EMPLOYMENT TRIBUNALS

Claimant: Ms B Zhaveri

Respondent: Spreetail UK Ltd

Heard at: Cambridge (in public) **On:** 12 January 2024

Before: Employment Judge Tynan (sitting alone)

Appearances

For the Claimant: In person
For the Respondent: Mr D Northall, Counsel

JUDGMENT having been sent to the parties on 7 February 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2013, the following reasons are provided:

REASONS

1. By a Claim Form presented to the Employment Tribunals on 7 July 2022, the Claimant pursues complaints against the Respondent that she was subjected to detriments and 'automatically' unfairly dismissed for having made protected disclosures (whistle blowing) and that she was discriminated against on the grounds of sex, race and disability.

2. The Claimant claims that she is disabled within the meaning of s.6 of the Equality Act 2010 by reason of the following mental impairments: post-traumatic stress disorder; depression and anxiety; panic attacks; suicidal thoughts; and self-harming. I am concerned with the period 19 April to 14 June 2022 being the period of the Claimant's employment with the Respondent to which the complaints relate. The Claimant completed section 12 of Form ET1 on the basis that she did not have a disability. I accept her evidence that this section was completed by her in error. It is abundantly clear from the details of her claim in Form ET1, from the record of the case management preliminary hearings on 2 May and 31 August 2023, and from the Claimant's Disability Impact Statement that she claims to be disabled. Her Disability Impact Statement dated 23 May 2023 sets out in detail the matters relied upon by her in that regard.

3. The Respondent disputes that the Claimant meets the relevant statutory definition within the Equality Act 2010.

4. At a case management preliminary hearing on 2 May 2023, Employment Judge Bedeau listed the case for a public preliminary hearing on 31 August 2023 to effectively determine whether, at the relevant time, the Claimant was disabled within the meaning of the 2010 Act. In the event, the hearing could not go ahead on 31 August 2023 as the Claimant had not complied with orders made by Employment Judge Bedeau for the disclosure of her medical records, notes and reports. The reasons for her non-compliance were recorded by Employment Judge Warren in his record of the hearing.

5. I had available to me a 256 page bundle for the hearing. The bundle includes the Claimant's Disability Impact Statement dated 23 May 2023. The Claimant gave evidence at Tribunal. For reasons I shall come to, the Claimant was not an entirely reliable witness.

6. Ahead of the 31 August 2023 hearing, the Respondent had filed and served copies of four legal authorities upon which Mr Northall relies. I refer to them below.

THE LAW

7. Section 6 of the Equality Act 2010, provides as follows:

> Disability
>
> (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.

8. Section 212 of the Equality Act 2010, clarifies that:

> (1) In this Act-
>
> …
> 'Substantial' means more than minor or trivial.

9. There are supplementary provisions in relation to disability in Schedule 1 of the 2010 Act.

10. Guidance has been issued by the Secretary of State regarding matters to be taken into account by Employment Tribunals in determining questions relating to the definition of disability. I am required to take into account any aspect of the Guidance which appears to be relevant. Paragraph A2 of the Guidance contains a helpful analysis of Section 6 of the Equality Act 2010:

> Main elements of the definition of disability-

> A1 …
>
> A2 This means that, in general:
>
> - the person must have an impairment that is either physical or mental;
> - the impairment must have adverse effects which are substantial;
> - the substantial adverse effects must be long term; and
> - the long term substantial adverse effects must be effects on normal day to day activities.
>
> All of the factors above must be considered when determining whether a person is disabled.

11. Paragraph 2 of Part 1 of Schedule 1 to the Equality Act 2010, clarifies:

> Long term effects-
>
> (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.

12. In this context, paragraph C3 of the Guidance (which reflects the the House of Lords' decision in Boyle v SCA Packaging Ltd (Equality and Human Rights Commission intervening) *2009 ICR 1056, HL*) confirms that 'likely' should be interpreted as meaning that it could well happen, something that is a real possibility but not necessarily 'more probable than not'.

13. The issue of how long an impairment is likely to last and/or whether it is likely to recur should be determined at the date of the alleged discriminatory act(s) and not the date of the tribunal hearing — McDougall v Richmond Adult Community College 2008 ICR 431, CA and All Answers Ltd. v Mr W and Ms R [2021] EWCA Civ 606 – so that a Tribunal will fall into error if it has regard to subsequent events when reaching a decision as to what was likely at the relevant time. Accordingly, in deciding whether the effects of any impairments which the Claimant had during the period 19 April to 14 June 2022 were likely to recur, I must restrict myself to the evidence that was available at that time.

