



# EMPLOYMENT TRIBUNALS

**Claimant**

Mr W Taplin

v

**Respondent**

Bristol City Council

**Heard at:** Bristol (via CVP)

**On:** 26 April 2023

**Before:** Employment Judge Fredericks-Bowyer

**Appearances**

For the claimant: In Person

For the respondent: Mr A Small (Counsel)

## JUDGMENT AT OPEN PRELIMINARY HEARING

1. The claimant is not disabled for the purposes of bringing his disability discrimination (failure to make reasonable adjustments) claim against the respondent.
2. Consequently, the claim advanced under s20/21 Equality Act 2010 is dismissed.

## REASONS

**Introduction**

1. These reasons are produced at the claimant's request following an oral judgment in respect of his disability status. The reasonable adjustments claim which relied on the claimant establishing his disability was also dismissed in consequence of my decision. The claimant has other claims which are continuing, with a final hearing listed to be heard over five days in July 2023.

2. The claimant's claims centre around the respondent's handling of a mistake he made at work, discovered in June 2021, and in respect of a grievance he made and investigations carried out about that from July and August 2021. He contends that the respondent's actions at this time constitute age discrimination and disability discrimination. He contends that he was disabled in July and August 2021.
3. The claimant represented himself in the hearing and gave sworn evidence in respect of his disability status. The claimant did not provide any expert evidence to support his contentions about being disabled, although he had been advised by a previous judge that it was a matter for him to decide ahead of this hearing if he did or did not do so. The respondent was represented by Mr Small of Counsel. As is usual in such hearings, the respondent did not present sworn evidence to resist the claimant's contentions. I had the benefit of viewing a bundle of documents which ran to 76 pages. Page references in this document are references to the pages of that bundle.

### Issues

4. The hearing was listed by Employment Judge Raynor to cover three matters. All three were considered in the hearing but only one of those is the subject of this judgment. The other two matters have been dealt with by way of separate orders. The issue for this judgment, then, is simply: *"whether or not the claimant was a disabled person at the material times"*.
5. The claimant's claimed disabilities in respect of the claim are taken from his disability statement. This is the evidence he has produced to support the contention he is disabled in response to the Tribunal's order of 28 June 2022. He describes his disability as:-

*"stress, anxiety and depression, with this stress and anxiety becoming acute in June 2021 to date"*.

6. The respondent's position is well captured by EJ Raynor's summary from the last preliminary hearing: *"The respondent denies that the impairment relied upon by the claimant amount to a disability. They assert that the impairments relied upon do not amount to a disability. They assert that the impairments relied upon do not amount to clinical depression, but are a response to a situation at work, and do not in any event have a substantial adverse impact on the claimant's ability to carry out day to day activities."*

### Relevant law

7. A person (P) has a disability they meet the criteria set out in section 6 Equality Act 2010:-

*"(1) P has a disability if:*

- (a) P has a physical or mental impairment, and*
- (b) The impairment has a substantial and long-term adverse effect on P's ability to do normal day to day activities."*

8. The claimant bears the burden of showing me that he meets this definition, on the balance of probabilities (*Morgan v Staffordshire University [2002] IRLR 190*). When determining the question of disability, I must take account of such guidance as I think necessary (*paragraph 12, Schedule 1 Equality Act 2010*). I consider it is necessary to take into account the government guidance “*Guidance on matters to be taken into Account in Determining Questions Relating to the Definition of Disability*” (“**Guidance**”). Such guidance is guidance only and should not be taken too literally or used to adopt a checklist approach (*Leonard v Southern Derbyshire Chamber of Commerce [2001] IRLR 19*).
9. In *Goodwin v Patent Office [1999] ICR 302*, it was held that there are four limbs to the definition of disability and this is reflected in the legislation:-
  - 9.1. Does the person have a physical or mental impairment?
  - 9.2. Does that impairment have an adverse effect on their ability to carry out normal everyday activities?
  - 9.3. Is that effect substantial?
  - 9.4. Is that effect longterm?
10. The term ‘substantial’ is defined under *s212 Equality Act 2010* as being “*more than minor or trivial*”. Normal day to day activities are things people do on a regular basis such as shopping, reading, writing, conversing, getting washed and dressed, preparing food, eating, carrying out household tasks, walking and travelling, socialising and working (*Guidance, D2 to D9*). Normal day to day activities must be interpreted as including activities relevant to professional life (*Paterson v Commissioner of Police of the Metropolis [2007] IRLR 763*).
11. *Paragraph 2(1) Schedule 1 Equality Act 2010* says:-

