



EMPLOYMENT TRIBUNALS

Claimant: JP

Respondent: Spelthorne Borough Council

Heard at: Reading **On:** 30 & 31 May 2023

Before: Employment Judge Shastri-Hurst

Representation

Claimant: in person

Respondent: Mr S Harding (counsel)

JUDGMENT having been handed down to the parties on 31 May 2023 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. The claimant was employed by the respondent, as a Community Development Manager, from 3 February 2019 to 17 January 2021.
2. The claimant initially presented three separate claim forms, in relation to 3 separate types of claim:
 - 2.1. Claim number 2301280/2021 related to a claim of detriments arising from protected disclosures under section 47B of the Employment Rights Act 1996 (“ERA”). The claimant commenced the early conciliation ACAS process on 3 November 2020, and that process was completed on 13 January 2021. The claim form was presented on 5 April 2021.
 - 2.2. Claim number 3311674/2021 related to a claim of disability discrimination under the Equality Act 2010 (“EqA”). The claimant commenced early conciliation on 5 April 2021. That process was

completed on 17 May 2021, and the claim form presented on 16 June 2021.

- 2.3. Claim number 3311663/2021 related to a claim of automatic unfair dismissal because of protected disclosures under section 103A ERA. The claimant commenced early conciliation on 5 April 2021. That process was completed on 17 May 2021, and the claim for presented on 16 June 2021.
3. The three claims were consolidated by order dated 15 November 2021. A preliminary hearing was originally listed for case management by telephone on 22 July 2022, however unfortunately this had to be postponed due to lack of judicial resource. The preliminary hearing went ahead on 10 January 2023. At that hearing the Judge was able to draw up a list of issues relating to the automatic unfair dismissal claim and the detriment claim. However, she was not able to complete the list of issues regarding the disability discrimination claim.
4. At that preliminary hearing, the case was set down for another preliminary hearing for two days in order to deal with three issues:
 - 4.1. Determining whether the claimant was disabled within the meaning of the EqA at the relevant time for the purposes of her discrimination claim;
 - 4.2. Clarification of the specific acts of discrimination alleged by the claimant in her disability discrimination claim, including categorisation of the types of claim brought (for example section 13, section 15, section 26 etc); and,
 - 4.3. Giving further case management orders to prepare the case that the final hearing.
5. The final hearing for this claim had been listed for 28, 29, 30, 31 October, 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15 November 2024, for 15 days. Unfortunately, the parties were not informed of these dates: I informed them at the beginning of the hearing before me that these dates had been listed for final hearing.

Preliminary issue

6. This was in fact an issue that was raised at the conclusion of the hearing, by Mr Harding, but I will address it here.
7. Mr Harding very fairly raised that, given the claimant had asked for written reasons, I may wish to consider making an anonymity order under rule 50 of Schedule 1 of the **Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013** ("the Rules"), in order to protect the claimant's identity in relation to the publication of very personal health information. The claimant confirmed that she wished for me to consider making such an order, anonymising her name.

Law on anonymisation

8. The tribunal has the power to make an anonymisation order under r50 of the Rules. R50 provides:

(1) a tribunal may at any stage of the proceedings, on its own initiative or on application, make an order with a view to preventing or restricting the public disclosure of any aspect of those proceedings so far as it considers necessary in the interests of justice or in order to protect the Convention rights of any person or in the circumstances identified in section 10A of the Employment Tribunals Act.

(2) in considering whether to make an order under this rule, the tribunal shall give full weight to the principle of open justice and to the Convention right to freedom of expression.

(3) such orders may include –

...

(b) an order that the identities of specified parties, witnesses or other persons referred to in the proceedings should not be disclosed to the public, by the use of anonymisation or otherwise, whether in the course of any hearing or in its listing or in any documents entered on the Register or otherwise forming part of the public record; ...

9. An order must be “necessary” for one of three reasons:

9.1. In the interests of justice;

9.2. To protect a Convention Rights; or,

9.3. To protect confidential information as defined in s10A ETA (this is not relevant here).

10. Furthermore, under Rule 50(2) the Tribunal is required to give “full weight” to the principle of open justice and the Convention right to freedom of expression when exercising its discretion under Rule 50(1).

