



EMPLOYMENT TRIBUNALS

Claimant **Respondent**
Courtney **v** **UBS**

Heard at: London Central (CVP) **On:** 12 August 2021

Before: Employment Judge Lewis

Representation

For the Claimant: Ms J Linford, Counsel

For the Respondent: Mr S Purnell, Counsel

RESERVED JUDGMENT

At the relevant time (26 July 2019 – April 2022), the claimant was disabled. She had the disabilities of Generalised Anxiety Disorder and Panic Disorder.

REASONS

The issue today

1. The issue before me was whether the claimant was disabled under the Equality Act 2020 at the time of the alleged discrimination. The relevant period was agreed as 26 July 2019 – end April 2021 (the dates given to the joint expert) plus, as a result of the claimant's amendment application, which the respondent does not object to, an extension of the period to April 2022. In closing submissions, the respondent admitted that the claimant was disabled from 21 November 2020 but not before. It accepted that from April 2020, the claimant was experiencing by reason of a mental impairment (Generalised Anxiety Disorder and/or Panic Disorder) a substantial adverse effect on her ability to carry out normal day-to-day activities, and that by 21 November

2020 the substantial adverse effect had lasted 8 months and was likely to last a further 4 months.

2. The claimant's primary argument is that she has had an underlying mental impairment (Generalised Anxiety Disorder / Panic Disorder) for her entire adult life, and that this had substantial adverse effects on her ability to carry out normal day-to-day activities throughout the relevant period. Moreover, she says the steps she has taken to manage her impairment, ie her coping mechanism, themselves amounted to substantial adverse effects.
3. The claimant's secondary argument is that, if the substantial effects fluctuated, they were at each point always likely to recur as substantial effects. Alternatively, if she had non-substantial effects, these were at the relevant time likely to progress to substantial effects.
4. The claimant did not take any pharmacological medication during the relevant period, so it is unnecessary to consider the effects without such medication.
5. It was not argued that the effect on the claimant's activities should be considered as if she had not been undergoing any therapy during the relevant period. The relevance of the therapy was argued instead as an indicator that the claimant was struggling with the adverse effects of her impairment and as part of the coping mechanism argument.
6. The respondent argues that prior to April 2020, although there might have been an ongoing impairment, it had no substantial adverse effects. The respondent says this is evident from her ability to hold down a successful career, and moreover that the steps she took to manage her anxiety were no more than she reasonably ought to have taken to avoid any substantial adverse effects.
7. The respondent raised other arguments which I shall address in these Reasons.
8. I was provided with a trial bundle and the respondent supplied closing submissions together with an Appendix containing a medical chronology. The claimant gave evidence and was cross-examined. Evidence and comments by each representative took the entire day, so I had to reserve my decision.

Fact findings

9. I was provided with a huge amount of information concerning the claimant's mental health. I cannot possibly reproduce it all in these reasons, but I have born in mind everything which was drawn to my attention. The trial bundle (552 pages) included a Joint Expert Medical Report, a Follow-up Q&A document, a Revised Joint Expert Medical Report, correspondence, notes and reports from a variety of other doctors and therapists, the Claimant's Amended Impact Statement and the Claimant's Impact Statement Timeline.

