EMPLOYMENT TRIBUNALS

Claimant: Ms J Nazirova

Respondent: GBT Travel Services UK Limited

Heard at: Manchester Employment Tribunal

On: 10 January 2025

Before: Employment Judge M Butler

Representation
Claimant: Self-representing, with Ms Coverdale providing interpretation
Respondent: Mr C Boyle (Solicitor)

JUDGMENT (AT PUBLIC PRELIMINARY HEARING)

1. The tribunal's decision is that the claimant was not a disabled person pursuant to s.6 of the Equality Act 2010 during the relevant period, in respect of PTSD and/or tinnitus/a hearing impairment.

2. The claims of disability discrimination are dismissed in their entirety.

REASONS

INTRODUCTION

3. An oral judgement was handed down to the parties at the hearing. However, the claimant subsequently made a request for written reasons. This document contains the written reasons for the decision.

4. This hearing was listed to determine whether the claimant had a disability pursuant to s.6 of the Equality Act 2010. This was initially listed to be heard on 26 September 2024. However, following postponement this took place

today. The final merits hearing had been listed to be heard across 3 days, starting on 19 March 2025.

5. The claimant's disability discrimination complaint was brought on 2 separate impairments: the mental impairment of post-traumatic stress disorder ('PTSD') and on the physical impairment of tinnitus/a hearing impairment.

6. The tribunal was assisted by a bundle that ran to 162 pages. Within that bundle, the claimant had produced a disability impact statement. The claimant's disability impact statement ran from pages 78 to 85.

7. The claimant gave oral evidence at this hearing.

LEGAL FRAMEWORK

8. Section 6 of the Equality Act (2010) ("EqA (2010)") states:

> (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.
>
> …

9. Schedule 1 of the EqA (2010) states:

> Section 6
>
> Part 1 Determination of Disability
>
> *Impairment*
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> 1
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> Regulations may make provision for a condition of a prescribed description to be, or not to be, an impairment.
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> Long-term effects
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> (1) The effect of an impairment is long-term if—
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> (a) it has lasted for at least 12 months,
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> (b) it is likely to last for at least 12 months, or
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> (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.

10. Guidance issued under section 6(5) of the Equality Act 2010, or more specifically the *Equality Act 2010 Guidance: Guidance on matters to be taken into account in determining questions relating to the definition of disability* provides the following:

> Meaning of 'likely'
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> C3. The meaning of 'likely' is relevant when determining:
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> • whether an impairment has a long-term effect (Sch1, Para 2(1), see also paragraph C1);
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> • whether an impairment has a recurring effect (Sch1, Para 2(2), see also paragraphs C5 to C11);
>
> • whether adverse effects of a progressive condition will become substantial (Sch1, Para 8, see also paragraphs B18 to B23); or
>
> • how an impairment should be treated for the purposes of the Act when the effects of that impairment are controlled or corrected by treatment or behaviour (Sch1, Para 5(1), see also paragraphs B7 to B17).
>
> In these contexts, 'likely', should be interpreted as meaning that it could well happen.
>
> C4. In assessing the likelihood of an effect lasting for 12 months, account should be taken of the circumstances at the time the alleged discrimination took place. Anything which occurs after that time will not be relevant in assessing this likelihood. Account should also be taken of both the typical length of such an effect on an individual, and any relevant factors specific to this individual (for example, general state of health or age).

11. Mr Boyle referred to the following relevant authorities in his closing submissions:

    a. **Goodwin v Patent Office [1999] IRLR 4, EAT**. Referencing that at paragraph 30 that there will be complete overlap over something being substantial and long-term. And that the constituent parts of disability can be considered separately, but a tribunal at the same time must be aware of the risk that disaggregation brings and should not take its eye off the full picture.
    b. **Kapadia v London Borough of Lambeth [2000] IRLR 699**
    c. **Dunham v Ashford Windows [2005] IRLR 608**, that evidence should be provided by a suitably qualified expert:

