EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr C Clayton-Temple	**v**	**Green Retreats Ltd**

RECORD OF A PRELIMINARY HEARING

Heard at: Watford **On**: 15 September 2023

Before: Employment Judge Andrew Clarke KC

Appearances
For the Claimant: Mr R Magara, solicitor
For the Respondent: Ms H Curtain, counsel

RESERVED JUDGMENT

1. The claimant was not at any material time a disabled person for the purposes of s.6 of the Equality Act 2010.

2. Consequently, all claims for direct disability discrimination (s.13 Equality Act 2010), harassment on the grounds of disability (s.26 Equality Act 2010) and for a failure to make reasonable adjustments (s.21 Equality Act 2010) are dismissed.

REASONS

Background and introduction

1. On 7 February 2023 the claimant lodged a claim form which alleged disability and sex discrimination. He had been employed by the respondent since 8 March 2022 as a Plaster's Mate. He then remained in that employment, but resigned shortly after submitting his claim form.

2. The claimant alleged in his claim form that he was disabled by reason of autism and that he therefore satisfied the test set out in s.6 of the Equality Act 2010 ("the 2010 Act"). He listed eight symptoms of his alleged disability. Each was briefly described in very general terms. The respondent does not

accept that the claimant was disabled at any material time, namely at any time during the period of his employment.

3. At a preliminary hearing on 10 July 2023 Employment Judge Mason listed this preliminary hearing to determine the issue of disability. The claimant had already served a disability impact statement (in response to earlier standard form directions). The Judge provided for disclosure of documents relevant to this preliminary hearing and for witness statements. In the event the claimant disclosed some medical records, but declined to serve a witness statement. Instead, he indicated a reliance on his disability impact statement as his evidence.

4. The disability impact statement recites what was said in the claim form about the claimant's autism and sets out the same eight symptoms in the same general terms. Their suggested impact on day-to-day activities is described in eight brief sub paragraphs. Most repeat, or paraphrase, the eight symptoms. Two other very general assertions are added. There is no attempt to exemplify the difficulties or otherwise to make the lists of symptoms and impacts personal to the claimant. This became more concerning when the claimant (who appeared otherwise articulate) was unable to explain what the very broad statements meant in terms of his life and, in one instance, disavowed what was alleged, despite having previously affirmed the accuracy of the contents of the statement. In particular, the statement did not seek to deal with the claimant's alleged disability and its impact during the material period.

5. That was a particular concern to me because of the state of the medical evidence. I shall review it in more detail below, but one aspect of its nature is conveniently dealt with now. The claimant was born in July 1998. There are a number of letters to and from medical professionals at the time when the claimant was in nursery school and had just started school. There is then another (rather shorter) set of such documents in 2012 when he was about 13. There was nothing disclosed between 2005 and 2012 and nothing beyond 2012.

6. In the course of the claimant giving evidence, it became clear that he had been provided by his GP surgery with far more documentation than he had disclosed. He had read through the material and had disclosed only what he considered relevant. Although represented by the same solicitor throughout these proceedings (from the submission of the ET1), that representative had not seen the additional documents.

7. As the respondent understandably made much of the absence of (in particular) documents more recent than 2012, I allowed a lengthy adjournment so that the claimant's solicitor could inspect the remaining documents and disclose any that were relevant. The outcome of that exercise was that one further letter from the infant period was disclosed and subsequently referred to in evidence. That letter added nothing to my understanding of the situation. It was not made clear to me whether the respondent had accepted a statement from the claimant's solicitor to the effect that he had considered the additional documents and found nothing

relevant, or whether his view was confirmed by the respondent reading the relevant documents.

8. What was made clear was that the gaps in the GP records between 2005 and 2012 and from 2012 onwards had been made good and that GP records existed and had been inspected for the totality of the claimant's life up to date. I was told, and accept, that from 2012 to 2023 whilst the claimant had seen his doctor for other reasons, there is no mention in his medical records of autism or of any other relevant disorder, or of the symptoms (or impacts) relied upon by the claimant in this case.