*“(1) 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.*

*(2) If an impairment ceases to have a substantial adverse effect on a person’s ability to carry out normal everyday activities, it is to be treated as continuing to have that effect if that effect is likely to recur.”*
12. For current impairments which have not lasted 12 months, I should decide whether the substantial adverse effects of the condition are likely to last for at least 12 months, where ‘likely’ is defined as “*could well happen*” (*C3 Guidance*). ‘Could well happen’ is the meaning of ‘likely’ in respect of disability in the *Equality Act 2010*.
13. The issue of how long an impairment is likely to last is determined at the date of the alleged discriminatory act and not the date of the tribunal hearing (*McDougall v Richmond Adult Community College [2008] ICR 431, CA*). Subsequent events should not be taken into account.

14. An impairment is treated as having a substantial adverse effect if it 'could well happen' that the substantial adverse effect could occur if the person who may be disabled stopped implementing supportive or preventive measures, such as medical treatment (SCA Packaging Limited v Boyle [2009] ICR 1056).
15. There is particular case law relating to the impairments depression and anxiety (both of which are often claimed alongside 'stress'). I must not merely seek out a medical diagnosis and end an analysis on the basis there either is or is not one. In Nissa v Waverly Education Foundation Limited UKEAT/0135/18, HHJ Eady QC (as was) said:-

*"the correct question was to consider what the effects of the impairments were at the material time and to consider whether there was information before the ET which showed that viewed at that time it could well happen that the effects of the impairments would last for more than 12 months"*.

16. In J v DLA Piper UK LLP UKEAT/0263/09, Mr Justice Underhill (as was) drew a distinction between (1) the disability 'depression' as a clinical impairment and (2) the effects of stress and anxiety (which may include low mood and a depressed state) which arise temporarily as a result of an adverse life event (such as the end of a relationship or a dismissal from a job). In such cases, the time or likely time for which the person has experienced substantial adverse effects is likely to be crucial because non-disability related stress and anxiety is likely to subside once the person is removed from the stressor and it is unlikely therefore to be a consistent issue for the person for at least 12 months.

### **Findings of fact**

17. The relevant facts, as I find them on the balance of probabilities, are as follows. The respondent did not present evidence as this is a matter about the claimant and his impairment. I explain how I have found the facts I have unless they are taken directly from the bundle. The only facts which are relevant to both this issue are the dates of significant events. The parties agree on these dates, and so I do not consider there is any danger of facts being found in this judgment which may prove problematic to future tribunals hearing this claim.
18. The claimant has a medical history of hypertension which has required treatment for a number of years. His evidence for the hearing as to his disability does not refer to the impact of hypertension; he does not seek to rely on this condition as a disability in this claim.

### *The claimant's written description of impairment*

19. On 21 April 2021, the claimant had a role in a significant data breach at work. He became aware of the breach in June 2021. When describing his claimed disability, he says in his witness statement:

*"I have been suffering from stress, anxiety and depression since April 2021, with the stress and anxiety becoming acute in June 2021"....*

*“Since April 2021 and more particularly since June 2021 my acute stress and anxiety has substantially and adversely impacted on my ability to focus, concentrate and manage my day to day working practices including such tasks as:*

*Preparing and sending e-mails, drafting and preparing correspondence/documents, interacting with colleagues, and basic administration such as checking correspondence/documentation.*

*I have found it increasingly difficult to maintain focus and concentration on all these and other work related tasks without distraction and my ability to complete these tasks within a satisfactory timeframe has been significantly impaired.”*

