



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Ijeomi Onyebalu

**Respondents:** (1) The Governing Body of Gascoigne Primary School  
(2) Ms Joanne Preston  
(3) Ms Rahat Ismail  
(4) Ms Hayley Shadrake  
(5) Ms Zoubiya Ahmed  
(5) Ms Dena Francis

**Respondents in case number: 3200006/2022**

(1) The London Borough of Barking and Dagenham  
(2) Mr Donald Lan-George  
(3) Mr James Fox  
(4) Ms Anre Buchner  
(5) Ms Joanne Preston  
(6) The Governing Body of Gascoigne Primary School

## PRELIMINARY HEARING (OPEN)

**Heard at:** East London Hearing Centre (by Cloud Video Platform)

**On:** 7 June 2022

**Before:** Employment Judge B Elgot

### **Representation**

**Claimant:** In person

**Respondents:** Ms L Robinson of Counsel Instructed by Ms C Linton, Legal Services,  
London Borough of Barking and Dagenham

**JUDGMENT** having been sent to the parties on 14 June 2022 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

## REASONS

1. The Claimant by letter dated 20 June 2022 has requested full written reasons for my judgment dated 7 June 2022 which was sent to the parties on 14 June 2022. Detailed oral reasons for my decision were given in open tribunal at the preliminary hearing.

2. The two claims against a total of ten separate respondents have been consolidated and ordered to be heard together. My judgment applies to both claims and to all of the respondents. The question of the knowledge or imputed knowledge of the Claimant's disability by all or any one of the Respondents was not a question for me to determine at this preliminary hearing, as the parties agreed. It was not therefore necessary to hear the evidence of Ms Preston for the Respondents.
3. The judgment decided that the Claimant was not at the material time relevant to her claims a disabled person within the meaning of section 6 Equality Act 2010. The Tribunal does not therefore have jurisdiction to hear her claims of disability discrimination (including harassment) and they are dismissed. Her complaint of victimisation remains to be heard and is listed for hearing before a full tribunal on 26-28 July, 1 - 4 August and 8 - 10 August 2023. Case management orders have been made in respect of that hearing and there is a further preliminary hearing on 16 September 2023 to deal with all other outstanding issues.
4. The disability which the Claimant identifies is the mental impairment of anxiety and moderate depression and a tendency to panic attacks for which she is prescribed by her GP an anti depressant called Escitalopram and Diazepam an anxiolytic drug to treat anxiety. A particular difficulty connected to her mental impairment is, she says, an inability to wear any kind of face covering or to consent to any kind of testing for covid 19 infection. The wearing of face coverings and/or covid 19 testing was mandatory at various times during the pandemic for those working in schools. The Claimant was both a higher teaching assistant and a teacher at Gascoigne Primary School ('the school') since 20 June 2017. When she commenced her employment she self-declared as fit for her duties without restriction.
5. The Claimant does not plead nor did she argue in her written or oral evidence prior to her closing submission at this hearing that her disability is specifically a complete inability '*to put on, wear or remove a face covering*' or undertake covid testing without experiencing what she today described as '*suffering*' '*extreme distress*' and '*hyper vigilance*'. There is no medical evidence of the presence of any such discrete identifiable or diagnosed mental or physical impairment. I am satisfied that what she describes is, to use her words, a '*reaction*' to the response of others when other people including her managers and colleagues discovered that she would not under any circumstances consent to wear a face covering or be tested for covid 19 infection. The reaction of others exacerbated her anxiety. This is consistent with the pattern of events which the Claimant describes which is that she has a reactive anxious/depressive reaction to difficult episodes. For example in paragraph 2 of her impact statement on pages 66 -68 of the Respondent's bundle she relates a panic attack on 3 August 2020 in Baldwins store when challenged for not wearing a face covering. I find for the reasons set out below that these intermittent difficulties are not a long term disability having a substantial adverse effect upon the Claimant's ability to carry out normal day to day activities.
6. I have therefore only considered whether her actual diagnosed mental impairment of depression and anxiety amounted to a disability at the material time. The Claimant states at page 20 of her bundle that her mental health difficulties began in July 2018 when she was ill with shingles and had an episode of conflict with a parent at the school. In July 2018 there was of course not even any consideration of the necessity for face covering or testing or any other covid 19 restriction. The Claimant's impact

statement however refers to her mental health difficulties beginning in late August 2020. Her evidence is inconsistent: perhaps she means that she had a recurrence of illness in August 2020, her account is unclear.

7. The parties are agreed that the relevant time in relation to which the Claimant must show that she was a disabled person as defined by the 2010 Act is from March 2021 when schools went back to face to face teaching (after a series of 'lockdowns' with varying restrictions) until today's date. In March 2021 in order to work face to face with pupils and colleagues at the school the Claimant was required to wear a face covering and to take regular lateral flow tests. She refused both instructions and says that she could not do these actions. In March 2021 she began to be involved in both disciplinary and grievance processes at the school.
8. Section 6 of the 2010 Act states that a person has a disability if '*the impairment has a substantial and long term adverse effect on [the person's] ability to carry out normal day to day activities*'. The burden of proof is on the Claimant. I have, as I told the parties, paid careful attention to the provisions of the Guidance on the definition of disability issued by the Secretary of State on 10 February 2011 under the Equality Act 2010.
9. There were two separate preliminary hearing bundles. The first was prepared by the Respondent consisting of 357 pages and there was a bundle of 100 pages from the Claimant. The Claimant gave evidence on her own behalf and was cross-examined. The Respondent's witness was not called upon for the reason given above.
10. The Claimant has prepared an impact statement relating to her disability which is at pages 166 – 168 of the Respondent's bundle. The impact statement was made in compliance with the order of Employment Judge Fowell made on 14 February 2022. In that Order the Employment Judge explains the nature and purpose of the evidence the Claimant must adduce. The Respondent filed a response to the impact statement which I have also read.
11. The medical evidence consists of the Claimant's GP Notes for the relevant period and those notes commence on page 195 of the Respondent's bundle. There is also a letter on page 200 from Dr Iqbal Mohiuddin an Independent Consultant Psychiatrist working through a private organisation named 'IamPsychiatry' dated 24 October 2021.
12. First, although the Claimant refers to her depressive symptoms and her anxiety state since July 2018 there is in fact no disclosed note of any mental health impairment by her general practitioner (GP) until the entry at page 198 dated 5 October 2021, seven months after the return to face to face teaching in March 2021. In that note she is diagnosed with an '*anxiety state*' and agrees that she will refer herself to IAPT (which is the NHS '*improving access to psychological therapies*' service). No medicines are prescribed; the GP records that the Claimant '*feels as if there has been a decline in her mental health...wears a sunflower lanyard [referring to mask wearing exemption] and feels she is always getting looked at...experiencing lots of stress and anxiety...overthinking lots*'. There is no reference by the GP to a long term ongoing or recurrent mental health impairment which appears either from the Claimant's previous medical records or which is reported by her.

13. There is a further relevant entry on 13 October 2021 by the same GP Dr R Aarons in which the Claimant says she has had a panic episode at work. No prescription is written although possible drug therapies are discussed. The GP writes '*feels work is very stressful...would like to take a week off*' The Claimant was off work from 13 -22 October 2021.
14. On 1 November 2021 the Claimant consulted her GP again and saw Dr B Brody who records her problem as '*panic disorder*' '*on wait list for CBT [Cognitive Behavioural Therapy]*' and prescribes her a single script and '*no more*' of Diazepam together with Escitalopram ( a serotonin inducing anti-depressant) at a 5mg starter dose rising to 10mg. I am aware from other tribunal work that Diazepam is prescribed with caution only for short term use. Again there is no mention of the Claimant's mental health difficulties being long term, recurrent or intractable. She was given a 4 week fit note for panic disorder on 2 November 2021.
15. The final GP note I have seen is dated 21 February 2022, three and a half months ago, in which the Claimant's '*ongoing stress, anxiety, insomnia, panic attacks and depression relating to issues at work*' is described. I read this entry to refer to mental health problems relating to a reaction to issues at the school which issues, according to the evidence of the Claimant herself, began in March 2021 and resulted in her consulting her doctors in October 2021. No long term history of mental illness is referred to by the GP in this latest note.
16. I conclude that the Claimant has failed to show from the evidence of her GP records that her mental impairment of depression and anxiety is 'long term'. She must demonstrate that it has lasted at least twelve months or is likely to last twelve months. The GP notes cover a period of diagnosis and treatment only lasting five months (October 2021 to February 2022) and there is no mention of pervasive or enduring anxiety, panic attacks or depression in the period between July 2018 (shingles and the altercation with a parent) and October 2021 or indeed such evidence for the period from August 2020 (the episode at Baldwins shop) to October 2021.
17. Finally Dr Mohiuddin's letter dated 24 October records his private consultation with the Claimant on 18 October 2021 and diagnoses anxiety, '*moderate depressive episode and panic disorder*'. The letter describes a long and detailed history of the Claimant's 'presenting' complaints about her '*severe distress and panic attacks*' relating to the wearing of a face covering and the alleged detrimental treatment by the school by being '*demoted and deployed to work from home since March 2021*'. This text is consistent with the mental health problems described by the Claimant herself to me and to her GP i.e. that from March 2021 she had adverse psychological reaction to being challenged about her refusal to wear a face covering and undertake covid 19 testing at the school.
18. Dr Mohiuddin identifies no incident reported to him by the Claimant about panic /anxiety episodes between August 2020 and March 2021 except his one reference at the bottom of page 200 to '*work related stress*' lasting '*over a year*'. I am not satisfied that this amounts to a diagnosis of mental health impairment that has lasted more than twelve months. Dr Mohiuddin refers at least twice in the letter to the Claimant having developed '*mental health problems over the past year*' and on page 201 says '*this is due to growing stress about wearing a face covering at work in her role as a teacher during the pandemic*'. I repeat that I interpret this medical evidence

to refer to a reactive episode of stress, anxiety and depression having lasted a few months since the Claimant returned to face to face teaching and became involved in dispute with her managers over the covid 19 restrictions with which she was expected to comply for her own safety and the safety of others.