9. The claimant maintained in evidence that he believed that he had been diagnosed as being on the autistic spectrum. The respondent pointed out that the medical records did not support this assertion. The claimant suggested that these might be incomplete. He then told me that his GP had told him (when contacted recently) that if he needed a diagnosis of autism for these proceedings he would need to be formally assessed by a specialist.

10. In those circumstances I suggested that I would be amenable to adjourn the hearing to allow the claimant to be examined by a jointly appointed expert should an application be made. In making that observation I also noted that I was concerned by the very general way in which the claimant's symptoms and impacts were expressed in the disability impact statement and further noted that an expert might well be able to assist, if appropriate, in explaining those general assertions in terms of the claimant's own circumstances. In other words, making them personal to the claimant, exemplifying and explaining them. The parties considered this over lunch. The claimant's representative then stated that he wished to proceed with the presently available evidence.

Findings of fact

11. Against that background I make the findings set out below.

12. The claimant was first referred for specialist consideration by someone in the Child Development Team of his local authority in late 2000. He had been born with serious hearing difficulties. This was subsequently addressed by surgery, which was successful. However, those hearing difficulties in the early years of his life impacted upon his linguistic development. The referral documentation shows that he was rather aggressive (something linked to his lack of development of linguistic skills) and had disturbed sleep patterns. On review, he was examined by a consultant paediatrician, a speech and language therapist and a clinical psychologist.

13. Those three professionals provided a joint report. They considered that he had experienced difficulties in acquiring linguistic skills due to his hearing problems. That had led to a negative style of interaction with others which

presented as significant behaviour problems. It was noted that his language development was improving.

14. The same team (supplemented by an additional speech and language specialist) reviewed the claimant again in late spring 2002. Speech and language development were noted as both progressing, but still gave some cause for concern. It was noted that there was still some aggression which appeared to have been reduced, but had then flared up again. The clinical psychologist felt that the claimant had “a semantic pragmatic language disorder problem”. It is not clear from that section of the report written by the clinical psychologist whether the author thought the disorder to be treatable so as to be cured. However, my reading of the report as a whole suggests that there was no clear diagnosis at this stage and some hope that, with the correct support, the language problems, which were seen as being the root of the claimant’s problems dealt with in the report, could be resolved or, at the very least, much reduced in their impact.

15. I consider that this view of that report is supported by a speech and language report produced very shortly thereafter. It notes a need for speech and language therapy to develop listening and attention skills, to develop the claimant’s semantic system and to improve his comprehension.

16. A progress review from October 2002 notes some progress in particular areas, but that some problems remained.

17. In December 2002 his consultant paediatrician reported on the claimant to his GP. This report appears to rely to some extent upon the reports in late spring and October 2002 referred to above and summarises parts of them. The consultant had also examined the claimant for the purposes of producing her report. She noted that:

> “[the claimant] is a child with complex difficulties. He does have semantic pragmatic language disorder, attention deficit and difficulties in social interaction and judging the response of others. We discussed the overlap of language disorder, attention difficulties and autistic spectrum type problems.”

18. She went on to discuss the support the claimant would need at school.

19. I note that this does not, in my view, amount to a diagnosis of autism. In this regard I will refer later to certain articles and papers which make clear that in order for semantic pragmatic language disorder to be diagnosed, a diagnosis of autism must necessarily have been rejected. Although produced by the respondent, the material contents of those articles and papers were not disputed by the claimant.

20. As the claimant was aged four at this time he could not, quite understandably, assist in providing any recollection of the discussion referred to in the report. However, taking the evidence as a whole, I consider it most likely that the consultant paediatrician discussed with the claimant’s mother the inter-relationship of the language disorder, the attention difficulties and the symptoms of and a diagnosis of autism. The

claimant was adamant that his mother was at all times pressing for a diagnosis of autism. I consider it likely that the consultant paediatrician explained to her that the claimant did not have autism, rather that he had a language disorder with associated attention difficulties which she hoped could be successfully addressed.