14. Paragraph B5 of the Guidance recognises that depression is typically an impairment with fluctuating or recurring effects.

15. Someone who has suffered from a combination of impairments with different effects and to different extents over a period of time, which may have overlapped, can still be regarded as disabled. I note in this regard the section of the Guidance dealing with the cumulative effect of impairments, beginning at

paragraph B4. Paragraph B6 states that a person may have more than one impairment, any one of which alone would not have a substantial effect. In such a case account should be taken of whether the impairments together have a substantial effect overall on the person's ability to carry out normal day to day activities. The given example is a minor impairment which affects physical co-ordination and an irreversible minor leg injury which affects mobility, that taken together might have a substantial effect on a person's ability to carry out certain normal day to day activities. The cumulative effect of more than one impairment should also be taken into account when determining whether the effect is long term.

16. It is well established that the onus of proving a disability is on the Claimant, on the balance of probabilities (Morgan v Staffordshire University [2002] IRLR 190).

17. As I observed during the hearing, I am familiar with the Employment Appeal Tribunal's decision in J v DLA Piper UK LLP UKEAT0263/09/RN, where Underhill J, as he then was, drew a distinction between the symptoms of low mood and anxiety caused by clinical depression, which was a situation likely to meet the definition of disability, and those derived from a reaction to adverse circumstances such as problems at work, or adverse life events, which was not. The Employment Appeal Tribunal acknowledged there is a borderline between those two state of affairs which might be blurred, but Underhill J gave guidance as follows:

> *"We accept that it may be a difficult distinction to apply in a particular case and the difficulty can be exacerbated by the looseness of which some medical professionals and some 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 context of a claim under the Act. This is because of the long term effect requirement. If as we recommend at paragraph 42 above, the Tribunal starts by considering the adverse effects 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."*

18. Mr Northall has highlighted passages from Royal Bank of Scotland plc v Morris UKEAT_0436_10, Dunham v Ashford Windows [2005] IRLR 608 and Herry v Dudley Metropolitan Council and another [2017] ICR 610 regarding the potential importance of expert medical evidence in disability discrimination cases. He submits that there are elements in this case that bring into focus why medical evidence is critical in any assessment of the Claimant's claimed mental health issues.

19. In Morris, Underhill J, then President of the EAT said:

> ***[55]*** *The burden of proving disability lies on the Claimant. There is no rule of law that that burden can only be discharged by adducing first-hand expert evidence, but difficult questions frequently arise in relation to mental impairment, and in Morgan v Staffordshire University[2002] IRLR 190, [2002] ICR 475 this tribunal, Lindsay P presiding, observed that "the existence or not of a mental impairment is very much a matter for qualified and informed medical opinion" (see para 20(5), at p 485A-B); and it was held in that case that reference to the Applicant's GP notes was insufficient to establish that she was suffering from a disabling depression (see in particular paras 18-20, at pp 482-4). (We should acknowledge that at the time that Morgan was decided para 1 of Sch 1 contained a provision relevant to mental impairment which has since been repealed; but it does not seem to us that Lindsay P's observations were specifically related to that point.) …"*

This seems to have been recognised by Employment Judge Warren in so far as he made provision at paragraph 2.7 of his Order of 31 August 2023 for the Claimant to provide a letter from her GP addressing various questions that had been posed by Employment Judge Bedeau in listing the case for a public preliminary hearing. I shall come back to the letter that was produced in response to that order. Mr Northall describes it as a somewhat anodyne record that could be deduced in any event from the Claimant's medical records. The Claimant herself says that the letter is unhelpful, though whilst I agree with her, I do so for different reasons.

20. The primary issue under consideration in Dunham was whether evidence should be accepted from a psychologist rather than a doctor, but the EAT reiterated, "*that in the case of mental illness medical evidence as to the nature of that illness is likely to be expected*".

21. Finally, in Herry, Judge David Richardson sitting in the EAT returned to Underhill J's guidance in DLA Piper UK LLP. He said:

> *"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 must 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."