19. Dr Mohiuddin's account of the Claimant's past medical and psychiatric history is very short. There is no narrative of a long term history of psychiatric or other illness. He records her mental state as being 'normal' in all the aspects set out in the relevant paragraph on page 201, for example '*no evidence of formal thought disorder*', '*orientated to time, place and person*', '*no evidence of any abnormal beliefs, experiences or perceptions*'. He recommends the same drug therapy, CBT, some blood tests (the results of which are not disclosed in the bundle) and some self help breathing and relaxation exercises. Dr Mohiuddin's report is thus consistent with the GP diagnosis and treatment.
20. There is no evidence in the bundle or given by the Claimant herself that she has actually undertaken any counselling or talking therapies beyond an initial introductory consultation. There is documentation to show that she has contacted both NHS and private providers but nothing to demonstrate that she has engaged medium to long term with any such help. There are no letters or reports from counsellors or early intervention psychiatric assessments. The Claimant told me that she uses her own wellbeing strategies and breathing techniques for relaxation and improved sleep together with a 'thought record' and diaphragmatic exercises recommended by Dr Mohiuddin.
21. If I am wrong about the long term nature of the Claimant's impairment I nonetheless am satisfied that she has failed to show that her depression and anxiety with the associated symptoms has had a substantial adverse effect upon her ability to carry out normal day to day activity. She describes some of her difficulties in her impact statement for the period beginning in August 2020 but there is a lack of corroborating evidence. I have reminded myself that in order to show a substantial adverse impact upon her ability to do normal day to day activities the Claimant must demonstrate a limitation going beyond the normal difference between people's ability to cope with stressful times; there is a variability and range of reactions to stress and challenge which even non disabled persons experience. The Claimant must show that as a result of her alleged disability the impact upon her goes beyond this spectrum of reaction in relation to the daily activities she cannot do. I find that she has failed to show this or give any examples.
22. There is no mention in the medical evidence including the report of Dr Mohiuddin that the Claimant experiences, as a result of disability, any substantial ( i.e. more than trivial or minor) adverse effect on her ability to carry out normal day to day activities which are described in paragraphs D2-D11 of the Guidance ( without any exhaustive list being provided) as '*in general, day to day activities are things people do on a regular or daily basis*' and might include all or some of the activities set out in paragraph D3.
23. I repeat that Dr Mohiuddin states that the Claimant has a 'normal' mental state examination, is well kempt and appropriately dressed but with low mood and a pre-occupation with work related stress

24. However over the relevant period from March 2021 the Claimant was able to work to the school timetable, use a computer and engage and teach remotely thus interacting with pupils and colleagues. She took up a course of part time legal studies. She was able during the relevant period to self-care, wash and dress and go out to attend consultations with her doctors. She has been able to apply for other jobs having now left the school.
25. In terms of the activities which she cannot do there is little or no evidence from her doctors (who are substantially reliant upon her own account of her difficulties) that she is prevented from engaging in normal day to day activity. The Claimant says she is inhibited from going to the cinema or library as much as she used to do and cannot concentrate on reading. This is not outside the range of reactions of the non-disabled person during the pandemic and especially during lockdowns and in any event these difficulties derive, I find, from the Claimant's extreme hesitation to wear a face covering and her severe apprehension about other people's reaction to her. For the reasons I have stated above the Claimant has failed to show that this hesitation and apprehension is a mental impairment.
26. In her oral closing submissions the Claimant gave a much more vivid description of her '*heightened awareness and hyper vigilance*' and her inability to carry out normal day to day activities, for example, she told me that she could not leave the house and go out without extensive preparation and checking to ensure that she would not be challenged by other. Hence she says she has '*trembling limbs*' and has to ask the security guards in stores to look after her. I am afraid that this evidence is inconsistent with all the other written and oral evidence produced by her. It lacks credibility because it is a very late statement of an exaggerated response which the Claimant has not previously described.
27. For the reasons stated above I conclude that the Claimant was not a disabled person as defined by the 2010 Act during the relevant period which is material to these proceedings.

**Employment Judge B Elgot**  
**Dated: 18 July 2022**