11. The test in such cases is a balance of the competing Convention rights of right to a private life, right to a fair and public hearing, and right to freedom of expression.

12. The default starting point is the fundamental principle of open justice, meaning that judgments (and hearings) are public. It is for the claimant to prove that I should move from this default position. However, there will be times when a derogation from that principle is appropriate.

13.I am assisted by the *Practice Guidance (Interim Non-Disclosure Orders) [2012] 1 WLR 1003*, which provides the following key points:

- 13.1. Applications to restrain publication always engage Article 10 of the European Convention of Human Rights (“ECHR”) and s12 of the Human Rights Act 1998 (both refer to freedom of expression). Article 8 of the ECHR may also be engaged (right to respect for private and family life). Articles 8 and 10 have equal weight.
- 13.2. Open justice is a fundamental principle and the general rule is that hearings and judgments are public;
- 13.3. Derogation from this principle is wholly exceptional and limited to what is strictly necessary for the proper administration of justice or to achieve its purpose;
- 13.4. The burden of establishing a derogation from this principle lies on the party making the application. This must be done with clear and cogent evidence;
- 13.5. A derogation from the principle is not discretionary; sufficient exceptional grounds either exist, in which case it must be granted, or they do not and it must be refused;
- 13.6. Parties cannot consent to the making of an order under r50.
- 13.7. In the case of **A v BBC [2015] AC 588**, Lord Reed at paragraph 42 set out some examples in which the making of an anonymity order may be appropriate, including where:

“it would be in the interests of justice to protect a party to proceedings from the painful disclosure of personal information about her where there was no public interest in its being published”.

Conclusion on anonymisation

- 14.I have heard the claimant give evidence and observed her over a two day period. I accept that she is not well. She has disclosed a great deal of very personal, distressing information, for the purposes of this hearing.
- 15.This is not a case in which embarrassment or reputational risk are the concerns; these would not be enough to move away from the principle of open justice. The concern here is the claimant’s welfare, and the impact that her name being published would have on her mental health, which is already fragile.
- 16.I cannot see that there is any public interest in the claimant’s identity being known. The public interest in this matter is not affected by the claimant’s identity being concealed.

17. I find that this is a case which falls squarely within the example set out above from Lord Reed. The details of the claimant's medical history are undoubtedly painful and upsetting to her; if her name were to be published, that would only compound those feelings and hurt the claimant further.
18. I consider that this is a case which requires derogation from the default position of open justice. The claimant's right to a private life outweighs the need for open justice on the facts of this case. The right to freedom of expression is not affected in this specific case by the claimant's name being anonymised.
19. I therefore make an anonymisation order, anonymising the claimant's name. she will be referred to as "JP".

Disability

20. In terms of the claimant's disability claim, she relies upon anxiety, depression and stress reaction.
21. At the beginning of the hearing, I asked the claimant whether there were any reasonable adjustments that she would be assisted by us making. The claimant also suffers from sensory issues, however she confirmed that the lighting and the setup of the room were fine for her. I advised that she just had to ask if she required a break, or if there was anything else we could do to assist her over the course of the hearing. There were times when the claimant required breaks, and this was accommodated.
22. At the hearing on 10 January 2023, the claimant had clarified that the earliest act of disability discrimination of which she complained took place around 9 July 2020. At the beginning of the hearing in front of me, the claimant clarified that in fact she alleged that the earliest act of discrimination had taken place in December 2019.
23. Therefore, for the purposes of determining the claimant's disability status, the relevant period for me to consider is December 2019 through to the claimant's date of termination on 17 January 2021.
24. In determining the issue of disability, I heard evidence from the claimant and was provided with a bundle of 666 pages, including the disability impact statement from the claimant at page 224. The claimant was cross-examined by Mr Harding, and both parties made closing submissions. During the course of the hearing the claimant produced a few additional emails, some with attachments. Mr Harding did not object to those documents being admitted, and so I took those into account as well.

