EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
AB	**v**	CD Limited

Heard at: Huntingdon **On:** 14,15 August 2023

Before: Employment Judge M Ord

Appearances
For the Claimant: In person
For the Respondent: Mr A Edge, Counsel

RESERVED JUDGMENT

1. The Claimant was not at the material time a disabled person within the meaning of s.6 of the Equality Act 2010.

2. The Claimant's belief in *"every individual's fundamental right to freedom, dignity and bodily autonomy and integrity"* is not a protected belief under s.10 of the Equality Act 2010.

3. The Claimant's complaints, and each of them, have in any event no reasonable prospects of success.

4. For the above reasons, and each of them, the Claimant's complaints are struck out.

REASONS

1. This matter came before me to determine:-

   1.1. Whether or not the Claimant was at the material times a disabled person within the meaning of s.6 of the Equality Act 2010;

1.2. Whether the Claimant's belief in *"every individual's fundamental right of freedom, dignity and bodily autonomy and integrity"* is a protected belief under s.10 of the Equality Act 2010; and

1.3. Whether the Claimant's complaints, or any of them, should be struck out on the basis that they have no reasonable prospect of success.

2. This Hearing was conducted as a Private Preliminary Hearing by Order of Employment Judge Fredericks-Bower dated 14 June 2023 and with the consent of the parties following Anonymity Orders made on 6 December 2022 by the same Employment Judge.

3. The Claimant is employed by the Respondent (and continues to be so employed).

4. The Claimant began Early Conciliation on 11 May 2022. Early Conciliation ended on 13 May 2022 and he presented his claim form to the Tribunal on 21 May 2022, saying that he had been the victim of:-

4.1. Discrimination on the protected characteristic of disability as defined in s.6 of the Equality Act 2010; and

4.2. Discrimination on the protected characteristic of philosophical belief as defined in s.10 of the Equality Act 2010.

5. All claims are denied. It was not accepted by the Respondent that the Claimant was a disabled person within the meaning of s.6 of the Equality Act 2010 and the Respondent denied that the Claimant had any philosophical belief which was afforded protection by s.10 of that Act.

6. Previous Preliminary Hearings were held on 6 December 2022 and 14 June 2023 and further directions were given, following which the matter came before me.

The Claimant's Claimed Disability

7. The Claimant says that because of two impairments he was unable to wear a face mask as required by the Respondent when moving around their office during the period of the Covid pandemic. The Claimant (this is the way it is set out in his Skeleton Argument for today's Hearing) says that the Respondent:-

7.1. Denied him access to his contractual place of work for *"a very substantial period"* between 2020 and 2022;

7.2. Forced him to work contrary to the terms of his contract of employment (as to place of work) against his will and without his consent;

7.3. Caused him to work much longer than his contracted hours out of necessity; and

7.4. Forced him to provide the Respondent with the use of a substantial part of his jointly owned property against his will and without his consent.

8. The impairments relied upon are:-

8.1. A long standing propensity to suffer panic attacks; and

8.2. What the Claimant says is,

> *"a profound and absolute visceral psychological aversion to being subjected to degrading and humiliating impositions, in this case being forced to wear a mask which would have amounted to a form of psychological torture and resulted in severe and lasting distress"*

9. At the Hearing before me the Claimant gave evidence by way of reference to written statements and was cross examined. A Bundle of documents was provided containing:-

9.1. The Claimant's Disability Impact Statement;

9.2. An email setting out the Claimant's impairments dated 2 May 2023 from the Claimant to the Respondent;

9.3. A Witness Statement from the Claimant setting out his evidence in relation to his alleged philosophical belief dated 16 May 2023;

9.4. A Witness Statement from the Claimant regarding his alleged impairments dated 16 May 2023;

9.5. Two supplemental Statements from the Claimant regarding his alleged philosophical belief; and

9.6. A Witness Statement from Judith Wilding (previously Human Resources Director for the Respondent) and Paul Deakin (at the relevant time Claims Relationship Manager and Senior Manager (Claims)) for the Respondent.

10. Both sides presented written submissions at the commencement of the Hearing to which they added orally at the conclusion of the Hearing and thereafter submitted, by agreement, further closing submissions in writing. The parties also provided a list of authorities.

11. I am grateful both to the Claimant and to Mr Edge for the helpful way they have each presented their cases.

The Law

12. It is appropriate before considering the facts of this matter as I find them based on the evidence provided, to set out the relevant Law.

13. Section 6 of the Equality Act 2010 states this,

> (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.