10. The claimant struck me as an honest witness. I did take into account that she had more recently added important additional detail by amending her initial impact statement, and that she had not given all the details to the joint expert, Dr Spoto. Nevertheless, I had no sense that she was exaggerating the effects of her anxiety. She had a tendency to over-explain and kept asking if I wanted her to spell out more examples or stick to a broad brush. I note that Dr Spoto also took the view that he was receiving a straight-forward account from the claimant. Moreover, as I explain below, he did not explore with her the full effect on her day-to-day activities.
11. I therefore did not feel that putting matters into her witness statement, which she had not described to Dr Spoto, meant that she was fabricating or exaggerating such matters. Of course, inconsistency can be an indicator that evidence is unreliable, but not necessarily. The type of evidence given at the hearing, the way the claimant gave her evidence, the detail – including names of brands, and the occasional piece of equipment which she spontaneously waved at the camera (eg an electromagnetic wave detector or something similar), all convinced me that the additional examples were true and not exaggerated. Also, many of the therapy sessions she said had taken place were evidenced by documentation.
12. The claimant has suffered from anxiety all her life. As an adult, this manifests itself primarily in over-anxiety about damage to her health (and after he was born, to her son's health) from germs, chemicals, electromagnetic waves, non-organic food, tap water etc. Her anxiety on such matters is at a level beyond the concerns which health-conscious individuals usually have over optimising their health. The difference is the extreme steps which the claimant takes as protective measures, her unremitting preoccupation with potential risks, and the level of anxiety she feels if she does not take protective measures such as eating organic food, avoiding wi-fi and reducing chemical risks.
13. When she was only 7 or 8 years old, the claimant was at a schoolfriend's birthday party when she became overwhelmed by fear about germs. She could not eat the birthday cake due to anxiety about how it had been cooked and whether it had dirt in it. She made excuses about having a tummy ache so she did not have to eat it. I accept this evidence from the claimant. It is a very graphic and unusual example. I also accept that this type of anxiety stayed with her throughout her childhood.
14. The claimant's mother had mental health issues and was unable to provide the claimant with mental and emotional support. Her mother made her leave home when she was just 16. The claimant's sister also has mental health issues. I accept the claimant's evidence that she started experiencing severe panic attacks soon after she moved out of home. She was prescribed medication which she took for 12 – 18 months. Once she obtained a job, at age 18, she started paying for therapy. She has been in and out of therapy all her life. She ceased taking medication in particular when she discovered that she has polycystic kidney disease to avoid exacerbating that condition, and has instead sought to manage her anxiety by therapy, practical tools such as

breathing exercises, and various extreme measures to reduce anxiety levels by avoiding what she sees as risks. She repeatedly talked about her anxiety causing 'ruminating thoughts'. She herself describes these measures as entailing compulsive behaviours. Having listened to many of the examples, which I will set out below, I respectfully agree. This ongoing anxiety, and the struggle to manage it, was present throughout the relevant period (as well as before and after). At certain times, matters have become worse, but the examples I give, unless I say otherwise, have been a constant feature of the claimant's life.

15. A psychological assessment by The Priory on 11 December 2007 notes that the claimant 'appears to have always been anxious'. Under the heading 'previous psychological therapy', it also refers to the fact that she had undergone hypnotherapy 6 – 7 years previously, and counselling when she was 17. It recommends 1:1 sessions and CBT. In 2009, the claimant attended a Meditation Centre for a couple of months. In 2015, she attended an expensive residential course with the Hoffman Institute; a 6 week 'The Power Self Esteem – More to Life' course; and a More to Life weekend Power of Purpose course. She frequently had acupuncture.
16. The claimant has always had considerable anxiety over food-related matters. She started eating organic food when she was in her mid 20s. She went to Costa Rica in 2009 (when she was 29) and would get up at 5 am for the organic early market. This anxiety has continued to date. This is not a mere preference for organic food. The claimant will ruminate and get extremely tense and anxious if she does not take these precautions. Eventually she will get palpitations, her thoughts will become overwhelmed and she will be unable to do anything else. Sometimes she finds she cannot eat in front of others and she places her hand in front of her mouth when she has to do so. She is constantly preoccupied with the safety of the food which she eats. While she was employed by the respondent, she would only buy food from certain places, eg Planet Organic, even though it would involve a 10 – 15 minute walk or travelling a few stops on the tube, taking up most of her lunch hour. During the pandemic when there were food shortages, she would at weekends undertake a 2 hour journey each way to Daylesford Organic Farm in the Cotswolds. When socialising, she would insist on going to a 'safe' restaurant, sometimes involving a long journey. With her son (born in 2017), she only uses organic food, ensures it is washed properly, cooks everything from scratch and stores it in certain containers and in a specific way. She will not let her son's father or nanny prepare the food or even heat it up in case they do it wrong.
17. The claimant would not drink tap water at home until she had the contamination levels tested. In late 2019, she bought a specialist water filter from Aquasanna Europe, having telephoned manufacturers to check their certifications. She chose a brand with independent test results and even then, she arranged for independent testing of the water by Ivario. She only allows her son to drink filtered water or Highland Spring bottled water. The claimant also bought a specialist shower water filter system to relieve her anxiety about breathing in contamination in the shower steam.

18. She delayed moving into her flat (just before she started working for the respondent) because of the smell of retardants and chemicals from the new carpet. She bought a £1000 top of the range air purifier (IQ Air). After her son was born, she put the air purifier in his room at night and then moved it to the lounge for the day. It was a large and heavy object which she could hardly move, but she would drag it up and down the stairs each day.
19. The claimant's son was born in 2017. The claimant's extreme anxiety then focused on him. She excessively googled dangers to children. She would obsessively check he was still breathing. She researched and bought natural dummies, only Otex-certified nappies, car seats without chemicals and which lay back so as not to affect oxygen saturation. The claimant would wait each day for a passer-by to help carry her buggy downstairs for the daily walk so as not to risk excessive vibration on the steps.
20. In early 2017, the claimant became really concerned about electromagnetic fields. Since then, she will only use hard cable internet rather than Wi-Fi, even though that means she cannot move freely with her laptop around her house.
21. The claimant moved again in 2019 and chose to live in a conservation area in order to avoid mobile mast radiation. Shortly after moving in (June 2019), she detected high wave readings in her bedroom. As a result, she slept on the sofa bed in the lounge for over a year until the high readings ceased. Each morning, she would put the sofa bed back, put back her son's toys and do a quick Hoover so that the nanny felt comfortable when she came in. The claimant also bought a professional electric field monitor for her new home and had specialist 'demand switches' fitted to reduce fields.
22. Even before the claimant's health further deteriorated in about March 2020, her coping strategies with food, cooking, where she was sleeping and moving the air purifier were taking about two hours each day.
23. Another long-standing and continuing cause of intense anxiety was fear of public speaking. By this, the claimant means talking in front of groups of people, particularly new people, whether in a social or work setting. She would remove herself in social situations, and at work, she would try to talk to people individually. If she could not avoid speaking in front of a group, her heart and temperature would race and she would be preoccupied with what people were seeing and thinking. Afterwards, she would often 'zone out' with physical and mental exhaustion resulting from the panic.
24. The claimant saw Isabel Philips for three Cognitive Hypnotherapy sessions in March and April 2018. Ms Philips was a member of the National Council for Hypnotherapy and the Complimentary and National Healthcare Council. The issue they worked on was the claimant's presentation nerves.
25. The claimant attended weekly sessions with Sarah Leonard, a Cognitive Therapist & Transformation Coach from 10 November 2018 to 11 January 2019 (apart from Christmas). Ms Leonard says in a statement, 'We started to

work on your fear of public speaking and generalised anxiety using Hypnosis and coaching techniques'. I have no reason not to accept what Ms Leonard says.

26. The GP notes record on 1 November 2019 that the claimant consulted her GP over stress. She felt overwhelmed by personal and work tasks. The previous day she had started to have a panic attack over a delayed email and was also tearful. The GP issued a two week sick note but the claimant felt she could not take the time off.
27. From 20 November 2019 to 12 October 2020 the claimant saw Hazel Gale for private talking therapy sessions (cognitive hypnotherapy). The claimant saw her every two to three weeks, and more consistently every two weeks in the last few months. Ms Gale says in a signed statement that the claimant initially sought her help because of her fear of public speaking, but it quickly became obvious that the claimant's relationship with her manager and team was causing anxiety and that became their primary focus. She says 'symptoms reported include anxiety, worry and heart palpitations; sleepless nights; a feeling of disconnection from her work, friends and loved ones (in particular, she felt her ability to uphold parental responsibilities and to maintain a good relationship with her son was in jeopardy); general feelings of discontent and lack of enjoyment; physical exhaustion'. I accept this evidence. I have no reason not to accept that Ms Gale's recollection of the reported symptoms is accurate. It is consistent with the claimant's own evidence to the tribunal and with Dr Barnett's report in August 2020 and the referral to a cardiologist in October 2020.
28. The effects of the claimant's underlying mental ill-health fluctuate. Much of the time she can manage them (ie keep anxiety controllable) by the above measures. But when there are personal or work stresses, the effects worsen substantially. The difficult birth of her son was one such stress. Her extreme anxiety about public-speaking was another.
29. From about February / March 2020, the claimant deteriorated further. Her personal care deteriorated, and she would fail to brush her teeth, brush her hair or shower for days at a time. She did not socialise and rarely spoke with friends even on the phone. She developed a sense of foreboding about spending time with her son due to her exhaustion and inability to cope. She employed help to care for hm on Saturdays and spent the day in bed. She regularly 'zoned out' when she realised she had not heard what her son or nanny were asking because she was ruminating about work. She would regularly break down in tears at work.
30. From about June 2020, she was experiencing palpitations for most of the day and keeping her awake at night, which ultimately led to an ECG scan and holter (which showed normal heart results). The documents show that the claimant was reporting palpitations to her GP in August 2020 and that on 16 October 2020, Dr Hayes of Health Management Ltd referred the claimant to a cardiologist. This was because the claimant 'has been having intermittent palpitations. They will often occur during a time of stress however they can

last for hours and the patient can feel her heart beating irregularly and very fast.' The claimant was grinding her teeth at night. She tried to wear a gum guard for a while, but she had to abandon this because it was made of plastic and she became obsessed with the idea that it would make bacteria breed in her mouth.

31. The claimant was aware that managing her anxiety came at huge personal cost, leading her to expensive purchases, exhausting behaviour, and damaging her relations with her nanny, her son's father and her son. However, she was unable to change what she does.
32. On 5 August 2020, the claimant received a one-off telephone assessment by a cognitive behavioural therapist, Dr Barnett of CBT Clinics. This was arranged after the claimant, concerned about her mental health, had approached Health Management Ltd, a company engaged by the respondent to provide GP services to its employees. The claimant was assessed as 26/40 on WSAS (work and social activity) 'severe', 18/27 on PHQ-9 'moderately severe' and 14/21 on GAD-7 'moderate'. The report stated that as regards the impact on work functioning, that the claimant had reported difficulty concentrating; lack of focus; lack of motivation; isolating herself from colleagues and withdrawal from non-essential interaction and deteriorating overall satisfaction with her work quality 'in line with deteriorating mental health'. Dr Barnett recommended CBT.
33. The claimant's last morning at work was 2 October 2020, when she broke down. She was taking in very little information, unable to concentrate except for very short periods, staring into space and crying uncontrollably. The claimant went off sick and did not return to work with the respondent.
34. The claimant's mental health did not subsequently improve. She found it difficult to communicate. She would cross the road to avoid bumping in to neighbours. She avoided talking to friends. Even though she was exhausted, she sacked her cleaner rather than have to deal with boundary setting. She found it difficult to concentrate and make decisions. She struggled to sleep. Her emotions became more extreme.
35. On 13 August 2021, Dr Foster, a consultant psychiatrist, wrote a report for the respondent's insurers in relation to the respondent's income protection policy for its employees. Dr Foster stated that the claimant was not currently fit for work and that she required further and different treatment. The report was based on a roughly 1 hour assessment over zoom. Dr Foster identified the 'onset of illness' from 'at least the return from her maternity leave in September 2019.' He diagnosed 'a stress reaction best described as an adjustment disorder' (a diagnosis with which the joint expert disagrees).

The joint expert report

36. A joint expert report was obtained for this preliminary hearing by the parties from a consultant psychiatrist, Dr G Spoto. He saw the claimant in his

consulting rooms for two and a half hours on 21 March 2022. He noted that the claimant struggled to recall information and used notes as a memory aid.

37. Dr Spoto was asked to provide a diagnosis plus various questions regarding the 'relevant period'. I am told that Dr Spoto was informed the relevant period was 26 July 2019 – end April 2021,
38. The questions put to Dr Spoto, both initially and in follow-up, are not entirely helpful because they do not precisely mirror the wording of the legal definition of disability. In particular, they confuse 'impairment' and 'substantial adverse effects', and further introduce the term 'condition'. This in turn leads to a lack of clarity in Dr Spoto's answers. So for example, Dr Spoto is asked whether there was an 'impairment' which was more than minor or trivial, whereas the definition is concerned with whether the *adverse effects* are more than minor or trivial; he is asked whether 'the condition' was present at all times – does that mean the underlying impairment or the adverse effects or the substantial adverse effects? And so on.
39. Dr Spoto diagnosed Generalised Anxiety Disorder (ICD10 F 41.1), plus additionally Panic Disorder (ICD10 F 41.0). He ruled out Adjustment Disorder because of the history of enduring symptoms. He considered depressive illness to be secondary. Dr Spoto said the claimant had a long history of Anxiety Disorder which had been treated intermittently and unsuccessfully over the years, and genetic factors were noted. He found no evidence of symptom magnification or dishonesty. Dr Spoto said that the claimant's condition was an exacerbation of a pre-existing condition and not a new illness. He referred to various trigger factors including a forceps delivery, cancer scare, breakdown of the relationship with her family, house move and the litigation. On prognosis, 'concerning the current episode, provided appropriate treatment is available without delay and immediately after the end of the litigation, the claimant should be symptom free within 6 – 12 months....Generalised Anxiety Disorder however is an enduring illness which carries a significant risk of relapse in future should the claimant be facing a trigger.'
40. Dr Spoto did not reach conclusions on whether the claimant's condition met the definition of 'disability' in the relevant period. That would not be his role in any event, and I note that he is not precise in his understanding of the definition. Moreover, he says he is unable to comment on day-to-day living without further investigations. It is also not clear at this point in his report whether he is referring to the claimant's health as at the date he met her, or to her health during the relevant period.

Law

41. The protection against disability discrimination is contained in the Equality Act 2010. There is also 'Guidance on matters to be taken into account in determining questions relating to the definition of a disability'. This Guidance

must be taken into account if relevant, but it does not impose any legal obligations in itself and it is not an authoritative statement of the law.

42. A person has a disability if she has a physical or mental impairment which has a substantial and long-term adverse effect on her ability to carry out normal day-to-day activities. 'Substantial' means more than minor or trivial (EqA 2010, s212).
43. Under EqA 2010, Sch 1 para 2(2), if an impairment ceases to have a substantial adverse effect on the claimant'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. 'Likely' means 'could well happen'. (SCA Packaging Ltd v Boyle [2009] IRLR 746, HL.)
44. Conditions with effects which recur only sporadically or for short periods can still qualify as long-term impairments (Guidance, para C5). If the substantial adverse effects are likely to recur, they are to be treated as if they were continuing. If they are likely to recur beyond 12 months after the first occurrence, they are to be treated as long-term. (Guidance, para C6).
45. By virtue of EqA 2010, Sch 1 para 5, an impairment is to be treated as having a substantial adverse effect on the claimant's ability to carry out normal day-to-day activities if measures are being taken to treat or correct it, and but for that, it would be likely to have that effect.
46. Sch 1 para 5(2) says that relevant measures include, in particular, medical treatment and the use of a prosthesis or other aid. The Guidance states that in this context, medical treatments would include treatments such as counselling, the need to follow a particular diet, and therapies, in addition to treatment with drugs. (Guidance, para B12.)
47. EqA 2010, Sch 1 para 8 covers the situation where the claimant has a progressive condition which has an adverse effect on his ability to carry out normal day-to-day activities, but the adverse effect is not yet substantial. In such a case, the claimant is deemed to have an impairment with a substantial adverse effect if the condition is likely to result in having that effect in the future. Again, 'likely' means 'could well happen'. (SCA Packaging Ltd v Boyle [2009] IRLR 746, HL.)

Avoidance strategies

48. B7 of the Guidance says account should be taken of how far a person can reasonably be expected to modify their behaviour, for example by use of a coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day-to-day activities. In some instances, the strategy might alter the effects of an impairment so that they are no longer substantial and the person is no longer disabled.

49. Under B10, if it is possible that a person's ability to manage the effects of their impairment will break down so that the effects will still occur, that possibility must be taken into account when assessing the effects of the impairment.
50. Under B9, it is not reasonable to conclude that a person who employs an avoidance strategy is not disabled if they avoid doing things which for example cause pain, fatigue or substantial social embarrassment, or because of a loss of energy and motivation.
51. In Dias da Silva Primaz v Carl Room Restaurants Ltd t/a McDonald's Restaurants Ltd and ors [2022] IRLR 194, the EAT said the tribunal should not take account of the claimant's coping mechanism, eg avoiding certain activities for fear that they would trigger or exacerbate a condition, if that was purely the claimant's subjective belief and objectively it was not true. In that case, the claimant avoided chemicals and medication because she was concerned with triggering epilepsy and vitiligo (a skin condition). The EAT noted that this was not a case where the condition itself caused the aversion or avoidance behaviours in the direct or intrinsic way that a mental impairment such as a phobic, obsessive disorder or a severe stress reaction disorder might have done.
52. I note also the well-known guidelines in Goodwin v The Patent Office [1999] IRLR 7, EAT and J v DLA Piper [2010] IRLR 936, EAT.