Issues

25. In determining whether a claimant is disabled for the purposes of section 6 of EqA, the issues are as follows:

- 25.1.1. Did she have a physical or mental impairment, namely anxiety, depression and stress reaction?
- 25.1.2. Did it have a substantial adverse effect on her ability to carry out day-to-day activities?
- 25.1.3. If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
- 25.1.4. Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?
- 25.1.5. Were the effects of the impairment long-term? The Tribunal will decide:
 - 25.1.5.1. did they last at least 12 months, or were they likely to last at least 12 months?
 - 25.1.5.2. if not, were they likely to recur?

Law

26. There are four questions the tribunal must ask itself when considering whether a claimant fulfils the definition of disability:
 - 26.1. was there an impairment;
 - 26.2. what were its adverse effects;
 - 26.3. were they more than minor or trivial;
 - 26.4. had those effects lasted 12 months, or was it likely that they would continue for 12 months or that they would re-occur.
27. In terms of impairment, the relevant question is the *effect* of an impairment not the *cause*.
28. Tribunals can approach the question of disability in two ways: it can consider the impairment first, followed by the effects of that impairment. In the alternative, when there are difficult issues as to the nature and extent of an impairment, the Tribunal can consider the question of long-term substantial adverse effect first.
29. In this case I consider that the most effective way of determining the issue of disability is to first consider the effects the claimant suffered during the relevant period as a result of her anxiety, depression and stress reaction.

Substantial adverse effect

30. Under section 212(2) EqA, “substantial” is defined as meaning more than minor or trivial.
31. In **Elliott v Dorset County Council [2021] IRLR 880**, the Employment Appeal Tribunal set out the test of substantial adverse effect. This requires a comparison between the ability of the person as an individual to carry out these activities versus how they would carry them out if not suffering from an impairment.

Long term effect

32. When considering whether the effects are likely to last for 12 months or more, or are likely to recur, the meaning of “likely” has been held to mean “could well happen”, as opposed to something that is more likely than not to happen – **SCA Packaging Ltd v Boyle [2009] UKHL 37**.
33. The question as to whether the adverse effect was likely to occur or last 12 months or more is one that needs to be answered without having regard to subsequent events (**McDougall v Richmond Adult Community College [2008] EWCA Civ 4**). It involves a “prediction on the available evidence” (Pill LJ at paragraph 23):

“In my judgment, it is on the basis of evidence as to circumstances prevailing at the time of [the alleged discrimination] that the Employment Tribunal should make its judgment as to whether unlawful discrimination by the employer has been established”

34. In other words, the tribunal must discount any evidence regarding the effects of the claimant’s impairment that post-dates the alleged discrimination.

35. In a similar vein, at paragraph 33, Rimer LJ said:

“... The evidence relating to the relevant time either will, or will not, prove the likelihood of recurrence. If it does prove it, evidence of subsequent events is unnecessary and irrelevant. If it does not prove it, evidence of those events cannot fill the gap. That is because it is fallacious to assume that the occurrence of an event in month six proves that, viewing the matter exclusively as at month one, that occurrence was likely. It does not. It merely proves that the event happened, but by itself leaves unanswered whether, looking at the matter six months earlier, it was likely to happen, a question which has to be answered exclusively by reference to the evidence then available. ...”

36. In short, the relevant question is whether, at the time of the alleged discrimination, the effect of the impairment was likely to last at least 12 months, or recur. The assessment of that question must be on the facts and circumstances that existed at the time of the alleged discriminatory acts.

37. Ultimately, the question of disability is a legal question for the tribunal. Although it is assisted by medical evidence, it is not bound by that evidence.