21. In January 2004 the same consultant paediatrician reported again. She noted that the claimant met the criteria for attention deficit hyperactivity disorder (ADHD) and continued to have language difficulties.

22. In March 2005 one of his speech and language therapists reported further improvements in the claimant's language skills, but that some problems remained. It was noted that he was about to move to a new school and had been referred to a specialist clinic to assist further with the development of the social use of language and associated skills.

23. A GP note made on 7 October 2005 is important. It appears that the claimant had moved schools and had attended the specialist clinic. He had settled in well at his new school and there now appeared to be no problems with his linguistic skills. Opportunities had been given for him to continue to attend the specialist clinic, but these had not been taken up. The GP assumed this to be on the basis that the work at the specialist clinic had been successful. The GP further noted that the claimant was now able to attend the drop-in service at that clinic if and when necessary, but nothing in the medical records that I have seen suggests that he ever did so. Indeed, that appears to be the last medical record of any problems with his linguistic skills.

24. I now move forward to April and May 2012. There is no suggestion in the medical records that the claimant experienced problems such as those he had experienced up to 2005 in the intervening seven years.

25. The GP notes from this period record that the claimant (now aged 13) had attended on his GP and was referred to a specialist clinic. The GP notes refer to the claimant's not sleeping well and state that the claimant "has autistic spectrum disorder semantic pragmatic disorder…". The letter of referral states that "It appears that he has been assessed as having a semantic pragmatic disorder, an autistic spectrum disorder."

26. The claimant told me that this referral was to do with his not sleeping and not his autism. There is no record of any report by the clinic to the GP. Further, there is no record of any attendance on the GP thereafter due to sleep or other problems of the kind dealt with in the disability impact statement. That is so for the whole of the succeeding 11 years.

27. The claimant relies heavily on the reference to autism in the notes and in this referral letter. I need to consider the references to autism in the context of the reference to "semantic pragmatic disorder", in the context of the final entries in the notes in the period up to 2005 and in the context of three pieces of specialist medical literature which describe semantic pragmatic disorder and its relationship to autism.

28. From those articles, the content of which the claimant did not dispute, I conclude that:

    28.1 Semantic pragmatic disorder is today more usually referred to as social communication disorder ("SCD"), or pragmatic communication disorder. This is now a well-recognised disorder.

    28.2 It is a disorder concerned with language skills and non-verbal communication.

    28.3 It can only be diagnosed if autism has been ruled out as a diagnosis. A child on the autistic spectrum may have similar language and communication problems as a child with SCD, but will also exhibit repetitive behaviours. I do not seek to define or explain that term more fully as none of the medical records which I have seen seek to apply it to the claimant.

    28.4 SCD is treatable. Children with SCD will need help to learn speech pragmatics (for example the use of appropriate greetings), conversations skill and the use of non-verbal communications.

29. I have seen no medical evidence to suggest that the claimant was ever diagnosed as autistic. He certainly was diagnosed with SCD. But by 2005 this had been treated and appeared to have been resolved. There was mention of an ADHD diagnosis at this time, but that is not referred to in any later medical report or the later GP notes. Doing the best that I can with the limited evidence before me, I conclude that in 2012 the GP's references to autism were simply a reference back to the 2002 diagnosis, possibly made without recalling the eventual outcome in 2005, or recalling that a diagnosis of SCD and a diagnosis of autism were mutually exclusive.

30. The GP did not diagnose autism at any time and the specialist referral in 2012 was because of poor sleeping and some behavioural issues related to it. It is not my view that the GP was concluding that the sleep problems were caused by or were a symptom of either autism or SCD. On the contrary, I consider that the GP was recording what was presented to him by the claimant (and/or his mother), referring back to the issues in infancy (but in the most general terms) and seeking such assistance as could be provided to him in relation to the sleep problems. What is clear is that if there was a response to the referral no record if it appears in the (now complete) medical records for the claimant and there do not appear to have been any further GP appointments relating to this or any associated problems.