14. Goodwin v Patent Office [1999] ICR 302, confirmed that the existence of a physical or mental impairment is a pre-condition to having a disability and set out four questions for Tribunals to determine on the question of disability, namely:-

14.1. Did the Claimant have a physical and / or mental impairment?

14.2. Did the impairment adversely affect the Claimant's ability to carry out normal day to day activities?

14.3. Was that adverse effect "substantial"? and

14.4. Was the adverse effect long term?

15. A definition of physical or mental impairment was suggested in Rugamer v Sony Music Entertainment UK Limited [2002] ICR 301 as,

> "Some damage, defect, disorder or disease compared with a person having a full set of physical and mental equipment in normal conditions."

16. In Primaz v Carl Room Restaurants Limited [2002] IRLR 194, the Employment Appeal Tribunal found no sufficient causal relationship between the Claimant's impairments and the restrictions that she voluntarily imposed on her day to day activities because she had belief as to what would trigger her condition. The Appeal Tribunal said that a Tribunal had been wrong to focus on any adverse effect of the coping mechanism. For the purposes of s.6 EqA 2010 it must be the impairment that causes the adverse effect on the person's ability to do normal day to day activities and that is an objective test of causation. It is not enough for a person to truly believe that the impairment has the claimed effect, the issue must be determined on the evidence before the Tribunal so if a Claimant asserts that engaging in a certain activity will risk triggering or exacerbating an adverse effect of an impairment, the Tribunal must consider whether it has evidence

that objectively makes good that contention. There must be a causal relationship between the impairments and the restrictions.

17. In Vance v Royal Mail Group Plc EATS0003/06, a reference to *"normal day to day activities"* was considered by Lady Smith (by reference to the previous legislation, the Disability Discrimination Act) as follows:-

> "It is plain… that if a person is impaired physically in a way which has a substantial and long term adverse effect on his ability to carry out a normal day to day activity which, at the relevant time, was one of his normal day to day activities, then he is disabled within the meaning of the Act.
>
> As is reflected in paragraph C2 of the Guidance, a person will not be treated as disabled because he is substantially impaired in his ability to carry out an unusual activity, even if it is an activity that is normal for him. However, it is not a corollary of that, that where a person does not, as part of his daily life, carry out an activity that is normal for others, that he is to be treated as disabled if he would not be able to do it, which was the thrust of Mr Marshall's submissions on this matter. If Mr Marshall is correct, the reference in the section to the micro extent of the person's impairment would be otiose".

18. Gallop v Newport City Council [2014] IRLR 211 established that any alleged less favourable treatment in a complaint of Direct Disability Discrimination, cannot be because of the Claimant's disability if the alleged discriminator did not know the person was disabled.

19. In IPC Media Ltd v Millar [2013] IRLR 707 it was held that, due to the statutory language of section 15 of the Equality Act 2010 (a requirement that any unfavourable treatment must be "*because of"* something arising in consequence of disability), it is necessary to identify the alleged discriminator, analyse whether they personally did not know and could not reasonably have been expected to know of the Claimant's disability, and in such analysis it is inappropriate to automatically impute to the alleged discriminator, information known elsewhere in the business but not by him or her.

20. In A Limited v Z [2020] ICR 199, the Employment Appeal Tribunal made it clear that if a Tribunal formed the view that an alleged discriminator ought to have taken further steps to ascertain whether the Claimant was disabled, before making a finding of "constructive knowledge" the Tribunal must first analyse what further information would have been provided by the Claimant had such further enquiries been made. In that case, it was held that the Claimant would have continued to suppress information about their disability.

21. Further, in Gallacher v Abellio Limited EAT0027/19, some level of detail regarding the alleged disability and its impact[s] must have been made available to the decision maker in order for them to be fixed with actual or constructive knowledge.

Philosophical Belief

22. Under section 10 of the Equality Act 2010 the direct characteristic of religion or belief means in relation to belief *"any religious or philosophical belief".*

23. The leading case of Grainger Plc v Nicholson [2010] ICR 360, states that a belief qualifies for protection (and only qualifies for protection) if:

    i. It is genuinely held;

    ii. Is not simply an opinion or view point based on the present state of information available;

    iii. Concerns a weighty and substantial aspect of human life and behaviour;

    iv. Attains a certain level of cogency, seriousness, cohesion and importance; and

    v. Is worthy of respect in a democratic society, is not incompatible with human dignity and is not in conflict with the fundamental rights of others.

24. McClintock v Department of Constitutional Affairs [2008] IRLR 29, was a case where the Employment Appeal Tribunal said that the Claimant's belief (objecting to same sex adoption) did not fall for protection because of the belief arose not because of any principle but from the grounds that there was insufficient scientific evidence to show that same sex adoptions were in the interests of the child.