20. Specifically in relation to the issues at work and the impact of them and his subsequent grievance, the claimant wrote:

*“I was deeply affected when I became aware of this data breach on 9<sup>th</sup> June 2021 and I was very annoyed at myself for allowing it to happen. This incident was personally very upsetting for me but what was even more traumatic was the fact that senior managers within my team seemed determined, quite unfairly, to put the entire blame for this data breach on my shoulders rather than consider the extent of others responsibility.*

*This incident, and the management reaction to it, led to feelings of anger, exasperation, frustration, acute anxiety and depression and I became emotionally overwrought and physically exhausted.*

*As events progressed during the second half of 2021 and into 2022, in what had then become a protracted grievance dispute, I started to feel completely overwhelmed by my situation, to the point of being totally fixated and obsessed by the events surrounding my grievance complaint.”*

21. I accept these points as accurate descriptions of how the claimant felt at the time in question, and the reasons for why he felt that way. He describes a stress reaction following an adverse event in the workplace, which undoubtedly gave him symptoms of illness. The respondent challenged the claimant on the significance of those symptoms, and noted that he did not suffer any noticeable decrease in his performance at work which would correspond with his description of finding certain tasks taking much longer or becoming more difficult to manage. I find that the claimant was stressed at this point, but that his performance at work did not degrade significantly. It appeared to me that the claimant agreed with this broad analysis but, regardless of that, there was no evidence before me of a decrease in output on the part of the claimant at work at this time when he was in work.

*The claimant’s GP records*

22. The claimant disclosed his GP records for the period running from 9 April 2021 to 8 July 2022, together with his fit notes over that period. The claimant does not attend

the GP between 9 April 2021 and 5 July 2021. On 9 April 2021, he was prescribed ramipril for his blood pressure. On 5 July 2021, the claimant was given a fit note saying he was not fit for work for two weeks due to “stress and hypertension” (page 52). The corresponding GP’s comment (page 43) says:

*“PT concerned about high BP over the wk... Spoke to patient Lots of stress at work... Working at home as a Legal Office – “I hate it” Really stressful. Spoken to them about how he feels but “they’re very unsupportive”... No-one knows he’s feeling this low...”*

23. The GP messaged the claimant on 8 July 2021 to follow up on the earlier appointment, and the claimant responded to update the GP about his blood pressure readings and medication. He does not mention his mood, depression, stress or anxiety (page 43).

24. On 2 August 2021, the claimant uploaded information about his blood pressure and medication and also mentioned migraines and kidney pain. He does not mention any mental health issue in his message (page 43). On the same day, his prescription dose of ramipril was increased.

25. The claimant messaged his GP again on 23 August 2021 to discuss his blood test results and blood pressure. Relevantly for his disability claim, he wrote (page 41):

*“My occupational health report has been completed at work and it says that I am very stressed and struggling to cope on a daily basis at work... It also says I should arrange a consultation with you to discuss the findings. My blood pressure readings are still very high when at work but they come down when not at work. Last Tuesday they were 180/107 and 183/105 at work but later in the week when not at work (working days Mon-Weds AM) they were 147/87, 151/96 and this morning 155/94). I phoned in sick this morning as I just feel so stressed and run down... management are due to have a meeting this morning to discuss [the OH report] so hopefully things will change and my situation at work will improve.”*

26. On 26 August 2021, the claimant was certified not fit to work by his GP due to “hypertension and stress” (page 51). The comments recorded by the GP from the appointment are (page 40):

*“BP remains high... highest at work... works in litigation, working from home – enjoys it but finds it stressful... HR have deemed him unfit for role and to cte in his current role. Advised on disability provisions in equality act- health condition is likely to persist beyond 12 months – he will seek legal advice re this and let me know”.*

27. On 13 September 2021, the claimant sent a message to his GP (page 40):

*“... I am back at work today with a change of line manager so hopefully things will start to improve and there will be less stress”.*

28. Other than a routine message about a flu vaccination, there is then no medical contact until the claimant messages the GP on 1 November 2021 (page 40). He mentions his medication for hypertension and his blood pressure, and also migraines. There is no mention of his mood or mental health.