31. Against that background I turn to the claimant's evidence of the symptoms he says that he currently experiences and their alleged impacts on him.

32. The disability impact statement contains the following:

    32.1 "Common symptoms for the claimant include:

(a) Difficulty in expressing how he feels.
(b) Heightened anxiety regarding social interactions.
(c) Heightened anxiety and panic attacks about confrontation.
(d) Difficulty in understanding or gauging what others are thinking or feeling.
(e) Heightened and intermittent need to be alone.
(f) Heightened sensitivity to sound//noise.
(g) Difficulty in understanding intricate social "rules" (for example, thinking that someone is a friend despite behaviour which may portray otherwise).
(h) Troubled/disturbed sleep akin to insomnia".

32.2 The statement goes on to state that:

"The impact on day to day activities include:

(a) Difficulty in social interactions and settings.
(b) Difficulty in understanding and communicating feelings or emotions.
(c) Difficulty in understanding non-verbal cues from others.
(d) Inability to focus in certain noisy environments/settings or places with high sensory distractions.
(e) Difficulty concentrating on tasks.
(f) Irregular sleeping patterns.
(g) Needing clear step by step/methodical instructions for tasks.
(h) Needing more time than those without autism to complete tasks."

33. The claimant was not asked to enlarge upon these generalities found in his disability impact statement by his solicitor (despite the respondent's criticisms of them) and he was not cross examined on them.

34. I sought to get him to explain to me what the various statements meant to him and how these things impacted on his life. He began by saying that he had had all of these symptoms all his life. On balance, I cannot accept that evidence. The medical records refer to few of these symptoms in any way and demonstrate that such symptoms associated with impaired language development difficulties in his early years were resolved by the end of 2005.

35. In most instances the claimant was unable to explain what these very general statements meant. He told me that he felt anxiety about being in big gatherings of people and in situations like being cross examined. He told me he did not cope well when people were angry or shouted. As regards panic attacks, he said that this happened occasionally but that he could go for a month or more without this happening. What he described as a panic attack he initially said was like a sharp pain in his chest, but then went on to say that what happened was that he felt uncomfortable in certain situations.

36. The claimant denied having a generally heightened sensitivity to loud noises, but referred back to not liking people shouting. He said that he might find very loud noise distracting. He said that he had difficulty understanding social rules, but he could not explain or exemplify what that meant in practice save by referring to thinking that people were friends when it turned out that they were not (the example given, albeit in different

language, in the statement itself). He did not exemplify what this meant, despite prompting.

37. He told me that he felt that he needed step by step instructions on tasks and he felt that he worked more slowly than those without autism. He noted that he still suffers from poor sleep patterns and can prefer his own company to socialising with others.

38. The claimant's answers to my questions were in marked contrast to his exchanges in cross examination. In those, he was able to follow the questions asked of him and seemed to me attentive, careful in his answers, able to use sophisticated language and to interact with counsel sensibly and confidently. He asked to be able to refresh his memory from documents where appropriate and was able to give reasoned and sophisticated answers to questions. For example, when taken to the last referral letter in 2012 and, in particular, to the reference to autism, it was he who said that although there were references to autism in the letter, the attendance on the GP and the referral stemmed from poor sleep patterns and not from his autism.

39. Given the way he gave evidence on other matters, when taken in detail through his medical records, I was struck by the claimant's inability to engage constructively with questions about his alleged symptoms and their impacts on him. On balance, I formed the view that this was because he did not really associate much of what was said in those very general terms with his personal state. Hence, he could not explain what those various phrases meant to him in his life. Furthermore, he was unable (save as noted above) to exemplify the manifestation of those symptoms and their impact on his life. No effort was made in the disability impact statement or elsewhere in his evidence to describe the manifestation or impact of those symptoms and their effects in the material period of his employment by the respondent.