25. In X v Y Tribunal case No: 2413947/20, a Claimant's belief in the fear of catching Covid 19 and the need to protect herself and others was not a protectable belief but merely a reaction to a threat of physical harm and the need to take steps to reduce the threat.

26. A narrow belief ("parochial") rather than fundamental, is unlikely to qualify for protection Harron v Chief Constable of Dorset Police [2016] IRLR481.

27. A belief that an employer should not support the "Black Lives Matter" movement could not attain the level of cogency, seriousness, cohesion, and importance. In Charalambous v Barnsley College (Employment Tribunal case: 1802552/2021), the Judge there stating that the belief was confined and parochial.

28. If a belief is protected under section 10, an employee has a right to protection for the holding of the belief and for the manifestation of it. Higgs

v Farmor EA/2020/000896 guides the Tribunal to ask the following questions:

28.1 Is there a close or direct nexus between the conduct of the Claimant and their protected beliefs? If so, the conduct would amount to a manifestation.

28.2 Was any limitation of the Claimant's right to manifest their belief justified pursuant to 9(2) of the European Convention on Human Rights?

28.3 The Tribunal must apply the Proportionality Test by asking the following questions:

i. Is the objective of the measure sufficiently important to justify the limitation of the right?
ii. Is the measure rationally connected to the objective?
iii. Could a less intrusive measure have been used without unacceptably compromising the achievement of the objective?
iv. Balancing the severity of the measure's effects on the rights of the person to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, does the former outweigh the latter? (Bank Mellat v HM Treasury (2) [2014] AC700).

29. In City of Oxford Bus Services Ltd v Harvey EAT0171/18, the Employment Appeal Tribunal provided Guidance relating to the justification of indirect discrimination as follows:-

29.1 There must be a critical evaluation of whether the Employer's reasons demonstrated a real need to take the action in question; and

29.2 If so, there must be consideration of the seriousness of disparate impact of the provision criteria or practice on those sharing the relevant protected characteristics, including the Claimant and whether the former was sufficient to outweigh the latter.

30. The Tribunal must assess not only the needs of the Employer but also the effect on those who share the characteristic. To be proportionate, the measure must be both appropriate and reasonably necessary to achieve a legitimate aim.

31. Reasonably necessary means that it is not necessary to prove that there was no other way of achieving the objective. There is a distinction between justifying the application of the Rules for a particular individual and justifying the Rule in the particular circumstances of the business.

Striking Out

32. Rule 37 of the Employment Tribunal Rules and Procedure:-

> A Tribunal, on its own initiative, on the application of a party, to strike out all or part of a claim or Response because:
>
> a. It is scandalous or vexatious or has no reasonable prospect of success;
> b. The manner in which the proceedings have been conducted on behalf of the Claimant or the Respondent has been scandalous, unreasonable or vexatious;
> c. For non compliance with any of these Rules or within an Order of the Tribunal;
> d. It has not been actively pursued; and
> e. The Tribunal considers it is no longer possible to have a fair hearing in respect of the claim or Response or part thereof to be struck out.

33. The test for a claim having "no reasonable prospect of success" is whether the prospect of success is realistic (Ezsias v North Glamorgan NHS Trust [2007] IRLR603).

34. Whilst it would not usually be the case, where there is a dispute of facts, strike out is permissible where the facts sought to be established by a party are totally and inexplicably inconsistent with the undisputed contemporaneous documents (Ezsias v North Glamorgan NHS Trust [2007] IRLR603).

35. When considering strike out a Claimant's case must be taken to its highest, (Mechkarov v Citibank N.A [2016] ICR 1211).

36. Cox v Adecco and Others UKEAT/0339/19/AT (V), when taking the Claimant's case at its highest, the Tribunal must do more than simply ask the Claimant to take it to the relevant material. The Tribunal must consider the claim as pleaded and as set out in the relevant supporting documents and should consider allowing an amendment to the application, applying the usual principles, if an amendment would provide the claim with reasonable prospects of success.

37. Maderassy v Amura International Plc [2007] ICR867 (Court of Appeal), reminds the Tribunal that:

> "…the bare facts of a difference in status and a difference in treatment only indicate the possibility of discrimination. They are not, without more, sufficient material from which a Tribunal could conclude that on the balance of probabilities the Respondent had committed an unlawful act of discrimination".

