



Case No. 2300759/2021

EMPLOYMENT TRIBUNALS

Claimants: Mr N Robinson

Respondents: Kent County Council (1)

Mr N Sangster (2)

RECORD OF A HEARING

Heard at: London South (By CVP) **On:** 13 May 2022

Before: Employment Judge Self (Sitting alone)

Appearances

For the Claimant: Mr C Kennedy - Counsel

For Respondent: Mr S Bishop – Counsel

RESERVED JUDGMENT

For the purposes of this claim the Claimant was a disabled person pursuant to the Equality Act 2010 from 1 November 2019 onwards.

WRITTEN REASONS

1. The Claimant was employed by the Respondent, Kent County Council, between 1 April 2005 and 16 October 2020 and at the end of his employment he was employed as a Senior Partnership Officer.
2. Following the end of his employment he entered into Early Conciliation on 21 October 2020 and a certificate was issued, ending Early

Conciliation, on 30 November 2020. The Claimant lodged a Claim at the Employment Tribunal on 22 February 2021 asserting that he had been:

- a) Unfairly constructively dismissed
 - b) Wrongfully dismissed
 - c) Directly discriminated against because of his disability
 - d) Harassed on account of acts related to his disability
 - e) Discriminated because of something arising from his disability
 - f) Indirectly discriminated against on account of his disability.
3. This matter came before Employment Judge Dyal at a Telephone Case Management Hearing. He case managed the matter and produced a thorough list of issues and listed a substantive hearing which will be heard between over 9 days between 30 January 2023 and 9 February 2023. He also listed this preliminary hearing to deal with the issue of whether the Claimant was a disabled person within the meaning of **section 6 of the Equality Act 2010** at the relevant times.
4. At this hearing it was confirmed to me that the relevant times for the purposes of this matter was between **October 2018 and 16 October 2020**. The Claimant asserted that he had been disabled from 1 January 2015.
5. I had before me at the hearing a bundle of 214 pages and some additional documents supplied by the parties. I have considered such documents as the parties have referred me to. The Claimant provided a lengthy witness statement and was comprehensively cross examined. The Claimant provided me with a document headed "Claimant's Legal Skeleton" and the Respondent had a "Position Statement". Both parties' counsel also made oral submissions.
6. The hearing concluded at 1400 having started at 1007 and gone through what would normally be a lunch break. In order to do justice to the representations of both parties I considered that a reserved decision would be appropriate and I have undertaken that task on the first occasions that my sitting schedule and other drafting commitments has permitted.
7. The Claimant asserted in his Claim Form that he was a disabled person on account of "***anxiety, low mood, stress, work-related stress..., a stammer and psychiatric ill health***" (17). That was repeated (broadly) within his Disability Impact Statement.

8. The Law

The definition of disability is set out at **section 6 of the Equality Act 2010 (EqA)** and states that a person has a disability if he or she has a physical or mental impairment which has a substantial and long-term adverse effect on his or her ability to carry out normal day to day activities.

9. Although the above definition is the starting point for establishing the meaning of 'disability', it is not the only source that must be considered. The supplementary provisions for determining whether a person has a disability are set out at **Part 1 of Schedule 1 of the EqA**. In addition, the Government has issued '**Guidance on matters to be taken into account in determining questions relating to the definition of disability**' (2011) ('the Guidance') under **s.6(5) EqA**. The Guidance does not impose any legal obligations in itself but courts and tribunals must take account of it where they consider it to be relevant.
10. Finally, the Equality and Human Rights Commission (EHRC) has published the **Code of Practice on Employment (2015)** ('the EHRC Employment Code'), which has some bearing on the meaning of 'disability' under the [EqA](#). Like the Guidance, the Code does not impose legal obligations but tribunals and courts must take into account any part of the Code that appears to them relevant to any questions arising in proceedings. The obligation to 'take account' of the Guidance or Code applies only where the tribunal considers them relevant, and, while the Code and Guidance often provide great assistance, they must always give way to the statutory provisions if, on a proper construction, these differ.
11. There is no definition of 'mental impairment' in the EqA but Appendix 1 to the EHRC Employment Code states: '**The term "mental impairment" is intended to cover a wide range of impairments relating to mental functioning, including what are often known as learning disabilities**' (Para. 6)
12. One of the Claimant's main conditions is stress. Although it is not a psychiatric injury or even a mental illness, stress can lead to feelings of anxiety and depression and may exacerbate other conditions such as dyslexia or epilepsy or even some physical conditions. Furthermore, employees complaining of stress may in fact be suffering from a stress-related illness, such as clinical depression, which has been triggered or exacerbated by the levels of stress with which they have to cope. It is not uncommon for employees who are absent from work to say that they are suffering from 'stress', 'work stress', 'anxiety', 'nervous debility' or 'depression'. But this does not necessarily mean that they are disabled for the purposes of the EqA. They must demonstrate a physical or mental impairment.