40. In short, the claimant's evidence amounted to pointing to what was said at various points in the medical records in the period to 2005 and in 2012, stating that autism was a lifelong disorder and pointing to what was said in his disability impact statement on the basis that those symptoms and their effects had been present throughout his life.

41. I am satisfied that the claimant is probably not particularly gregarious or outgoing, that he is not as confident an operator as some in larger groups of people (especially consisting mainly of strangers) and that he is happy when allowed to work alone (as he presently told me was the case). He thinks that he needs more instruction than others for tasks and that he performs tasks more slowly than others. However, I am not satisfied that this is actually the case today, although for periods in his early years that may well have been so. He has, at least periodically, poor sleeping patterns, but on the available evidence I cannot be satisfied either that this was a persistent problem at any material time (especially given the lack of any mention in the medical records since 2012) or that it is associated with any particular disorder (given the lack of any expert evidence on the point), or that it has any significant impact on his day to day activities.

The law

42. The statutory test to determine whether a person has a disability is set out in s.6 of the Equality Act which states that:

> "(1) A person (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 carry out normal day-to-day activities."

43. Section 6(5) provides that a minister may issue guidance about matters to be taken into account in deciding any question for the purposes of sub section (1) and section 6(6) states that schedule 1 to the 2010 Act which sets out certain supplementary provisions has effect.

44. Schedule 1 of the 2010 Act provides that the effect of an impairment is long-term if it has lased or is likely to last for at least 12 months. Part 2 of that Schedule provides that a tribunal must take into account such guidance as is issued under s.6(5) of the 2010 Act as the tribunal thinks is relevant in the particular case.

45. The statutory guidance issued under s.6(5) includes "Guidance on matters to be taken into account in determining questions relating to the definition of disability" which came into force in May 2011. Furthermore, the Equality and Human Rights Commission has published a Code of Practice. I note at this point that the government guidance makes clear that it is the effect and not the cause that is important when determining whether a claimant suffered at a material time from an impairment. Both the guidance and the case law support a broad approach to the term "impairment". I accept that it is the degree to which a person is affected by a particular impairment that will be important in determining whether a person is disabled for the purposes of the 2010 Act.

46. The law in this area was uncontroversial between the parties and I can summarise other material aspects of it succinctly.

47. The burden of proving that he satisfies the requirements of s.6 lies upon the claimant on the balance of probabilities.

48. Whilst evidence relating to earlier or later periods of time may be relevant in determining the issue of disability, I must focus upon whether the claimant is disabled at the material times, that is (in this case) during the period March 2022 to January 2023: see Cruickshank v VAW Motorcast Ltd [2002] ICR 729.

49. Although pre-dating the 2010 Act and determined at a time when certain provisions of what was the Disability Discrimination Act differed from the provisions of the relevant sections of the 2010 Act, the guidance given in Goodwin v Patent Office [1999] IRLR 4 remains good law. Hence, it is

necessary for me to approach this matter by asking a series of four questions:

49.1 Did the claimant have a mental and/or physical impairment?

49.2 Did that impairment affect the claimant's ability to carry out normal day-to-day activities?

49.3 Was the adverse effect substantial?

49.4 Was the adverse condition long-term?

50. In Morgan v Staffordshire University [2002] ICR 475, the EAT (Lindsay J) offered some guidance to tribunals dealing with the disability question in respect of a case of mental impairment. These included:

50.1 That claimants should identify clearly in advance of the hearing exactly what impairment was relied upon and the respondent should then set out its position. As a result the parties ought to be clear as to what must be proved or rebutted at the hearing. I note that in this case the disability impact statement was rapidly followed by a clear statement summarising the respondent's position.

50.2 In many cases (especially those where it is alleged that there was a failure to make reasonable adjustments) the medical evidence will need to cover not merely a description of the mental impairment but over what periods and how it is said to have manifested itself in the course of the claimant's employment.

