



EMPLOYMENT TRIBUNALS

Claimant: Dr Glynn Lloyd

Respondent: Insensys Limited

Heard at: Bristol (by Video) **On:** 9 September 2025

Before: Employment Judge Midgley

Representation

Claimant: Mr W Young, Counsel

Respondent: Mr S Wyeth, Counsel

RESERVED JUDGMENT

ON A PRELIMINARY ISSUE

1. The claimant was not a person with a disability within the definition of section 6 and Schedule 1 of the Equality Act 2010 as a result of an impairment caused by the condition of 'High Performance Anxiety' in the period October 2023 to 16 July 2024.
2. The claims of disability discrimination are not well founded and are therefore dismissed.

REASONS

The claims and issues for the preliminary hearing

1. By a claim form presented on 23 December 2024 the claimant brought complaints of unfair dismissal and discrimination on the grounds of disability. The claimant relied upon an impairment caused by a condition identified as 'High Performance Anxiety' as a disability for the purposes of the discrimination claims (hereinafter referred to as 'the Anxiety').
2. Early conciliation through ACAS commenced on 15 October 2024 and a certificate of early conciliation was issued on 26 November 2024.

3. By a response presented on 11 March 2025, the respondent resisted the claims. It filed an amended response on 14 March 2025 in which accepted that the claimant had the condition of anxiety but put the claimant to proof that the resulting impairment was a disability.
4. At case management hearing on 6 May 2025, at which this preliminary hearing was listed to determine the issue of disability, the respondent clarified the nature of the dispute in relation that that issue as follows:
 - 4.1. The respondent put the claimant to proof of the symptoms of the Anxiety but disputed that the condition caused the claimant to experience extreme sensitivity to auditory overload or any of the pleaded aspects of perfectionism he relied upon.
 - 4.2. The respondent put the claimant to proof of the manner in which the Anxiety condition affected him and disputed that that claimant avoided social interactions.
5. Regrettably, in breach of the Orders which I had made at the case management hearing, the parties did not file the bundle, skeleton arguments or authorities until late in the afternoon of 8 September 2025. They had not been added to the Tribunal's file in consequence, and therefore had not been provided to me in advance of the hearing.

Procedure, Hearing and Evidence

6. The bundle and other documents were located after the start of the hearing. They consisted of an agreed bundle of 153 pages, containing the pleadings, the claimant's disability impact statement, a statement from Mrs Lucy Knox, relevant medical evidence and other relevant documents, and detailed skeleton arguments (21 pages) and authorities (200 pages) from counsel.
7. It was therefore necessary for me to read before the evidence could begin. I took approximately thirty minutes to read the statements, the skeleton arguments and some of the documents in advance of the evidence commencing. The time for reading was insufficient to allow me to consider any of the points from the authorities referred to in the skeletons.
8. Such breach of orders which are essential to a Judge's proper preparation for the hearing is becoming all too common. It is unacceptable, and only the most limited explanation was given for it, and the most basic apology. Its effect is, however, more profound. It has been necessary to reserve Judgment, which requires time to be taken from other cases for the Judgment to be written, which time is commonly unavailable given the pressure on judicial resources, or the Judge is required, as I am, to write the Judgment in their own time on evenings and weekends.
9. This is far from the worst example, but the parties and their representatives are put on notice that if there is any further breach of case management orders of this sort, the hearing will be postponed and the Judge will consider if the conduct of the proceedings has been unreasonable and, if so, whether any claim or response or part of it should be struck out, or if costs should be ordered against a party or a representative. The Judge will then be free to consider other cases where the parties have complied with orders.

10. The claimant gave evidence by affirmation and answered questions from counsel and from me. Mr Knox also gave evidence by affirmation in the same manner.
11. I heard concise verbal submissions from both counsel, expanding upon their written arguments. Evidence and argument concluded at 2pm, at which stage it was necessary to break for lunch, and I took the decision to reserve Judgment given the likelihood that one or other party would request written reasons in any event and seeking to write and hand down a Judgment in this case, which was finely balanced, was unrealistic.

