



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms H Sinclair  
**Respondent:** Leicester Partnership NHS Trust

**Heard at:** Leicester Hearing Centre, 5a New Walk, Leicester, LE1 6TE  
By video link

**On:** 17 March 2022

**Before:** Employment Judge Adkinson sitting alone

**Appearances**

**For the claimant:** Mr A Rozycki, Counsel  
**For the respondent:** Mr A Ohringer, Counsel

## JUDGMENT

After hearing the evidence and submissions from each party, and for the reasons set out below, IT IS DECLARED THAT the claimant was not disabled at any time relevant to this case and therefore IT IS ORDERED THAT the claimant's claims of discrimination arising from a disability (**Equality Act 2010 section 15**) are dismissed.

## REASONS

### Background

1. Ms Sinclair alleges she is disabled for the purposes of the **Equality Act 2010** because of the following conditions: arthritis to her right wrist, tennis elbow, intermittent sciatica, muscular skeletal issues in her lumbar and cervical spine ("muscular skeletal issues"), following two road traffic accidents ("RTAs") and post-traumatic stress disorder ("PTSD") following the above RTAs.
2. The claim is for disability-related discrimination and unfair dismissal. The details do not matter for the purpose of this hearing. It is common ground that the relevant period for deciding whether the claimant is disabled is 4 April 2019 (start of disciplinary action) to 21 July 2020 (dismissal).
3. The respondent accepts the muscular skeletal issues were a disability until February 2018 (i.e. fall outside the relevant period). The respondent denies that she was disabled during the relevant period.

## Issues

4. The issues for me to determine are whether during the relevant period the claimant has physical or mental impairments and, either together or individually, they have a more than minor or trivial adverse effect of her normal day to day activities and have either done so for 12 months, could well last for at least 12 months or could well last for the rest of the claimant's life.

## Hearing

5. The hearing took place by video link. There were no technical problems.
6. Mr A Rozycki, Counsel, represented the claimant. Mr A Ohringer, Counsel, represented the respondent. Both made oral submissions at the end of the evidence. Both provided written skeleton arguments around which their submissions were structured. Both were thorough in their submissions and questioning while at the same time focusing only on the relevant issues. I am grateful to both for their help.
7. I heard oral evidence from Ms Sinclair. She adopted her disability impact statement and was cross-examined on the issues. I have taken her evidence into account when reaching my conclusions.
8. There was an agreed bundle of about 415 pages. I told the parties at the start that if they wanted me to take a document into account, they must ensure that they draw my attention to it. They have done so. I have taken into account those documents to which the parties referred me when reaching my conclusions.
9. No-one suggested the hearing was unfair. I am satisfied it has been a fair hearing.
10. Because of the factual issues, it took the day listed just to hear the parties' cases and submissions. Therefore, I reserved my decision. This is that decision.

## Facts

### ***Comments on Ms Sinclair as a witness***

11. Before I set out the facts of the case, I will comment on how I perceived Ms Sinclair as a witness. I do not accept that Ms Sinclair was a reliable witness. My concerns that led me to this conclusion were as follows
  - 11.1. Her oral evidence, especially in cross-examination, was vague about dates that things occurred or how her alleged impairments manifested themselves at the relevant time as opposed to other times. I found it impossible to discern when she was talking about events in the immediate aftermath of her RTAs or at other times, and whether she was talking about the alleged impairments within and without the relevant period. I appreciate that one is talking of events over a long period, all which took place some time ago, but even making allowances for that, too much vagueness remains.