50.3 Tribunals should be alert to the dangers of forming a view on the issue of mental impairment from the way the claimant gives evidence on the day of the hearing.

50.4 Numerous reported cases emphasise that it is usually not material whether the impairment results from a particular identifiable medical or other condition. It is not the cause of an impairment which is in issue, but its existence, its effects, their severity and longevity. There is an exception where the cause is one of those which places the impairment and its effects outside the scope of protection, but that is not material here. The need to link a mental impairment to a clinically well-recognised illness was repealed as from the end of 2005. However, the presence or absence of a diagnosis of a particular mental condition may have evidential significance because a contrast between what the claimant alleges that he suffered from (and to which his symptoms are said to be related) and such medical diagnosis as he may have had, may assist the tribunal in determining the answers to the four questions identified in Goodwin: see (eg Walker v SITA Information Networking Computing Ltd EAT 0097/12).

51. I have already noted what the guidance says with regard to the concept of "long-term". I have also kept in mind what is said with regard to two other material concepts:

    51.1 Appendix 1 to the EHRC Code states that "Normal day-to-day activities" are activities that are carried out by most men or women on a fairly regular and frequent basis. The Code gives examples which include (referring to linguistic and social skills) talking and forming social relationships. The government guidance also refers to a person's ability to understand human non-factual information and non-verbal communications such as body language and facial expressions.

    51.2 Section 212(1) of the 2010 Act notes that substantially means more than minor or trivial. The EHRC Code states that in determining whether an adverse effect is substantial, a tribunal should compare the claimant's ability to carry out day-to-day activities with the ability the claimant would have had if not so impaired. The government guidance sets out, at paragraph B1 onwards, a number of factors which can be considered, where relevant, in relation to whether or not an impairment is substantial. These include the time taken to carry out an activity, the way in which a particular activity is carried out and the effects of the environment in which it is carried out. The focus should be on what the individual claimant cannot do or can only do with difficulty. The appendix to the Guidance gives some examples of what would reasonably be regarded as an adverse effect on a person's ability to carry out normal day-to-day activities which would be substantial. These include the ability to converse, or to give instructions to another and difficulty in understanding or following simple verbal instructions.

Submissions

52. Both parties provided written closing submissions which were supplemented by oral submissions. Although expanded upon to an extent, those submissions related to what the claimant had said in his disability impact statement and what the respondent had said in its response. Hence, I note that it would have been clear to the claimant from the time of the first preliminary hearing what criticisms the respondent made as to the adequacy of the evidence upon which the claimant relied in this regard.

53. The claimant's submissions preceded from the proposition that he had been diagnosed with autism, that the symptoms which he relied upon in the disability impact statement were symptoms associated with autism, that these amounted to impairments which had the substantial impacts upon his day-to-day activities which the disability impact statement set out. I was asked to accept the claimant's evidence that he had suffered from autism for all of his life, that the symptoms which he described in his statement were symptoms which he had experienced for all of his life and that the impacts were similarly impacts which he had always experienced.

54. The respondent, in its submissions, repeated (albeit in greater detail) the criticisms set out in the response to the disability impact statement. The respondent pointed out that the claimant's medical evidence did not reveal a diagnosis of autism and, indeed, there was a diagnosis at an early stage of a disorder the diagnosis of which was inconsistent with a diagnosis of autism. The respondent relied upon the fact that the medical evidence of any impairment was limited to a period culminating in 2005, albeit that there was a refence back to that period in a specialist referral for other reasons (related to sleep) in 2012. The respondent relied heavily upon the fact that there was no reference in the medical notes from 2012 onwards either to a diagnosis of autism or to the claimant seeking assistance to deal with any of the symptoms upon which he now relied. The generality of the description of those symptoms and the lack of any evidence specifically relating to the period of the claimant's employment was relied upon. On that basis the respondent submitted that there was insufficient evidence before the tribunal to reach a finding in the claimant's favour on any of the four questions posed in Goodwin.