Sullivan v Bury Street Capital Ltd [2021] EWCA Civ 1694

38. The case of **Sullivan** raises the issue of whether the claimant's delusional disorder impacted his day-to-day life such that, at the material time, it constituted a disability within the meaning of s6 EqA. The tribunal found that, between May and September 2013, there was a substantial adverse effect as required under section 6 on the day-to-day activities of sleeping and social interactions that were caused by his delusional beliefs. The tribunal also found that, between April and July 2017, there was again a substantial adverse effect, that being some 3.5 years after the first period.
39. On that basis the tribunal concluded that the claimant was not disabled. It is this part of the claimant's appeal that is relevant to today's hearing. The claimant's first ground of appeal was to argue that the tribunal had erred in law in finding that he was not disabled, particularly given its approach to the likelihood of occurrence issue. The Employment Appeal Tribunal rejected the appeal, but gave permission to appeal to the Court of Appeal.
40. In **Sullivan**, the Employment Tribunal found it important to distinguish between the claimant's continuing belief in the existence of a Russian gang (the manifestation of his delusions), and the effect that such belief had on his ability to carry out day-to-day activities.
41. The tribunal held that, during the period of substantial adverse effect in 2017, it was not likely that the substantial adverse effect would continue for at least 12 months – cited at paragraph 22 of the Court of Appeal judgment:

“In 2013 the substantial adverse effect had lasted around 4-5 month, as the tribunal has found. During this period in 2017, the claimant was under particular stress by reason of the discussions about the basis of his remuneration. These were not going to continue indefinitely, and it was likely that his condition would improve once they were resolved. The tribunal concluded that so far as this episode in 2017 is concerned, it was likely that the substantial adverse effect would continue, like that of 2013, for a number of months, but for rather less than 12 months.”

42. For the same reasons the tribunal held that the substantial adverse effect was not likely to recur within the meaning of the EqA. For these reasons the tribunal found that the claimant was not disabled.
43. At the Court of Appeal, Singh LJ made the point that this is a decision that was based on its facts rather than raising any points of general principle.
44. Singh LJ went on to consider some of the cases relevant to his decision-making. The case of **J v DLA Piper UK LLP [2010] ICR 1052** at paragraph 45 sets out an example of where recurring short periods of depression may lead to a finding that a claimant is disabled. This example, given by Mr Justice Underhill in **Piper**, simply provides an example of where, on the facts of any specific case, it may be “appropriate to infer that there is a continuing disability where there are recurrent symptomatic episodes” (paragraph 92 **Sullivan**).
45. In terms of dealing with the issue of likelihood of recurrence, as I have said there were two periods of a few months in which the effects of the impairment were substantial and adverse; those in 2013 and 2017. The Court of Appeal

held that the Employment Appeal Tribunal had been right to conclude that, for the purposes of determining whether there was a disability 2013, the fact that the adverse effect did recur in 2017 was irrelevant.

46. At paragraph 95 of **Sullivan**, Singh LJ highlighted that the case of **McDougall** did not decide what the relevance was of the events in 2013 to the likelihood of occurrence when considering the events of 2017. However, he noted that:

“...although in many instances the fact that a [substantial adverse effect] has recurred episodically might strongly suggest that a further episode is something that “could well happen”, that will not always be the case. Where, as here, the [substantial adverse effect] was (in the judgment of the ET) triggered by a particular event that was itself unlikely to continue or to recur, then it is open to the Employment Tribunal to find that it is not likely to recur”.

Findings of fact

47. I set out below a chronology of the relevant facts. I have limited myself to facts that are relevant to the issues and the decision that I have to make on the disability status of the claimant.

Prior to 2019

48. The GP notes, at page 282, show that in September 1994 the claimant was diagnosed with anxiety and depression.

49. In July 1996, the claimant was diagnosed with adjustment disorders and depression.

50. In May 2011, she suffered from suicidal ideation.

51. In October 2011, the claimant suffered with acute stress reaction NOS (not otherwise specified).

52. These are the only references to mental health issues made under the GP notes section of “significant past” on page 282.

53. Over the past two days, the claimant has explained to me that she suffered tiredness in December 2019. This is referenced at page 283 of the GP records.

54. There is also a note in the GP notes section “minor past” on page 283, regarding a period of stress at work in the summer of 2017. At page 316, there is a summary of the fit notes for that period, all of which cite the issue as being stress and anxiety. I also note the GP record entries for this time at pages 305-306.

2019

55. In 2019 the claimant was a victim of domestic violence. The GP notes covering this are at pages 301 and 300.

56. On 16 August 2019, the claimant attended her GP surgery reporting domestic stress. The GP recorded "feels mood is much better", "not needed the Propranolol and no further palpitations" and "no suicidal ideation/self-harm thought" – page 300.
57. On 13 December 2019, the claimant attended her GP surgery reporting a problem of being tired all the time. She denied low mood at this point – page 299.