Conclusions

53. My conclusions relate to whether the claimant was disabled during the relevant period. For the following reasons, I find that she was. For reasons of length, I am not going to repeat all the fact-findings which I have made, but I refer back to them.
54. The claimant had a mental impairment during the relevant period. Her impairment was Generalised Anxiety Disorder. She also had a further impairment of Panic Disorder. Dr Spoto diagnosed these impairments and I find his diagnosis more reliable than that of Dr Foster, who wrote his report for other purposes, in less detail, and having spent less time with the claimant, and over zoom.
55. Dr Spoto ruled out Adjustment Disorder because of the history of enduring symptoms. Dr Spoto's diagnosis also makes sense to me having listened to the claimant's description of her symptoms.
56. I further accept, by way of a wider context, Dr Spoto's statement that the claimant has had a long history of anxiety disorder and that Generalised Anxiety Disorder is an enduring illness which will extend into the future. Again this is consistent with other evidence. I also note Dr Spoto's advice that there is a genetic aspect to this, both the claimant's mother and her sister having mental ill health.

57. The real dispute in this case however concerns the extent and duration of the adverse effects.
58. I find that during the entire relevant period, the claimant's impairment had adverse effects on her ability to carry out normal day-to-day activities such as eating, drinking, cooking, sleeping, maintaining relationships, taking her son out for a walk or drive, and speaking in front of groups of people.
59. The adverse effects caused by the claimant's anxiety disorder were substantial. They became worse from about February / March 2020, but they were already substantial. I give the following examples in the relevant period, some of which arise from severe anxiety over her son, and many of which arise from her continuing anxiety over her own health.
60. From when her son was born in 2017 and continuously after that, the claimant's anxiety about his health, and the safeguarding measures which she took, went well beyond what one usually hears about worried first-time mothers. Every item of 'kit' was intensively researched and sourced to ensure its safety. This amounted to a substantial adverse effect on the normal activity of looking after her child, (changing nappies, giving him a dummy, taking him for a drive). She was so worried about vibration when taking his buggy down steps that she did not leave the house for a walk until a passer-by came along to help her. This is a substantial adverse effect on the normal day-to-day activity of taking her son for a walk. She has never let her son drink ordinary tap water.
61. In late 2019, the claimant not only bought a specialist water filter, which I would not consider unusual in itself, but having obsessively telephoned manufacturers to check certification of their products, which is less usual, she then had the water independently tested. Further, she bought a specialist shower filter in case she breathed in contamination while showering. This is a level of time-consuming and obsessive checking which is well beyond any reasonable coping system which a normally anxious person might adopt to allay anxiety. She was only able to carry out the normal day-to-day activities of drinking water and taking a shower by using such equipment. Buying a £1000 air purifier might be within the 'normally anxious' range, but dragging it up and down the stairs every day is an extreme activity. Sleeping on a sofa bed in the lounge from June 2019 to avoid mobile mast radiation is another extreme coping strategy. The time and effort taken, when the claimant was already tired as a single mother, amounts to a substantial adverse effect. Since 2017, the claimant does not use Wi-Fi and relies on hard cable internet. Anyone who uses a laptop at home and is used to carrying it around the house as convenient would recognise this as a non trivial impact on her ability to use her computer at home.
62. Throughout the relevant period, as well as before and after, the claimant would only eat organic food. There are many people who heavily prioritise eating organic food. But what is striking once again is the obsessiveness with which the claimant adhered to these safeguards. She was willing to use up her lunchbreak travelling to Planet Organic. She would insist on 'safe'

restaurants. She would not even let her son's father or the nanny heat up food which she had carefully prepared.

