EMPLOYMENT TRIBUNALS

Claimant: Mr Dominic Manser

Respondent: Orange Property Group Limited

RECORD OF A PRELIMINARY HEARING

Heard at: London (South) Employment Tribunal (remotely)

On: 10.01.2024

Before: Employment Judge Mensah

Appearances

For the Claimant: Mr Daniel Matovu (Counsel)

For the respondent: Mr Nadin (Solicitor)

Background

1. This case previously came before the Tribunal by way of a Case Management preliminary hearing on the 25.10.2023. The Judge identified the issues as follows:

"The issues the Tribunal will decide will:

(1) Did the claimant have a disability as defined in section 6 of the Equality Act

i. Did he have a physical or mental impairment? The Claimant says he had a stroke which caused brain damage and vasculitis.

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ii. Did the impairments have a substantial adverse effect on his ability to carry out day-to-day activities?

iii. If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairments?

iv. Would the impairments have had a substantial adverse effect on his ability to carry out day-to-day activities without the treatment or other measures?

v. Were the effects of the impairments long-term? The Tribunal will decide:

a. did they last at least 12 months, or were they likely to last 12 months."

Preliminary issues

2. The Respondent sought to adduce a medical letter dated 24.11.2023. Mr Nadin explained it showed the Claimant had not had a full stroke, but a TIA (Transient Ischemic Attack) sometimes referred to as a mini stroke. It also showed the Claimant did not have vasculitis. This went to the existence of the impairment rather than long term effect.

3. Mr Matovu confirmed he was relying upon the TIA only and not relying on vasculitis. He argued that as a TIA was a temporary disruption to blood supply to brain, he still sought to rely upon potential brain damage or brain impact. He accepted the Claimant had not had a full stroke. On that basis I admitted the letter but in the context of those agreements above.

4. Mr Matovu also raised a concern regarding the witness statement for Mr Tom Lever. He wanted to check he was not being proffered as an expert witness. Mr Nadin confirmed Mr Lever is not an expert witness but is a medical doctor and is providing his evidence as the Respondent's response to the Claimant's claimed disability and in particular, the fact the Claimant has filed a witness statement from his partner who offers her opinion on the Claimant's medical problems as a nurse.

5. On that basis Mr Matovu accepted he had no objection to offer to the evidence of Mr Lever.

The Law

6. I start with the statutory provisions as follows:

"Section 6(1) statutory definition

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Schedule 1 Part 1 of the Equality Act 2010

Disability.

A person (A) is disabled if A has a physical or mental impairment which has a long-term effect,

(1)The effect of an impairment is long-term if—

(a)it has lasted for at least 12 months,

(b)it is likely to last for at least 12 months, or

(c)it is likely to last for the rest of the life of the person affected.

(2)If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.

(3)For the purposes of sub-paragraph (2), the likelihood of an effect recurring is to be disregarded in such circumstances as may be prescribed.

(4)Regulations may prescribe circumstances in which, despite sub-paragraph (1), an effect is to be treated as being, or as not being, long-term substantial adverse effect on A's ability to carry out normal day-to-day activities.

5(1)An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if—

(a)measures are being taken to treat or correct it, and

(b)but for that, it would be likely to have that effect.

(2)"Measures" includes, in particular, medical treatment and the use of a prosthesis or other aid."

"*The relevant time*

(1)A question as to whether a person had a disability at a particular time ("the relevant time") is to be determined, for the purposes of section 6, as if the provisions of, or made under, this Act were in force when the act complained of was done had been in force at the relevant time."

7. I have considered the Secretary of State's Guidance on Matters Related to the Statutory Definition of Disability which confirms.

"There is no need for a person to establish a medically diagnosed cause for their impairment. What it is important to consider is the effect of the impairment, not the cause.

A substantial adverse effect is something which is more than a minor or trivial effect. The requirement that an effect must be substantial reflects the general

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understanding of disability as a limitation going beyond the normal differences in ability which might exist among people.

9. Account should also be taken of where a person avoids doing things which, for example, cause pain, fatigue or substantial social embarrassment; or because of a loss of energy and motivation.

10. An impairment may not directly prevent someone from carrying out one or more normal day-to-day activities, but it may still have a substantial adverse long-term effect on how they carry out those activities.

For example, where an impairment causes pain or fatigue in performing normal day-to-day activities, the person may have the capacity to do something but suffer pain in doing so; or the impairment might make the activity more than usually fatiguing so that the person might not be able to repeat the task over a sustained period of time.

Recuring conditions under Paragraph 2 of Schedule 1 if impairment stops having the impact (as with the reference to 3 years, if this ia in reality correct, I return to below) it will be taken to have continued if if that effect is likely to recur. See Sullivan V Bury Street Capital. This is a question of fact".

<u>Evidence of the Claimant.</u>

8. After taking the oath the Claimant adopted his witness statement which is within the agreed bundle. He was asked about the *statin* he took. He told me he took in February 2023 and not September 2022 (as in the witness statement). He told me he had wondered if the statin was causing urinary frequency. When crossed examined he was pointed to the Impact statement and grounds which says he suffered a stroke but in fact we know was not a troke but a TIA. He was asked why he didn't use term TIA when he would have known it wasn't a stroke at that time.

9. The Claimant explained he was not a medical professional and to him *a stroke is a stroke*, but he had discussed his doctors note. It was suggested he had said *stroke* as it sounded more serious, but the Claimant denied that. The Claimant confirmed his symptoms, or the most concerning symptoms started on the 07.08.2022 and lasted about an hour and a half.

10. The discharge letter shows the symptoms lasted an hour and this is repeated in the consultants' letter (page 254). On the 07.09.2022 the Claimant had a telephone appointment with doctor and went back to Hospital the same day and had an MRI on the 08.09.2022. This showed multiple spots on the brain. The Claimant said he had not had any medical advice to link the spots on the brain to the TIA.

11. The Claimant's partner had said the Claimant's reaction in the hospital included,

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"*Eventually he agreed to attend the local AE department, where I worked, on the 7th September, where over the next few days he understood numerous tests and interventions. Don was distressed physically and emotionally by the range of diagnosis that were put to us. Naturally he didn't understand them he was scared and confused resulting in numerous panic attacks, denial and flight or flight where he would lave the room or hospital. He stayed at mine overnight on these dates, where he was scared and clearly stressed.*"

12. The Claimant was asked if this was due to his phobia of Hospitals. The Claimant said it was attributed to his TIA and being told in A and E it looked like a TIA or some form of stroke and when he had a CT scan, he couldn't breathe and was panicking as he has a young child. The Claimant accepted it was fear of what the TIA represented that caused these symptoms rather than the TIA itself.

13. The Claimant was referred to an email at page 227 from his partner which said he was fit to attend work provided he did not have any further episodes. The Claimant said he had anxiety, loss of confidence and headaches but no repeat of the blurred visions and symptoms of TIA. Page 218 of the bundle shows a call to GP 20.02.2023, five months after the TIA and shows the Claimant was put on a *statin*. The Claimant confirmed he had no treatment between the September 2022 and the February 2023. It was suggested this meant the symptoms had resolved. The Claimant said he was suffering anxiety and had the spots on the brain and was still under investigation.

14. Mr Nadin took the Claimant to the next contact he had with the stroke unit on the 25.04.2023 (page 244/5) which showed he had been discharge from Hospital on the 08.09.2022. The Claimant told me the outcome was discussed in a telephone conversation with the Consultant. The Claimant was told if he had any further symptoms, he should report them, and she would keep on eye on the Claimant as she wasn't sure what the spots on the brain where.

15. The Claimant says he had headaches that were so bad he was paralysed from doing anything, but he didn't seek any treatment for that and clearly did not report them to the Hospital or the Consultant. The letter from the Consultant only states he had occasional headaches, and Mr Nadin put to the Claimant that this was inconsistent with the severity he now claims. The Claimant could not say why the Consultant had recorded that, but he says he told her about the headaches.

16. It was put to the Claimant that in his witness statement he was very clear about the chronology and impact of urinating from September 2022 but had today only at the hearing amended that to February 2023. The Claimant claimed he suffered confusion and wrongly recalled it was September 2022 when it was February 2023. It was put to him he had exaggerated the period of which he was

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taking a *statin* to bolster his claimed disability. This was denied by the Claimant. The Claimant admitted he didn't seek medical assistance for headaches, fatigue, night terrors, confusion anxiety or panic attacks. There is no medical evidence of those symptoms. When asked why he had not mentioned these symptoms in his ET1 (claim form dated 23.02.2023) or at any time before his impact statement he told me he didn't know why it wasn't listed in the claim form. He was asked why he didn't expand his claim in the Case Management hearing before Judge Clarke on the 25.10.2023. The Claimant said he was not aware of why and maybe he wasn't asked.

17. Mr Nadin referred the Claimant to his partners statement at page 264.

"Lethargic, anxious and having panic attacks, his sleep was broken on most nights due to urological issues and some night terrors and flashbacks…"

18. It was put to the Claimant that the urological issues were caused by the *statins* which is didn't start to take until February 2023. The Claimant said he had the same problems with the blood thinning medication, albeit that is not his recorded evidence. The Claimant told me his problems with urination continued when he came off the *statins*.

19. It was put to the Claimant at least some of his symptoms were due to his phobia referred to:

"*Lethargic, anxious and having panic attacks, his sleep was broken on most nights due to urological issues and some night terrors and flashbacks that were predominately due to claustrophobia from the MRI and his experience at the hospital. He was fearful of the threat of another stroke or TIA and was in denial…"*

20. The Claimant confirmed this was accurate. He also confirmed he had only one further MRI scan since the TIA and no further treatment has yet been recommended, but he says he has an appointment with the Consultant next month.

21. It was pointed out (page 255) the letter from the neurologist suggested no real further concerns and the Claimant accepted this may be the case. He was also referred to a letter 24.11.2023 which says no changes to brain and neurology complete and Mr Nadin put to the Claimant that this reads as no brain damage that need any further treatment. The Claimant replied, he didn't know as he was still taking his prescribed drugs. The Claimant started work after his dismissal and said it was a couple of months, given the Claimant says he has some symptoms at that time. The Claimant says he was working as a carpenter. Photographs at pages 237 to 240 of the bundle show the Claimant in his new role he took on after his dismissal.

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22. It was pointed out the photographs show the Claimant performing strenuous manual labour and the Claimant accepts that and it was typical of the type of labour he was undertaking at that time. The Claimant also confirmed he had a Covid infection in October 2021, and this made him quite ill, and he says he collapsed.

23. Mr Nadin asked the Claimant about the partner evidence where she compares the Claimant's behaviour before and after TIA. He pointed out she had said they met in May 2022 and says both were busy and have childcare responsibility. The Claimant replied he had stayed with his partner before and after the TIA, but more frequently after. It was put to the Claimant that given the short period of the relationship his partner before the TIA, she could not accurately compare before and after. The Claimant replied, it was a difficult question to answer, and he couldn't express how she feels.

24. The Claimant accepts he didn't tell Consultant about the severity of his headaches but instead says he told his partner. The Claimant says he didn't raise these symptoms with medical professionals as he trusted his partner and asked her about them given, he suffers with a hospital phobia. The Claimant told me the headaches reduced in severity and says the last two months were less and not as intense as in the early stages. The Claimant says he had to lay down for a few hours when he suffered these headaches, and this happened on a few occasions, but he couldn't recall the dates.

25. When asked about his reference to headaches, lack of concentration, reading and watching TV and to pull his car over a couple of times when driving due to headaches. The Claimant told me he had resumed physical activity since the TIA but not to level as before. He says he doesn't run on the road but on the treadmill due to reduced confidence being outside. He said running on the treadmill resumed about six months ago and was not to the 5 kilometres he did before. He referred to his conditions impacting on his ability to travel abroad. He told me he was conscious of were going further overseas as he was uncomfortable with the thought of needing medical treatment and didn't want to be in a foreign country with the medical facilities. However, he admitted he has been to Tuscany in May 2023. The Claimant didn't know if next appointment was simply a standard review or not. He confirmed he had been in his new employment since Christmas of 2022.

26. The Claimant said he started to get up in the night more frequently when he took the blood thinner medication, but it became more frequent when he took the statin and was still getting the urge but not as bad as before. He told me it was *roughly* as bad as when taking blood thinner. He would go two or three times at night and go more in the day say twice as much or five or six times a day more than he use to before.

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Re-examination

27. Mr Matovu asked the Claimant about the reduction in headaches and at what stage they reduced. The Claimant told me he had a bad headache in November 2022, but they were bad until later summer last year, ending around August 2023. Mr Matovu asked the Claimant why he was confused about dates and he said he struggled with dates and recall.

Dr Thomas Richard Tony Lever

28. Dr Lever adopted his witness statement and made no changes. Mr Matovu cross-examined Dr Lever. He asked if the Claimant had had a TIA. He replied there was no dispute he had but he wasn't diagnosing him but commenting on his impact statement. Mr Matovu had no further questions. Mr Nadin had no re-examination.

Oral Submissions

29. Mr Nadin argued the Claimant's claimed impairment had changed since it his claim was submitted, and this was important as the effect and likelihood of recurrence and impact is in issue. He argued the Claimant was saying he had suffered a stroke and had consequential brain damage and vasculitis, but we now know he did not suffer an acute stroke and there is no diagnosed brain damage. There is no evidence the white spots are linked in any way to the TIA, and all follow up tests have found the Claimant stable and recommended no treatment to date and have not diagnosis vasculitis.

30. He reminded me that the Claimant's varicose veins and phobia were not part of his impairment for the purposes of bringing himself into the Act. There was no evidence of damage to brain that can be attributed to the TIA. There is still no diagnosis, and the evidence still shows no lasting damage and no recurring effects to diagnose an impairment. He argued the Claimant had suffered an event on the 07.08.2022 and this did not cause any long term symptoms or a substantial effect on the ability of the Claimant to undertake day to day activities. He referred me to pages 130 and 200 which show the Mayo clinic's advice about TIA's and that they do not cause permanent damage and symptoms usually fully resolved within 24 hours.

31. He pointed out at page 254 the spots on the brain were looked at by the Consultant who confirms the scan revealed nothing acute and non-specific and they could have been caused by lifestyle and comorbidities but not could have been caused by TIA.

32. He referred me back to the Claimant's evidence that he never sought medical treatment for headaches and GP records show he felt able to raise the frequency of urination and potential prostate concerns. Mr Nadin argued the evidence shows the Claimant did feel able to speak to medical professional and yet he claims he didn't mention these severe symptoms. He pointed out the only evidence of fatigue came

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from the Claimant's own impact statement and whilst the Claimant says he mentioned such symptoms to his partner, she doesn't mention this in her statement.

33. He referred me to the Claimant's Impact statement where he says he struggled due to fatigue but pointed out there no evidence to link Fatigue to the TIA suffered. Further, the partner says the Claimant suffered lack of sleep, night terrors and frequent urination but that the night terrors linked to phobia of hospitals and predates the TIA and is not linked, therefore.

34. He argued if the symptoms had a substantial adverse effect, it is implausible the Claimant would not have told medical professionals and sought treatment. The Claimant had Covid 19 in October 2022, the same period when he said his headaches were most severe. In absence of medical evidence, he argued those headaches could have been linked to Covid 19.

35. The Claimant says the headaches had ceased by August 2023 and Mr Nadin pointed out this is less than 12 months from the TIA on the 07.08.2022. He referred me to page 227, an email dated 26.09.2022 where the medical professional confirms the Claimant was fit to return to work and makes no mention of the symptoms the Claimant now seek to rely upon. At page 245 there is a letter dated 25.04.2023 from Dr Prohan, the Consultant, who records the Claimant complaining of occasional headaches. Mr Nadin argued this is inconsistent with weekly and paralysing headaches the Claimant says he was having, and it is astonishing he would not have mentioned such severity, or the Consultant would not have recorded in the letter.

36. Mr Nadin argued the generic medical evidence produced by Claimant highlights the lack of any specific medical evidence to show he suffered a substantial impact and is of limited value in this case. Turning to the medical treatment, Mr Nadin pointed out the Claimant had claimed in his signed witness statement the cause was the taking of *statins*. At the hearing he accepts he wasn't even taking statins until February 2023 and so now attributes frequent urination to taking blood thinning medication.

37. Mr Nadin argued this change of evidence casts doubt on the Claimant's credibility. The evidence shows the Claimant contacted his GP on the 31.03.2023 (page 218) about a month into taking the statins. He argued if the Claimant had genuinely suffered frequent urination between August 2022 and Mar 2023, he would have contacted his GP sooner. He argued the more plausible account is he started the statins in the February 2022 and contacted his GP on the 31 March and then stopped taking the stains and made no further reports of urination problems because they resolved. This would mean the frequent urination only lasted two months and that period is not relevant to the claim. There is no evidence to link this to the TIA, but it is clearly linked to the statin and led to him not getting enough sleep and being fatigued. This was all after February 2023 and not before.

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38. He added the blood thinning medication was aimed at reducing the risk of a stroke and not to treat current symptoms and statin and Clopidogrel (blood thinning medication) were the only treatment prescribed and again there to reduce risks rather than active treatment and neither mitigated the adverse effects the Claimant relies upon in his claim. He pointed out the Claimant was not taking the statins from the 31.03.2023 and through to the 03.08.2023 and no adverse effects had been recorded. He argued it was not sufficient to be at risk of stroke, as so is the general population to varying degrees.

39. In terms of the impairment lasting long term, he argued the relevant period is September 2022 through to January 2023. It is pleaded it would be likely to last more than 12 months at that time. He argued the TIA symptoms lasted about one to one a d a half hours. They were transient and fully resolved within 24 hours, consistent with the general expectations for a TIA. Mr Nadin argued that there was no evidence beyond the Claimant's impact statement to suggest otherwise. He reiterated that the Claimant did not contact a doctor until Feb 2023 and did not see a Consultant until September 2023. The existence of having suffered a TIA was not sufficient and there is nothing to show the likelihood of recurrence. If risk is of an acute stroke, Mr Nadin argued the Claimant cannot rely upon the risk of a different impairment to categorised disability, see page 66 paragraph 39 of the case of *Siddique*. He closed by arguing the Claimant had been *guilty of gilding the lily* and had exaggerated the symptoms and there was no employment Tribunal decision finding a TIA is a disability.

<u>Mr Matovu oral submissions</u>

40. Mt Matovu argued the TIA was suffered and is the starting point. He said this was a serious incident and although less than an acute stroke, it is very significant incident. A TIA causes a temporary disruption of the blood supply to brain or a blockage. The way it affects people will vary from person to person. In deciding this case he argued I should have regard to Claimant's evidence and Respondent had not provided evidence to counter that and only provided commentary. He asked me to accept the Claimant is as an honest witness and responded in straightforward way to questions. He pointed out the Claimant had corrected his witness, and the change doesn't diminish the case. He pointed out there is no requirement to set out full details of the disability in the claim form and that is why the standard procedure was addressed by Judge Clarke when he ordered the Claimant to provide an impact statement.

41. Turning to the general literature he argued this indicates TIA's can cause lasting effects. He accepted the TIA physical signs were short and did not *quibble* they lasted for 24 hours, and this is a short time. However, he argued the literature shows it is not uncommon, but usual to have fatigue and anxiety. He referred me to

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his skeleton argument for references and in particular paragraph 12 and page 207 and article at page 78 which is a page from the BMC Family practice which shows it is accepted TIA's can have impact and long-term effects and is consistent with the Claimant's complaints. This shows his complaints are credible. I was asked to accept the Claimant's evidence as truthful.

42. Applying the evidence to the legal principles, Mr Matovu argued the period in question is not September 2022 to Jan 2023. It is late September when he returned to work to 28 October 2022. The evidence that posts dates September 2022 should be approached with caution as to what should read in and assist in determining the issues.

43. He referred me to the case in his skeleton of *All Answers* and argued it makes it clear the Tribunal should not have regard to events after the material time. He asked me to focus on the evidence for October 2022. This is only one month since the TIA and the impact was substantial. He accepts this is a different period than was previously agreed by his instructing solicitors.

44. He argued the fact the Claimant didn't seek medical treatment is beside the point. I should consider whether he suffer not whether he reported the same. He also asked me to consider the Claimant has a phobia about hospitals and going to doctors and so it is effectively credible he didn't seek medical help. Mr Matovu argued this case is about whether the Tribunal accepts the claimed effects. They do not necessarily to be totally disabling so long as more than trivial. He asked me to accept the Claimant was physically fit and active before the TIA and markedly different after and the lack of concentration flowed from the fatigue. He argued there was a low threshold, and the evidence meets it. In terms of the long-term, noting paragraph 2(2) of Schedule 1 regarding likely recurrence. Mr Matovu referred me to the case of *Boyle* in his skeleton argument which sets out and is helpful in the correct approach at paragraph 40.

*"So where, for instance, a particular patient, with a known history, is prescribed a continuing course of drug treatment after a heart attack or a minor stroke, a doctor may be able to say, pretty confidently, that, if the treatment were stopped, that patient would probably have another heart attack or stroke. In short, for doctors called to give evidence in relation to an issue under paragraph 6(1) the difficulty of predicting the effect of stopping a treatment, on the balance of probabilities, will vary from case to case. In itself, therefore, the possible difficulty of doing so in some cases is not a compelling reason to interpret *1069 "likely" as meaning something less than "probable" in order to make the provision workable*.

45. Mr Matovu argued the medical experts prescribed medication to prevent the risk of another stroke and the Claimant was put on the blood thinning medication

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straight away and this indicates they thought it was necessary, as per paragraph 41 of *Boyle*,

"On the one hand, a doctor does not prescribe a continuing course of treatment if it is unnecessary—in other words, where she considers that the condition or its symptoms will not recur if the patient stops the treatment. But, equally, unless perhaps the side-effects are particularly unpleasant or the cost of the drug is prohibitive, a doctor does not prescribe a continuing course of drug or other treatment only where she considers that there is more than a 50% chance of the condition or symptoms recurring. She does so when she considers that there is a significant risk of that happening—when "it could well happen", to use Girvan LJ's phrase, and when, accordingly, it is worthwhile to continue the treatment."

46. Mr Matovu argued this case is not about the general population. The Claimant has suffered TIA and doctors have determined he needed the drug. This is sufficient for likelihood of recurrence test to be met. He argued I should be satisfied the definition of likely recurrence is satisfied. He ended by pointing out it was more difficult to predict the likelihood of recurrence in October 2022 and argued Mr Nadin's suggestion risk is not relevant in this case is not correct.

<u>Reserved</u>

47. Unfortunately, by the time the parties had finished it was 12.28pm. This case had been listed for 3 hours and there was therefore inadequate time given for deliberation and judgment. I therefore reserved my decision and informed the parties I would seek to prepare a full written judgment on the 22.01.2024, being the only date I had available.

<u>Findings</u>

48. There is no dispute before me the Claimant had a TIA on the 07.08.2022. The parties have filed written arguments and case law. I do not repeat those argument and case law as it is well known to the parties. I have applied the legal principles as set out in those documents, which I considered established and correct. The key dispute in fact turned on findings of fact, albeit I address the issue of long terms at the end of this judgment for the sake of completeness.

49. I accept the proposition that the impact of a TIA can differ from case to case. There is disagreement between the parties as to whether any impact is temporary or has the kind of long-lasting impact required under the act. Mr Lever says a TIA is a transient event, a temporary blockage of a small vessel which causes low levels of oxygen in a specific region of the brain which causes temporary symptoms. As the blockage passes, the signs and symptoms fully resolve and leave no lasting brain

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damage. Mr Matovu argues in this case, as does occur in other cases, the Claimant suffered symptoms that persisted beyond those initial 24-hour symptoms.

50. It is right to say that before me there is no medical evidence of any brain damage or impact on the Claimant's brain function attributable to the TIA. What I have instead is evidence from the Claimant as to the difficulties he says he suffered after the TIA and his belief they are attributed to it. It seems to me the fact he had a TIA is at the very least a physical impairment which might be capable of causing both physical and mental symptoms based upon the literature before me. Mr Matovu accepts the Claimant's medical records do not address this.

51. In many ways the medical evidence post dating the TIA might be said to really go to the issue of credibility. This is part of Mr Nadin's case. He argues the evidence shows the Claimant has not given an accurate or truthful account of the severity of his symptoms, the period of time when he says he suffered such symptoms and whether the tests are met under Section 6. There is a secondary argument as to whether the prescription of the blood thinning medication of itself would be sufficient at least to meet the likelihood of recurrence threshold and the definition of long-term.

52. The Claimant has changed his account of his symptoms post his TIA and at times his evidence has been difficult to accept. Firstly, it is clear at the time he suffered his TIA he had a headache that lasted for about one-hour, blurred vision in his right eye and pins and needles in his right arm. There is no real dispute these initial symptoms resolved within about an hour or an hour and a half.

53. The Claimant is also someone who says he suffers with a phobia of Hospitals and Doctors. His partner says this had an impact on him at the Hospital where was confused, suffering panic attacks and either did or wanted to leave the Hospital. However, despite the symptoms caused by the phobia, the Claimant did attend the Hospital again on the 7th and on the 8th September 2022. He did have a CT scan and he was told by the treating consultant he had not had a stoke but had had a TIA.

54. I note what is said "*9. Account should also be taken of where a person avoids doing things which, for example, cause pain, fatigue or substantial social embarrassment; or because of a loss of energy and motivation.*

55. Mr Matovu argued the Claimant's phobia prevented him from seeking medical assistance. I found the Claimant's account that his headaches thereafter became so disabling he was effectively paralysed from undertaking any activity difficult to accept. In his witness statement he claims up to three times per week for a minimum of one hour per day up to the whole day, he would suffer headaches. He claims he was taking paracetamol. By the 28 October 2022 he says these had reduced in frequency to once or twice a week but when he suffered them, he was virtually paralysed from all activity.

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56. The Claimant did engage with medical services throughout when required and there is no evidence he failed to attend or missed any appointments. The Claimant is someone who appeared able to go to his GP and raise any concerns and does so in March 2023 when he complains of urine frequency. Mr Matovu argued it didn't matter he didn't seek medical assistance, but I find it undermines his evidence as to the severity of his symptoms and in particular the headaches that he would not have sought medical assistance. I note that the Claimant not only found employment but commenced a job he accepted was very physically demanding by the Christmas of December 2022. His GP has provided a fit note stating he is fit to work, and I therefore I cannot accept he would not have spoken with his GP about the headaches if they were so severe.

57. Further the letter from the Consultant only states he had occasional headaches, and Mr Nadin put to the Claimant that this was inconsistent with the severity he now claims. The Claimant could not say why the Consultant had recorded that, but he says he told her about the headaches. I cannot accept the Consultant would have recorded the headaches in this way if the Claimant had told him they were as severe as he claimed before me. I do consider this undermines his credibility.

58. I also do not accept he was confused about the urine frequency and the timing of his statins. The Claimant was able to give an account to his solicitors and sign it with a statement of truth asserting his urine frequency was triggered by taking statins in the September 2022 and yet only at the commencement of the hearing did he seek to resile from that. His evidence at the hearing is now that he was suffering with urine frequency due to the blood thinning medication and was confused but I agree with Mr Nadin, this is not a credible explanation. The medical evidence does however support the clear link between the statins and urine frequency being caused by the statins which he started in February 2023 and which he stopped taking at the end of March when his GP told him he could stop taking them if causing urine frequency.