2020

58. On 19 April 2020, the claimant attended her GP surgery. No problem is recorded as such, but the GP notes that "had a chat to patient first" – page 297. This appears to have been to discuss the claimant's liver function. At that consultation the claimant denied having a low mood.
59. In February 2020, the claimant was given a prescription for folic acid – page 283.
60. There is then a gap in the claimant's GP notes until December 2020. This was raised with her in cross-examination, to which she gave the response that the pandemic made it difficult to gain access to her GP. However, I also note the claimant's evidence that she did not make an attempt to see her GP at this time, as she did not think there was anything that the GP could do for her, particularly given that she did not want to be signed off from work. There is therefore no medical evidence for this period before me, and nothing to suggest that the claimant sought any medical assistance.
61. On 4 December 2020, the GP notes record that the claimant was suicidal – page 282. The claimant had a telephone call from the GP on this date: the problem is recorded that the claimant was suicidal and that she was feeling low and depressed having been suspended yesterday. At this point, she was having thoughts of suicide, although the GP noted that she (the claimant) said she would not do anything once the GP had hung up. The second time the GP telephoned, the claimant sounded very calm – page 296.
62. On this same day, an adult mental health services referral form was completed by the Berkshire NHS Community Mental Health Team ("CMHT"). The referral notes that a "high level of risk [is] indicated" – page 322. The reason for referral is stated to be "issues at work suspended may lose job in two weeks lives alone" – page 323. At page 324 in terms of risk factors, under "present", the box of suicide is ticked.
63. On 11 December 2020, Dr Rumalean, the consultant psychiatrist at the Crisis Resolution and Home Treatment Team West ("CRHTT") reviewed the claimant, and wrote a letter to her GP. Dr Rumalean diagnosed her with acute stress reaction and adjustment disorder. It was recommended that the claimant take Diazepam, although she seemed reticent to do so (and in fact did not take it). The claimant was also given some advice in terms of alcohol intake and withdrawal. The claimant was given the information to self-refer to the Resilience Team. Dr Rumalean ended his letter by stating "CRHTT will soon discharge the patient back to you and Resilience" - p336.

64. Also on this date, a member of the CRHTT wrote to the claimant's employer setting out that the claimant was struggling with her mental health and was under their care for short-term interventions. The letter requests that a meeting on the 18 December 2020 is postponed until the claimant is mentally stable .
65. The claimant was discharged from the care of the CRHTT on 26 December 2020 – page 295.

2021

66. On 4 January 2021, the claimant completed an e-consult form for the Datchet Health Centre - page 339. In that document the claimant reports symptoms of lack of concentration, lack of motivation, not washing and wearing the same clothes, not eating properly, feeling there is no point to anything – page 340.
67. Following that e-consult form to Datchet Health Centre, a response was received on 5 January 21 which stated;

“Thank you for your recent e-consult request. Tracey, I have read the notes and feel that continuity of care here is important to you. I have therefore asked Dr Kalirai to contact you tomorrow when he is back at work. I hope that that is okay – I know you have crisis team details and would encourage you to contact them or myself urgently today if you feel you cannot wait. Dr M Watts - page 295

68. On 6 January 2021, the claimant was issued with a fit note stating she was not fit to work due to stress and adjustment reaction from 6 January 2021 to 6 February 2021– reference page 315.
69. On 7 January 2021, the claimant was admitted back to the CRHTT – page 338. This was due to concerns with anxiety, severe distress, confusion and sensory distortion.
70. On 8 January 2021, Alice Priestley, a student nurse, emailed to Datchet receptionists and copied in Dr Rumalean, stating that the claimant had been experiencing distressing gaps in her memory, and had been reporting these since early December 2020. The email requested various tests to be done including a CT scan.
71. On 12 January 2021, a letter of support was provided from Alison Sayers, a Senior Mental Health Practitioner at the CRHTT. She states in that letter that the claimant has been diagnosed with acute stress reaction and adjustment disorder, and that she is complying with the recommended treatment and is engaging well with the crisis team for intensive support.
72. On 13 January 2021, the GP called the claimant to discuss a recent letter asking for further blood tests, an ECG and a CT head scan regarding her poor memory. The claimant had on this date developed a significant stammer and the GP advised her to go to A&E, which she did – page 294. The admission sheet is at page 346: the claimant was admitted at 1809hrs on 13 January 2021, and was discharged six hours later with no follow-up.