13. In **Herry v Dudley Metropolitan Council 2017 ICR 610**, EAT, the EAT upheld an employment tribunal's decision that an employee was not disabled, even though he had to take a long-time off work because of stress, where his condition had been a reaction to difficulties at work rather than a mental impairment. The EAT noted that work-related issues can result in real mental impairment, especially for those who are susceptible to anxiety and depression. However, it indicated that unhappiness with a decision or a colleague, a tendency to nurse grievances or a refusal to compromise are not, of themselves, mental impairments: they may simply reflect a person's character or personality. Any medical evidence in support of a diagnosis of mental impairment should therefore be considered by an employment tribunal with great care. Where a person suffers an adverse reaction to workplace circumstances that becomes entrenched so that they will not return to work, but in other respects suffers no or little apparent adverse effect on normal day-to-day activities, this does not necessitate a finding of mental impairment.
14. The nature of stress is that it can occur in bouts, separated by periods of stress-free good mental health. The fact that an employee can enjoy stress-free periods is no barrier to establishing that the stress condition is a disability, provided he or she can show that the impairment has a substantial adverse effect on his or her ability to carry out day-to-day activities.
15. Depression affects a person's physical state, mood and thought processes and is an illness that requires treatment. It can manifest itself in many different forms, with the most common types being mild, moderate, and severe or clinical depression. Simply having depression or low mood is, again, not sufficient to meet the definition of disability of themselves. It may be that their symptoms are not severe enough to amount to a physical or mental impairment or that the depression does not have a substantial effect on their ability to carry out normal day-to-day activities; or that the illness does not last, or is not likely to last, for at least 12 months.
16. In **J v DLA Piper UK LLP 2010 ICR 1052**, EAT, the EAT said that, when considering the question of impairment in cases of alleged depression, tribunals should be aware of the distinction between clinical depression and a reaction to adverse circumstances. While both can produce symptoms of low mood and anxiety, only the first condition should be recognised by the legislation. In practice, the requirement that any impairment must have long-term effects if it is to amount to a disability for the purposes of the EqA should assist in drawing a line between the two (particularly given the EAT's acknowledgement that clinical depression can also be triggered by adverse circumstances or events).