38. A Limited v Z [2020] ICR199 is a case where the Employment Tribunal dealt with circumstances where it is alleged that the purported discriminator should have taken further steps to ascertain whether the Claimant was disabled before making a finding of constructive knowledge, the Tribunal must analyse what further information would have been provided, had such further enquires been made. In that case, the Claimant would have continued to suppress information about their disability and the Employment Appeal Tribunal overturned the finding of constructive knowledge.

39. Gallacher v Abellio Limited EAT0027/19, recognised that some level of detail as to the alleged disability and/or its effect, needs to have been made available to the Decision Maker in order for them to be fixed with actual or constructive knowledge.

40. Convery the Bristol Street Fourth Investments Limited 1807364/2020 is the first Instance case of decision of the Employment Tribunal in Leeds to which the Claimant has drawn my attention. In that case the Employment Judge found that wearing a facemask was a normal day to day activity, finding that if it become "the norm for the vast majority of the population with effect from 24 July 2020".

41. In the First Instance case of Morter v Echocleen Services Limited and Ors (3305486/2021), the Tribunal Judge also found that during the Corona virus pandemic,

> "Mask wearing did become such a common activity… it was an activity carried out almost universally by most men and women on a regular basis. It became a requirement of day to day life".

42. In the Guidance to the Equality Act 2010 (B7 to B10), the question of avoidance strategies is considered. The duty of the Tribunal is to consider:

> "How far a person can reasonably be expected to modify his or her behaviour, for example, by the use of a coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day to day activities. In some instances, a coping or avoidance strategy might alter the effects of the impairment to the extent that they are no longer substantial and the person that no longer meets the definition of disability….",

in other words, whether a coping or avoidance strategy puts a person who would otherwise be treated as disabled under section 6 of the Equality Act 2010 outside that definition because of any modifications of behaviour that a person can reasonably be expected to undertake.

43. Further guidance is given in Primaz regarding the importance of evidence other than a belief held by a Claimant. There it was said that :

> "… in a case where the Claimant asserts that engaging in a certain activity will triggering or exacerbating some adverse effect of the impairment itself, such as bringing on a seizure or an adverse skin reaction of something of that sort, and that is disputed, the Tribunal must consider whether it has some evidence that objectively makes good that contention".

The Facts

44. Based on the evidence presented before me I have made the following findings of fact.

45. On March 2020, due to high levels of Covid infections, the then Prime Minister announced the first "National lockdown" throughout the UK. People were ordered to stay at home.

46. As a result the Respondent's offices were closed and its employees were required to work from home.

47. On 5 June 2020 the World Health Organisation released, "Advice on use of masks in the context of Covid 19". Previous advice was updated and it was said that:

> "to prevent Covid 19 transmission affecting the areas of community transmission, Governments should encourage the public to wear masks in specific situations and settings as part of a comprehensive approach to suppress…..transmission".

48. On 14 July 2020, Government Guidelines entitled "Face coverings: when to wear one, exemption and what makes a good one" was issued. The version of the advice dated 21 July 2021 stated:

> "Business and employers must complete a risk assessment, and take reasonable steps to manage risks to the health and safety of their workforce and customers in their workplace or setting, including the risks of Covid 19. Businesses can require or encourage customers, clients or their workers to wear a face covering.
>
> When completing a risk assessment you would need to consider the reasonable adjustments needed for staff and customers with disabilities".

49. The Respondent's Ipswich office, where the Claimant was based, remained closed from 23 March 2020 until 10 May 2021. The Respondent carried out risk assessments prior to the gradual re-opening of the office and issued documents which set out its policy on face coverings.

50. On 17 June 2021 the Respondent's Q & A document stated, in answer to the question:

> *"Will masks be required? and, if so, will they be supplied"?*

The following was answered:

> "Face coverings will be supplied, and the general rule will be to wear the mask whilst moving around the office, unless you are exempt for medical reasons. You will be supplied with a face covering or you can choose to wear your own. This requirement will be reviewed after 19 July*".*

51. The follow up guidance in August 2021, in answer to the question:

> *"Re the point on face coverings in the office. Do people have to show a doctor's note to prove that they are medically exempt?"*

Stated:

> "Yes, a Doctor's note will be required if you won't be wearing a face covering because you are medically exempt. Please advise your line manager of your exemptions so they are aware, and they will advise you to provide the note directly to Judith Wilding. If you are unable to obtain a Doctor's note in time for this weeks' return to the office, we kindly ask that you continue to work from home until you can provide the note. By way of reminder, unless you are medically exempt, face coverings are mandatory whilst moving around all our offices. They are not required when seated at your desk or in the meeting rooms".

52. This Policy was applied to Respondent's employees based in Ipswich (including the Claimant) from 10 May 2021 when the process of gradually re-opening the office began until 23 February 2022 when all restrictions on attendance, including any requirement to wear a mask were lifted.