> 40. In our judgment the Tribunal also fell into error in relying on the fact that Mr Cawkwell is a psychologist and not a medical practioner. That reliance is, perhaps, understandable. The Employment Appeal Tribunal in Morgan indicated that the fourth route could be expected to require very specific medical evidence to support its existence; and Mummery LJ in McNichol, at paragraph 19 of his judgment, said
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> "The essential question in each case is whether, on sensible interpretation of the relevant evidence, including the expert medical evidence and reasonable inferences which can be made from all the evidence the applicant can fairly be described as having a physical or mental impairment."
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> However neither in Morgan nor McNichol was the Employment Appeal Tribunal or the Court of Appeal considering a case of mental impairment which did not involve a mental illness; nor was the effect of expert evidence from a psychologist as opposed to a doctor under examination. We do not regard their dicta as imposing a requirement of medical evidence in every case, even where appropriate expert evidence as to the type and nature of the condition which formed the basis of the claim is available. We accept that in the case of mental illness medical evidence as to the nature of that illness is likely to be expected, as in the case of a physical illness; but in a case of learning difficulties we see no reason why the essential evidence which establishes the nature of the condition from which the Claimant claims to suffer should not be provided by a suitably qualified psychologist. What is important is that there should be evidence from a suitably qualified expert who can speak, on the basis of his experience and expertise, as to the relevant condition. Mr Cawkwell's unchallenged report demonstrated that he had very substantial experience in the relevant field; and it was not open to the Tribunal, in our judgment, to decline to accept his conclusions and to reject Mr Dunham's claim because Mr Cawkwell was not a doctor.

d. **Richmond Adult Community College v McDougal [2008] IRLR 227**
e. **J v DLA Piper UK LLP [2010] IRLR 936**
f. **Royal Bank of Scotland Plc v Morris UKEAT/0436/10**
g. **Khorochilova v Euro Rep Limited UKEAT/0266/19**, at paragraph 16 where it is stated that '… there can be no error of law in seeking to identify whether or not a person has an impairment as that is what the statute expressly requires.'

12. The tribunal considered the current state of the law, including the following specific paragraphs:

    a. **Morgan v Staffordshire University [2011] EAT/0322/00**, in which the EAT provided the following guidance on the question of whether a mental impairment qualifies as a disability under the EqA (2010).

At paragraph 20 of the Judgment Lindsay J stated as follows:

> "(1) Advisers to parties claiming mental impairment must bear in mind that the onus on a claimant under the DDA is on him to prove that impairment on the conventional balance of probabilities.
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> (2) There is no good ground for expecting the Tribunal members (or Employment Appeal Tribunal members) to have anything more than a layman's rudimentary familiarity with psychiatric classification. Things therefore need to be spelled out. What it is that needs to be spelled out depends upon which of the 3 or 4 routes we described earlier in our para 9 is attempted. It is unwise for claimants not clearly to identify in good time before the hearing exactly what is the impairment they say is relevant and for Respondents to indicate whether impairment is an issue and why it is. It is equally unwise for Tribunals not to insist that both sides should do so. Only if that is done can the parties be clear as to what has to be proved or rebutted, in medical terms, at the hearing.
>
> (3) … In any case where a dispute as to such impairment is likely, the well-advised claimant will thus equip himself, if he can, with a writing from a suitably qualified medical practitioner that indicates the grounds upon which the practitioner has become able to speak as to the claimant's condition and which in terms clearly diagnoses either an illness specified in the WHOICD (saying which) or, alternatively, diagnoses some other clinically well-recognised mental illness or the result thereof, identifying it specifically and (in this alternative case) giving his grounds for asserting that, despite its absence from the WHOICD (if such is the case), it is nonetheless to be accepted as a clinically well-recognised illness or as the result of one.
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> (4) … When a dispute is likely a bare statement that does no more than identifying the illness is unlikely to dispel doubt nor focus expert evidence on what will prove to be the area in dispute.
>
> (5) This summary we give is not to be taken to require a full Consultant Psychiatrist's report in every case. There will be many cases where the illness is sufficiently marked for the claimant's GP by letter to prove it in terms which satisfy the DDA. Whilst the question of what are or are not "day-to-day activities" within the DDA is not a matter for medical evidence – Vicary v British Telecommunication plc [1999] IRLR 680 EAT, the existence or not of a mental impairment is very much a matter for qualified and informed medical opinion. Whoever deposes, it will be prudent for the specific requirements of the Act to be drawn to the deponent's attention.
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> (6) If it becomes clear, despite a GP's letter or other initially

available indication, that impairment is to be disputed on technical medical grounds then thought will need to be given to further expert evidence, as to which see de Keyser v Wilson [2001] IRLR 324 at p 330.