73. On 17 January 2021, a letter was sent from Dr Kalirai at Datchet Health Centre to report that he had reviewed the claimant recently on a number of occasions and that there were currently significant concerns for her mental health – page 319. He records the current diagnosis as being acute stress reaction. He goes on to record that:

“a significant degree of her current stress is being caused directly by her work situation, and I understand that she had recently been asked to attend a disciplinary meeting. Given her current fragile mental health status I feel it was perfectly appropriate that she did not attend. I had also written the Med 3 for her the day prior on Jan 6th”.

74. On 20 January 2021, Kirsty Bader at Frimley NHS emailed Datchet Health Centre, stating that their “overall impression is of an acute stress reaction with psychosis” – page 345. The letter also states “she previously has had thoughts of self-harm, but does not have any at present, nor does she have suicidal ideation”.

75. On 21 January 2021, the GP called the claimant again for a review. The GP had spoken to Alison Sayers at the CMHT. The CT scan results had been checked and it was concluded that this was an acute stress reaction with psychosis, and short-term memory loss is recorded with sensory distortions, auditory hallucinations and stammers amongst other symptoms – the GP recommended that the claimant call Resilience.

76. On 3 February 2021, the claimant emailed the reception team at Datchet Health Centre, setting out some of her symptoms, including poor memory.

77. On 8 February 2021, the GP made a neurology referral to Datchet Health Centre – reference at page 290.

78. On 17 February 2021, the GP called the claimant to review her stress and adjustment reaction. In the consultation, the claimant said her mood was better and that she was feeling a bit better in herself. She also commented that the Chief Executive was reviewing her case and so she remained hopeful about her job – page 290.

79. In June 2021, the claimant commenced treatment with Resilience which was ongoing until March 2023. This included one-to-one sessions group sessions, and a course entitled “Choosing to Change”: this treatment related to the claimant’s alcohol addiction.

80. On 21 December 2021, the neurology referral was actioned and the claimant was seen on 22 December 2021 for an MRI scan – page 289.

81. The outcome letter following that appointment is at page 350 and states: “[e]vents December 2020 with further worsening January [2021] affecting speech and memory and cognition”. This letter records that “there is a significant background of work stress towards the end of 2020”. The diagnosis is recorded as “likely mental health based”. The CT scan reported “possible low-density right basal ganglia arranging for MRI”.

2022

82. On 23 February 2022, the results of that MRI were received, finding no evidence of acute stroke or other abnormal findings. The MRI is reported as being “very reassuring” – page 353.

83. In December 2022, the claimant concluded a 12-week programme called “Freedom”, supplied by the DASH charity. The claimant has provided evidence to show that she had been in email contact with DASH since September 2022.

2023

84. In January 2023, the claimant undertook a course called “Brave”, run by Berkshire NHS. She was unable to attend one session on 29 March 2023. She did however complete the course on 5 April 2023.

Conclusions

85. There are four questions I need to address:

- 85.1. was there an impairment ;
- 85.2. what were its adverse effects;
- 85.3. were they more than minor or trivial;
- 85.4. had those effects lasted 12 months, or could it well happen that they would continue for 12 months or more, or that they would re-occur.

86. As set out above, I will first consider the question of the effects that the claimant experienced.

Adverse effects – more than minor or trivial

87. I remind myself that the relevant period for me to consider is December 2019 to 17 January 2021. I will split the chronology up into various sections.

Pre–December 2019

88. The claimant had suffered one period of work-related stress and anxiety in 2017 which lasted for around six months.

89. The claimant was off work throughout this period . I note that the very nature of being too ill to be able to perform your job in itself demonstrates a substantial adverse effect on your day-to-day activities.