Decision

55. I regard the state of the evidence in this case as unhelpful. The claimant has known since before the first preliminary hearing that the respondent criticised the medical evidence as being insufficient to enable the claimant to satisfy the burden of proof laid upon him because of its historic nature and (so far as the period to 2005 is concerned) its close association with linguistic problems (and associated social and behaviour problems) found to have resulted from the problems associated with the claimant's hearing from birth until these were successfully corrected by an operation.

56. The claimant chose not to provide a witness statement to explain in more detail the very general assertions contained in his disability impact statement and for the reasons which I have set out above, I regarded his attempts to make good this deficit answer to questions form me as unsatisfactory.

57. I am conscious that in my assessment of the adequacy of his evidence I have, in part, been influenced by his manner of giving evidence and his inability to engage helpfully with my questions. I do not consider that in doing so I have acted contrary to the pointer set out in Morgan. I consider it permissible for me to contrast the way in which the claimant was able to deal with questions in cross examination with the way in which he dealt (or failed adequately to deal) with questions from me asking him to personalise and exemplify very general statements contained in his disability impact statement. In this regard I also note that at a time when I had set out the misgivings which I had with regard to his evidence contained in that statement, the claimant did not choose to seek the appointment of a joint expert. Furthermore, I also note that his GP had told him that if he wished to have a diagnosis of autism then he would need a specialist report.

58. Looked at in one way the claimant's case amounted to saying that he had been diagnosed with autism, that what he listed were symptoms (and

effects) typically associated with a person suffering from autism and, hence, I should accept that he was someone with a metal impairment which necessarily had a substantial adverse effect on his ability to carry out day-to-day activities. I reject the premise of that argument. The claimant had never been diagnosed as autistic. This means that I have to look at the evidence before me of the alleged impairments and their impact without the assistance that would be provided by a diagnosis of autism.

59. I turn to consider each of the four questions set out in Goodwin:

59.1 Did the claimant have a mental impairment?

59.1.1 I have to ask myself whether he had such a mental impairment at the material time between March 2022 and January 2023. I am not satisfied that he did have such an impairment at that time.

59.1.2 I accept, based on the medical evidence which I have dealt with above, that the claimant did have such an impairment up to some time in mid to late 2005. That impairment can conveniently be described as social communication disorder. The linguistic challenges in the claimant's case and the associated behavioural problems are summarised in the various reports to which I have already referred. However, I am satisfied that it is more probable than not that this impairment had been resolved by treatment by mid to late 2005.

59.1.3 I do not consider that the evidence of the claimant's linguistic and other associated difficulties in the period to 2005 is sufficient to establish that he was suffering from a mental impairment in the period March 2022 to January 2023.

59.1.4 I do not consider that the referral letter (and associated GP note) in April 2012 assists the claimant. He had consulted his GP because of sleeping problems, but in my view there is no sufficient evidence linking those problems to, or to enable me to find that those problems evidence, a mental impairment even at that time in 2012. There is no follow up to that referral and no indication in the claimant's medical records of his consulting his GP about or receiving any treatment for any of the symptoms now relied upon between 2012 and the ending of the relevant period in January 2023.

59.1.5 I bear in mind what the claimant says in his disability impact statement with regards to his symptoms, but given their generality, the claimant's inability to personalise and exemplify those general assertions and the lack of any particular reference to the period of his employment (or evidence relating to that period of time), I do not consider that this material provides a basis upon which I could find the claimant to have had a mental impairment in the material period. In that regard I have considered each of the "symptoms" relied upon by the claimant.

59.1.6 Without some personalised explanation of what these various general assertions mean to him and some examples to help in understanding this, the list of eight "symptoms" in most instances amount to no more than a generalised description of some features which might be present in a person diagnosed with autism. Indeed, the claimant's case was built on the foundation that he had been so diagnosed and that these were typical symptoms of autism.