- 11.2. The unreliability of her evidence is highlighted by the contradictions with the contemporaneous documents and their contradiction with each other. For example
- 11.2.1. She alleges she has PTSD. There is however no medical diagnosis at any time of PTSD. She alleges Ms Perry (a cognitive behavioural psychotherapist) diagnosed it. In her triage report Ms Perry makes no such assessment, nor does she in her discharge report. Ms Cansdale, a chartered clinical psychologist who wrote a report in 2018 for the civil proceedings, does not diagnose it either. PTSD is a specific, potentially serious condition. If she had it, then it would have been mentioned. It seems to me this is an exaggeration on Ms Sinclair's part about her condition not justified by the contemporaneous evidence.
- 11.2.2. Medico-legal reports have been prepared for her civil proceedings to recover compensation for personal injuries arising from the RTAs. The experts have all signed the statements of truth required for civil proceedings. However, all those reports paint a picture of a claimant suffering far greater disability than the surrounding documents disclose to be the case. The contradictions are set out below but one particularly egregious example in my view is that she told her chiropractor on 4 June she had been for a 15-mile bike ride but 2 days later she told Ms Cansdale she had to give up all exercise because of the RTAs.
- 11.2.3. A further example of the exaggeration is the report of Ms Perry which suggests the claimant had stopped her fitness activities and that she felt she had lost 6 years of her life. The records clearly show that in fact she had not stopped her activities when the report was written and, while I can appreciate someone as active as Ms Sinclair may lament not being as fit and active as she was before the RTAs, it seems melodramatic at the least to suggest she had lost 6 years of her life. It is plain she was still quite active and, if she had stopped, she had in fact resumed them for some time before meeting Ms Perry, and she was far more active than would be plain normal day to day activities.
- 11.2.4. The documents disclose a contradiction between what she reports to different people that cannot easily be squared. For example, Ms Cansdale in June 2018 reports Ms Sinclair had said she had to stop swimming and had been unable to resume her activities. The information must have come from Ms Sinclair. However, she told Mr Scott-Watson 4

- months earlier she had been swimming. Against both these it is notable that, earlier still, records show her treating physicians had told her to “back off” the swimming while she recovered from an operation on her shoulder.
- 11.2.5. Ms Sinclair made numerous allegations in cross-examination the medico-legal experts had recorded things incorrectly and she had asked for them to be corrected. She also complained about her solicitors not following up these complaints. She told me that they had told her the requested amendments were not going to affect the value of the claim and so were not worth pursuing. Ms Sinclair admitted the experts made some minor amendments but stood by their reports, and that what I had before me were those finalised reports. It is clear the medico-legal experts stand by what they report that they were told. I am in any case sceptical she would ask the experts to tone down the extent of her loss of amenity given that would reduce her compensation for personal injury. I note also that I have seen no evidence of these complaints, and it appears that neither the solicitors nor experts have been allowed an opportunity to comment on the allegation put before me about the reports and her requests for corrections.
- 11.2.6. It is clear the reports were ready for deployment in proceedings. Reflecting on the pre-action protocols for claims for compensation from road traffic accidents, that her claims settled otherwise than at trial and these reports were prepared for those civil proceedings, I infer they were disclosed to the defendants in those proceedings and formed part of the basis of negotiation. It is clear therefore she has relied on them as accurate at least once before. To now seek to play them down is something that undermines her reliability in my view. Ms Sinclair suggested they would be altered if proceedings began. I reject that in the circumstances.
- 11.2.7. In any case, even if that assumption is wrong, the reports represent what the experts say they were told and their findings. They will be aware of their overriding duty to the court because they signed declarations to that effect. Experts will be aware that someone unable to do anything is different to someone able to do something to a limited degree. They would be careful not to be slack about such matters, since it clearly affects compensation and jeopardises their reputation and career. I therefore do not accept they inaccurately recorded what she told

them about the effect of the injuries resulting from the RTAs on her.

11.2.8. Indeed, over-exertion is suggested by both Dr Peffers and her chiropractor. The claimant's denial she has overexerted herself in the face of clear evidence to the contrary undermines her evidence in my view.