90. I therefore conclude that this was a six-month period during which the claimant suffered substantial adverse effects stemming from stress and anxiety.

91. There was also a period in summer 2019 in which the claimant suffered domestic stress and violence, which evidently led to stress being experienced by the claimant. In this period, the claimant had suicidal tendencies. Come mid-August 2019 the claimant reported feeling much better and her psoriasis had calmed down.

92. I note in the claimant's disability impact statement that, although she found this period stressful, she coped and took no time off work. The claimant however qualified this evidence to the Tribunal, by stating that she was not in fact "healthy" during this period as she had indicated in her statement at page 226: all she had meant was that she had been able to function.

93. This period of stress appears to have lasted for around two months from mid-June to mid-August 2019.

94. I am satisfied that the claimant did suffer a substantial adverse effect during this 2-month period. Although the claimant took no time off work, she had been having palpitations, and reported suicidal tendencies and thoughts of self harm. She also suffered with psoriasis as a result of her stress – page 300.

December 2019 to December 2020

95. Although I accept that the claimant suffered from tiredness in December 2019, there is nothing further on the medical evidence or indeed the claimant's evidence, to suggest that she was suffering substantial adverse effects during this period. I am not satisfied that "tiredness" in and of itself is a substantial adverse effect. Further, I have no evidence of any other symptoms the claimant was suffering at this time.

December 2020 to 17 January 2021

96. From the evidence I have heard and seen it is clear that, from 4 December 2020 through to January 2021, the claimant suffered severe symptoms of acute stress, including hallucinations, memory loss, confusion, and anxiety. I accept the evidence in her witness statement (that was not challenged) as to the extent of her mental distress during this period, including:

- 96.1. Hallucinating that she was on fire;
- 96.2. Attempting suicide;
- 96.3. Hearing voices and seeing things that were not real;
- 96.4. Not eating, washing, sleeping, or generally functioning.

97. I am satisfied that the effects on her daily activities were more than minor or trivial during this period. I note the level of involvement from the CMHT and CRHTT at this time too, which indicates to me that the claimant was not coping and required significant intervention.

18 January 2021 onwards

98. I have limited medical evidence to cover this period of time, and highlight the following points:

- 98.1. On 20 January 2021, was not having thoughts of self-harm of suicidal ideation – page 345;
- 98.2. On 17 February 2021, the claimant reported to her GP that her mood was better – page 290;
- 98.3. The claimant took part in one-to-one sessions and two types of group sessions from June 2021 to March 2023;
- 98.4. She undertook a 12-week Freedom course in winter 2022;
- 98.5. In January 2023, she undertook the Brave course.

99. I have no further detail or medical notes that cover this period, whether from the Resilience team, or from the other courses which the claimant attended. This makes it difficult to assess the effects on the claimant, given the lack of evidence I have from those who were interacting with her at this time.

100. The claimant was given the opportunity to produce any documents she wished to regarding these courses, and input from the Resilience team, during the course of the hearing. This was as a result of Mr Harding making the point that there was a gap in evidence regarding these courses, and the claimant indicating she could produce relevant documents for us. However, she only produced a few emails which did not take matters much further, other than indicating the periods during which she underwent the various courses.

101. The claimant's impact statement states:

“The stutter and other cognitive impairment along with the anxiety continued throughout 2021 and I was referred for an MRI scan to ascertain what may have caused the dead mass in my brain. I was incapable of working and had very short-term memory. I would also get anxious and the anxiety would result in panic attacks and at their worst would trigger suicidal ideology”.

102. This evidence was not particularly challenged in cross examination.

103. I also take into account that:

- 103.1. The claimant had a fair amount of input in different forms of counselling from June 2021 to March 2023;
- 103.2. She has not returned to work in any capacity;
- 103.3. There appears to have been no medical intervention between February and June 2021.

104. I have to consider how the claimant would have been without the counselling. I take into account how she has been and how she describes her symptoms with the benefit of counselling. She says at page 228:

“by the time of the current hearing on 10 January 2023 I will have suffered poor mental health and substantial deterioration to my cognitive ability for 30 months or two and half years... I am still unable to work and haven't had any paid employment since I was dismissed in January 2021. I suffer with anxiety and

cannot remember things. I am under the care of Resilience and have counselling every two weeks. My language has improved but if I'm in a stressful situation I start to hallucinate and or hear voices and my language deteriorates into a terrible stammer whereby I cannot even speak or communicate properly".

105. Clearly, without the input of the Resilience team and other courses, the claimant's symptoms would be worse.
106. From the evidence, I find that the claimant had a memory loss problem, that had a substantial adverse effect on her ability to undertake day-to-day activities .
107. In terms of hallucinations and hearing voices, these appear to be reactions to stressful situations. I do not have enough detail of the frequency of these hallucinations and so on to find that they have or had any substantial adverse effect on the claimant's day-to-day life during this period.
108. To recap, I accept that there was a substantial adverse effect on the claimant during the following periods:
 - 108.1. 2017 for 6 months;
 - 108.2. Mid-June to mid-August 2019; and
 - 108.3. December 2020 to March 2023.

Long-term effects

109. As at the date of the claimant's termination (17 January 2021), the substantial adverse effects had not lasted for 12 months or more. They had begun in December 2020, and so by the time of the claimant's termination had lasted around 6 weeks.
110. The question I must consider then is whether it was likely that the substantial adverse effects would last 12 months or more, or recur, as at 17 January 2021. In terms of likelihood of lasting this period, the question is whether there is evidence before me which shows that, viewed at the time of the alleged discrimination, it could well happen that the effects of the impairment would last for more than 12 months, or recur.
111. Another way of looking at it is to consider what a doctor may have said in January 2021 if asked the question "how long do you think this will last?".
112. Towards the end of January 2021, the claimant was still under the guidance of the CMHT. Dr Kalirai at Datchet Health Centre sent a letter on 17 January 2021, which stated that the claimant was not in a fit state of mind to attend a meeting at the respondent's premises and that the meeting should be adjourned – [319]. There was no indication of how long it should be adjourned for; equally there was no indication that the respondent should be prepared for a very lengthy wait.
113. This letter also included a reminder to the respondent that there was a fit note covering the period up to 6 February 2021. Although I accept that the

claimant's fitness to work would have been reviewed at the expiry of this fit note, it appears that, as of 17 January 2021, the doctor did not envisage the claimant's symptoms lasting for 12 months or more.

114. The doctor also stated that the stress was significantly caused by work – page 319. This view was reiterated in the letter following a clinic appointment on 22 December 2021 – page 350.
115. Mr Harding, in his submissions, suggested that the termination of the claimant's employment would have seen an upturn in the claimant's condition, as her problems at work would have reached a conclusion.
116. I do not accept that there would have been a speedy recovery to complete health soon after the claimant's termination. She would need to recover from the effect of being dismissed.
117. Nevertheless, from the evidence I have before me, I am not satisfied that the claimant's GP or Dr Rumalean, if asked on 17 January 2021 to give a prognosis, would have answered "12 months or more". It may well be that they would envisage the effects of the claimant's impairments lasting for a period of 2-6 months, as they had done in the past. However, the test is whether substantial adverse effects are likely to last for at least 12 months, or recur.
118. I therefore conclude that the effects of the claimant's impairments were not likely to last 12 months or more as at 17 January 2021.
119. In terms of recurrence, I accept that the effects on the claimant were a reaction to the situation at work. That was a specific life event, and therefore in itself was not likely to recur so as to exacerbate those effects again. There was no indication as at 17 January 2021 that there would be any other life event in the near future that could well lead to a recurrence of the claimant's symptoms.
120. As such, the claimant did not satisfy the requirements of s6 EqA at the relevant period of December 2019 to 17 January 2021. The claimant's disability discrimination claim will therefore be dismissed.
121. The claimant still has her two other claims, of detriment and automatic unfair dismissal due to protected disclosures. A case management order has been made in relation to those matters in a separate document.

Employment Judge Shastri-Hurst

Date 16 June 2023

REASONS SENT TO THE PARTIES ON
4 July 2023

FOR THE TRIBUNAL OFFICE