53. The Claimant objected to the policy and the Government directives. Equally, the Respondent had carried out certain steps to assist all of those employees who were working from home.

54. On 7 April 2020, the Claimant was sent a workstation self-assessment form in relation to home working. He completed it on 18 June 2020. In answer to the question of whether or not he had any special requirements that needed consideration, he replied, "*No*".

55. The Claimant's workload was managed by Catherine Murphy (Assistant Manager) and then by Mr Deakin from April 2020 onwards.

56. In June 2020, the Claimant had emailed Ms Murphy, describing his wellbeing as "*far from good"* and stating that he had:

> "*…absolutely had enough with this illegal and suicidal lockdown and with working from home. Trying to work at the moment is like trying to work while your house is on fire, knowing right from day one that this was a totally avoidable catastrophe. All our futures are being destroyed needlessly.*
>
> *There is absolutely no reason to continue with this madness but still it goes on… We have all been violated and abused by the state. The social contract and the rule of law no longer exist".*

57. On the same day, 4 June 2020, the Claimant again wrote to Ms Murphy. He was critical of what he described as Government propaganda which had been *"swallowed wholesale"* and said he felt like *"one of the few sane people amongst a nation of delusional brainwashed people",* stating that people would *"literally rather continue on their own destruction than listen to evidence or reason".*

58. At that time the Claimant had not disclosed anything that would alert Ms Murphy or Mr Deakin to any potential disability. Mr Deakin, reasonably, formed the view that his issues appeared to be linked to political opinions and the Government's response to the Covid 19 pandemic.

59. A suggestion was made that the Claimant might take some time from work (Mr Deakin had noticed that he was working at weekends). The Claimant had apparently thought about doing so but did not take the matter further.

60. In July 2020 Mr Deakin reduced the Claimant's workload. In October 2020 the Claimant wrote to Paul Deakin as follows:

> *"I understand that those working in the office are expected to wear a mask when not at the desk. Not only is this entirely pointless, given that high quality studies show that they are useless against viruses, using masks this way is actually harmful in that it transfers virus and bacteria from hands to face, increasing the likelihood of infection. Wearing a mask is a non-pharmaceutical medical intervention. Making someone undergo a needless medical intervention which is not for their benefit is a breach of the Nuremburg Code.*
>
> *The Government's own mask mandates were made ultra varies under our constitution as they exceed the scope of the parent legislation. Forcing healthy people to act as if they are sick is Munchausen Syndrome by Proxy, which is a crime in certain circumstances. It certainly constitutes physical and psychological abuse of anyone who is aware that the mask is of no medical benefit and is merely a symbol of submission to this colossal deception".*

61. On 16 October, the Claimant wrote to Ms Wilding, stating:

> *"… I have opposed mandatory masks ever since they were suggested… it is quite clear that decades of scientific study show that healthy people should not be wearing masks in community settings such as offices".*

62. He later said:

> *"Given the physical and psychological harm they cause, I cannot wear a mask without there being any sound medical reason to do so, and, with all the evidence available, I firmly believe that no employee should be made to wear one against their will".*

63. Subsequently, in June 2021, the Claimant wrote to the Executive Claims Director (Stephen Roberts), on 15 June, stating :

> *"I am fortunately legally exempt under the legislation, so I have never had to suffer the psychological torment of wearing a device I know to be, at best, medically useless, and that it has been mandated for reasons of psychological manipulation. Others are not so lucky".*

64. The Claimant also said that he had been *"recently physically assaulted by someone wearing a mask".*

65. In August 2021 he wrote to Judith Wilding to say:

> "*Given that:*
>
> - *Covid 19 is a relatively low risk disease.*
> - *There is a lack of evidence for the effectiveness of masks.*
> - *There is substantial evidence of the harms they cause.*
>
> *Requiring employees to wear masks is unnecessary, perverse, physically and psychologically harmful and an infringement of the right to bodily autonomy".*

66. Although the Claimant told Mr Deakin on 18 August 2021, that he felt he could not wear a mask because he had *"experienced panic attacks while at University",* he did not, contrary to Mr Deakin's encouragement, permit Mr Deakin to inform HR and would consider informing HR himself but only on a "without prejudice" basis.

67. As a fact, the Claimant did not inform Ms Wilding of his history of panic attacks at any time so that Ms Wilding was unaware of any history of panic attacks or the Claimant's assertion that such attacks were triggered by wearing face coverings.