FINDINGS

22. I agree with Mr Northall that there is a distinction between what the Claimant has reported to her medical advisors and set out in her claim to the Tribunal, and what she said at Tribunal and in her Disability Impact Statement. In Form ET1 she states that statements were made in the course of her employment that the organisation did not need disabled employees (albeit without relating these in any way to the fact that she was disabled), that its employment practices caused her incomprehensible stress and that the stress was at such a level that she began to have suicidal thoughts and panic attacks, ultimately leading her to being assessed as having moderate to severe depression. Whilst the addendum to Form ET1 does not itself identify whether this assessment was made during her employment or only after it had ended, I believe that she is most likely referring to assessments undertaken on 20 June 2022, a few days after she had been dismissed from the Respondent's employment.

23. Form ET1 gives no indication that the Claimant might have a history of mental health issues or that she might claim to be disabled by reason of these. By contrast, in her Disability Impact Statement the Claimant identifies her impairment as long term depression disorder and anxiety with on and off triggers around PTSD due to trauma in childhood. She states that she was initially diagnosed in India when she was 15 years of age. She moved to the UK in 2003 aged 18 and says that she attempted suicide the following year, when she taken to hospital by the emergency services. She states that she asked for this to be kept off her medical records due to her feelings of shame and embarrassment and because she was concerned there might be negative consequences. I consider it unlikely that such an incident would have been kept off her patient records altogether, even if the details might have been limited at her request. In the context of at least one other significant claimed matter that is not reflected in the Claimant's medical records, namely post-partum depression in 2021 which was referred to by the Claimant for the first time during the hearing, but not mentioned in her Disability Impact Statement, I have significant reservations as to whether there was a suicide attempt and hospital assessment or admission in or around 2004.

24. The Claimant refers to cultural issues and the perceived stigma around depression and anxiety as having resulted in her struggling to acknowledge her mental health issues over many years and, indeed, that in response to questions from her GP she had specifically denied that she might be depressed when she consulted her GP regarding insomnia, migraines, lethargy and fatigue. The Claimant states that she finally disclosed her 'condition' to her GP in early 2020. When questioned by Mr Northall about a report dated 22 May 2023 produced by her GP, Dr Dunseath, the Claimant said that she had been formally diagnosed with PTSD in 2010 when she was living in Reading. Her evidence in this regard is in the context that Dr Dunseath had written of the Claimant having "a longstanding history of depression" (page 256). Mr Northall sought to clarify with the Claimant where this history might be found within her

medical records. The Claimant attributed the longstanding history of depression to the fact she said she had been diagnosed with mental health issues in India when she was 15 years of age and to the subsequent PTSD diagnosis in Reading in 2010. If, as the Claimant claims and indeed reported in 2020 to her GP, she was diagnosed with PTSD in 2010, this sits uneasily with the statement in her Disability Impact Statement that she has hidden behind physical medical conditions for many years and specifically hidden the fact she has chronic depression from her GP and other medical experts. It seems to me that she could only have been diagnosed with PTSD in 2010 on the strength of having provided a detailed history at that time to the relevant medical professional. Be that as it may, there is in fact no evidence within the Claimant's medical records that there was any such diagnosis or, indeed, even that she sought advice or support with mental health issues at or around that time. The Claimant sought to address this significant gap in the evidence on the basis she says that certain of her medical records have been lost. However, her GP records dating back to 2009 are in fact available in the bundle. Although they have been heavily redacted by the Claimant, she told me that she had erred on the side of caution by disclosing any entries that could in any way be thought to relate to her mental health. The records confirm that the Claimant consulted her GP on 1 December 2009 with tiredness symptoms which seemed to be attributed to painful periods. She was noted as not having time for breakfast and that she was given lifestyle advice. She saw her GP on approximately nine separate occasions in 2010. The only unredacted record relates to a consultation on 22 September 2010 after the Claimant had experienced a migraine. She was noted to be working long hours and there is also a reference to her having had cheese with her breakfast. Some history of headaches was noted. The reference to cheese indicates to me that the GP was exploring whether there may be a link to diet. The Claimant said in response to questions from Mr Northall that she had been asked by her GP to maintain a food diary. As I have noted already, lifestyle advice had been provided the previous year in the context of reported fatigue. What is relevant in this regard is that there is no record in 2010 of the Claimant having been diagnosed with PTSD as she claims or having any other mental health issues nor that she had been or was being referred for any assessment in that regard. Equally, there is no reference to any past diagnosis of mental health issues whilst in India. I find that inexplicable. The Claimant's evidence regarding a claimed diagnosis in 2010 emerged for the first time in the course of her evidence at Tribunal, as did her reference to post-partum depression in 2021. I consider her evidence on these matters to be unreliable. She undermined her credibility in the matter further by seeking to turn the spotlight on the various health professionals, criticising Dr Dunseath's report as unhelpful and stating that others had failed to keep adequate or accurate records of their interactions with her, something I do not accept. Over the years, the medical professionals have documented tiredness, insomnia, headaches, migraine and fatigue. It is not credible for the Claimant to suggest that they failed to record a suicide attempt, depression with PTSD or post-partum depression.

25. Three and a half years after the Claimant consulted her GP in 2010 regarding migraine, the Claimant returned to surgery in May 2014 reporting three recent migraine episodes. She consulted her GP again on 30 July 2014 regarding

tiredness symptoms, when she admitted that she pushed herself and had been working for exams. That, rather than any underlying condition, would explain her tiredness. There are extensive redacted records over the following year. On 8 September 2015 the Claimant reported to her GP that she was experiencing palpitations. Once more, the symptoms seem to have been work related. She was noted to have a very stressful job as a consultant for IBM. She was provided with advice on stress management. There was no documented diagnosis of depression or anxiety. An ECG was undertaken, seemingly as a precautionary measure.

26. A further year later, in August 2016 the Claimant presented at surgery with a headache. There are no further details in that regard in her GP records. The next unredacted entry is two years later in July 2018 when the Claimant reported atypical chest pain and migraine. She attributed the latter as most likely related to periods, which had also been the identified reason for her tiredness symptoms in 2009. The chest pains were said to have been ongoing for six weeks; she received advice around breathing techniques.

27. The next unredacted record is an entry from 14 February 2020. The identified problem was stated to be "depressive disorder" with reference to a reported long standing history of depression with PTSD. This could only have been a reference to what the Claimant's GP, Dr Doshi had been told by the Claimant when he took her history, rather than his own assessment in the matter, since no such history is revealed by her medical records. As I have observed already, the Claimant's evidence in this regard is unreliable; there is no evidence of a longstanding history of depression with PTSD, and certainly no evidence that the Claimant was formally diagnosed in 2010 with PTSD. It seems to me that the consultation on 14 February 2020 proceeded on a false premise, such that I cannot place any significance reliance upon any documented conclusions arrived at by Dr Doshi in the course of the consultation. I note that the Claimant reported that her symptoms of depression with PTSD had recurred and worsened over the preceding two years, making it difficult for her to cope. That is not reflected in her GP records which evidence just one potentially relevant consultation over the previous two years, namely the consultation in July 2018 during which migraine had been attributed to her periods. I do, of course, note that Sertraline 50mg tablets were prescribed on 14 February 2020, that the Claimant presented as tearful during the consultation and that she reported suicidal thoughts, albeit which she said she would not act upon.

28. My reservations in respect of the 14 February 2020 consultation extend to Dr Dunseath's report of 23 May 2023 which draws heavily upon Dr Doshi's notes of his consultation with the Claimant three years earlier. Again, in my judgement, Dr Dunseath's report proceeds on a false premise, namely the Claimant's self-reported longstanding history of depression with PTSD in circumstances where there is in fact no evidence to corroborate such a history and no evidence of any relevant professional assessment or diagnosis.

29. There is no evidence of any follow up to the consultation of 14 February 2020, which is perhaps surprising if the Claimant had been experiencing significant

symptoms of depression for approximately two years and had been diagnosed with a depressive disorder for which she had been prescribed Sertraline.

30. The Claimant saw her GP on 29 September 2020 when she reported that she believed she might have ADHD. She spoke of being hyper focused and absorbed in work, and that this was impacting her personal relationships. She reported no problems with concentration (a common symptom of depression and other mental health conditions) and no work related issues. There is no record of any discussion of the Claimant's claimed longstanding depression. The Claimant's GP felt that she was not reporting traits typical of ADHD and their notes do not suggest any other underlying health issues, rather that the Claimant might benefit from relationship counselling.

31. The Claimant presented in surgery with palpitations in November 2020. I consider that these are likely to be attributable to the relationship difficulties she was then experiencing, though she was also pregnant. In a subsequent consultation with a consultant cardiologist in December 2020 the Claimant admitted to some anxiety and stress.

32. The Claimant moved to a different surgery early in 2021, though returned to her previous surgery at the end of December 2022. Her medical records evidence that she sought help with anxiety / migraine on 7 October 2021 and stress / low mood in early January 2022; the latter seems to have been a private consultation. It is clear from the Claimant's medical records that the issues she was reporting at this time related to various stresses within her personal and working life, including difficulties or tensions within her then working environment which were possibly the subject of a grievance. There was a formal diagnosis of stress at work / tension headache on 7 October 2021 and she was issued with a MED3. In January 2022 the Claimant was reported to be feeling the after effects of bullying at work; it was documented that she had been through a challenging time, but that she did not require medication.

33. The Claimant consulted her GP on 8 and 22 June 2022. She reported increased anxiety and panic attacks over the preceding few months. She potentially related this to encounters with bullies (including it seems, her sister). She also reported low mood and confirmed that she had not taken the anti-depressant medication that had been prescribed in 2020. It was noted that she had started a new job that April (this would have been with the Respondent) – she apparently described the new job as "fine". She described her relationship with her husband as "ok, he is not abusive" and reported fleeting suicidal thoughts. Dr Gwinnell noted as follows:

> *"She wanted to know if she was suffering from PTSD / anxiety or depression"*

It makes no sense to me that she might have asked this of Dr Gwinnell if, as she claims she had been diagnosed in India with mental health difficulties many years before and specifically diagnosed with PTSD in 2010 by a health professional in the UK. It reinforces my findings and conclusions above and further undermines my ability to place reliance upon the record of the 14

February 2020 consultation or Dr Dunseath's report of 23 May 2023 which draws heavily upon it.

34. Dr Gwinnell saw the Claimant again in surgery on 22 June 2022 by which time the Claimant had self-referred for talking therapies. She said that she felt things were better since her contract had ended as her job was causing her a lot of stress. She had been triaged by the Cambridge and Peterborough NHS Foundation Trust Psychological Wellbeing Service (IAPT) on 20 June 2022, during which she had completed psychometric tests which indicated that she had moderately severe depressive symptoms (using the PHQ-9 diagnostic criteria) and moderate anxiety symptoms (using the GAD-7 diagnostic criteria). In a letter dated 2 December 2022 the IAPT confirmed to the Claimant that following 11 sessions of high intensity therapy, the Claimant's scores against these criteria had reduced to a level that was no longer clinically relevant in terms of depression or anxiety. I shall return to the question of whether this evidence has any bearing in terms of whether the Claimant was disabled at the relevant time.

CONCLUSIONS

35. In my judgement, the Claimant has failed to discharge the burden upon her to establish that she was disabled at the relevant time. She has not satisfied me on the balance of probabilities that she has PTSD or that she self-harms. I can find no reference to self-harming in the Claimant's Disability Impact Statement, medical records or elsewhere. Prior to 8 June 2022 I can only identify one record in the Claimant's medical notes to the effect that she had experienced suicidal thoughts, namely in the record of the 14 February 2020 consultation which, as I say, I approach with caution. With the exception of the November 2020 palpitations, there is nothing in the Claimant's medical records prior to 8 June 2022 which evidences that she experienced panic attacks. On 20 June 2022 the Claimant was assessed as having moderately severe depressive symptoms and moderate anxiety symptoms. Whilst this was after her employment with the Respondent had ended, it might be thought unlikely that her symptoms only reached that level on 20 June 2022. However, in circumstances where I do not accept that the Claimant has a longstanding history of depression (with or without PTSD), there is little or no objective evidence as to when her symptoms respectively first reached those levels of severity. It is worth reiterating that the Claimant has the burden of proof in this matter.

36. Having carefully considered the Claimant's unredacted medical records during the period 2019 to 2021, I am satisfied that in so far as there is relatively limited and intermittent evidence over those years of the Claimant having experienced symptoms of anxiety, as well as occasional tension headaches, migraine, palpitations and work stress, these episodes fell squarely within what were referred to in DLA Piper UK LLP as symptoms derived from a reaction to adverse circumstances such as problems at work, or adverse life events, and as such that the Claimant was not thereby disabled within the meaning of the Equality Act 2010.

37. I recognise, of course, that prolonged exposure to problems at work and adverse life events can undermine a person's resilience such that their symptoms may ultimately reflect and evidence the existence and manifestation of an underlying mental impairment which is having a substantial adverse effect upon their ability to carry out normal day to day activities. However, the Claimant has not satisfied me on the balance of probabilities that this had been the case for 12 months by the time she was dismissed from the Respondent's employment, let alone at some earlier date in her employment.

38. I am satisfied that by 20 June 2022 the Claimant was experiencing symptoms consistent with depression and anxiety, as opposed to merely stress related to adverse life events and pressures at work. Given her history of adverse reactions to stress, I conclude that the Claimant experienced some form of stress reaction during her employment with the Respondent. I should stress that I have made no findings that this reflects any wrongdoing or culpability on the part of the Respondent or its staff. The Claimant has not identified in her Disability Impact Statement when any such stress reaction is likely to have occured or when she first began to manifest symptoms consistent with depression and anxiety. Putting aside that the Claimant told her GP on 8 June 2022 that work was "fine", she states in the addendum to Form ET1 that she became aware very early on in her employment that she was being underpaid and that she was bullied from the outset. Even if I were to conclude that the Claimant's resilience had been so effected by events during her previous employment and in personal life that she had become susceptible to depression and anxiety, there is no evidence before me to enable me to conclude that she had already developed these mental impairments by the time she commenced employment with the Respondent in April 2022 or that they were then having a substantial adverse effect on her ability to carry out normal day to day activities. Although, as I say, it might be thought unlikely that the Claimant's symptoms of depression and anxiety only reached the level that they did on 20 June 2022, she has the burden of proof in the matter; she has failed to identify or establish an earlier date by which they had reached that level such that I could reasonably conclude she thereby had a relevant mental impairment whilst employed by the Respondent or that it was impacting her ability to carry out day to day activities to any material extent. For these reasons alone, I conclude that she was not disabled at the relevant time.

39. In any event, even had the Claimant satisfied me that she had experienced symptoms consistent with moderately severe depression and moderate anxiety either from the outset of or during her employment with the Respondent, and that the effects were as stated in her Disability Impact Statement, she has not satisfied me that those effects were likely to last 12 months or more. Given her history of reaction to adverse circumstances, which over the course of the eleven or so years covered by her medical records seem to have been relatively intermittent and short lived, there is no reason for me to conclude that the adverse reaction she experienced in 2022 could well lead to a long term effect on her ability to carry out normal day to day activities. I put aside the fact that the Claimant seemingly made a full recovery by the end of 2022 and focus instead on how things looked in June 2022, or even in April 2022 at the outset of her employment with the Respondent. Even if I approach the matter on the basis that at some point during her employment with the Respondent, the

Claimant began to experience moderately severe depression and moderate anxiety, and that these had a more than minor impact on her ability to carry out normal day to day activities (something she has not established), I do not consider that there was a real possibility at any point during her employment that these claimed effects would continue to be felt for a further 8 to 10 months or more or, if they had been felt prior to her dismissal, that they could well recur. In my judgement, an unfortunate, but unique constellation of events caused the Claimant to begin to experience symptoms of depression and anxiety by June 2022; she was a first-time mother of a young child, had experienced some relationship difficulties, perceived that she was being bullied by her sister and the Respondent, and had become involved in a difficult workplace conflict at a previous employer, potentially involving a formal grievance. In my judgement, these or similar 'triggering' events were unlikely to recur. She might well continue to be susceptible to stress by reason of adverse life events, but I am not satisfied that by 14 June 2022 or earlier there was a real possibility that any symptoms of depression and anxiety would recur.

40. For all these reasons, the Claimant has failed to discharge the burden upon her of establishing that she was disabled within the meaning in s.6 of the Equality Act 2010 at the relevant time. In the circumstances, I shall strike out her claims of disability discrimination on the grounds that they have no reasonable prospect of success.

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Employment Judge Tynan

Date: 18 March 2024…….

Sent to the parties on:3 April 2024 .....

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For the Tribunal Office