17. To amount to a disability the impairment must have a '**substantial adverse effect**' on the person's ability to carry out normal day-to-day activities — S.6(1)(b) EqA. If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities but that effect is likely to recur, it is to be treated as continuing to have that effect (**Para 2(2), Sch 1**)
18. In **Goodwin v Patent Office 1999 ICR 302**, EAT, gave guidance which is now reflected in **Appendix 1 to the EHRC Employment Code** i.e., that account should be taken not only of evidence that a person is performing a particular activity less well but also of evidence that 'a person avoids doing things which, for example, cause pain, fatigue or substantial social embarrassment; or because of a loss of energy and motivation' (para 9).
19. Substantial is defined in **S.212(1) EqA** as meaning '**more than minor or trivial**'.
20. The substantial adverse effect of an impairment has to be long term to fall within the definition of 'disability' in **S.6(1) EqA**, whether the disability is current or a past disability under **S.6(4)**. This requirement ensures that temporary or short-term conditions do not attract the Act's protection, even if they are severe and very disabling while they last.
21. Under **para 2(1) of Schedule 1 to the EqA**, the effect of an impairment is long term if it:
 - a) has lasted for at least 12 months
 - b) is likely to last for at least 12 months, or
 - c) is likely to last for the rest of the life of the person affected.
22. For current impairments that have not lasted 12 months, the tribunal will have to decide whether the substantial adverse effects of the condition are likely to last for at least 12 months. The Guidance stipulates that an event is likely to happen if it '**could well happen**' (**Para C3**). The word 'likely' in the EqA simply means something that is a real possibility, in the sense that it 'could well happen', rather than something that is probable or 'more likely than not'.
23. It is important to note that the issue of how long an impairment is likely to last should be determined at the date of the alleged discriminatory act and not the date of the tribunal hearing — **McDougall v Richmond Adult Community College 2008 ICR 431**, CA. It is not permissible to have regard to subsequent events when considering the likely to last 12 months question. The Guidance stresses that anything that occurs after the date of the discriminatory act will not be relevant (**Para C4**). It also states that account should be taken of both the typical length of such an

effect on an individual and any relevant factors specific to this individual, such as general state of health and age.

24. The effect of an impairment does not have to remain the same during the 12-month period. As the Guidance points out, some activities may initially be very difficult but become easier. The main adverse effect may even disappear temporarily or disappear altogether, while another effect may develop into a substantial adverse effect (**Para C7**). Even if a condition does not continually have this adverse effect, it satisfies the long-term requirement if it has substantial adverse effects that are likely to recur beyond 12 months after an individual developed the impairment.
25. Some individuals with mental health conditions experience periods of remission and good health during which they would not be able to satisfy the definition of disability. To ensure that such people are protected, **para 2(2) of Schedule 1 EqA** provides that 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 treated as continuing to have that effect if the effect is 'likely to recur' with likely again meaning *'it could well happen'*
26. The Guidance states that the effects are to be treated as long term if they are likely to recur beyond 12 months after the first occurrence (**Para C6**). This is to ensure that the total period during which a person has an impairment with recurring effects is at least 12 months. The example is given of a young man with bipolar affective disorder, a recurring form of depression. His first episode occurred in months one and two of a 13-month period. The second episode took place in month 13. This will satisfy the requirements of the definition of disability in respect of the meaning of 'long-term' because the adverse effects have recurred beyond 12 months after the first occurrence and are therefore treated as having continued for the whole period — in this case a period of 13 months.
27. By contrast, the Guidance gives an example of a woman who has two discrete episodes of depression within a ten-month period. In month one she loses her job and has a period of depression lasting six weeks. In month nine she experiences a bereavement and has a further episode of depression lasting eight weeks. Even though she has experienced two episodes of depression, she will not be covered by the Act. This is because, as at this stage, the effects of her impairment have not yet lasted more than 12 months after the first occurrence, and there is no evidence that these episodes are part of an underlying condition of depression that is likely to recur beyond the 12-month period. However, the Guidance goes on to suggest that if there was evidence to show that the two episodes did arise from an underlying condition of depression,

the effects of which are likely to recur beyond the 12-month period, she would satisfy the long-term requirement.