29. On 18 November 2021, the claimant updates the GP with his blood pressure results. On the same day, he is certified by his GP as not being fit to work due to “*hypertension and stress*” (page 50). The corresponding notes from the GP state (page 39) “*diagnosis: hypertension exacerbated by work stress*” and:

*“Really struggling with work stress – has moved department but still in law department at Bristol City Council... finds that stress is putting up his BP... Struggles to sleep as ruminates about work... Enjoyed time off as [not fit for work] in summer – found his BP was lower. Would like further NFW”.*

30. The claimant’s next GP appointment is on 4 February 2022 and he is certified not fit for work due to “*stress and hypertension*” (page 49). The corresponding GP notes (page 38) state:

*“Feels BP all to do with work related stress – the lower readings are when he is off work and had some mental health counselling since May last year – no resolution to problems at work, nothing being resolved as yet, gets angry/upset about it...”*

*...Denies low mood or any SI – mainly anger and stress.*

*...Plan. Discussed that leaving job is likely the only thing that will relieve his stress and feelings...”*

31. On 24 February 2022, the claimant had a telephone review with his GP. The notes state (page 37):

*“This this is more stress related secondary to his job... really struggling with work stress... Mood – has felt quite low this year. Diagnosis – essential hypertension”.*

32. On 31 March 2022, the claimant was certified as not fit for work by his GP due to “*Stress. Significant hypertension*” (page 48). The corresponding appointments notes state (page 37):

*“Tried to work out pattern in high BP readings – certainly higher whilst at work... ‘Work are totally stressing me out’. Had six sessions of counselling through work ‘interesting and helpful’ but no resolution to work stressors”.*

33. Messages were exchanged between the GP and the claimant on 29 April 2022 and 26 May 2022 about the claimant’s hypertension but there is no mention of mental health impairment (page 37).

34. On 15 June 2022, the claimant is certified as not fit for work by his GP due to “*Stress. Significant hypertension*” (page 47). The corresponding notes state (page 36):

*“Work remain very stressful...Currently back at work, on and off sick, esp when BP high... if work causing BP to go so high needs to consider moving jobs – asked me for Med 3 today – agreed...”*

35. On 8 July 2022. The claimant is certified as not fit for work by his GP due to “*Stress. Significant hypertension*” (page 46). The corresponding notes state (page 35):

*“... home BPs have been high and although a bit better when not at work – still too high... work is a huge source of stress – awaiting outcome of tribunal...”*

*The claimant’s oral evidence about impact on day to day activities*

36. The claimant was challenged about the things which he cannot do or which are significantly adversely affected as a result of the impairments he relies upon. He was not particularly pleased with this approach. When I suggested that he was not articulating any impact at all on self-care activities, or the non-work items suggested in the Guidance, he suggested that I was seeking to inappropriately adopt a checklist approach. Eventually, he conceded that in his view he is narrowly affected by his claimed stress, depression and anxiety.

37. The claimant says that his sleep is disturbed by his mental health, in that he cannot help but ruminate on sources of stress introduced by work. He then described how he is often awake in the evening late due to indigestion caused by his hiatus hernia, which he resolves through a snack or drinking milk. This also wakes him during the night. It is when awake in the night that he begins to ruminate on work stressors. The hiatus hernia and comments about being kept awake by indigestion accord with some comments made to his GP in the medical notes disclosed, which are not directly quoted because they do not relate to his claimed impairments.

38. He also observed that he has been certified as not fit for work several times as a result of high blood pressure caused by stress. He also described an impact on his social life. He said that he used to play chess with a club but that he no longer felt, and did not feel at the time, that he has any interest in doing that hobby. He expressed this as a shame, because he used to derive joy from chess. Upon further exploration, he then said that the chess club had stopped due to Covid-19 and had not started again by the beginning of the period relating to his claim. To that end, he did not withdraw from the social activity because of his impairment; he did not return after the club re-opened having fallen out of the habit.