The Issues

12. The relevant issues were as follows

Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? In particular:

- 1.1. Did the claimant have a physical or mental impairment. The claimant argues that he had a mental impairment, namely High Performance Anxiety.*
- 1.2. Did it have a substantial adverse effect on the claimant's ability to carry out day-to-day activities?*
- 1.3. If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?*
- 1.4. Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?*
- 1.5. Were the effects of the impairment long-term? In particular:*
 - 1.5.1. did they last at least 12 months, or were they likely to last at least 12 months?*
 - 1.5.2. if not, were they likely to recur?*

Factual Background

10. I made the following findings on the balance of probabilities on the basis of the evidence which I heard and from that contained in the agreed bundle.
11. The claimant was employed by the Respondent as its Chief Technical Officer from 1 October 2019 until his dismissal on 16 July 2024. He holds a PhD in Engineering. He is clearly a very intelligent and articulate man and presented in that manner during his evidence. Mr Chris Knox and his wife, Mrs Lucy Knox, are Directors of the Respondent.

12. During the first three years of his employment, the Claimant was largely in good health. In approximately September 2021, he began to experience symptoms of anxiety. There is very little evidence of what those symptoms were, how frequently they occurred and how acute they were. The claimant did not address the specifics in his witness statement.
13. The symptoms cannot have been significant because the claimant did not seek any medical support or other treatment in respect of them until March 2023. Conversely, when the claimant experienced symptoms of other conditions, he did seek medical attention; thus, he approached his GP in March 2009 when he experienced diarrhoea for three days, he did so again in March 2015 for haemorrhoids and in January 2016 when he had pins and needles. Similarly, he sought medical treatment for the condition of irritable bowel syndrome in 2017. I conclude therefore that had the symptoms of his anxiety have been in any way significant between September 2021 and March 2023 he would have sought medical support in a timely fashion; he was not a medical sceptic who averse to taking medication or to raising minor health issues with his GP.
14. Furthermore, it was not the claimant's evidence that the symptoms prevented him from performing his role as the CTO or as a director of the Respondent, nor that it effected his social life or home life. He continued to work without any need for sick leave and benefited from a full social and family life.
15. The claimant suggested that his practice was to try to manage any health issue himself, but the evidence of his GP records contradicts that account, and I reject it. That he did not report his anxiety to the GP, therefore, is powerful evidence that the symptoms were not acute or substantial before March 2023, save for the limited and discrete occasions detailed below, and I find accordingly.
16. In February 2022 Mr Knox return to work after the death of his father. He and the claimant, who had been longstanding friends, became involved in a heated argument which shook and upset both men and fundamentally altered the nature of their relationship from that point onwards. As they worked together, it was a very difficult matter to overlook or ignore.
17. The claimant continued to work, travelling from his home in the West Midlands to the respondent's premises in Fareham two days a week, staying in a B&B whilst he worked from the office before returning home.
18. In late 2022 and in early January 2023, the claimant experienced two panic attacks. Those attacks coincided with two events in that period: first, following the death of the claimant's mother-in-law in November 2022, the claimant's father-in-law spent more time with the claimant and his family. In February 2022, the claimant reported to the respondent's HR Manager, Rebecca Ogborn that his father-in-law had been acting as the 'alpha' male in the house, which the claimant found distressing and stressful. Secondly, from approximately late October or early November 2022 the claimant's business decisions within the respondent were coming under increasing scrutiny and were subject to criticism from Mr Knox, leading to increased friction between the two men, and between the claimant and the directors more generally. Some of those disputes are detailed in paragraphs 15 and 16 of the Grounds of Resistance, others in the Particulars of Claim. It is unnecessary and inappropriate to make any finding

about what occurred in relation to them, but it is sufficient to note that both the claimant and the respondent agree that the disputes occurred.