59.1.7 I consider that the claimant's evidence went no further than to demonstrate that, like many others with no mental impairment, he is not a particularly gregarious or extravert person who is perfectly happy in his own company, who becomes somewhat anxious if shouted at and dislikes dealing with necessarily challenging situations, such as giving evidence in a court or tribunal. He told me that he had always periodically experienced difficulty in sleeping (a symptom in his list) and there is reference to that both in the period up to 2005 and in 2012 in his medical records. However, as I have found, there is no sufficient evidence before me to link that to a mental impairment.

59.2 I next turn to the question of whether or not any impairment affected the claimant's ability to carry out normal day-to-day activities.

59.2.1 It is extremely difficult to consider this issue in the absence of a finding of a mental impairment. However, I consider that had I found any such impairment to exist at the material time, the evidence would have been insufficient to enable me to find that any such impairment affected the claimant's ability to carry out normal day-to-day activities.

59.2.2 This is because, once again, the claimant was unable in any useful way to explain and expand upon and exemplify the points made in paragraph 3 of his disability impact statement.

59.2.3 For example, he alleges a difficulty in social interactions and settings. He was unable to explain this other than by referring to his not feeling confident in larger groups of people. No examples were given, in particular no examples of situations in which he had experienced difficulties in the relevant period.

59.2.4 I do not find a statement that the claimant had "difficulty understanding and communicating feelings of emotions" helpful without further explanation. Similarly, a statement that he has "difficulty understanding non-verbal cues from others" I find to be far too general and to cry out for exemplification.

59.2.5 In evidence he repeated the assertion that he needs "clear step by step/methodical instructions for tasks." Yet, he provided no examples of circumstances in which this was manifested. The assertion of needing "more time than those without autism to complete tasks" is equally unhelpful. The claimant had no diagnosis of autism. It would therefore be necessary for him, having demonstrated what mental

impairment he was relying upon, to exemplify how he believed that he took longer to undertake particular identified tasks than he would have done had he not had the particular mental impairment. I accept that evidence of how long others of similar experience and ability took would be relevant. Yet, there was simply no such evidence before me.

59.2.6 The claimant's simplistic case that he had a diagnosis of autism and that autistic people experience these impacts on their conduct of day-to-day activities fails firstly because there was no diagnosis of autism, secondly because I had no evidence before me, other than the claimant's generalised evidence, to suggest that those with autism do experience these impacts and, thirdly, because I need to be satisfied on balance as to the impacts upon the claimant and his evidence did not assist me in that regard.

59.3 As I have not been able to find the existence of relevant adverse effects, the question of substantiality does not really arise. However, even if I had found there to be a mental impairment and had found there to be an adverse effect, the defects in the claimant's evidence referred to above would have had a similar impact here. Mere generalities of the kind relied upon by the claimant would not be sufficient to enable me to make a finding as to the substantiality (or otherwise) of the adverse effect. Looking at the problems said to be experienced with sleeping, there was an almost complete absence of any evidence explaining the impact of that on the claimant.

59.4 I can say nothing about the longevity question, given the answers that I have given to the three previous questions.

60. In those circumstances, I am unable to find that the claimant satisfies the test for disability in s.6 of the 2010 Act and his various claims for disability discrimination must be dismissed.

Consequential directions

61. Unfortunately, it was necessary for me to reserve my judgment and reasons in this instance. The parties' submissions concluded late in the day and it was clear to me that I would need to carry out a detailed review of those submissions, the medical evidence and the three articles or papers before reaching a decision. However, I was able to canvass with the parties what impact the dismissal of these claims might have on the directions already given should I decide against the claimant on the disability issue and what further directions were needed to take the case to its full merits hearing in 2025. It was agreed that the duration of the hearing should remain at five days, but that further directions would be needed. Those directions and provision for judicial mediation are set out in separate orders.

Employment Judge Andrew Clarke KC

Date signed: 2 October 2023

Sent to the parties on:
10 October 2023

For the Tribunal Office: