



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms S Chan  
**Respondent:** Stanstead Airport Limited  
**Heard at:** East London Hearing Centre (by CVP)  
**On:** 14 November 2023  
**Before:** Employment Judge S Park

**Representation**

**For the Claimant:** In person  
**For the Respondent:** Mr R Mitchell (solicitor)

## RESERVED JUDGMENT

The Judgment of the Tribunal is that at the material time the claimant was disabled as defined in the Equality Act 2010.

## REASONS

### Claims and issues

1. The claimant is pursuing claims against the respondent for unfair dismissal and disability discrimination. In her claims she says that she is disabled “*by virtue of stress, anxiety and the menopause*”. The respondent does not accept that the claimant is disabled within the meaning of section 6 Equality Act 2010.
2. The claimant was ordered to provide medical evidence and a statement about disability, which she duly did. Having reviewed this evidence, the respondent’s position remained the same.
3. This hearing was held to determine whether or not the claimant was disabled at the material time within the meaning of section 6 Equality Act 2010.

### Procedure, documents and evidence heard

4. The hearing was held by video (CVP). The respondent was represented and the claimant attended in person.
5. A bundle of documents had been prepared. This included the claimant's medical records, two statements she had prepared on disability, Occupational Health reports and return to work documentation and other contemporaneous documents of relevance to the issue. The respondent cross-examined the claimant on her evidence.
6. The respondent had prepared written submissions and the claimant made oral submissions. Before reaching my decision I also asked the parties to address me on recurrent conditions, as it appeared potentially relevant in this case and had not been expressly referred to by either party in their submissions.

### Findings of Fact

7. The claimant was employed by the respondent as a Security Officer. Her employment commenced in 2008.
8. Up until the middle of 2017 any sickness absences the claimant had were brief. She was generally off work for 1 or 2 days and at most 4 days. There was no underlying reason for the absences, which tended to be due to flu symptoms, gastrointestinal symptoms, and some back problems.
9. On 19 July 2017 the claimant was signed off work with stress. She remained off work until 13 August 2017. This was the first time the claimant had been absent from work due to her mental health.
10. The claimant explained in her evidence the first sign of stress had been in April 2017. The claimant's dentist noticed the claimant had been grinding her teeth and queried if she had been under stress. At this point the claimant was not aware of any particular feelings related to stress. The claimant explained in oral evidence that before then she had never experienced any anxiety or other difficulties with her mental health. I accepted that this was the case. It was consistent with the claimant's absence record.
11. The claimant said that the feelings of stress were the first symptoms she had of the menopause. Initially she did not know why she was beginning to feel stressed. She started to feel overwhelmed by work but could not understand why. In her statement the claimant has also described feeling "*uncharacteristically emotional*". She would get upset about small things that did not usually bother her. The claimant set out how she had been feeling from 2017 onwards in an email to her manager from November 2021. This was an email the claimant sent to her manager with a timeline of how she had experienced her menopause.
12. In July 2017 the claimant went to see her GP, as evidenced by her medical notes. She said that she discussed the perimenopause with her GP then, as she was also starting to experience other symptoms. This is not recorded in the claimant's medical notes. There is no reference to menopause in the claimant's GP notes at all, either then or later. The claimant acknowledged that this was unfortunate,

but her evidence was that she did discuss this with her GP. I accepted the claimant's evidence on this point and that she first discussed menopause with her GP at this time. I find that the claimant did start to experience menopause from the middle of 2017.

13. In coming to this conclusion, I have also noted the claimant's evidence that she made a choice not to take HRT. The primary reason the claimant went to see her GP in July 2017 was stress. At that point she had not started experienced any other typical menopause symptoms, she was just suffering from stress. I find it likely that the discussion was focused on the stress the claimant reported, with discussions about menopause being secondary. As the claimant was not seeking treatment or a prescription to help with menopause symptoms the GP would not necessarily record this.
14. For completeness, I also note that in submissions, the respondent also accepted that the claimant was going through the menopause at the relevant time.
15. The claimant was signed off work for four weeks in total at this time. She returned to work in August 2017.
16. The claimant mostly remained fit to work from then, save for a couple of days due to short term ailments such as gastric or flu symptoms, until December 2020. She was signed off work again with anxiety and work-related stress. She remained off work until 29 January 2021. At this time the claimant had been informed she was at risk of redundancy and this was the trigger for her stress and absence.
17. During the remainder of 2021 the claimant mostly remained fit to work, other than 2 short term absences (5 days due to a migraine and 3 days for unspecified gynecological reasons). She then was signed off work again with stress on 3 December 2021. This was also work related. She returned on 28 December 2021. She was not signed off work again before her employment terminated.
18. The claimant's evidence was that from July 2017 onwards she experienced a variety of menopause symptoms. She began to have hot flushes and night sweats. Her mental health continued to be affected. The claimant has described the impact on her as follows:
  - 18.1 Her short-term memory was affected. She would forget information she knew well, such as log in details or her PIN number, and not be able to remember for a few days. She explained in oral evidence that she had to put in place systems to remember things, writing everything down.
  - 18.2 She could not concentrate. She used to read a lot. The claimant explained she used to read a book a week on average. She has now not read a whole book for several years. In the email she sent her manager in November 2021 she described how she felt as being '*slightly drunk*' and '*you can still function but you're not quite there mentally*'.
  - 18.3 Due to hot flushes the claimant's sleep was broken. At times she was having hot flushes and night sweats 2 or 3 times a week and when that happened, she would not be able to get back to sleep so would only have a few hours sleep each night. This made her very fatigued a lot of the time.

19. The claimant did not pinpoint specific times when she was experiencing these particular symptoms or impacts on her daily life. Neither did she set out in any detail times when the symptoms were more severe or the impact greater. The claimant in oral evidence said that symptoms did vary over time. She described it as being cyclical. I understood this to mean she would have periods of time when she felt better and periods when the symptoms were worse. The claimant was clear in her evidence that stress made the symptoms worse. I accepted that this was the case.
20. I find that the general symptoms of lack of concentration, fatigue and poor memory persisted from the middle of 2017 for several years, though the severity of the symptoms varied over that time. In reaching this conclusion I particularly rely on the claimant's email to her manager from November 2021. In this the claimant is describing how she has been feeling and how the menopause has been affecting her since around July 2017. By this point it had been going on for four years. My interpretation of the language of this email indicates the claimant is talking about what she has been experiencing and what she continues to experience.
21. During this period of time the claimant was also signed off work with stress on three occasions. I have concluded that the stress that the claimant was suffering from was a symptom of the menopause. The evidence the claimant has provided, both in her statements for this Tribunal and the email from November 2021, make it clear that for the claimant the biggest impact the menopause had for her was on her mental health. She said in the November 2021 email "*the downside is my mental health has taken a battering and I've had to learn how to manage my stress in a new way.*". The claimant had not experienced problems with her mental health before she was menopausal, this was new for her.
22. The specific occasions when the claimant was signed off work were described as work-related stress. Though the workplace issues were the trigger for the stress I have still concluded that these periods of absence were due to the menopause. Because the claimant's mental health had been adversely affected by the menopause, she was less resilient than she had been before. In the November 2021 email she said "*I was finding myself getting very stressed over things that would have gone over my head in the past*" and in her statement for this Tribunal she said she "*felt uncharacteristically emotional and upset over relatively mundane matters*". Based on this evidence I accept that the three absences for stress were due to symptoms of the menopause, which at those times were such that she was unable to work.

### **The Law**

23. Section 6 Equality Act 2010 provides:
  - (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.

24. The **Guidance on matters to be taken into account in determining questions relating to the definition of disability** states this at A3 in relation to the meaning of an impairment:

*“The definition requires that the effects which a person may experience must arise from a physical or mental impairment. The term mental or physical impairment should be given its ordinary meaning. It is not necessary for the cause of the impairment to be established, nor does the impairment have to be the result of an illness. In many cases, there will be no dispute whether a person has an impairment. Any disagreement is more likely to be about whether the effects of the impairment are sufficient to fall within the definition and in particular whether they are long-term. Even so, it may sometimes be necessary to decide whether a person has an impairment so as to be able to deal with the issues about its effects.”*

25. At A5 the *Guidance* gives examples of impairments and these include “mental health conditions with symptoms such as anxiety, low mood, panic attacks” and “mental illnesses such as depression”.

26. In **J v DLA Piper UK LLP [2010] ICR 1052 EAT**, Underhill P (as he then was) set out the following principles in relation to the definition of “impairment”:

*“The first point concerns the legitimacy in principle of the kind of distinction made by the tribunal, as summarised at para 33(3) above, between two states of affairs which can produce broadly similar symptoms: those symptoms can be described in various ways, but we will be sufficiently understood if we refer to them as symptoms of low mood and anxiety. The first state of affairs is a mental illness – or, if you prefer, a mental condition – which is conveniently referred to as “clinical depression” and is undoubtedly an impairment within the meaning of the act. The second is not characterised as a mental condition at all but simply as a reaction to adverse circumstances (such as problems at work) or – if the jargon may be forgiven – “adverse life events”. We dare say that the value or validity of that distinction could be questioned at the level of deep theory, and even if it is accepted in principle the borderline between the two states of affairs is bound often to be very blurred in practice. But we are equally clear that it reflects a distinction which is routinely made by clinicians...and which should in principle be recognised for the purposes of the Act. We accept it may be a difficult distinction to apply in a particular case; and the difficulty can be exacerbated by the looseness with which some medical professionals, and most lay people, use such terms as “depression” (“clinical” or otherwise), “anxiety” and “stress”. Fortunately, however, we would not expect those difficulties often to cause a real problem in the context of a claim under the Act. This is because of the long-term effect requirement. If, as we recommend at para 40(2), a tribunal starts by considering the adverse effect issue and finds that the claimant’s ability to carry out normal day to day activities has been substantially impaired by symptoms characteristic of depression for 12 months or more, it would in most cases be likely to conclude that he or she was indeed suffering “clinical depression” rather than simply a reaction to adverse circumstances: it is*

*a common sense observation that such reactions are not normally long-lived.”*

27. In **Herry v Dudley Metropolitan Council [2017] ICR 610**, HHJ Richardson, said this:

*“56 Although reactions to adverse circumstances are indeed not normally long-lived, experience shows that there is a class of case where a reaction to circumstances perceived as adverse can become entrenched; where the person concerned will not give way or compromise over an issue at work, and refuses to return to work, yet in other respects suffers no or little apparent adverse effect on normal day-to-day activities. A doctor may be more likely to refer to the presentation of such an entrenched position as stress than as anxiety or depression. An employment tribunal is not bound to find that there is a mental impairment in such a case. Unhappiness with a decision or a colleague, a tendency to nurse grievances, or a refusal to compromise (if these or similar findings are made by an employment tribunal) are not of themselves mental impairments; they may simply reflect a person’s character or personality. Any medical evidence in support of a diagnosis of mental impairment must of course be considered by an employment tribunal with great care; so much any evidence of adverse effect over and above an unwillingness to return to work until an issue is resolved to the employee’s satisfaction, but in the end the question whether there is a mental impairment is one for the employment tribunal to assess.”*

28. A “substantial” adverse effect is one that is “more than minor or trivial” (s. 212(1) EqA 2010). In determining whether an effect on normal day to day activities is substantial, a Tribunal should have regard to the time taken to carry out the activity (**Guidance [B2]**) and the way in which the activity is carried out (**Guidance [B3]**).

29. “Normal day-to-day activities” are things that people do on a regular or daily basis (**Guidance [D2]**), such as shopping, reading, writing, having a conversation, using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport and taking part in social activities. They do not include activities which are only normal for a particular person or a small group of people (**Guidance [D4]**). They do not include highly specialised work activities which are not normal day-to-day activities for most people (**Guidance [D8]**).

30. Schedule 1 to the Equality Act 2010 sets out further provisions relating to the determination of disability. Paragraph 2(1) of Schedule 1 provides that the effect of an impairment will be “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.

31. The question of whether an impairment is “likely” (in the sense of “it could well happen”) to last for at least 12 months falls to be determined based only on

evidence that was available, and on the circumstances prevailing at the relevant time. The Tribunal is not entitled to have regard to events occurring after the date of the alleged discrimination to determine whether the effect did (or did not) last for 12 months; see **McDougall v Richmond Adult Community College [2008] ICR 431** at [23] – [24].

32. Paragraph 2(2) of Schedule 1 provides that if an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day to day activities, it is to be treated as continuing to have that effect if it is likely (again in the sense of "it could well happen") to recur. The likelihood of recurrence is again to be judged based on evidence available and circumstances prevailing at the relevant time (**McDougall** at [26]).

### **Discussion and conclusions**

33. In her claim the claimant has said she is disabled "*by virtue of stress, anxiety and the menopause*". The menopause is not in itself an impairment. It is a normal stage in a woman's life. However, women can experience a wide range of symptoms when going through the peri-menopause and menopause. The severity of those symptoms varies and in some case the impact may be such that the woman meets the definition of being disabled under the Equality Act 2010.
34. When considering if a woman is disabled due to menopause symptoms the approach is the same as outlined in **J v DLA Piper UK LLP**. It is necessary to start by looking at the adverse effects and the impact on the claimant's ability to carry out normal day to day activities due to those symptoms. Then I need to consider whether any adverse effects are long term.
35. Before considering this, I also need to consider which menopause symptoms that the claimant is relying on. The claimant has said she is disabled due to menopause and stress and anxiety. In its submissions the respondent separated out stress and anxiety and treated these as a separate impairment. The respondent has then said that the claimant has not provided the necessary evidence to show that she is disabled by reason of stress and anxiety. My conclusion is that this approach misunderstands what the claimant is saying about disability and artificially separates out 'stress and anxiety' from the menopause.
36. It is clear to me from what the claimant has said in her statement and contemporaneous evidence (specifically the November 2021 email) that the stress and anxiety she refers to are symptoms of the menopause. These are the symptoms that have affected the claimant the most. She says this overtly in the November 2021 email, that her "*mental health has taken a battering and I've had to learn how to manage my stress in a new way*". This is also consistent with the evidence provided by the claimant, that she did not suffer from stress or anxiety before she began the menopause and it was the first symptom she experienced.
37. My conclusion is that in the claimant's case menopause, stress and anxiety should be considered as a whole, with the stress and anxiety being the main symptoms relied on by the claimant. I need to consider the adverse effects of