59. Further, his oral evidence was inconsistent and confusing regarding the urine frequency. In his witness statement he claimed to have increased frequency at its worse to three or four times a night and four or five times a day around October 2022. The Claimant said he started to get up in the night more frequently when he took the blood thinner medication, but it became more frequent when he took the statin and was still getting the urge but not as bad as before. He told me it was *roughly* as bad as when taking blood thinner. He would go two or three times at night and go more in the day say twice as much or five or six times a day more than he use to before. This evidence would suggest he was worse now than he had claimed he was when at its worst before. I find this indicative of the Claimant seeking to

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reconcile his earlier account with the medical evidence retrospectively. I find this further undermines his credibility.

60. There clearly is no evidence beyond the Claimant own account, that he suffered any substantial symptoms after the first 24 hours of the TIA, beyond some occasional headaches and urine frequency for one month when taking statins. His claims to have suffered fatigue, flashbacks, lack of focus and motivation and lack of sleep are wholly unsupported by any of the medical evidence. I note the Claimant gave no account of the impact of Covid in October 2022 and his silence about this is in my view also undermining. His claim to have had his ability to travel abroad and his relationship with his partner impacted by his TIA seems tied in with his claimed lack of confidence. He has failed to show any of these symptoms have anything to do with the TIA, as opposed to be linked to a phobia, or that they had a substantial effect on his ability to carry out day to day activities. The Claimant appears to have travelled to Ireland and Italy, but his witness statement is silent about his holidays outside the United Kingdom.

61. The Respondent has taken photographs of the Claimant in his new employment. The Claimant accepts he was able to secure employment in December 2022 and was working in a physically demanding role. This is in my view consistent with the GP fit note and inconsistent with the claims he has made regarding symptoms. Mr Matovu is right that his symptoms only must be more than trivial and do not have to be as debilitating as he has claimed. The problem is he has claimed they were so debilitating, and I do not find that account credible or reliable.

62. Taking all the evidence together, I do not accept the Claimant suffered symptoms connected with his TIA which had a substantial adverse effect on his ability to carry out day to day activities as claimed. I do not find the Claimant has given a reliable or credible account of his symptoms, the severity and the periods of time he was affected. I don't accept he suffered urine frequency before February of 2023. I do not accept his headaches had a more than trivial effect on his ability to carry out day to day activities as claim. I do not accept his other symptoms were as debilitating as claimed or caused or connected with his TIA. On that basis the impact of medication or medical treatment does not assist the Claimant regarding the symptoms.

63. That leaves the argument that the treatment for the TIA was due to the risks to the Claimant's health as per Mr Matovu's skeleton argument. I found his arguments very persuasive and had I accepted the Claimant was suffering any symptoms causing a substantial adverse effect and attributable to his TIA (which I do not) after the initial 24 hours, and if I had accepted they had an adverse effect on his day to day activities (which I do not), for the avoidance of doubt, I would have accepted his argument that the fact the medical professionals had prescribed Clopidogrel right at the outset was good enough evidence to show a risk of recurrence and meet the

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long-term test. I would have in fact accepted that argument whether the relevant period had been as originally agreed or as suggested by Mr Matovu.

64. Based on my findings, I find the Claimant has not shown he is disabled under Section 6 by reason of a TIA or symptoms caused by a TIA.

Case Management

65. Before the decision was reserved, I did seek agreement from the parties that I would issue by judgment on the 22.01.2024 to enable the parties to consider their respective positions in the light of my findings and for the Claimant to still meet the order to file and serve a schedule of loss by the 26 January 2024.

66. The parties are invited to write to each other and the Tribunal with their positions regarding the case management orders and final hearing in the light of the above.

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Employment Judge **Mensah**

Date 22 January 2024

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