and illustrative examples of when it would, and would not, be reasonable to regard an impairment as having a substantial adverse effect on the ability to carry out normal day-to-day activities are shown in the Appendix.

D3. In general, day-to-day activities are things people do on a regular or daily basis, and examples include shopping... getting washed and

dressed ..., and taking part in social activities. Normal day-to-day activities can include general work-related activities...such as interacting with colleagues, ... carrying out interviews...

...

50. The tribunal must focus on what the claimant cannot do, or can do only with difficulty, rather than the things that she can do: *Goodwin v. Patent Office* [1999] IRLR 4. That is not to say, however, that the things that the claimant can do are completely irrelevant; they may shed some light on the extent of any difficulty in carrying out the activities upon which the claimant relies.
51. In assessing whether an impairment has an effect on a person's normal day-to-day activities, it is appropriate for a tribunal to consider the effect on the person's ability to cope in his or her job: *Paterson v. Commissioner of Police for the Metropolis* [2007] ICR 1522.
52. Tribunals do not need to make a medical diagnosis or identify the precise cause of an impairment. Whilst it is good practice to make separate findings about the impairment and its effect, the tribunal need not proceed in rigid consecutive stages.

Conclusions

Impairment – back pain

53. The period with which I am concerned is July 2018 to June 2019.
54. I start by reminding myself of the claimant's case as to what her impairment was. The impairment was low back pain.
55. The claimant had the impairment of low back pain from July 2018 to at least February 2019.
56. An early formulation of the claimant's case suggested that the alleged impairment might have been different. When first describing the nature of her disability, the claimant alleged that her back pain had been diagnosed as cervical spondylosis myelopathy (CSM). If CSM had been the alleged impairment, it would be necessary to make a finding about all the adverse effects of her CSM on the claimant's ability to carry out normal day-to-day activities. Those effects might include the difficulties caused by the shoulder pain and the pins and needles in her hand. In my view it would be wrong to take those effects into account. I reach this view for two reasons:
 - 56.1. First, it would be unfair. The claimant confirmed numerous times on paper and out loud that her alleged impairment was back pain. The claimant was not cross-examined on the effect of shoulder and hand symptoms on her ability to carry out normal day-to-day activities. No doubt, this omission was a deliberate one in reliance on the claimant's clear indication of the way in which she put her case.
 - 56.2. Second, I was not persuaded that the claimant's back pain was caused by CSM. This is for the reasons I have given in paragraphs 36 and 37. If the claimant was disabled only with the effects of CSM, that disability would be irrelevant to her complaint of failure to make adjustments, which concerned the disadvantage caused by her back pain.

Actual effect on day-to-day activities

57. From July 2018 until about February 2019, the claimant's low back pain adversely affected the claimant's ability to sleep, work at a low-level desk, and get out of bed. These are all day-to-day activities.

Substantial

58. Between July 2018 and about February 2019, the effect on the claimant's ability to carry out these activities was more than minor or trivial.
59. If there was any effect on day-to-day activities from February 2019 to June 2019, in my view, the effect was minor and not substantial. This is for the reasons I have given in paragraph 44.

Deduced effect on day-to-day activities

60. I now turn to what the effect of the claimant's lower back pain on the claimant's ability to carry out normal day-to-day activities would have been if she had not taken painkilling or anti-inflammatory medication. This is sometimes referred to as the "deduced effect" of the impairment.
61. I did not make a finding on this question for the period July 2018 to February 2019: see paragraph 43.
62. I did make a finding on deduced effect in relation the period from February to June 2019. to I found that, even without medication, the effect of the claimant's back pain on her ability to carry out normal day-to-day activities would be only minor: see paragraph 45.

Long-term – whether lasted for 12 months

63. The claimant's principal argument is that, by July 2018, the claimant was already disabled, because the substantial adverse effect of her back pain had already lasted for over 12 months. In fact, she says, it had lasted since 2002.
64. This argument needs to be taken seriously. It is beyond doubt that, from 2002 to 2004, the claimant had the impairment of back pain which, but for medication, would have substantially adversely affected the claimant's ability to carry out normal day-to-day activities. That period by itself exceeded 12 months. The claimant also had a 6-month period from 2013 to 2014 where it is certainly arguable that the adverse effect of her back pain was substantial. That 6-month period, if it can be aggregated with the 7 months of substantial adverse effect from July 2018 to February 2019, would produce a total exceeding 12 months.
65. My view, however, is that those findings are not enough on their own. In order for the claimant's argument to succeed, I would need to find that the impairment that the claimant had in July 2018 was the *same* impairment as one of the impairments she had in 2002-2004 or in 2013-2014. In one sense the impairments seemed the same, in that they all produced symptoms of pain in the lower back. But that does not mean that the impairments actually were the same. Impairments are not the same as symptoms. If they were, a person could be disabled if they had a succession of traumatic injuries, years apart, each resulting in a full recovery, as long as those injuries all hurt in the same place. That seems intuitively wrong. In my view, something more is required. There has to be something about the underlying physical condition that all the symptomatic episodes have in common.

66. In this case, my view is that the claimant's impairment from July 2018 onwards was different from the back pain impairments that she had experienced previously. There was a sudden onset of pain on 23 July 2018, caused by an identifiable physical movement (reaching into the fridge) against the background of about 3 weeks of sitting in an uncomfortable position. Her comments at the time emphasise the suddenness of her injury. Prior to July 2018 the claimant had not experienced any significant back pain, with or without medication, since 2014. Had she been suffering from back pain in May 2018, I would have expected her to mention it in her DSE self-assessment in answer to very specific questions.
67. What all of this means is that the claimant's back pain in July 2018 was not the recurrence or continuation of a pre-existing impairment, but the start of a new one.
68. As I have found, the substantial adverse effect of the new impairment ceased in February 2019. That was 7 months after its onset. At no point during the relevant period, therefore, did the claimant reach the point where the substantial adverse effect of this particular impairment had lasted for 12 months.

Long-term – whether likely to last for 12 months

69. An impairment may still be long-term, even if it has not yet lasted 12 months. I must consider whether, at any point during the relevant period, it could be said that the substantial adverse effect of the back pain "could well" last for 12 months.
70. I start with the latter part of the relevant period, namely February to June 2019. During that time, if the claimant had the impairment of back pain at all, the impairment did not have a substantial adverse effect. For these 4 months, therefore, I must assess the likelihood of recurrence. What I must ask myself is, bearing in mind the circumstances existing at that time, what were the chances of the substantial adverse effect coming back? Could it well happen? In my view, the chances of recurrence did not pass that low threshold. The claimant had had a sudden injury against the background of a few weeks of discomfort. She had had physiotherapy and recovered to the point where she no longer mentioned back pain to her doctors. Her overwhelming concern at this time was her painful shoulder and pins and needles in her left hand.
71. That leaves the period from July 2018 to February 2019. I do not think it could be said, during that period, that the substantial adverse effect of her back pain "could well" last 12 months. There is no evidence that the claimant had any damage to her lumbar spine that would not recover naturally. It would be premature to predict that her back pain was likely to last 12 months before she had undergone physiotherapy.
72. For these reasons, I have reached the conclusion that, during the relevant period, the substantial adverse effect of the claimant's impairment of back pain was not long-term.
73. The claimant has therefore failed to satisfy one of the essential elements of the statutory definition of disability.

Disposal

74. Since the duty to make adjustments is only owed towards persons who have disabilities, and the claimant did not have the disability that she alleges, the complaint of failure to make adjustments cannot succeed. I therefore dismiss that complaint.
75. The remainder of the claim is unaffected by my conclusion on the preliminary issue. The remaining complaints will therefore go forward to the final hearing.

Employment Judge Horne
18 December 2020

SENT TO THE PARTIES ON

27 January 2021

FOR THE TRIBUNAL OFFICE