68. In relation to the Claimant's medical evidence, GP notes and records have been produced.

69. Earlier in his life the Claimant suffered panic attacks. In 1990 the clinical psychologist treating the Claimant, stated that they were "*precipitated generally by thoughts about his own existence and the nature of reality".*

70. By October 1990 the same psychologist stated the Claimant was

> *"In good spirits… now [feels able to lead a normal life again]".*

71. By 1991 GP records say that the Claimant had not had an attack for a month and then only a mild one [he had not seen a medical practitioner in relation to his panic attacks for a year].

72. In 1993 the Claimant suffered panic attacks, apparently due to examination stress, but there is no reference to any panic attack between 1995 and 2000.

73. In March 2004 the Claimant began his period of continuous employment and referred to a daily dose of 25mg of Dothiepin owing to "*occasional mild anxiety*" which had not caused him to suffer any absence from work.

74. He then saw his GP on 7 April 2011 and referred to suffering panic attacks "*20 years ago*" and denied any precipitating factor.

75. There was no evidence of any medication continuing after 2013 in relation to panic attacks and there is no further reference to panic attacks in the Claimant's medical notes and records.

76. The Claimant states that he has a *"longstanding propensity to suffer panic attacks"* and relies on this as his *"first impairment"* in relation to his complaint of disability discrimination.

77. On the facts of the case as presented to me, the Claimant has suffered from no such attacks since the latest 1995, has required no medication for such attacks since 2013 and his statement made in submissions that his panic attacks are caused by stress and that he has had increased attacks since 2020 are not supported by any medical evidence and were made for the first time in closing submissions in writing, after the hearing. There is no evidence before me, other than the Claimant's submission – in particular no medical or other expert evidence – to support the Claimant's contention that wearing a face covering would cause a panic attack. Indeed, the evidence identified that one of the strategies which the Claimant was advised to undertake (and which he says he did undertake) when feeling the onset of a panic attack, was to cover his nose and mouth with, and breathe into and out of a paper bag, thus covering his nose and mouth in the way a mask would.

78. The Claimant complains that because of the Respondent's policy of requiring persons to wear a mask whilst moving around the office unless they could provide a medical exemption, he was denied access to the office and was required to work from home. The Claimant's own evidence was that he did not seek, at any time, any form of medical exemption. He told the Respondent that he was not registered with a GP Practice but in fact what had happened was that the GP Practice which he had previously been a patient of had been taken over by another Practice.

Conclusions

Disability

79. The Claimant has not established that at the material time he was a disabled person within the meaning of s.6 of the Equality Act 2010.

80. The Claimant, earlier in his life, suffered panic attacks. He had suffered no such attacks since, at the latest, 1995 whereas the material time under consideration is between the closure of the Respondent's office in Ipswich on 23 March 2020 (the announcement of the first national lockdown) and 23 February 2022 when all restrictions on attendance at the Respondent's premises, including any requirement to wear a mask, were lifted.

81. The first impairment upon which the Claimant relies is *"a longstanding propensity to suffer panic attacks".* The Claimant refused to wear a mask stating that this would trigger his panic attacks.

82. There is no evidence other than the Claimant's submission of that allegation in support of that contention.

83. By the time of the relevant period, there had been a number of years since the Claimant had suffered any panic attacks. He has produced no evidence in support of any contention that they would be *"likely"* to recur, nor any evidence in support of his contention that they would be triggered by the wearing of a face covering.

84. Indeed, this is an allegation which is entirely contrary to two important matters,

    84.1 The fact that when suffering or feeling the onset of a panic attack, the Claimant used as a strategy, placing a paper bag over his nose and mouth and breathing into and out of the paper bag thus covering his nose and mouth; and

    84.2 Accordingly, if wearing a mask was a trigger for a panic attack, then so would be the covering of the nose and mouth with a paper bag, yet this was advised and used by the Claimant as a strategy to deal with a panic attack.

85. Further, the Claimant told Judith Wilding of the Respondent on 16 October 2020, that:

> *"I cannot wear a mask without there being any sound medical reason to do so, and, on all the evidence available, I firmly believe that no employee should be made to wear one against their will".*

86. This is a clear indication that the Claimant objected to wearing a mask because he did not consider there was a sound medical reason to do so. That is very different indeed from any medical reason preventing the wearing of a mask or face covering and the unsupported (on any medical evidence) allegation that wearing a face covering would trigger a panic attack.

87. Dealing with the Claimant's second impairment, Mr Edge submits that this is not an impairment but in effect, an attempt to redefine the Claimant's philosophical belief as a medical condition. I consider that to be correct.

