



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss S Douglas

**Respondent:** Tameside Metropolitan Borough Council

**Heard at:** Manchester

**On:** 27 April 2023

**Before:** Employment Judge Phil Allen

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Ms L Carr, Solicitor

# JUDGMENT

The judgment of the Tribunal is that:

1. From 8 June 2021 the claimant had a disability as defined by section 6 of the Equality Act 2010, as a result of blindness in her left eye and related TIA. Prior to that date, the impairment did not amount to a disability as defined.
2. The claimant did not have a disability as defined by section 6 of the Equality Act 2010, as a result of anxiety, at the relevant time.

# REASONS

## Introduction

1. The claimant was employed by the respondent as a child protection conference chair or Independent Reviewing Officer from 15 October 2018 until 11 February 2022. The claimant resigned. The claimant alleges constructive unfair dismissal, race discrimination, disability discrimination, and victimisation. This hearing was arranged to determine whether the claimant had a disability or disabilities at the relevant time.

**Preliminary Issue**

2. A preliminary hearing (case management) was previously conducted in this case, on 17 August 2022. At that hearing a further preliminary hearing was arranged to determine whether the claimant had a disability or disabilities at the relevant time for the purposes of section 6 of the Equality Act 2010. The date for the hearing was subsequently changed.
3. At the start of this hearing, it was confirmed with the parties that would be the issue to be determined.
4. The claimant confirmed that the impairments upon which she was relying as being a disability or disabilities at the relevant time, were: blindness in her left eye and related TIA (transient ischaemic attack); and anxiety.
5. The previous case management order recorded that the relevant time for determining disability was November 2019 to 11 February 2022 (the date when the claimant's employment ended). During this hearing it was confirmed that if I did not find either of the impairments to have been a disability for all of the relevant time, a decision would also need to be made as to whether it/they had been a disability for some of the relevant time (and, if so, when it/they became a disability).

**Procedure**

6. The claimant represented herself at the hearing. Ms Carr, solicitor, represented the respondent.
7. The hearing was conducted entirely by CVP remote video technology, with both parties attending remotely.
8. A bundle of documents was prepared in advance of the hearing by the respondent. The bundle ran to 145 pages. Where a number is referred to in brackets in this Judgment, that is a reference to the page number in the bundle. At the start of the hearing, it was established that the claimant had not received all of the pages of the bundle (which had been sent in parts). At the start of the hearing, the missing parts were re-sent to the claimant by the respondent. The claimant had previously seen the documents provided but had not received all of the numbered pages in the Tribunal bundle.
9. At the start of the hearing, I read the claimant's disability impact statements and all of the medical records provided in the bundle.
10. During the cross-examination of the claimant, it became clear that the claimant was referring to occupational health reports which had not been provided to me. The reports had been disclosed to the respondent by the claimant, but had not been identified (as they had been provided with other documents not relevant to the preliminary issue). The hearing was adjourned so that the two reports could be provided to me (and copied to the claimant). A return to work form was also provided at the same time. The respondent did not object to the documents being considered. The occupational health reports were dated 24 March 2021 and 14 July 2021.

11. The bundle contained two statements made by the claimant as a disability impact statement (77 and 79). It was understood that the claimant had previously provided a statement to the respondent, but after the respondent had advised her that the content did not appear to be limited to or focussed upon the question of disability, the claimant had provided the amended statement(s) upon which she now relied. The claimant confirmed that the contents of those documents/statements were true and accurate under oath. The claimant was then cross-examined by the respondent's representative, before I asked her questions, and she was given the opportunity to say anything she wished to by way of re-examination.

12. During cross-examination the claimant was also asked about the redactions which had been made to the medical records. The respondent was concerned about some of the redactions, particularly those which related to occasions when the notes did record matters relevant to the impairments relied upon, or those which were in close proximity to them. When answering the questions, the claimant re-checked the original records and confirmed that the redactions excluded only things unrelated to the two impairments relied upon. I had no reason to doubt the answers given by the claimant under oath about the redactions made.

13. After the evidence was heard, submissions were made by each of the parties. It was agreed that the respondent's representative would make her submissions first. Each of the parties made submissions verbally.

14. Following an adjournment, I informed the parties of my Judgment on the preliminary issue and the reasons for that decision. As the claimant requested that written reasons for the decision be provided, these written reasons are provided.

### **Facts**

15. On 17 November 2020 the claimant had a consultation with a GP (126). In the notes the GP recorded that "*job is stressful, no time for self care ?on path to burnout*". The claimant's impact statements did not address any issues which occurred at that time.