the claimant's menopause symptoms, which include stress and anxiety, on her ability to carry out normal day to day activities.

38. Based on my findings of fact the menopause symptoms did have a substantial adverse effect on the claimant's ability to carry out normal day to activities at times between July 2017 and when she was dismissed. Some of the symptoms were a lack of concentration, memory loss and fatigue. As a result of these the claimant forgot information that she usually was able to recall easily. She also found it difficult to concentrate on reading, which included being unable to read a book. As described by the claimant, these effects are more than minor or trivial. The claimant needed to set up systems to help her remember everyday information that she usually recalled without difficulty. She was unable to read a whole book for several years, having previously done so regularly.
39. At times the claimant was also unable to work. She was signed off work on three occasions and each time was around 4 weeks. Being able to work in a general sense can be a normal day to day activity. It will not be a normal day to day activity if the part of the job that the individual cannot do is particularly specialised. This was not the case for the claimant. The claimant was just unable to work due to the stress and anxiety. Being unable to work for several weeks at a time is a substantial adverse effect.
40. In submissions the respondent took me to the case of **Herry v Dudley Metropolitan Council** which relates to absences that were due to difficulties at work rather than a mental impairment. This was because the claimant's absences were described in the contemporaneous medical evidence as being due to work related stress. I do not find this analysis appropriate in the claimant's case. As I have already concluded, feelings of stress and anxiety were some of the menopause symptoms the claimant experienced. The specific instances when the claimant was signed off work were triggered by difficulties at work. I have found though that the claimant's mental health was adversely affected by the menopause. This made her less resilient to difficult situations so unable to work when these arose. Therefore, these absences are still attributable to the symptoms of the menopause. The claimant's inability to work for several weeks at a time was an adverse effect of the symptoms of the menopause. At those times the effect was more than minor or trivial.
41. I then need to consider whether or not the adverse effects were long term, meaning lasting for 12 months or more or likely to do so. It is accepted by the respondent that the claimant was going through the menopause at the relevant time. I have also concluded that the claimant was experiencing the menopause from July 2017 and this was still ongoing when her employment terminated. However, it was not clear from the claimant's evidence exactly when she experienced some of the symptoms and the associated adverse effects. This is particularly the case with the lack of concentration and memory loss. In her evidence the claimant gave a few specific examples, but it was not clear whether this was just on odd occasions or a regular occurrence.
42. The respondent submitted that any more severe symptoms were sporadic at best. The claimant's evidence was that her symptoms did vary over the whole period, which extended to over four years. At times she did feel better and then at other times it was worse. Her symptoms were also exacerbated by stressful



situations. I accepted this was the case and the claimant's symptoms did vary but had persisted to an extent over the entire period in question.

43. In deciding whether the effects were long term I have considered the claimant's conditions should be seen as recurrent. I have concluded that the claimant's condition was not consistent and it is hard to pinpoint when exactly some of the claimant's symptoms manifested in such a way that the adverse impact was substantial. What is documented though are the periods of time when the claimant was sufficiently unwell due to her menopause related stress that she was unable to work. This occurred in July 2017, December 2020 and December 2021. I have found that these periods of absence were due to the menopause symptoms. The menopause affected the claimant's mental health and made her less resilient to stressful situations. This situation happened first in 2017 and then recurred twice over a period of four years. By December 2020, when the claimant was signed off work for a second time, I have concluded it was likely that there could be a recurrence of serious symptoms of stress and anxiety. In fact, that did happen, and the claimant was signed off work again for several weeks in December 2021.
  
44. On this basis I have concluded that the substantial adverse effects of the claimant's menopause symptoms were long term. As a consequence, the claimant was disabled at the relevant time. This continued at least up until the claimant's employment terminated, as she was still going through the menopause at that time. Based on what was known at the time, it remained likely that there would be a recurrence of more serious symptoms of stress and anxiety that would have affected her ability to work. The fact that the claimant was not subsequently signed off work again before she was dismissed does not change this likelihood.

**Employment Judge S Park**

Date: 19 December 2023