88. The Claimant says that the impairment is

> *"…a profound and absolute visceral psychological aversion of being subjected to degrading and humiliating impositions, in this case being forced to wear a mask which would have amounted to a form of psychological torture and result in severe and lasting distress".*

89. This alleged psychological aversion is not supported by any medical evidence whatsoever. It is a statement from the Claimant. If he had wished to call medical evidence or provide a report from an appropriate psychologist in support of this contention he could have done so but he has not.

90. Mr Edge further submitted, which I accept, that the advancement of the second impairment amounts to a proposition that if an individual is not able or willing to carry out a normal day to day activity, then he or she must be disabled. The argument is circular because:

    90.1 The day to day activity in question is said to be wearing a mask; and

    90.2 The physical or mental impairment is an alleged inability to do so.

91. However, the inability to carry out a normal day to day activity under the Equality Act must be because of the impairment.

92. Rugamer stated that:

> "Impairment… has, in our judgment, to mean some damage, defect, disorder or disease compared with a person having a full set of physical and mental equipment in normal condition. The phrase… refers to a person having…. something wrong with them physically or something wrong with them mentally".

93. The Claimant does not advance the argument that there was anything wrong with him or his physical and mental equipment but rather says that his aversion to wearing a mask was entirely "*logical*". He, at the relevant time, stated:

> "*I cannot wear a mask without there being any sound medical reason to do so"*

    Which demonstrates that the Claimant here was, I find, able to wear a mask. He was not disabled or suffering any physical or mental impairment which prevented him from doing so, but was refusing to do so because he did not consider the medical evidence in support of mask wearing at the time of the Covid 19 pandemic compelling or sufficiently cogent to warrant the requirement of mask wearing in public places.

94. Accordingly, the Claimant did not have either of the physical / mental impairments for which he contends. There was no evidence before me that what the Claimant described as his longstanding propensity to suffer panic

attacks was in fact the case. He had had no panic attacks since 1993 and there was no evidence that they were likely to recur.

95. For those reasons the Claimant has not established that he was a disabled person within the meaning of s.6 of the Equality Act 2010 at the material time.

96. In his written submissions after the conclusion of the hearing, the Claimant refers to further reasons why he would not wear a mask being:

> *"social embarrassment" and "loss of face".*

97. Irrespective of the fact that they were not advanced as reasons during the course of the hearing or at any time previously, they take the Claimant's case no further forward.

98. The Claimant's complaints are that the Respondent's policy which required, at the relevant time, every member of its workforce to work from home unless they wore a face covering whilst moving around the office or provide the Respondent with medical evidence showing that they were medically exempt from wearing such a face covering amounted to:

    98.1 Direct disability discrimination;

    98.2 Indirect disability discrimination; and

    98.3 Discrimination arising from disability.

99. Even if the Claimant had established that he was a disabled person within the meaning of the Act, those claims would be bound to fail.

100. There are two essential elements of claim for direct discrimination. First, a disparity of treatment because of the protected characteristic, secondly, knowledge of the protected characteristic in the mind of the discriminator.

101. There is no disparity of treatment in this case. The Claimant was treated the same as every other employee. Further, the Claimant withheld, and did not disclose any medical evidence or other information which would lead the person who applied that policy (Ms Wilding) to have any knowledge of his disability at any material time.

102. That lack of knowledge is also fatal to the Claimant's complaint under s.15 of the Equality Act 2010 and discrimination arising from disability (OPC Media Limited v Millar [2013] RNLR 707).

103. In relation to the claim for indirect discrimination:

    103.1 The policy of requiring everyone (except those medically exempt) from wearing a mask whilst attending the Respondent's office, clearly touched on an important and serious matter, the Covid 19 pandemic; and

103.2 Any person without an exemption who refused to wear a mask around colleagues would be acting contrary to Government guidance and would have had an impact on other members of the workforce. The policy permitted the Claimant to attend work without a mask with a doctor's note and no less intrusive measure has been suggested by the Claimant.

104. There was no evidence that the policy placed the Claimant at any particular disadvantage because of any proven disability and/or that it constituted any unfavourable treatment. He could have obtained evidence if he was medically exempt and made no attempt to do so.

105. Accordingly, even if the Claimant had established that he was a disabled person under s.6 of the Equality Act 2010 his allegations of discrimination were bound to fail for the reasons set out above. The claims had no reasonable prospect of success whatsoever.

Philosophical Belief

106. It is important to note the distinction between the Claimant's views regarding the wearing of masks in the sense that they were, on his evidence, ineffective in relation to Covid 19 and his view that they were associated with slavery, perversion and the occult so that he was unwilling to wear them and the philosophical belief relied upon for freedom, dignity and bodily autonomy.