63. On 1 November 2019, the claimant's GP wanted to sign her off as unfit for work for two weeks. She had reported the start of a panic attack the previous day and starting to feel tearful.
64. The claimant felt the need to start private therapy sessions with Hazel Gale from 20 November 2019. Though triggered by fear of public speaking, the issues soon expanded. She had seen Sarah Leonard from 10 November 2018 to 11 January 2019 about generalised anxiety as well as about the public speaking issue. She had seen Isabel Phillips for three cognitive therapy sessions in March and April 2018. Although these were cognitive therapists, and although the impetus came from concern about public speaking at work, I note that the claimant was approaching the issue from a therapy rather than business coaching angle. Moreover, the claimant's concern about public speaking went well beyond a desire to improve her work performance or the normal nerves or shyness that very many people feel at the idea. The very thought of public speaking sent her into a panic and the possibility of having to do so obsessively concerned her.
65. So even before the worsening in February/March 2020, the claimant was only able to hold ruminating thoughts at bay by a series of extreme measures. It was not reasonable to expect her to carry out these measures, which were expensive, time-consuming, exhausting, and damaged her relationships.
66. Moreover, those measures themselves had a substantial adverse impact on her ability to carry out the normal day-to-day activities of eating, sleeping, socialising, going out with her son, and many more.
67. Matters became worse from February / March 2020. Then during the pandemic, the claimant travelled two hours each way at weekends to buy organic food. From June 2020 she experienced palpitations on a regular basis, including at night-time. She started grinding her teeth at night but could not wear a gum guard because of her fear of bacteria. These were substantial adverse effects on her ability to eat and sleep. By 5 August 2020, she was reporting difficulty concentrating, lack of focus and motivation and withdrawal from non-essential interaction. On 2 October 2020, she completely broke down. I add that the respondent admits that the claimant's impairment caused substantial adverse effects from April 2020.
68. The respondent argues that there is no evidence that the claimant's 'obsessional traits' were caused by her underlying anxiety disorder; that she does not rely on OCD as a disability; and that there were external causes to the claimant's anxiety ie a cancer scare, a house move, a difficult birth and litigation with her ex-partner. I feel this misses the point. The claimant had a generalised anxiety disorder. Numerous things caused her extreme anxiety. She worried about one thing after another. Her 'obsessional traits' clearly derived from that anxiety and were an attempt to fend off the panic. The 'external causes' were trigger factors which set off heightened anxiety. I have

disregarded adverse effects caused by independent factors, for example, fatigue caused by routine looking-after a baby or young child. I have only looked at fatigue and exhaustion caused by extreme anxiety or panic driven behaviours, eg sleeping on a sofa bed in the lounge, or being unable to sleep because of palpitations caused by anxiety. Nor is this a Primaz type of case. It was precisely the claimant's mental impairment (General Anxiety Disorder / Panic Disorder) which caused her to have an excessive fear of – and therefore caused her to avoid - chemicals, electromagnetic waves etc. Whether such chemicals, waves etc would in fact harm her physical health or that of her son is irrelevant.

69. For all these reasons, I find that the claimant's Generalised Anxiety Disorder and her Panic Disorder caused substantial adverse effects on her ability to carry out day-to-day activities in the relevant period. Many of the effects were substantial in themselves, but can also be viewed cumulatively as substantial.

Recurring or progressive effects

70. In the alternative, if the effects were not substantial at any of the relevant dates, they were likely to become substantial in the future. Similarly, if the substantial effects were fluctuating, they had been substantial in the past and they were at each point likely to recur more than one year later.

71. Dr Spoto said that Generalised Anxiety Disorder as an illness (in the claimant's case anyway) carries a significant risk of relapse when the claimant faces a trigger. Although he was not talking specifically about day-to-day activities, which he did not investigate, and although he was eliding the intensity of the 'condition' with day-to-day activities, I think it is clear he had in mind a relapse to the state that the claimant was in at the time she saw him. The logic of what Dr Spoto says suggests to me that viewed in the past also, it was likely she would get significantly worse if there were triggers. The kind of triggers he had in mind were ones which were always likely to occur in the sense of 'could well happen' given the normal vicissitudes of life and the claimant's underlying vulnerability and circumstances. Indeed, as at 26 July 2019, some triggers were present, ie a traumatic birth two years previously, a young son, increasing work demands.

Employment Judge Lewis

Dated: 26/08/2022

Judgment and Reasons sent to the parties on:

26/08/2022

For the Tribunal Office