12. Finally there is in my opinion an incongruity between what she alleges she cannot do (could not lift a kettle, cannot peel or chop food, cannot go cycling) and what the documents disclose (e.g. swimming, cycling, gym classes, pressing 2.5kg weights at the gym, 'slamball' (see below)) she could do. The non-medico-legal reports and her evidence suggest significant physical activity (swimming 1000m even with floats, cycling 12-15 miles, 'slamball', 'heavy duty gym activities'). There is no explanation for these apparent contradictions. I am acutely aware that what can be done is not the measure of disability. I also recognise that it is quite possible for someone to be able to do something quite physically demanding any yet be unable to do other normal day-to-day activities (for an extreme example see the Paralympics where athletes demonstrate extraordinary physical performance even though it is plain they would be unable to do many normal day-to-day activities within the meaning of the **Equality Act 2010**; alternatively arthritis could make holding something like e.g. a tin opener difficult but not stop gardening). However an ability to lift weights in the gym is superficially at odds with an inability to lift a kettle; likewise an ability to ride a bike and so grip the handle bars and manipulate gears (even if the route is mostly flat) compared to an inability to demonstrate the dexterity needed to chop or peel food; and likewise her alleged being unable to cycle (see medico-legal reports) compared with her admitted riding a bike at the same time as those reports. My concern is the apparent contradiction between the 2 positions. Without more I may well have been able to accept that on balance there was in fact no contradiction. However, when factored against everything else and with the lack of evidence to explain why being able to do these activities is not inconsistent with those she says she cannot do, this further undermines her credibility in my opinion.
13. Ms Sinclair was at pains to point out she kept active because it helped her mental health and was recommended by the CDC (I infer this is a reference to the Center for Disease Control in the United States of America). It may be so, and no one would criticise her for being active. Newspapers often report on modern views that exercise begets better mental health overall. However, that does not detract from all the other problems that suggest unreliability.
14. Finally there was no evidence about what she would be like without the treatment she had received and was receiving.
15. Overall I believe that the contemporaneous records demonstrate a more accurate picture of matters at the relevant time, and within them it is those records created other than for civil proceedings that are more accurate because they are not being created for any purpose other than to record treatment or advice given, rather than to justify a claim for compensation.

**Findings**

16. I turn then to the facts relevant to the issues before me. I decide matters on the balance of probabilities.
17. On 28 May 2012 Mr Salama, consultant, noted some early arthritis in the claimant's right wrist. He observed no loss of function. I note that no other medical documents refer to of arthritis in the wrist after this date, except for the claimant's self-referral for physiotherapy and workplace assessment. I conclude therefore that the arthritis continued to cause no loss of function. Otherwise I would expect it to have been mentioned at some other point in the medical documents with an indication of loss of function.
18. On 27 October 2013 Ms Sinclair was involved in an RTA. She was involved in a second RTA on 14 June 2014.
19. She commenced claims in relation to both accidents to recover compensation for personal injuries. It is not clear when she did so, but I do not believe it matters for the purposes of the case before me.
20. On 2 September 2014 Ms Sinclair saw Mr Choksey (consultant neurosurgeon). He reported she had numbness in the upper left limb and in other limbs from time to time. Apart from stiffness in neck he noted no other restrictions on movement. He noted degenerative changes consistent with age. Further investigations into the shoulder and other joints report similar types of findings.
21. On 3 March 2015 Ms Sinclair saw a consultant neurosurgeon about numbness in the right heel, some pain in the right buttock and what the neurosurgeon described as  
"possibly an episode of sciatica".
22. There is no other mention in the medical notes of sciatica. Like the arthritis, given the numerous medical documents and in particular the injuries from the RTAs, I would expect that sciatica would at least have been mentioned again and if it became worse so as to impact on her life. The fact it is not mentioned ever again, and is described only as a possible episode, leads me to conclude Ms Sinclair does not have sciatica at the relevant time.
23. Mr Sloan, consultant orthopaedic surgeon, on 4 July 2015 noted the following after an operation on her left rotator cuff in her shoulder
  - 23.1. She was back to doing most things;
  - 23.2. She was swimming again but was still getting pain. She was doing front crawl;
  - 23.3. There was good movement albeit some restrictions;
  - 23.4. She was advised to "back off" from the swimming because it could take 3 to 6 months to recover from the operation.
24. On 25 September 2016 Mr R Scott-Watson, an orthopaedic surgeon, examined the claimant for the civil claims. I have not seen that report, but after writing it he reviewed subsequent scans and wrote a supplementary report which discloses its existence. He concluded in January 2017 that Ms

Sinclair had degenerative changes in her neck and lumbar spine that in keeping with her age. There were no specific abnormalities.

25. On 24 September 2017, Ms Sinclair disclosed on her social media profiles she had passed her Safety Award for Teachers course. This meant she had been trained for and subsequently demonstrated the knowledge and ability (amongst other things) to rescue those in a swimming pool who were in trouble in an emergency.

26. Ms Sinclair attended a chiropractor. The chiropractor made notes of their sessions. On 2 October 2017 she completed the referral process. She then told the chiropractor her hobbies were:

“swim, ride a bike, scuba dive”.

When asked about his she explained she could swim 2,000m before the accident but now could swim only about 1,000m (40 lengths). In my opinion that is still a significant distance. She was unable to tell me how often she cycled at that time. She explained that when diving she could now only do 2 or 3 dives per week whereas before she could do 3 or 4 dives per week. She confirmed she would be carrying a cylinder with regulator, worn like a rucksack but now has to get into the water in an atypical manner – putting her jacket on or off in the water rather than on the boat.

27. On 25 October 2017 Ms Sinclair attended a wellness check, where things like blood pressure, weight, cholesterol are assessed. Under “Activity”, she recorded that she was “Active” as opposed to inactive or moderately inactive.

28. On 14 December 2017 Ms Sinclair posted on her social media profile that she was diving in the Red Sea in Egypt.

29. Mr Scott-Watson examined the claimant again on 22 February 2018. He noted that Ms Sinclair could go to the gym and press up to 2.5kg. She could do a 45 minutes spinning class. He noted she told him she rarely cycled now and could do so for only 45 minutes. He reported she cannot hold her head when swimming and has rarely gone diving. He noted she could no longer life-save. Pains in the neck and right wrist were minimal. He observed that spinal symptoms would prove to the point of impairment but no disability with chiropractic treatment (which she received). These were not revisited in the civil litigation.

30. In my opinion these statements, especially about the cycling, are in clear contradiction to what reported to the chiropractor in October 2017. It is contradicted by her passing her Safety Award for Teachers course. She provided no clear or adequate explanation for the significant discrepancy. I also believe that superficially her gym work, coupled with her proven cycling which would require manipulation of brakes, gears and handlebars, contradicts what she asserts she cannot do.

31. On 4 June 2018 she saw her chiropractor. The chiropractor noted  
“[right] sided posterior gluteal started today after [Ms Sinclair] cycled 12 miles yesterday... pain in [neck] and [right] sided shoulder girdle pain”.

32. On 6 June 2018, 2 days later, at 10am she met with Ms P Cansdale, a chartered psychologist. She prepared a full report from their meeting. She diagnosed the claimant with an  
“adjustment disorder with mixed anxiety and depressed mood (DSM-V 309.28).”
33. The report records that Ms Sinclair told Ms Cansdale that  
“She had been unable to resume her exercise activities. She feels a particular sense of loss relating to swimming, which was a favourite interest. She has missed the regular swims as well as many swimming related activities that she had planned.”
34. What she told Ms Cansdale was untrue. She was clearly cycling again, as evidenced by the chiropractor’s notes. It is difficult to see how only 2 days after that appointment she had forgotten she was cycling again. I reject Ms Sinclair’s suggestion that what she in fact said was that she was not able to resume them *to the same level* as before. If she had said that then I expect Ms Cansdale would have noted that. Ms Cansdale has no reason to exaggerate the matter, she had signed a statement of truth as to the report’s accuracy and would be acutely aware of the difference between reduced ability to exercise and no ability to exercise.
35. Ms Cansdale makes no diagnosis of PTSD. There is no other diagnosis. I conclude the claimant did not have PTSD.
36. At 11:53 that same day she saw her general practitioner (“GP”) about tennis elbow in her right elbow. She did not tell her GP about the cycle ride or report any other pains. The GP recorded mild tenderness. I conclude that the pains she had reported to her chiropractor had subsided because otherwise she would have mentioned them. This suggests they were far from permanent and more likely to be overexertion. That suggestion is supported by other documents where she is told to take it easy. I am also satisfied that the tennis elbow was mild because of the findings on examination, and more likely than not to have resulted from her cycling. The GP noted nothing abnormal in the right wrist, which again suggest no arthritis.
37. On 10 July 2018 she saw her chiropractor. They noted that Ms Sinclair  
“has just returned from a holiday in Egypt [she has a house in Egypt]. Managed 2 days scuba diving. Felt much better for being in a warmer climate. However, upon return to work right forearm has become uncomfortable due to typing.  
“Completed 15-mile cycle and core endurance and swimming on Sunday. Starting swimming tutoring on Sunday.”
38. Initially Ms Sinclair told me that she could only cycle 10 miles with a break. These notes confirm this is not the case. The core endurance exercise involves pushing one’s lumbar spine to the floor by tightening the abdominal muscles. She would spend an hour swimming and 2½ hours tutoring. This Sunday is physically heavy.



39. On 11 July 2018 Ms Sinclair reported to her GP that she had tennis elbow, “was better off work, get worse with typing.” This suggests it is situational, i.e. related to typing. This is not one of the impacts on normal day to day activities that she relied on at the hearing.
40. On 5 August 2018 Ms Sinclair posted on her social media profile that she had taken part in “Let’s Ride”. This was an annual event in which a traffic-free route was set up around a city or town and members of the public could cycle the route at their leisure.
41. On 9 August 2018 she saw Dr Peffers, consultant rheumatologist. She noted the wrist pain from the RTA and right tennis elbow. She said there was no evidence of rheumatoid arthritis:
42. She wrote in her report back to the GP that
- “Everything has improved whilst on holiday for the past two weeks. She sits at her desk using a computer for hours every day and finds the use of a mouse exacerbates the problem. She still manages to be very active and has been taking part in regular gym exercise activities including one called ‘slamball’ which requires a wide legged, bent knee stance followed by lifting a medicine ball above the head and then slamming it down on the floor between the legs. This clearly involves a lot of wrist, shoulder and knee activity and may well be a contributory cause to her right elbow pain. She has in recent weeks stopped doing this activity so this may be also reason why it is improving.
- “I have advised her to refrain from such heavy-duty gym activities and perhaps resort to swimming.”
- Ms Sinclair denied that this was evidence that she was overdoing activities at the gym. I do not accept her denial. Dr Pepper’s letter shows both excessive physical activity and its contributory factor to Ms Sinclair’s pain. Furthermore, it seems to me that ‘slamball’ is far from a normal day to day activity. Again, there is no evidence of the impact on the normal day to day activities that Ms Sinclair complained of before me.
43. On 28 August 2018 she self-referred to the respondent’s staff physiotherapy service for (claimant’s words)
- “arthritis to right wrist and onset of tennis elbow”.
44. On 18 September 2018 she told her chiropractor that she had neck and shoulder pain.
- “possibly in relation to swimming 50 lengths front crawl [Equivalent to 1,250m] on the [preceding] Friday”
45. There was some debate about the physical impact of front crawl compared to, say, breast-stroke. The claimant also said she had used floats to help her get back into swimming and build strength. She suggested this made it easier. In my opinion 40 lengths or more with or without floats and whatever stroke is a significant physical activity well beyond normal day to day activities. It is also more evidence of overexertion.
46. On the same day a scan confirmed she had tennis elbow.

47. On 2 August 2019 the claimant reported to her GP she had work-related problems in her right wrist. Again, there is no suggestion of the impact she advanced before the Tribunal at the hearing.
48. On 15 October 2019 Ms Sinclair attended an assessment for cognitive behavioural therapy/EMDR. The assessor was Ms A Perry, a cognitive behavioural psychotherapist. Ms Sinclair suggests it was Ms Perry who diagnosed PTSD. However, Ms Perry's assessment makes no mention of PTSD. Ms Perry recorded that Ms Sinclair had told her the following
- “Presenting Problems and Main Symptoms:
- “Low mood – due to chronic condition of her neck and shoulder. She feels a sense of grief due to the loss of life. Ms Sinclair was a very active person and these activities has had to be stopped due to her injuries. She feels it has stolen 6 years of her life.
- “Low energy and fatigue – Ms Sinclair has cycles of demotivation and lack of energy.”
49. This report was prepared for the purposes of civil litigation because it would justify a claim for medical expenses as part of rehabilitation.
50. Ms Sinclair provided no explanation that I found satisfactory about why Ms Perry would report that Ms Sinclair's activities had stopped due her injuries when in fact she had resumed many of these activities already by this point. I accept it may not have been to the pre-RTAs level, but nonetheless I find as a fact that her swimming, scuba diving and cycling she had done between the RTAs and this assessment are (a) significant levels of physical activity and (b) in direct contradiction to the statement “these activities had to be stopped due to her injuries. She feels it has stolen 6 years of her life.” Ms Sinclair alleged it was yet another error in the medical reports recording what she said. I cannot accept that so many errors like that have occurred with different medical practitioners, especially when the errors would be to her favour in civil litigation because they would suggest a higher loss of amenity than was the case. Instead I find as a fact she was, deliberately or otherwise (I know not, and it does not matter for my purposes) exaggerating matters to the medico-legal experts.
51. On 29 October 2019 Mr Banerjee administered a steroid inject to Ms Sinclair's right tennis elbow. It appears it was successful. There is no evidence it was not. I have no evidence of how things would be without the injection or that the cure was not permanent.
52. On 22 June 2019, Ms Sinclair posted on her social media profile that she had cycled to a local beauty spot. The return route was about 12 miles and involved a break. She did a similar thing on 21 September 2019.
53. On 13 November 2019 she shared on social media, with the message “The stats are out!”, data from a personal fitness device that showed she had swum for 63 minutes (58 classed as “active”) achieving a pace of 3 minutes 15 seconds per 100 metres.
54. On 17 November 2019 Ms Sinclair had a disability workplace assessment. It noted arthritis in her right wrist, back and neck pain from long periods of sitting exacerbated by a mouse and keyboard and made a number of

suggestions for adjustments. This is based on self-reporting and not independent examination or consideration of the records.

55. I note also that Ms Sinclair had steroid injections into her wrist on 24 May 2012, 13 November 2012 and 12 August 2013. There have been none since. There is no evidence that they have not worked, what her wrist would be like without the injections or that there has been a deterioration.
56. Ms Sinclair says she could not lift a kettle “during her employment”, could not peel or cut food and had to use a gadget to open bottles and tins. She says she can no longer do as much gardening or home decoration as before her injuries, but it has not stopped altogether, and it not clear exactly what she cannot actually do when doing these activities. She says also she can no longer lift, carry or move everyday objects, but no evidence was provided to put this vague assertion into context to understand the boundaries of what is and is not possible. Given the inconsistencies, exaggeration in the medico-legal reports, lack of mention of these effects in the medical notes and given what she was doing, am not persuaded on balance of probabilities by the evidence she had these impacts on normal day to day activities or, if I am wrong, that they arose from her conditions. I therefore find as a fact that she did not suffer these limitations. I would have found as a fact that if she did, they did not arise from the impairments she had.
57. There is no evidence to allow me to deduce the effects on her if for example she did not have the steroid injections in her wrist or elbow.

## Law

58. The **Equality Act 2010 section 6(1)** provides  
“(1) A person (P) has a disability if—  
“(a) P has a physical or 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.”
59. The **Equality Act 2010 schedule 1** provides details of how to determine disabilities. In particular it defines long term as  
“2. (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  
(c) it is likely to last for the rest of the life of the person affected.  
(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. ...”
60. The schedule also provides  
“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 ...”

61. The Secretary of State has issued guidance called **Guidance on matters to be taken into account in determining questions relating to the definition of disability (2011)** (‘the guidance’).
62. In **Goodwin v Patent Office [1999] ICR 302 EAT**, Morison J said
  - 62.1. Tribunal should look carefully at what the parties have said in their pleadings and clarify the issues;
  - 62.2. It should construct the legislative protections purposively;
  - 62.3. It should refer expressly to any relevant provisions the Guidance it has considered;
  - 62.4. It should bear in mind that the fact that a person can carry out activities with difficulty does not mean that his ability to carry them out has not been impaired – the focus is not on what the claimant can do, but what they cannot do or can do only with difficulty (see also **Leonard v Southern Derbyshire Chamber of Commerce [2001] IRLR 19 EAT**);
  - 62.5. Where a claimant is or has been on medication, the Tribunal should examine how the claimant’s abilities were affected while on medication and how those activities would have been affected without the medication;
  - 62.6. Each element should be considered in turn;
  - 62.7. It should be careful not to lose sight of the overall picture when considering each element of the statutory definition in turn.
63. While one cannot determine an allegation that a person is disabled by reference to what they can do, a Tribunal is entitled to take into account all the evidence to decide if it finds the claimant’s case credible: **Ahmed v Metroline Travel Ltd [2011] EqLR 464 EAT**.
64. The appropriate time to consider disability is at the time of the alleged discriminatory acts: **Cruickshank v VAW Motorcast Ltd [2002] ICR 729 EAT**.
65. Normal day-to-day activities means those activities relevant to professional or work life where it applies across a range of employment situations. It requires a broad definition but can include irregular but predictable events: **Paterson v Commissioner of Police for the Metropolis [2007] ICR 1522 EAT**; **Chief Constable of Dumfries and Galloway v Adams [2009] ICR 1034 EAT**. “Normal” has an ordinary everyday meaning: **Guidance D4**.
66. An employment tribunal is entitled to infer, on the basis of the evidence presented to it, that an impairment found to have existed by a medical expert at the date of a medical examination was also in existence at the time of the alleged act of discrimination: **John Grooms Housing Association v Burdett UKEAT/0937/03 EAT**.

67. Reliance on deduced effects under the **Equality Act 2010 schedule 1 para 5** generally requires clear medical evidence: **Woodrup v Southwark LBC [2003] IRLR 111 CA.**
68. Though I have had regard to the whole guidance, I found the following paragraphs of the guidance particularly helpful in this case:
- 68.1. B7-B10 (effects of behaviour);
  - 68.2. B12-B17 (effects of treatment);
  - 68.3. C9-C11 (likelihood of recurrence);
  - 68.4. D2-D7 (meaning of normal day to day activities);
  - 68.5. D11-D19 (adverse effects on ability etc.) and
  - 68.6. Appendix.

## **Conclusions**

### ***PTSD***

69. There is no evidence of any diagnosis of PTSD by either the psychologist or psychotherapist. I therefore conclude she did not have PTSD at the relevant time and so there is no consequent disability because of it.

### ***Sciatica***

70. There is no diagnosis of sciatica, only of possible sciatica in March 2015. Given the number of medico-legal reports and the visits to doctors concerning her neck, lumbar spine, elbow and wrist and the 2 RTAs, I would expect there to be more evidence of it in those documents beyond one mention of possible sciatica. I do not accept her own evidence for reasons set out above about her as a witness. I conclude she did not at the relevant times have sciatica and consequently no disability because of it.

### ***Arthritis in the right wrist***

71. This is diagnosed only once, in 2012. I accept it is permanent and so is long term. Other references are from the claimant herself. As set out in my findings of fact I conclude that while the claimant had arthritis in her right wrist at the relevant time, on balance of probabilities it was so minor that it caused no loss of function and so had no substantial effect on normal day to day activities. Therefore she has no disability because of it.