28. In **Swift v Chief Constable of Wiltshire Constabulary 2004 ICR 909**, EAT, the EAT emphasised that the question for the tribunal is not whether the impairment itself is likely to recur but whether the substantial adverse effect of the impairment is likely to recur. The tribunal must therefore identify the effect of the impairment with a degree of precision, since a substantial adverse effect resulting from a different impairment that was not the consequence of the condition initially diagnosed would not qualify as a recurrence.
29. The Guidance states that the likelihood of recurrence should be considered taking all the circumstances of the case into account, including what the person could reasonably be expected to do to prevent the reoccurrence (**Para C9**). Medical evidence (or a lack of it) will often be critical in establishing that a substantial adverse effect is likely to recur.
30. In assessing the likelihood of a Claimant's impairment recurring, and thus qualifying as 'long-term', an employment tribunal should disregard events taking place after the alleged discriminatory act but prior to the tribunal hearing — **McDougall v Richmond Adult Community College 2008 ICR 431**, In that case the tribunal should have asked itself what, in at the date of the discriminatory act and to ignore what was known at the date of the hearing.
31. The effect of medical treatment is only relevant where the treatment would permanently cure the person without the need for any further treatment, thereby removing the impairment. If the treatment merely delays or prevents a recurrence, and a recurrence would be likely if the treatment stopped, as is the case with most medication, then the treatment should be ignored and the effect of the impairment regarded as likely to recur (**Para C11 Guidance**).
32. The EqA, only protects individuals whose ability to carry out 'normal day-to-day activities' is impaired.
33. **Appendix 1 to the EHRC Employment Code** states that 'normal day-to-day activities' are activities that are carried out by most men or women on a fairly regular and frequent basis, and gives examples such as walking, driving, typing, and forming social relationships. The Code adds: ***'The term is not intended to include activities which are normal only for a particular person or group of people, such as playing a musical instrument, or participating in a sport to a professional standard, or performing a skilled or specialised task at work. However, someone***

who is affected in such a specialised way but is also affected in normal day-to-day activities would be covered by this part of the definition' (Paras 14 and 15).

34. The indirect effects of an impairment must also be taken into account when assessing whether the impairment falls within the statutory definition. Indirect effects might include, for example, where a person has been advised by a doctor to limit or refrain from a normal day-to-day activity on account of an impairment or where an impairment causes pain or fatigue so that though the normal day-to-day activity can still be performed, the person might not be able to repeat the task over a sustained period of time (**Para D22 Guidance**).

35. The Claimant's Evidence

As stated the Claimant provided a lengthy statement and was courteously and thoroughly cross examined on the same. The Claimant clearly found the process a difficult one but managed to provide answers as required. I found the Claimant's evidence to be without exaggeration and had little doubt that what he told me matched the perception he had of events. In the interests of proportionality, I do not intend to go through the statement of the Claimant's evidence in detail as the statement and the chronology therein is clearly set out in that document. I have had full regard to the challenges raised by the Respondent and my findings on the Claimant's evidence are set out below.

36. Medical Evidence

The parties to this case made a joint application for a psychiatric report on the Claimant when it became clear that the issue of the Claimant's disabled status was not going to be agreed. That application was made on 19 January 2022. The Tribunal rejected the application on 8 February 2022 although the identity of the Judge cannot be discerned. It was left that if the Judge dealing with the matter at this hearing considered that a joint expert would assist then directions could be made at that time. The application for a jointly appointed psychiatrist was not renewed at this hearing and I could not see that there was any need myself.

37. The Claimant has provided his medical records and they run from 2005 until 30 July 2021 (178-185) and so cover the material period. I have reviewed them in relation to the impairments specified by the Claimant as constituting his disability and that yields the following results:
- a) The first relevant entry is on **29 June 2020**. He reported ***"Panic attacks, low mood, tearful, sleep OK, appetite not as good. Never sought help for mental health before but had suffered with anxiety / panic attacks***

before and had support through work. Suicidal thoughts, no plans, spent Saturday curled up in bed crying. Partner supportive and he has children who were protective factors to. The diagnosis was of a stress related problem”.

- b) ***13 July 2020 – “Up and down, remains off work. Counselling 5th of seven sessions. Feels not just work related, bereavement, lost mother last April, marriage breakdown following this. Having bouts of anxiety about returning to work. Doesn't wish for antidepressant therapy. Feels these conversations plus counselling helps, doesn't feel so trapped or like there is no way out now”.*** A fit note document was issued for a two-week duration.
- c) ***27 July 2020 – “Diagnosis work related stress and anxiety . Stress better since being off work, hands visibly shake when he receives a message from work. Needs occupational health support at work as wouldn't be able to meet his boss, thinks he has enough for a grievance against him. Counselling hugely helpful and this has been extended by seven sessions”.***
- d) ***6 August 2020 – “Stress related problem. Off work due to stress particularly with his boss. His boss keeps contacting him which is exacerbating his symptoms . Wishes for anti-depressant / anti-anxiety medication. No suicidal thoughts. Start Citalopram.***
- e) ***24 August 2020 - “Mood still up and down . E-mail from manager demanding contact today. Had occupational health appointment last week, they are seeing him again end of September. Has been in touch with CAB have recommended the solicitor to help him with grievance. Started to feel a benefit from Citalopram at the weekend . Will continue this”.***
- f) ***17 September 2020 –“Spoke to patient - feeling okay. Had meeting with occupational health at work how . Deemed not fit currently to engage in process due to his negative perception of boss or. Mood feeling more stable on 30 mg agreed continue on current medication extend medication by one month and review then”.***
- g) ***26 October 2020 – “Resigned from job two weeks ago. Solicitor claiming constructive dismissal. Very stressed not able to think about work at the moment. Agreed to sign him off for three months then speak again in the new year or sooner if he wishes. Continue 30 mg Citalopram which he is getting benefit from.”***
- h) The Claimant was signed off from work from 29 June to the end of his employment on 16 October and beyond. The condition was variously

described in the Fit Notes as “**stress related problem**” (29/6), “**stress and anxiety**” (13/7) and “**Work-related stress and anxiety**” (13/7) and following.

38. The Claimant had a number of Occupational Health Assessments during the material period and they can be summarised as follows so far as they are relevant to the impairments cited by the Claimant in relation to his disability:

- a) The first referral was made on 2 January 2019 and was in relation to the Claimant disclosing a conviction from March 2017 (formal caution for assault). The referring officer (the Second Respondent) stated that the Claimant had made him aware soon after May 2018 that the Claimant was suffering from stress (some work related), anxiety, alcohol dependency and sleep deficiency which were also going on back in March 2017. Mr Sangster has not given any evidence to gainsay the truth of the Claimant’s statement and I see that as corroborating evidence of the fact that the Claimant was suffering from stress and anxiety from March 2017 through to May 2018. Upon being seen by the OH practitioner the Claimant was deemed to have been open about his alcohol use, confirmed he was having counselling and that he was not on medication. He was deemed fit for work, appeared to have a good insight into his issues and presented a low risk of an anger outburst such as the one that led to his caution.
- b) On 11 August 2020 the Claimant was reporting that he had acute symptoms, office stress, anxiety and low mood which was described as being a combination of personal but predominantly work-related stress and for that reason the Claimant did not present as being sufficiently emotionally robust to return to his contracted role in any capacity at that time. In the OH Physician’s opinion, the blockage to his recovery and his successful return to his contracted role appeared to be the negative perception he had formed regarding some employee / manager relationship issues and not being given the time to have any escape from work related matters due to constant e-mail communications. Clinical evidence suggested that until this perception has been resolved, one way or another, symptoms were likely to continue. It was suggested that the Claimant was likely to be covered by the Equality Act 2010, however there is no indication as to how the physician came to that conclusion. Matters are further complicated by the note that whilst the Claimant did have an impairment that had an adverse effect to carry out his substantive duties at work the physician did not consider that there was a substantial or long- term effect on the claimant’s ability to carry out normal day to day activities. That view was not broken down any

further. The report was carried out by Ms Delaney who appears to have a nursing and OH background.

- c) On 23 September 2020 the Claimant was deemed unfit to work or mentally able to take part in a formal process. At the consultation the Claimant was distressed and had developed an unpredictable stutter. The issues which the Claimant had with Mr Sangster were deemed to be at the root of the issues.

- 39. The Claimant provided a highly detailed statement in respect of his Disability. He disclosed that he always suffered from feelings of worry anxiousness and stress and had a propensity in particular to work related stress. The Claimant stated that he left a gardening role in 2005 because he had stress which he assigned to work related pressures. The Claimant did not describe to me any specific effect on his day-to-day activity over this period and I find that the stress described at this period was that which many experience in their day-to-day life and was not of sufficient intensity to be an early period of stress and anxiety that meets the statutory criteria.
- 40. The period from April 2005 and March 2015 was deemed to be bearable save for times of low mood. When cross examined the Claimant did not identify any specific or consistent matters that would suggest that again any symptoms that he had were again of sufficient intensity to be an early period of stress and anxiety that meets the statutory criteria. At the end of that period the Claimant applied for and was given a full-time role.
- 41. The Claimant stated that there were some stresses to this role which led to heightened anxiety and low mood which in turn led to an increase of alcohol intake and he had frequent hangovers. In June 2016 the Claimant was particularly affected by the Brexit result which resulted in him feeling very gloomy about the future. In March 2017 the Claimant was cautioned for assault in an incident that took place on the roads.
- 42. In May 2018 the Claimant began to be line managed by Mr Sangster and the Claimant states that in the first one to one he told Mr Sangster that he suffered from anxiety, low mood, and stress. I accept that evidence.
- 43. I accept the Claimant's evidence that from around May 2018 he was affected by a number of incidents in his personal life surrounding family and the increased obligations that imposed upon him. I also accept that the death of the Claimant's mother and his divorce in April 2019 and May 2019 respectively took matters to a different level as explained at paragraph 13 of the statement.
- 44. The Claimant set out its position in closing as follows:

- a) The Claimant had a mental impairment through the whole period with periods of debilitating depression.
- b) Sleep, work, and appetite were affected and there was a permanent substantial adverse effect.
- c) Whilst accepting that there were no visits to the GP before June 2020 it was pointed out that in the risk assessment completed on 20 December 2018 it was stated that **“(the Claimant) was suffering from stress and anxiety and this is an ongoing condition for which he is seeking help and support”** (121)
- d) The fact that the Claimant had told his manager in May 2018 that he suffered from “stress, anxiety, alcohol dependency and sleep deficiency (126)”
- e) The Claimant had told the OH physician that he had long standing stress in January 2019. (128)
- f) The Claimant had been a fair witness and had not sought to exaggerate.

45. The Respondent set out its position on disability in writing. I mean no discourtesy by summarising the same but the document sets out:

- a) That there was no intervention from the GP or any record at all of mental illness before 29 June 2020 and any issues before that time is self-reported;
- b) That the Claimant did not have a mental impairment as the stress arose from an adverse reaction to work and life circumstances. **“The claimant evidenced that he is over-sensitive to the stresses that life throws up and has a disproportionate emotional response. That is his character, not an impairment.”** (para 4(i) R’s Position Statement);
- c) Hangovers caused by his alcohol abuse would have caused transient low mood and anxiety short of an impairment;
- d) It is asserted that there is insufficient evidence to suggest that the effects were substantial;
- e) It is asserted that there is no period where the effects lasted or were likely to last 12 months.
- f) A chronology is then set out where each specific possible period of disability is accounted for which I will not repeat here.

Conclusions

46. It is clear from the evidence that the Claimant has a low threshold when it comes to experiencing anxiety and stress related conditions. Many people do suffer such conditions without it affecting or impacting upon normal day to day activities.

47. I am quite satisfied that there is insufficient evidence to suggest that any stress / anxiety / depression experienced prior to March 2015 was at a level that had a substantial (as defined above) adverse effect on the Claimant's day to day activities. From the evidence tendered any effect was no more than trivial.
48. The Claimant felt able to go and work full time in 2015 and it was clear that the medical position was such that the Claimant felt he was able to take more responsibility and work longer hours. I find that any stress anxiety depression over this time was at a low level and had a minimal effect on the Claimant's ability to undertake day to day activities.
49. Over the next period the Claimant's description of his day-to-day symptoms are very generalised. I accept that there were stressful days at work and that from time to time there were stressful issues that arose in the Claimant's personal life and there were times when the Claimant was at low mood when particular issues arose. He explained that in order to assuage these matters he drank more than he should have but again over this period save for specific individual incidents such as the Brexit referendum and the incident that led to his assault I do not have satisfactory evidence that he met the definition of being disabled in terms of having a more than trivial effect on his day-to-day activities. I consider this to be the case between taking the role in March 2015 until May 2018.
50. I accept the Claimant's evidence at paragraph 10 of his witness statement that towards the end of 2018 there were issues that exacerbated his stress / anxiety / low mood. These included an increase in the workload and tension at work, the regular trips to Essex to see his mother who was ill and deteriorating and his younger son going to university. I accept that his condition was worse over this time but there is still limited evidence about what the specific effect was on the Claimant's day to day activities and again I am not satisfied that there was a substantial effect on his day-to-day activities. I accept that the Claimant was proactive and undertook some Support Line counselling which as he said came as a massive relief. In my view the Claimant's condition still fell short of what is required by the statute in that the effect on the Claimant was still trivial.
51. On the evidence I consider that the Claimant's condition crossed the threshold and became substantial in or around May 2019 upon the death of the Claimant's mother and after his marriage ended. I accept the Claimant's evidence about having suicidal thoughts and considering driving into a tree, that his sleep was additionally affected and in particular that he had regular panic attacks which were debilitating. I find that as at that date the Claimant's anxiety and stress manifesting itself into panic attacks was such that it did have a substantial adverse effect

upon the Claimant's day to day activities and in particular he looked to avoid interaction with others, looked to avoid going shopping or to avoid attending social activities including his allotment. I further accept that his appetite was affected as was his desire to cook for himself.

52. I accept that the Claimant's condition continued thereafter and at all times up to his dismissal he met the definition. It follows therefore on those factual findings that the Claimant would become a disabled person when it was deemed likely that his impairment causing these effects would last 12 months after May 2018.

53. That is effectively a balancing act that I have to undertake moving forward without, of course, taking into account what subsequently happened. The Claimant had been suffering from stress / anxiety / low mood for some time leading up to May 2019 all be it at a level that did not have a substantial effect on his day-to-day activities. As of May 2019, it was quite possible that the end of his marriage and the final passing of his mother and the responsibilities that brought matters to a head would gradually ease. It was also possible that the matter would get worse.

54. It seems to me that at the start of matters in May 2019 it would not be possible to say that it could well happen that the condition and its' restrictions would last 12 months but that at a point six months after the Claimant crossed the threshold then it would be fair to say that it could well happen that he would not recover within 12 months. In those circumstances I consider that the Claimant was a disabled person from 1 November 2019.

55. I have considered the points raised by the Respondent very carefully and confess that the two parties' positions in this case have been very finely balanced. I note that the Claimant did not go to see his GP until June 2020 but also note that the Claimant appears to be a person who used the services of his GP on a very infrequent basis over the years from 2005 and 2020 for anything. I accept his evidence that he simply tried to place his best foot forward with his condition and crack on with everything gaining assistance via the counsellor and turning to the solace of the bottle as opposed to seeking treatment for his condition.

56. To put it another way I do not see anything unusual about the Claimant, a man in his mid-fifties, acting in that way and do not consider it a definitive marker that he was not suffering from his condition as required before that time. I note that he did refer to his stress and anxiety from time to time e.g., from the risk assessment in late 2018 and during 2019 to his line manager. The Claimant attended his GP when matters became intolerable for him but that does not discount a finding that he was disabled before that point.

57. It is right to say that the Claimant is susceptible to stress and anxiety on a day-to-day basis. It is also right to say that his anxiety and stress appears to be of the reactive kind i.e., to upsetting events or pressures at home or work. I have sought to distinguish between the stresses and strains felt by all from those which were particular and disabling for the Claimant. Whilst issues at work have affected the Claimant especially in 2020 I consider that the causes of his stress/ anxiety and depression are multi factorial

58. I am satisfied that the Claimant did have a mental impairment which met the definition of disability on 1 November 2019 and that he remained a disabled person at all material times thereafter.

Employment Judge Self
08 July 2022