39. In cross-examination, the claimant was taken through his medical notes and shown the opportunities where he could have raised symptoms of depression and anxiety, or the occasion where it appeared he denied low mood. The claimant accepted the omissions on the page and explained them by saying that he felt ashamed about his low mood, and that nobody knew how he felt, so he did not talk about it with his GP as a matter of course.

40. I asked the claimant about the timing of his symptoms. Clearly, he has had hypertension for some time, but I put to him that the medical notes and his own



description appear to indicate that the symptoms of stress and extremely high blood pressure are a result of a stressful event, rather than a chronic condition. The claimant was not happy with this line of exploration, and argued about the time period of the symptoms. However, he could not explain what he described as 'acute' symptoms any other way. He did not tell me about a history of mental illness and did not offer any evidence about any previous episodes of anxiety and depression that might establish a factual pattern of re-lapsing condition.

*Findings of fact drawn from the evidence*

41. I find the following facts, drawn from the evidence outlined above:

- 41.1. The claimant has not been diagnosed with depression or anxiety;
- 41.2. Exacerbation of his hypertension is due to work stress, specifically the mistake he made in April 2021 and the work events subsequent to that;
- 41.3. The respondent observed no adverse performance from the claimant during his time at work;
- 41.4. The claimant's MED3 certifications are founded upon his blood pressure, raised by work, and not by anxiety or depression;
- 41.5. The claimant has asked to be certified not fit for work having identified that work raises his blood pressure and inflames his hypertension;
- 41.6. The claimant has identified no adverse impact on day to day activities which he says is caused by depression and anxiety other than being slower at work, ruminating on his work issues and a difficulty in sleeping;
- 41.7. The GP has no concerns about the claimant's mental health recorded in the notes, and interactions with the GP are all framed around reducing the claimant's blood pressure; and
- 41.8. The claimant considered, at that time, that his symptoms would be resolved once his work stressors were resolved.

**Conclusions**

*Does the claimant have a mental or physical impairment?*

42. The claimant's only diagnosis from the medical notes is hypertension, which he does not rely upon. He describes experiencing work related stress and is certified not fit for work in part because of that. He also seeks to rely upon 'depression' and 'anxiety' but there is very little supporting evidence that he has these impairments other than bald assertion. There is no framing of any discussion with his GP about 'anxiety'. Similarly, there is only very occasional conversation about feeling 'low' or 'low mood'. The claimant's assessment of his counselling sessions is similarly conditional upon the work stress resolving. There is no discussion at all about the symptoms of stress

or low mood being 'chronic'. The whole focus in the documentation is about resolving the work dispute which causes the stress and spikes the hypertension.

43. The claimant did not articulate symptoms or experiences which expanded on 'low mood' or 'feeling low'. He did not articulate symptoms or experiences which expanded on 'anxiety' other than to repeat his evidence about work related stress causing his blood pressure to go very high. There was no account of any chronic episodes or panic responses or any sort of fatalism or feelings of wanting to give up or feel hopeless. Repeatedly, the claimant described the impact of adverse working events upon him through the vocabulary of stress and blood pressure.
44. I am satisfied that the claimant has experienced stress and the symptoms of stress. I am not satisfied that the claimant had the 'medical' impairments of 'depression' or 'anxiety' at the time of the claimed discrimination. In my view, the claimant's condition falls within the bounds of the discussion of Underhill J in *J v DLA Piper*. It is therefore important to consider the other stages of the test to determine whether or not there are any substantial and long-term adverse effects on the claimant's ability to carry out normal day-to-day activities.

*Does that impairment have an adverse effect on their ability to carry out normal everyday activities?*

45. The claimant says he struggles with his concentration and that working tasks took longer than usual throughout the period. He says that his sleep is disturbed, that he ruminates on work events, has felt angry and upset, and that he does not feel like re-joining his chess club. Completing working tasks, sleeping and socialising at clubs are plainly normal everyday activities. The claimant describes an adverse effect to them. The question then is whether the adverse effect is caused by the disability.
46. In my view, the rumination that the claimant describes, with the anger and upset, are not adverse effects caused by the impairments. The claimant is clearly very upset by the mistake he made at work and the way the respondent then handled his grievance process. However, those emotions and reactions are to be expected from someone in the claimant's position – particularly when they then bring Employment Tribunal litigation. The claimant has not satisfied me, on the balance of probabilities, that those adverse reactions are caused by any of his impairments.
47. Similarly, I do not consider that the claimant's sleeping pattern is interrupted by the impairments claimed. The claimant does not describe sleep interruption due to stress, depression or anxiety. His evidence is that he struggles to get to sleep due to pain caused by his hiatus hernia, and this is supported by the conversations with his GP. Once he is awake, I accept that his mind processes aspects of his life which cause him stress, and which leads to rumination. However, again, I consider that this is a reaction to the life events experienced at work and not in its own way an impairment or disability.
48. The claimant spoke about not wanting to rejoin his chess club or undertake any other social activity. However, his evidence was also that he only ever socialised at a chess club which he found very enjoyable. Attendance was interrupted by the Covid-19 pandemic and he did not withdraw from it due to an impairment. He says he was not particularly sociable other than the social club, and did not contend that his quiet

social life prior to the Covid-19 pandemic was as a result of a long-term impairment such as anxiety or depression.

49. No other aspect of the claimant's day to day activities were, in my judgment based on the evidence I have seen and heard, affected by the impairments that he seeks to rely upon. Consequently, I consider that none of the impairments the claimant seeks to rely upon has an adverse impact on day to day activities.

*Is that adverse effect substantial?*

50. Even if a claimed impairment did have an adverse effect on day to day activities as the claimant contends it did, then I do not consider the adverse effect to be substantial. I do not mean to diminish the claimant's experience, but the claimant describes taking longer to send e-mails and read correspondence, struggling to fall asleep when he wakes in the night, and deciding not to re-join a club after lockdown. He could not describe how much longer those working tasks took, or sound at all confident when asked to estimate how much of his workload is not complete (and I accept the respondent's evidence that the claimant did not fall behind). Similarly, the claimant could not quantify the time lost for reasons related to the claimed impairment other than to offer an explanation that his indigestion woke him up and/or kept him awake and this allowed his rumination to kick in. Finally, the claimant did not offer persuasive evidence about his decision not to re-join his chess club being linked to an impairment.

51. In my judgment, the claimant has not discharged his burden of proving any substantial adverse effect.

*Is that adverse effect long-term?*

52. This is a moot point considering the conclusions drawn above. There are no substantial adverse effects found.

53. For completeness, in my judgment, the length of the adverse effects (if I am wrong and they were caused by impairments) is difficult to determine. This is a case where the claimant is experiencing a stress reaction due to a problem encountered at work. This has caused upset and the claimant is still experiencing the problem because these proceedings are founded on his experience of what happened to him. The claimant and his GP were waiting for the stressors to pass in order to resolve his symptoms, but the stressors are perpetuating. To that end, he has as a matter of fact experienced stress caused by the work events for a period in excess of 12 months. Given the length of time it takes to conduct proceedings, it 'could well have happened' from the summer of 2021 that the stressors could be in place for more than 12 months. I consider that any substantial adverse effects, if there were any, would have found to have been 'long-term'.

*Overall conclusion and consequences*

54. The claimant has not persuaded me that the impairments he seeks to rely upon caused a substantial adverse effect at any point of the period to which his evidence relates. He has not given me the sort of evidence I consider I would need to find in

his favour on this point. I do not find in his favour, and so do not find him to have been disabled according to the legal definition.

55. As a result, he cannot sustain a claim predicated on him being a disabled person. His disability claim is therefore dismissed.

**Employment Judge Fredericks-Bowyer**

Date: 18 June 2023

Reasons sent to the Parties on: 04 July 2023

For the Tribunal Office