### ***Muscular skeletal issues in her lumbar and cervical spine***

72. Mr Scott-Watson examined the claimant for his report in February 2018. He concluded there was a near-complete recovery by that time. That conclusion was not revisited. There is no other medical evidence that in my view concludes he was wrong or that there was a relapse. Therefore I am satisfied the claimant had recovered by the end of February 2018 and at that point, they ceased to be a physical impairment. There is no evidence of possible recurrence. Therefore any disability caused by Muscular skeletal issues in her lumbar and cervical spine ceased at the end of February 2018.

**Other impairments**

73. I am satisfied that at the relevant time the claimant had tennis elbow. I am satisfied this is a physical impairment. Looking at the chronology I am satisfied it had lasted longer than 12 months and so was long term.

**Substantial and adverse impact on normal day to day activities**

74. I am satisfied that lifting a kettle, peeling or chopping food, cycling and opening bottles or tins unaided are normal day to day activities. This is in my view self-evident and no-one has sought to argue otherwise.
75. The other matters that she relies on (no longer doing as much gardening or home decoration but it has not stopped altogether, no longer lift, carry or move everyday objects) are so vague that, while they sound like they may be normal day to day activities, I cannot determine whether they are or are not because I do not know what exactly she alleges she cannot do. I therefore put them to one side.
76. I have found as a fact she did not suffer the impacts that she alleges on her normal day to day activities. They were I conclude unhindered. That is enough to result in the dismissal of her claim.
77. I would add the following matters that fortify my conclusion in my view.
78. In the absence of clear medical evidence, the claimant has not been able to persuade me that her condition would be different (yet alone worse) without the treatment she has already received or was receiving. There is simply no evidence that allows me to reach a conclusion without deploying presumptions not justified on the evidence, or frankly, guesswork. I therefore conclude that there would be no material difference.
79. I would not have been satisfied on balance of probabilities that any of the impairments (including those I have concluded were not impairments if were wrong in those earlier conclusions) had impacted her normal day to day activities in a more than minor or trivial way at the relevant time. My reasons are as follows:
- 79.1. I find her an unreliable witness for the reasons set out above.
- 79.2. The impacts that she complains of are in stark contrast to gym, swimming, cycling and diving that she has been doing. I accept that it is possible to be able to do some things but not others. However, it requires some explanation in my opinion why someone would be unable to lift a kettle but could 'slamball' or could not peel or chop food but could ride a bike. Considering the superficial contradiction between these activities, an explanation is needed. There is none. While I might be able to guess what it is, I do not believe I should fill the gaps with guesswork or assumptions.
- 79.3. The need for clear explanation and evidence is required moreover because the contrast between what she told the medico-legal experts and the other contemporaneous records.
- 79.4. None of the alleged adverse impacts appear in her medical notes.

79.5. There is however evidence that there was no impact on normal day to day activities at the relevant time. Her swimming was substantial even if less than before and even if she needed floats. Her gym work was also notable and contradicts at first glance her alleged inability to lift a kettle. Her cycling was also notable and the need to use handlebars and gears would appear to contradict her assertions about difficulties opening tins and bottles and cutting and chopping food.

79.6. There is evidence too that suggests it is more likely than not that the problems arose from over-exertion. As noted above she was told a few times to “back off”. What she was doing was beyond normal day to day activities. It was plainly reasonable for her to reduce her physical activity to aid recovery. There is no evidence in my opinion that shows that, had she not pushed herself so much, she would still have been disabled or that she would have been unable to do normal day to day activities.

80. In summary the claimant’s evidence is too unsatisfactory for me to be able to rely on it conclude any long-term impairment has substantially and adversely impacted on her normal day to day activities as she alleges at the relevant time.

81. Therefore, I conclude that she was not disabled at the relevant time. Her disability-related claims must therefore fail.

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Employment Judge Adkinson

Date: 30 March 2022

JUDGMENT SENT TO THE PARTIES ON  
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FOR THE TRIBUNAL OFFICE

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