107. The Claimant has not relied on any of those beliefs as affecting his ability to wear a face covering.

108. The belief in freedom, dignity, bodily autonomy and integrity is wholly unconnected to the Claimant's unwillingness or alleged inability to wear a mask. He accepted, in his Witness Statement, that he did not consider there was anything degrading or demeaning about someone wearing an effective and necessary mask for a particular occupation, that his belief applies equally to those who choose to wear a mask, *"however futile that may be"* and he respected their right to do so if they wish and further, that the question of whether masks are effective to prevent viral transmission is a factual scientific matter and not a question of belief, with the most convincing evidence (in the Claimant's view) being that they do not. Further, the belief is entirely neutral as to whether any individual could, or could not, wear a mask.

109. The Claimant's complaint is of indirect discrimination based on his stated philosophical belief.

110. The first question is whether the belief is capable of protection under s.10, applying the test in Grainger.

111. At one level the stated philosophical belief of the "*fundamental right to freedom, dignity and bodily autonomy and integrity*" is something which is so wide ranging as to be described by Mr Edge as 'banal'.

112. Most importantly, it does not deal with the issue at hand, the wearing or not of a face covering. Accordingly, it does not support any of the Claimant's discrimination claims.

113. The Claimant's complaint is of indirect discrimination and the stated belief is neutral as to whether any individual could, or could not wear a mask – bearing in mind the Claimant's own evidence that there was nothing degrading or demeaning about someone wearing an effective and necessary mask for a particular occupation, or his respect for others having their right to wear a mask.

114. The Claimant has prayed in aid and taken me to historical photographs of slaves masked in one way or another and usually also subject to other physical and mental mistreatment. Their relevance in this case is zero.

115. Equally, reference to prisoners in Guantanamo Bay wearing masks takes the Claimant's case no further forward. It is the slavery, the imprisonment, the torture of such individuals which offends his belief. The difference between a slave being "*masked*" in such a way as to prevent them eating is a considerable distance apart from a policy of wearing (unless medically exempt) a face covering during a viral pandemic.

116. In truth, the Claimant does not consider that the wearing of a mask is contrary to his belief. He has expressed the view that he could wear a mask if medical evidence was (in his view), sufficiently cogent and accepts that there is nothing demeaning about someone wearing a mask for a particular occupation.

117. The Claimant's objection to wearing a mask is not, I find, based on any philosophical belief. His objection is – in his words – because *"the most convincing evidence suggests that they do not [prevent viral transmission]"*. That was the basis for the Claimant's refusal.

118. In any event, the belief expressed by the Claimant lacks the necessary cogency, seriousness, cohesiveness and importance to satisfy the Grainger test. It is so wide-ranging as to be meaningless.

119. I agree with Mr Edge's analysis of the Claimant's position that the only possible sustainable "*beliefs*" which he has put forward are that :

    119.1 Masks are associated with slavery, imprisonment, subjugation, aversion and humiliation, and

    119.2 That they are ineffective in preventing the transmission of Covid 19 virus.

120. The first fails the test in Grainger. It is insufficiently cogent. It is not a belief as to a weighty and substantial aspect of human life and behaviour. It is the Claimant's view based on extreme examples of *"masking"* – all of which include wider and much greater substantial aspects of slavery or imprisonment, and nothing more.

121. The second "*belief*" is a mere view. It is the opinion of the Claimant on the basis of his reading / understanding / acceptance or not, of the information available and, as he states, *"is a factual scientific matter, not a belief".*

122. Further, and in any event, the Respondent's policy was proportionate in the face of the Government Guidelines and the Covid pandemic. It required only that the Claimant, if attending or moving around the office, should wear a mask or obtain a medical exemption from doing so. That was a legitimate balance of the rights of all employees, including all those working within the Respondent's Ipswich office.

123. Further, there is no evidence provided of any group disadvantage or that the Claimant suffered any particular disadvantage as a result of this PCP. The Claimant could, at all material times, have sought or obtained a medical exemption but did not attempt to do so.

Summary

124. The Claimant was not a disabled person at the material time within the meaning of s.6 of the Equality Act 2010.

125. The Claimant's stated philosophical beliefs do not qualify for protection under s.10 of the Equality Act 2010.

126. In any event, each of the Claimant's complaints have no reasonable prospect of success and in the event that the Claimant had established either disability under s.6 or protection under s.10 of the Equality Act 2010 is liable to be struck out on that basis.

30 October 2023

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Employment Judge M Ord

Sent to the parties on:6 November 2023.

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For the Tribunal Office