16. In her short impact statement (77) the claimant stated that she had suffered with temporary blindness which was accompanied by extreme fatigue and cognitive impairment. She also stated that she suffered from anxiety and depression.

17. In her longer statement impact statement (79), the claimant stated that in December 2020 she had first experienced an episode of blindness in her left eye. In her oral evidence she explained that she had suffered a TIA (with blindness) on each of 1 and 9 December 2020. She was absent from work following the second TIA from 10 December 2020 until 3 May 2021. In her impact statement the claimant described being put on medication (clopidogrel), which she explained in evidence was a blood thinner. She later moved onto aspirin, which she took daily for the same reason (the GP records recorded that as being from 2 February 2021 (119), the claimant emphasised that she wished to make the change). There was no real evidence before me about the detailed reasons for the claimant's absence during that period. The claimant was unable to drive for a short period after the TIA.

18. An occupational health report dated 24 March 2021, prepared for the respondent, was provided to me during the hearing. That confirmed that the claimant had been treated for a TIA or mini-stroke following the two episodes in December 2020 and had received appropriate medication, upon which she remained at the time of the consultation. The report recorded that there had been no further episodes of loss of vision. In a section headed “*Current Outlook*” it was stated that “*It is anticipated that Miss Douglas’ risk of further TIAs will be managed with ongoing medication. However she still has a small risk of further TIAs, and other stimuli such as stress can increase the risk*”. The report also addressed work related stress. Under a heading “*Disability Advice*” the writer of the report said:

*“My interpretation of the relevant UK legislation is that Miss Samantha Douglas’s TIAs and stress are unlikely to be considered a disability because they: - have not lasted longer than 12 months - are not having a significant impact on her ability to undertake their normal daily activities”*

19. The claimant returned to work in May 2021. On 4 June 2021 (or possibly the 2 or 3 June 2021, the evidence and documents were not entirely consistent on this date), the claimant had a further TIA with a period of temporary blindness and visited Accident and Emergency. The claimant attended work on 7 June 2021. Early in the morning of 8 June 2021 the claimant had a further TIA with temporary blindness and again attended Accident and Emergency. The claimant was absent from work from that date until October 2021. Following the June TIAs, the claimant also gave evidence that she had symptoms of extreme fatigue, vertigo, slurred speech, disrupted cognitive functioning, and the inability to absorb and process information that would usually be routine memory issues. As an example, the claimant explained that she had been unable to remember how to cut and paste.

20. In her impact statement, the claimant also explained that she had noted a significant decline in her mental health in or around June 2021, with anxiety extremely heightened and mood extremely low. She described seeing beings whilst awake. She had a constant fear. She spent days crying and struggling to function. She described difficulties with childcare. She explained that there were days when she could not leave the house or speak to friends and family (which was not her usual behaviour). She received counselling between August and October 2021. She took some medication but ceased doing so after experiencing adverse effects.

21. In her claim form (14) the claimant detailed her TIAs as having been on 4 June and 8 June 2021. In her impact statement she stated that she had more episodes in quick succession after returning to work. In her medical records was a note made by a receptionist which recorded the claimant as having informed the receptionist on 8 June 2021 that she had had another TIA last week, but without mention of a further TIA on 8 June itself (112).

22. A second occupational health report dated 14 July 2021, also prepared for the respondent, was provided to me. It detailed the two June TIAs with a loss of vision on each occasion. It explained that the claimant had attended Accident and Emergency after each. It stated that, in the opinion of the writer, the claimant was unfit for work in any capacity at the time of the report. It said: “*I believe her symptoms remain too severe for her to carry out any working duties at this time*”. Under the heading “*Current Outlook*” the report said: “*The outlook is guarded as she*

*continues to complain of symptoms not yet resolved*". The writer then referred to the claimant receiving treatment and advice from the TIA clinic. Under the heading "*Disability Advice*" the report said:

*"My interpretation of the relevant UK legislation is that Miss Douglas's TIA is likely to be considered a disability because it: - is having a significant impact on her ability to undertake normal daily activities - would have a significant impact on normal daily activities without the benefit of treatment"*

23. The claimant returned to work in October 2021. She resigned with notice on 17 December 2021. Her employment ended on 11 February 2021. She commenced new employment with a new employer on 14 February 2021.

24. I have not endeavoured to reproduce all of the claimant's medical records in this Judgment (albeit that I did read them all and take them all into account). The first reference in them to anxiety was in an entry on 28 September 2021, which referred to anxiety disorder. There were no references to depression (or, at least, none highlighted by the parties).

25. The claimant's evidence was that when she was signed off work on ill health grounds, the reasons given were TIA (or were related to investigation arising from the TIA), until the last note in September 2021 when the reason changed to be anxiety (or was related to anxiety). I was not provided with copies of the fit notes, but the reasons given (at least in broad terms) were not in dispute.

26. In her evidence, the claimant referred to having continued to have had TIAs since those specifically evidenced, including having had one in January 2023.

### **The Law**

27. I made my decision based upon section 6 of the Equality Act 2010. That provides the following:

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

28. Section 212 of the Equality Act 2010 provides that "*substantial*" means "*more than minor or trivial*".

29. Schedule 1 Part 1 of the Equality Act 2010 (at clause 2) says the following:

*"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."*

30. Clause 2 goes on to say at subsection (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."*

31. Clause 5 of Schedule 1 includes provisions that relate to medical treatment. If measures are taken to treat or correct an impairment (including medical treatment) and, but for those measures, the impairment would have the requisite effect on the person's ability to carry out normal day-to-day activities, then the condition is to be treated as having that effect.

32. There is some guidance on matters to be taken into account in determining questions relating to the definition of disability which has been issued by the Secretary of State and I am required to take account of that guidance. That guidance confirms that "*likely*" means that something "*could well happen*".

33. The onus is on the claimant to prove that the relevant condition is a disability.

34. In their submissions, neither party identified or relied upon any particular case law or point of law. They both emphasised their case on the facts.

### **Application of Law to Facts**

35. Applying the law to the facts, I first considered the left eye condition and the TIAs, and then I considered anxiety separately.

#### *Left eye condition and TIAs*

36. It was clear to me that the left eye condition and TIAs were an impairment.

37. When a TIA occurred, it had a substantial adverse effect on the claimant's ability to carry out normal day-to-day activities. That effect was in a number of ways. There was blindness, even if that was temporary. There were also other impacts which were described in the claimant's impact statement, including impact on cognitive function and memory. As the claimant evidenced, that included being unable to recall basic computer functions such as cut and paste, which is in my view, a normal day-to-day activity.

38. The impact had not been continuous, in that the claimant clearly had recovered in between TIAs. It therefore was not the case that the symptoms lasted continuously for a 12 month period, but they had recurred.

39. Looking at when TIAs occurred, what provided me with the clearest medical evidence about the impact of the first two occasions when TIAs occurred (which was on 1 December and 9 December 2020) was the Occupational Health report of March 2021. That report said, importantly, that there was only a small risk of further TIAs (the full wording, including a caveat to that, is explained above). In that report the adviser went on to give the view that the conditions addressed in the report were not a disability, both because they had not lasted for 12 months, and because they had not had a significant impact on the claimant's ability to carry out normal day-to-day activities. I was not required to accept the adviser's view, but it was clearly important evidence about the medical impact of TIAs at that time and the view of recurrence, provided by a medical professional.

40. Looking at the legal test and how it applied at that time, I must consider whether the impairment was long term at that time (including taking account of the likelihood of recurrence and subsection 2(2) of schedule 1 recited above). Having

applied the test of whether the adverse effect was (at that time) likely to recur based upon the Occupational Health advice, I found that the condition (the left eye blindness and TIAs) were not likely to recur (at that time). A small risk that something was likely to happen, is not the same as it being “likely” or meaning that it could well happen. At that point in time (March 2021) I found that the claimant's left eye blindness and TIAs were not a disability.

41. However, the claimant did have further TIAs on (approximately) 4 June 2021 and 8 June 2021. I accepted that they both occurred, as that was the claimant's evidence, and it was consistent with what was recorded in the later Occupational Health report on 14 July 2021. The date of the first TIA was recorded as being slightly different in different documents, but I did not think anything material turned on that. I did not accept the submission that the note of a GP receptionist, which was inevitably a summary of what was said, undermined the claimant's own evidence as corroborated by that Occupational Health report written a month later, about the claimant having suffered two TIAs at that time.

42. I also noted from the evidence that: the claimant attended Accident and Emergency on both occasions; that the more notable symptoms described in the claimant's impact statement occurred in June 2021; that by the end of July in the second Occupational Health report, the claimant's symptoms were described as remaining too severe for her to carry out any working duties at the time; and (perhaps most importantly) the outlook in July was described as “*guarded*”.

43. In the report in July, the occupational health adviser concluded that the claimant's TIAs and eye condition would be considered a disability at that time because of the significant impact upon her day-to-day activities and the impact on her day-to-day activities without treatment. I did note that that report did not say the specific words that the TIAs were likely to recur, but I read the report (and the comment that I have just recorded about the outlook) as meaning that by 14 July 2021 the condition was long-term in that it was likely to recur for at least 12 months, or at least was likely to recur over that period without treatment, because that is what the report said. I noted the significant difference in the terminology used in that report about disability, as compared to the previous one. As a result, I found that the impairment was long term by the time of that report because the significant adverse impact upon the claimant's ability to undertake day to day activities was (by that time) likely to recur.

44. There was an important question that I had to consider, which was exactly when the claimant's impairment became a disability. I found that the July Occupational Health report, and what was said, would have recorded the position from the fourth TIA on 8 June. There was no evidence that anything substantively changed between the fourth TIA and the report. As a result, I found that the impairment was long term from 8 June 2021, because the significant adverse impact upon the claimant's ability to undertake day to day activities was (by that time) likely to recur.

45. However, the July Occupational Health report did not address what would have been the position after the third TIA but before the fourth. I considered very carefully whether the claimant had proved that she had a disability from the third TIA which occurred on or around 4 June. I reminded myself that it was for the claimant to

prove that she had a disability at the relevant time. I found that there was insufficient evidence before me that the impact of the impairment on the claimant's ability to undertake day to day activities was likely to recur after the third TIA, albeit that I had found that it was likely to recur after the fourth. I noted that the claimant returned to work between the third TIA and the fourth TIA. Most importantly, I noted that there was no medical evidence before me that recorded the likelihood of recurrence after the third TIA.

46. For those reasons, I found that the claimant's TIA and eye condition was a disability from the date of the fourth TIA, but the claimant had not proved that it was a disability from the date of the third TIA (that is that she had not proved that the substantial adverse effect on day to day activities was long term because it was likely to recur over twelve months from the date the adverse effect first occurred).

### *Anxiety*

47. Turning to the anxiety, the claimant's evidence was that it had a substantial adverse effect on her day-to-day activities, and she described that in her impact statement. The adverse effects included the claimant crying and being unable to function, the claimant being unable to speak to friends and family, an impact upon mood, and the claimant seeing things. In my view that evidence was clear that her anxiety had a substantial adverse effect on her day-to-day activities.

48. Looking at the period of time involved, the claimant's impact statement recorded the decline in her mental health as occurring in June 2021. By February 2022 the claimant had moved onto new employment, and there was no evidence that the claimant's anxiety was having a substantial adverse impact on her after that date. February 2022 was also the date that her claim was entered at the Tribunal. The substantial adverse effect on day-to-day activities was evidenced for the period June 2021 to February 2022.

49. There was no evidence before me that the anxiety had lasted more than 12 months. There was also no evidence that it had been (at that time) likely to do so. There was no evidence about the likelihood of recurrence.

50. I considered carefully the GP entry of 17 November 2020, which recorded the claimant as being on the path to burnout, as the claimant emphasised that entry. That document did relate to a stress related issue. It did not record anxiety or that the impact of what had been recorded on the claimant was a substantial adverse effect on her ability to carry out normal day-to-day activities. I did not find that the specific entry in the notes on its own was sufficient to prove that the claimant's impairment at that time had the requisite effect, particularly in the light of what was said in the claimant's impact statement about when her mental health significantly declined (and the absence of any evidence about what pre-dated that decline).

51. As a result, I did not find that the claimant had proved that her anxiety was a disability at the relevant time, because she had not proved that it had been long-term, applying the meaning of those words under the Equality Act 2010.



*Medical treatment/measures*

52. I also, as I was required to do, considered the effect of medical treatment/measures and applied what was said in schedule 1 of the Equality Act 2010. I noted that the claimant took medication as a blood thinner. However, there was no evidence before me that if she had not taken that medication, it would have meant that the claimant's blindness and TIAs were a disability at a time earlier than I found. There was no evidence about the likely effect of her impairment on her day-to-day activities at that time if blood thinners had not been taken.

53. For the anxiety, the claimant took medication only for a short period. As with the other impairment, there was no evidence before me that, but for taking that medication, the requisite effects of the claimant's anxiety would have lasted for more than 12 months or would have been likely to do so (or to have been likely to recur).

**Summary**

54. For the reasons explained above, I found that the claimant did have a disability, applying the relevant legal test. That was as a result of the blindness and TIAs. That was not for the whole of the relevant period. It was from 8 June 2021. I did not find that the claimant had proved that her anxiety satisfied the legal test for a disability at the relevant time.

Employment Judge Phil Allen

2 May 2023

JUDGMENT AND REASONS  
SENT TO THE PARTIES ON  
4 May 2023

FOR THE TRIBUNAL OFFICE

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.