…

(8) The dangers of the Tribunal forming a view on "mental impairment" from the way the claimant gives evidence on the day cannot be over-stated. Aside from the risk of undetected, or suspected but non-existent, play-acting by the claimant and that the date of the hearing itself will seldom be a date as at which the presence of the impairment will need to be proved or disproved, Tribunal members will need to remind themselves that few mental illnesses are such that their symptoms are obvious all the time and that they have no training or, as is likely, expertise, in the detection of real or simulated psychiatric disorders.

(9) The Tribunals are not inquisitorial bodies charged with a duty to see to the procurement of adequate medical evidence – see **Rugamer v Sony Music Entertainment UK Ltd [2001] IRLR 644** at para 47. But that is not to say that the Tribunal does not have its normal discretion to consider adjournment in an appropriate case, which may be more than usually likely to be found where a claimant is not only in person but (whether to the extent of disability or not) suffers some mental weakness."

b. **Royal Bank of Scotland plc v Morris [2012] UKEAT/0436/10/MAA**, in which Underhill J provided further guidance on the assessment of mental impairments under the Equality Act 2010:

"[63] We accordingly hold that it was not open to the tribunal on the evidence before it to find that the Claimant was disabled during the relevant period. It might well be that the Claimant could have filled the evidential gap by agreeing to the suggestion made during the case management process that expert evidence be sought which directly addressed the questions which the contemporary reports did not cover. But he made a deliberate – and perfectly rational – choice not to do so: see para 55 above. The fact is that while in the case of other kinds of impairment the contemporary medical notes or reports may, even if they are not explicitly addressed to the issues arising under the Act, give a tribunal a sufficient evidential basis to make common-sense findings, in cases where the disability alleged takes the form of depression or a cognate mental impairment, the issues will often be too subtle to allow it to make proper findings without expert assistance. It may be a pity that that is so, but it is inescapable given the real difficulties of assessing in the case of mental impairment issues such as likely duration, deduced effect and risk of

recurrence which arise directly from the way the statute is drafted."

c. **J v DLA Piper LLP [2010] UKEAT/0263/09/RN**, where Underhill J (whilst President of the EAT) gave guidance on the distinction between clinical depression and a reaction to adverse life events:

> "[40] Accordingly in our view the correct approach is as follows:
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> > (1) It remains good practice in every case for a tribunal to state conclusions separately on the questions of impairment and of adverse effect (and, in the case of adverse effect, the questions of substantiality and long-term effect arising under it) as recommended in Goodwin.
> >
> > (2) However, in reaching those conclusions the tribunal should not proceed by rigid consecutive stages. Specifically, in cases where there may be a dispute about the existence of an impairment it will make sense, for the reasons given in para. 38 above, to start by making findings about whether the claimant's ability to carry out normal day-to-day activities is adversely affected (on a long-term basis), and to consider the question of impairment in the light of those findings.
> >
> > (3) These observations are not intended to, and we do not believe that they do, conflict with the terms of the Guidance or with the authorities referred to above. In particular, we do not regard the Ripon College and McNicol cases as having been undermined by the repeal of para. 1 (1) of Schedule 1, and they remain authoritative save insofar as they specifically refer to the repealed provisions.
>
> [42] 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 unquestionably 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". (But NB that "clinical" depression may also be triggered by adverse circumstances or events, so that the distinction cannot be neatly characterised as being between cases where the symptoms can be shown to be caused/triggered by adverse

> circumstances or events and cases where they cannot.) 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 – it is implicit or explicit in the evidence of each of Dr Brener, Dr MacLeod and Dr Gill in this case – and which should in principle be recognised for the purposes of the Act. We accept that 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 laypeople, 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) above, 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 twelve 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."

d. **Boyle v SCA Packaging Ltd (Equality and Human Rights Commission intervening) 2009 ICR 1056**, HL, in which Baroness Hale defined the term 'likely' as meaning something that 'could well happen'.

e. **Jobling v Corporate Medical Management Ltd EAT 0703/01**, where medical evidence was important.

CLOSING SUBMISSIONS

13. In summary, Mr Boyle submitted the following in closing argument:

a. The respondent did not accept that the claimant had a disability based on the evidence it had seen.
b. The burden of proof rests on the claimant.
c. The tribunal has to consider the four elements: is there a physical or mental impairment. Does it adversely affect normal day to day activities. Is that affect substantial. Is it long term? These may overlap.
d. With respect impairment of PTSD, the quality of medical evidence is important. Often requires evidence from a suitably qualified medical practitioner. This is especially so where the impairment involves depression and/or cognitive impairment.
e. The claimant has not produced sufficient evidence capable of proving that she was disabled by reason of PTSD during relevant

period.

f. There is no reference to PTSD in clinical medical records during material time.
g. With respect tinnitus, there is no prognosis given following audiology test. And that no hearing aid needed.
h. PIP assessment supports no obvious impact on claimant, as at 11 July 2023 (date the claimant was assessed).
i. Although the MRI report refers to clinical history of tinnitus, and to small effusion of the right mastoid (06 December 2023), it provides no other details, with everything else seeming normal. This taken together with earlier PIP assessment, claimant did not have a disability with reference to tinnitus during the material time.
j. There is no evidence to suggest PTSD, if the claimant still had this impairment during the material period, was having a substantial adverse affect on her normal day to day activities.
k. The claimant refers to effects PTSD and tinnitus had on her daily life at pages 81-83. However, these are not supported by the documentary evidence provided. Particularly the PIP assessment.
l. With respect long-term. The medical documents do not support that claimant had suffered forom affects of PTSD for 12 months at material time, or was continuing to do so, so as to make it likely. Whilst the audiology request form places tinnitus as having lasted for around 6 months, and no evidence to support that it was likely to last a further 6 months at that stage. Likelihood is to be assessed at date of discrimination.

14. The claimant submitted the following:

a. She had not had the chance to be assessed by a specialist. But had prepared as best she could for this hearing.
b. The claimant identified that she had clearly been assessed by medical practitioners, and diagnosed with PTSD.
c. The claimant explained that PTSD was not something that could come to an end. However, accepted that the symptoms comes in different forms and shapes at different time.
d. The claimant explained that her health caused issues to her memory, vision, hearing and senses. And that there was an ongoing processs, with the hospital and her GP still trying to understand what was causing a disconnection she was suffering from.
e. The claimant explained that she had disclosed all the medical notes that have been created by her doctors.
f. The claimant says she had a recurrence of PTSD symptoms in January 2022. And that she cannot control how she reacts to situations.
g. The claimant explained that when a situation became overwhelming, her symptoms can differ. But she cannot remember what she was saying to the doctors.

FINDINGS OF FACT

The tribunal makes the following findings of fact based on the balance of probability from the evidence it has read, seen, and heard. Where there is

reference to certain aspects of the evidence that have assisted the tribunal in making its findings of fact this is not indicative that no other evidence has been considered. The tribunal's findings were based on all of the evidence and these references are merely indicators of some of the evidence considered in order to try to assist the parties understand why it made the findings that it did.

The tribunal does not make findings in relation to all matters in dispute but only on matters that it considered relevant to deciding on the issues currently before it.

15. The claimant was diagnosed with Post-Traumatic Stress Disorder ('PTSD') on 08 May 2019 (p.155). And at this point in time the claimant was clearly affected by her PTSD and continued to do so at least up until August 2020. It was recorded in the claimant's clinical records on 16 April 2020 (see p.125). And on 21 August 2020 (see p.149) when the claimant was assessed by a consultant, the claimant is recorded as reporting that she feels sleepy all day but was unable to sleep when the appropriate time came, feels numb, disconnected and had a persistent low mood. The claimant also reported (see p.150) symptoms of hypervigilance, that she becomes angry and tearful and had feelings of being overwhelmed. She further reported having nightmares and arguing with family members. And on examination, she was assessed as being objectively low. She presented as having been subject to regular nightmares. The claimant had been prescribed Venlafaxine (the date and dosage are unknown), which is an anti-depressant. This was reduced on 21 August 2020 to 150mg per day.

16. Between 03 January 2023 and 03 November 2023 (this is the material time with respect the claimant's disability discrimination complaints), the claimant's normal day to day activities were not impacted on by PTSD. In making this finding, the tribunal has considered the evidence that the claimant has provided to the tribunal. None of which supported that there was a long term and substantial adverse impact on her normal day to day activities during the relevant period. The claimant presented a copy of her medical documents. Of relevance are:

    a. The claimant's GP notes, which cover the period 29 December 2023 to 08 April 2024 (pp.120-118). These are outside the period the tribunal was concerned with so do not assist the tribunal.
    b. The claimant has produced a copy of a document relating to an Ultrasound that took place on 02 January 2024, which relates to no impairment on which the claimant brings her claim (p.121).
    c. The claimant has produced a copy of her medication history (see p.124), which identifies the claimant had a prescription for 28 days of Venlafaxine at 150mg per day from 08 June 2023. The next prescription of Venlafaxine was on 06 November 2023, at the reduced dosage of 75mg per day. The prescription again covered 28 days.
    d. A copy of the claimant's clinical records (p.125). The claimant has redacted some parts of these records, and therefore the tribunal presumes that these records are not relevant to the issues. There is reference to a depressive order on 16 April 2020, tinnitus on 03 April 2023 and hearing loss on 08 June 2023. The 17 May 2023 entry causes some difficulty. The first part is redacted, and the second part states 'thoughts'. It is presumed that this is referring to suicidal

reports, given that identified below (although this is merely a presumption by the tribunal). The claimant gave no evidence to explain what this was, nor seemed to rely on the entry during the hearing.

e. A copy of a discharge report dated 07 June 2023 (see p.144). This appears to be a referral to the Wellbeing Service at Heaton Moor Medical Centre. Again, the claimant has redacted parts of this document, which does not appear helpful. However, this document shows that the claimant was assessed by the Service on 11 May 2023. The claimant was assessed as reporting severe symptoms of low mood. That there was a risk with the claimant identified, which presumably should read 'Risk of harm to self and others', however, part of this is redacted, which makes it difficult to be certain. The claimant was signposted to counselling, to which the claimant agreed, and she was discharged from the care of the Wellbeing team on 07 June 2023. The claimant's low mood, which is a different entry to that used for PTSD, resolved itself with a short course of counselling.

17. Further, supporting the finding above in respect no evidence impact caused to the claimant by PTSD during the relevant period, is that the claimant's disability impact statement (pp.78-85) does not provide any specific examples of difficulties in normal day to day activities at the material time that are required to establish disability. Rather, it is written generally. And, for the most that written in the claimant's disability impact statement appears to reflect how she presented to Dr Swarbrick on 21 August 2020 (see notes at p.150), which are not repeated in any documentary evidence after this time. The claimant's description of how PTSD was affecting her, insofar as the material period is concerned, do not appear to be supported by the evidence at the time. The tribunal does not doubt she was affected in these ways some time prior to the material period, as this is supported by the medical evidence, but there is no reference to these continuing and ongoing during the material period. Therefore, on balance, the tribunal finds that the claimant was not affected in the way she describes in her disability impact statement at the time of the allegations. Albeit the tribunal is not doubting that she may have had struggles previously and/or even afterwards, the tribunal must determine whether the claimant had a disability during the material period of her disability discrimination complaints, with that period being 03 January 2023 and 03 November 2023.

18. The claimant had an impairment of tinnitus from around the beginning of March 2023. This was the claimant's evidence in her disability impact statement, and which is supported by the documentary evidence. Particularly, the references in the claimant's clinical records (see p.125, as noted above). And the Hearing Centre full hearing assessment, dated 24 June 2023 (see p.140), which followed a referral made on 17 June 2023 (see pp.142-143). The impairment was still ongoing on 03 December 2023, as evidence by the MRI report of that same date, following investigation by the ENT team (see p.127).

19. Since March 2023, the claimant says she struggled to understand instructions, however, this was because people spoke at different speeds and in different accents. Although the claimant considered her tinnitus to

make this more difficult. This was the claimant's evidence under oath.

20. On 28 June 2023, and following the full hearing assessment, the referring doctor was sent a letter that explained that the claimant did not require a hearing aid (presumably this is what the redaction was referring to) at this stage (see p.139), and that was on considering the claimant's audiometric results. This does not identify any further issues nor a prognosis of the issues the claimant was suffering from.

21. There is no evidence that supports that the tinnitus issue was long term or was likely to last at least 12 months at this stage.

22. The claimant applied for Personal Independence Payment. The claimant was assessed by telephone, on 11 July 2023 (see p.105). A decision letter was sent to the claimant on 25 July 2023 (see pp.91). The claimant was assessed as follows (see p.92-94):

    a. The claimant was awarded a score of 2 for preparing food, meaning she may need prompting to prepare or cook a simple meal.
    b. The claimant was awarded a score of 0 for eating and drinking, meaning she could eat and drink unaided.
    c. The claimant was awarded a score of 2 for washing and bathing. It is recorded that the claimant needed supervision or prompting from another person to wash or bathe.
    d. The claimant was awarded a score of 2 for dressing or undressing. Being recorded that prompting or assistance may be needed.
    e. The claimant was awarded a score of 0 for communicating (p.93). With communication covering whether the claimant could express and understand verbal information unaided.
    f. The claimant was awarded a score of 0 for mixing with other people. With this category covering whether the claimant could engage with other people unaided.
    g. The claimant was awarded a score of 0 for making budgeting decisions, meaning she could manage complex budgeting decisions unaided.

23. Furthermore, in the decision part of the document (see p.94), the assessor refers to the following:
    a. There was no reported cognitive, learning, memory, speech, visual or hearing impairments. And that during the consultation the claimant engaged well and was able to provide details of her medical history showing adequate general memory and understanding.
    b. The claimant's speech was normal, and she communicated well without any prompting or assistance.
    c. The claimant can drive unaided, which requires a complex set of cognitive abilities including attention, concentration, and memory.
    d. There is no evidence of cognitive, intellectual or sensory impairment.

24. The claimant accepted that the decision letter was accurate and chose not to appeal the outcome. The assessment and conclusions recorded above are contrary to the affects that the claimant says she experienced at the material time because of her impairments (see disability impact statement). This further supports the tribunals findings about affects that the

impairments were having on the claimant.

CONCLUSIONS

25. The tribunal was faced with a real difficulty in this case, and it primarily relates to the evidence presented in this case. The claimant explained to the tribunal that she had disclosed all the documentary evidence that was relevant to her impairments. However, the tribunal could not help but think that there were some relevant medical records that have not been disclosed. For example, in the claimant's clinical record details at p.125, it is recorded that the claimant had a consultation on both 17 May 2023 and 08 June 2023. Part of these entries are redacted, but if that is referring to 'suicidal thoughts' and some mental disorder, then having this before the tribunal could have been beneficial to the claimant's case. However, it was not. Furthermore, with prescription reviews. For example, when the claimant's dosage of Venlafaxine was reduced on 06 November 2023, one would expect to see some discussion around this and discussion over why this was taking place. The claimant knew that she needed to disclose all relevant documents. She understood that the burden rested on her to establish that she satisfied the definition of disability under the Equality Act 2010, and she explained that she considered herself to have provided all the evidence that she needed. The tribunal could only assess whether the claimant had a disability based on the evidence it had before it.

26. Turning to the two impairments separately, starting first with the physical impairment of tinnitus/hearing impairment. Before then turning ot the mental impairment of PTSD.

27. Although the claimant likely had a physical impairment relating to hearing from around March 2023. The tribunal is not satisfied that the evidence supports that it had a substantial adverse effect on her normal day to day activities. And further, that at any point during the relevant period any such affects were likely to be long term. The evidence points towards the impairment having been raised and then those treating her dealing with the impairment conservatively, s they must have considered that this would resolve the claimant's issues in the short term. There is no suggestion of longer-term concerns by those treating the claimant, nor of a suggestion of a longer term plan. At no point does the evidence support that there was an impairment that was likely to last more than 12 months. The tribunal has had to discount what has happened since 03 November 2023, and her continuing problems. And has had to make this assessment based on the state of the evidence known at the time during the material period.

28. Turning to the normal day-to-day activities that the claimant has raised in her disability impact statement. The claimant placed much of her difficulties understanding conversations and participating in discussions as being because of the pace of people's speech and/or the accents they spoke in when she was cross-examined on this. And further, the medical documents at the material time, do not support that the hearing impairment was having a significant impact on the claimant's daily life. The claimant was continuing to work, as normal. And the claimant has not suggested otherwise.

29. The claimant has not provided anything specific that supports that she was relying increasingly on written communication at the material time.

30. The only document with any specific detail that could assist the tribunal in terms of effects on the claimant's normal day to day activities during the material period is the decision in respect the claimant's PIP claim, which was sent to her on 25 July 2023. And this references that the claimant was able to express and understand verbal information unaided. This runs contrary to that suggested in the claimant's disability impact statement. The decision also references that the claimant did not report to the assessor that she had any learning, memory, speech, visual or hearing impairments. And that during the consultation the claimant engaged well and was able to provide details of her medical history showing adequate general memory and understanding. Again, this runs contrary to that which the claimant included in her disability impact statement.

31. The burden of proof rests on the claimant to establish that she had an impairment that had a long terms adverse impact on her normal day to day activities. Although the tribunal accepts that the claimant had a diagnosed hearing impairment. She has not satisfied the tribunal that during the material time the evidence supported that it was long term or likely to be long term. Nor has she satisfied the tribunal that this caused a substantial adverse affect on her normal day to day activities. In those circumstances, the claimant's hearing impairment is found not to be a disability pursuant to s.6 of the Equality Act 2010

32. Turning to the claimant's alleged disability insofar as the mental impairment of PTSD.

33. The tribunal accepts that the claimant has evidence that she had a mental impairment of PTSD from 08 May 2019 through to a short period after 21 August 2020. This is the last piece of evidence the claimant has presented which supports such an impairment, and which identifies that the claimant continued to be prescribed Venlafaxine. The claimant certainly satisfied the definition of disability at this stage. However, the tribunal was tasked with determining a different period, and it was determining whether the claimant had a mental impairment of PTSD that satisfied the definition of disability under the Equality Act 2010 during the period 03 January 2023 and 03 November 2023 (and if it did, at what point during that period was the tribunal satisfied that the claimant has a disability).

34. However, the claimant's evidence does not support that this mental impairment continued to affect the claimant up to and through the material period, that being 03 January 2023 until 03 November 2023. There is a distinct lack of evidence that covers this period or the preceding 12 months, namely from 03 January 2022.

35. After 21 August 2020, there is no reference to the mental impairment of PTSD in the claimant's medical records. There are references to other matters, however, these appear separate from the clinical diagnosis, and thus the impairment, of PTSD. Or at least, there is no evidence to explain to the tribunal the interconnection between PTSD and the other issues for

which the claimant sought medical advice/intervention. The tribunal is not a medical expert, and the burden rested on the claimant to ensure that there was sufficient evidence before the tribunal that would help it understand the nature of the claimant's PTSD, when it started and ended and what affects it was having on her.

36. Furthermore, if the tribunal had decided that the claimant did continue to be impacted by the mental impairment of PTSD, it was also not satisfied, based on the evidence before it, that this was an impairment that had a substantial adverse effect on the claimant's normal day to day activities during the relevant period.

37. There is a distinct lack of evidence during the material period of any affects PTSD was having on her. The claimant has given general examples, however, as noted above, these resemble closely how she presented to Dr Swarbrick on 21 August 2020, and there is nothing in the documentary evidence that appears to support that these affects were continuing into the material period. Rather, the PIP assessment paints a very different picture. Rather, this recorded that the claimant could mix with others unaided, was able to make complex decision unaided, was able to communicate unaided, and specifically records that the claimant showed 'adequate general memory and understanding', 'she communicated well without any prompting or assistance' and that 'there is no evidence of cognitive, intellectual or sensory impairment'. This assessment was during the material period. To a large degree, this contradicted the claimant's evidence in her disability impact statement. And given the generality of the claimant's disability impact statement, given that the tribunal does not accept that it reflects the affects of PTSD on the claimant's normal day to day activities during the material time and given that there are no other documents that support that there were such affects, the tribunal concluded that the claimant had failed to establish that PTSD was having a substantial adverse affect on her normal day to day activities during the material time.

38. The claimant did have low mood in July 2023. The tribunal does not consider this a recurrence of the previously diagnosed PTSD, given the difference in the way that this matter was recorded in her clinical records. And further, considering the evidence in the round, these severe symptoms of low mood appear to be a reaction from the claimant to what was a difficult work situation (this seems to be the thrust of the claimant's claim form, box 8.2, where she references the stress and anxiety that she was being caused by working on what she describes as 'extremely challenging'. She references the account as being extremely challenging several times, and from when she first started working for the respondent. And she describes how this caused her to be stressed and anxious. This appears wholly different to the claimant's PTSD diagnosis). The claimant in her claim form identifying that she was becoming stressed through working on a demanding account. In respect stress and anxiety, this was clearly expected to only last short term at this time and was being managed conservatively through counselling (see p.144).

39. In the circumstances above, the tribunal has decided that the claimant is not a disabled person for the purposes of the Equality Act 2010 because of tinnitus/hearing impairment or PTSD. The claimant's disability

discrimination complaints are therefore dismissed in their entirety.

Judgment approved by:

Employment Judge **M Butler**

Date: 06 February 2025

JUDGMENT SENT TO THE PARTIES ON

Date: 14 February 2025

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FOR THE TRIBUNAL OFFICE

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

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