19. On 19 February 2023, the claimant attended the England Lionesses v Italy football match in Coventry.
20. On 4 March 2023, the claimant attended a weekend social gathering of the respondent's staff in Gunwharf Quay.
21. The Claimant's second 'panic attack' occurred whilst he was at work on 14 March 2023, following a discussion with Mr Knox during which the claimant perceived that Mr Knox was unjustly and reasonably critical of him. He emailed Ms Ogborn and asked if she had a spare 5 minutes to talk to him. She came to see him, noticed that he was anxious and, having taken him outside, talked to him whilst the two walked around the industrial estate for 30 or 40 minutes until his anxiety had subsided. During that discussion the claimant explained the impact of his father-in-law's conduct on him and how it was making him anxious and causing him stress. In consequence, Ms Ogborn suggested that the claimant spoke to her fiancé, who was a GP, which he did. Ms Ogborn's fiancé advised the claimant to make an appointment with his GP and to discuss a prescription for sertraline.
22. The claimant therefore called his GP surgery on 31 March 2023, explained that he had been having a difficult time with Mr Knox, his colleague and former friend, and reported that as a result he had been experiencing stress, feeling anxious and had experienced a panic attack (although he gave no further details of what that attack had involved). He said that he had been experiencing feelings of anxiety for approximately 18 months. He relayed his discussion with Ms Ogborn's fiancé and his recommendation. The GP prescribed the claimant 50mg of sertraline but advised him to begin with a half dose initially.
23. The GP discussed the NICE guidance for treating and recognising Generalised Anxiety Disorder and the possibility of a self-referral to Birmingham Healthy Minds, a mental health organisation which provides talking therapy and which is an NHS service. He subsequently sent the claimant links to each.
24. The claimant started taking sertraline on 5 April 2023.¹
25. Six days later, on 11 April 2023, the GP conducted a telephone review with the claimant. At that time, the claimant reported that he had been taking a dosage of 25mg of sertraline but had increased it to 50mg as directed, that he felt a little queasy at times, and had had some difficulty ejaculating, but said that his mood felt brighter, although he had felt slightly emotionally detached. He reported that two of his colleagues were the trigger for his anxiety and low mood, but they had been on holiday the previous week. The GP noted "sounds very positive" when recording the claimant's presentation. The GP recommended that the claimant engage with Birmingham Healthy Minds, which the claimant agreed to, but in the event he did not avail himself of that opportunity.

¹ (the Friday before the consultation on 11 April as detailed in the GP notes)

26. On the same day, 11 April, the claimant spoke with Mrs Knox and told her that his anxiety related to the difficult situation with his father-in-law, but that that was resolving and he did not think he would need to take sertraline for a long period.
27. A further telephone review was conducted by the GP on 3 May 2023. At that time the claimant reported that he felt more positive and livelier, that he no longer felt nauseous and his ability to ejaculate had improved. It can be inferred from that that the claimant was still enjoying a healthy and active sex life. He reported he had excessive sweats for two nights in the last six weeks when sleeping, but his sleep was okay, and his appetite was unaffected. He reported that he had had no problems with his colleagues and had not experienced any other trigger event and would like to continue with the sertraline.
28. On 26 May 2023, the claimant was sent a discharge letter by Birmingham Healthy Minds as he had failed to respond to their letter of invitation to schedule an appointment.
29. On 29 May 2023, the claimant's GP (who it appears was unaware the claimant had been discharged) wrote to Birmingham Healthy Minds stating,
- "I have reviewed this gentleman since the end of March 2023 regarding problems with anxiety. The main cause for this is work-related. He is a director on the board for a company, and has had a difficult time with a colleague and his wife, who are both also on the board. He feels this has affected him for almost 2 years now. He suffers with panic attacks and stress. He has had no thoughts of self-harm or suicide. ... He is a non-smoker and drinks in moderation. I commenced him on sertraline in April, and although he had some side-effects initially these have settled. He has also started to feel more positive about things on medication"*
30. A further telephone consultation occurred on 23 June 2023. The claimant said that the sertraline was working well on a 50mg dose but reported no other symptoms.
31. On 1 September 2023, the claimant attended a karaoke night organised by the respondent in Portsmouth.
32. The claimant attended further telephone consultations with his GP on 25 September and 18 December 2023. At each, as with the consultation in June, the claimant reported feeling well and no other symptoms or issues.
33. Between those two consultations, on 11 October 2023, the claimant met Mr Knox to discuss their ongoing dispute; the claimant then sent the respondent's Board a note on 12 October which led him to have to a further difficult conversation with Mr and Mrs Knox that day. A similar meeting occurred on 17 October 2023.
34. On 5 December, in an email exchange with Mrs Knox relating to the claimant's performance of the CTO role, the claimant wrote,

"It feels to me... that you and Chris [Mr Knox] have just moved on from all the recent discussion, whereas I feel that there are many unresolved matters that we all need to discuss that are more fundamental to our working and personal relationship."

35. In a later email on the same day, referencing the previous heated discussions between the three, the claimant wrote,

"My mental health is directly connected to our conflicts so please let's not make this more difficult for any of us."

36. On 6 December 2023, the claimant attended the respondent's Christmas party at the Utilita Bowl. The event was attended by several hundred people.

37. On 8 December 2023, the claimant proposed that he should be paid a significant financial settlement to leave the respondent. That proposal was rejected.

38. The claimant resigned from his role as Director on 14 December 2023. Thereafter there were further difficult and at times heated conversations between the claimant and Mr Knox relating to those issues on 24 and 30 January 2024 and a further meeting that led to disciplinary allegations on 1 February 2024. The claimant did not return to the workplace after that incident, having been directed to work from home to avoid further confrontations and disputes.

39. During the resulting disciplinary investigation, the claimant informed the investigator that he had been diagnosed with high performance anxiety, but stated *"most of the time it doesn't affect my ability to function and do my life and job."* He added that it was "situationally" induced by the behaviour of Mr and Mrs Knox" and was not triggered by anything else. Later in the same interview the claimant stated of his mental health,

"it doesn't affect my day-to-day life to do my job.... Going back to before November 2022, I have never had any signs of mental health issues. If [Mr Knox and Mrs Knox] hadn't caused any more problems, then I don't think I would have needed anything else from the company."

... I had a bad turn one afternoon that was likely to be because I was due to have a meeting with [Mrs Knox] the next day."

40. On 24 February 2024, the claimant attended leaving drinks for a colleague in Portsmouth.

41. On 7 March 2024, the claimant attended a further telephone consultation with his GP. He reported again that he was 'doing well,' that there had been no changes, and that his anxiety had been caused by two colleagues at work. He suggested that it was slowly resolving, and he was looking to come off the sertraline in the near future. He reported no low mood, that he was sleeping well, and his appetite was normal.

42. On 16 and 17 April 2024, the claimant attended two mediation sessions with Mr and Mrs Knox and a trained mediator. Although he found the sessions difficult and cried after one of them, he did not experience any more significant symptoms of anxiety. Mrs Knox also found the meetings upsetting, and cried. She did not have an anxiety condition. Thereafter, the claimant attended further meetings with Mr and Mrs Knox on 23 and 25 April and 3 May 2024 to try and agreed a public statement detailing the change in the claimant's role. They were unable to reach an agreement.
43. A further GP telephone consultation occurred on 4 June 2024, when the claimant again made the same report. It is notable that on the same day, the claimant had been notified that he was being dismissed due to an irretrievable breakdown of relationships with Mr and Mrs Knox. The claimant's employment ended on 7 July 2024.
44. At a further 3 monthly review on 4 September 2024, after his employment had ended, the claimant stated that he was feeling 'very good' and felt his anxiety was well controlled by the sertraline. The Doctor noted the claimant's description of his position and symptoms as follows,
- "Trigger was work bosses, now left that company for 3 months and notice significant improvement in mood. Previous panic attacks, controlled with sertraline.... Plans to stop taking sertraline – safety netted patient to not stop taking altogether and [side effects] Safety netted for serotonin syndrome."*
45. In October 2024, the claimant stopped taking Sertraline.
46. The claimant initiated ACAS conciliation in relation to his dispute with the respondent on 15 October and a certificate was issued on 26 November 2024. He presented his claim on 23 December 2024. At a case management hearing before me on 6 May 2025, the claimant's claims were clarified to relate to events between October 2023 (a single event) and the disciplinary investigation in February to March 2024.
47. The relevant period for the acts of discrimination is therefore October 2023 to 16 July 2024.
48. At the preliminary hearing I made orders for the claimant to clarify the manner in which the condition of High Performance Anxiety affected him in the period October 2022 to July 2024 (that was because if the effect of the condition were more than trivial for a year before October 2023 and remained so in October 2023, the claimant would satisfy the definition of disability).
49. The claimant complied with the Order and produced a lengthy document, the first three pages of which detailed the alleged symptoms of the claimant's condition and their effect on his behaviour. It is unnecessary to recite each and every impairment catalogued therein in this Judgment, but they included:

- 49.6. Panic attacks, some of which lasted many hours
- 49.7. Headaches, muscle tension,
- 49.8. Gastrointestinal issues / nausea

- 49.9. Fatigue / difficulty sleeping without interruptions
 - 49.10. Constant worry and needing constant reassurance
 - 49.11. Hyper vigilance, hypersensitivity leading to mental exhaustion and an inability to relax;
 - 49.12. Obsessive compulsive behaviours,
 - 49.13. Fluctuating mood, being particularly prone to emotional outbursts and irritability
 - 49.14. Extreme sensitivity to auditory overload
50. The claimant suggested that in consequence he avoided social situations or places with other people.
51. Later, in a disability impact statement prepared on 6 August 2025, the claimant described having periods where he felt emotionally numb (this was a consequence of the sertraline), fluctuating moods, and struggling to cope in situations where there were multiple conversations going on at once, leading him to cancel plans where there was a risk of such an occurrence or leaving social situations where he began to feel overstimulated. He reported that that overstimulation had made simple tasks, like getting on a bus or going to the supermarket, impossible at times.

The Relevant Law

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

6 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.
- (2) A reference to a disabled person is a reference to a person who has a disability.
- (3)...
- (4) This Act (except Part 12 and section 190) applies in relation to a person who has had a disability as it applies in relation to a person who has the disability; accordingly (except in that Part and that section)—
 - (a) a reference (however expressed) to a person who has a disability includes a reference to a person who has had the disability, and
 - (b) a reference (however expressed) to a person who does not have a disability includes a reference to a person who has not had the disability.
- (5) A Minister of the Crown may issue guidance about matters to be taken into account in deciding any question for the purposes of subsection (1).
- (6) Schedule 1 (disability: supplementary provision) has effect.

53. The relevant sections of Schedule 1 are as follows:

Long-term effects

2 (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.

Effect of medical treatment

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.

(3) Sub-paragraph (1) does not apply—

- (a) in relation to the impairment of a person's sight, to the extent that the impairment is, in the person's case, correctable by spectacles or contact lenses or in such other ways as may be prescribed;
- (b) in relation to such other impairments as may be prescribed, in such circumstances as are prescribed.

54. The Equality and Human Rights Commission Guidance ("the Guidance") was issued in accordance with s.6(5) EQA and by virtue of section 12(1) to Schedule 1 a Tribunal must take it into account when determining whether a person is a disabled person.

55. In order to determine whether a claimant has a disability the tribunal should consider four questions (see Goodwin v Patent Office [1999] ICR 302, EAT):-

- 55.6. did the claimant have a mental and/or physical impairment? (the 'impairment condition')
- 55.7. did the impairment affect the claimant's ability to carry out normal day-to-day activities? (the 'adverse effect condition')
- 55.8. was the adverse condition substantial? (the 'substantial condition'), and
- 55.9. was the adverse condition long term? (the 'long-term condition').

Impairment

56. The meaning of impairment is dealt with at A3 of the Guidance which provides:

"The term mental or physical impairment should be given its ordinary meaning. It is not necessary for the cause of the impairment to be established, nor does the impairment have to be the result of an illness."

57. Thus 'Impairment' in s.6 EQA 2010 bears 'its ordinary and natural meaning... It is left to the good sense of the tribunal to make a decision in each case on whether the evidence available establishes that the applicant has a physical or mental impairment with the stated effects' (McNicol v Balfour Beatty Rail Maintenance Ltd [2002] ICR 1498, CA) The term is meant to have a broad application.
58. In Rugamer v Sony Music Entertainment UK Ltd [2002] ICR 381, EAT, the Employment Appeal Tribunal suggested the following definition of physical or mental impairment under the DDA:
- 'some damage, defect, disorder or disease compared with a person having a full set of physical and mental equipment in normal condition'.
59. Appendix 1 to the EHRC Employment Code states that 'There is no need for a person to establish a medically diagnosed cause for their impairment. What is important to consider is the effect of the impairment, not the cause' — para A7. This adopts the decision in Ministry of Defence v Hay [2008] ICR 1247, EAT, where the EAT held that an 'impairment' under S.1(1) DDA could be an illness or the result of an illness, and that it was not necessary to determine its precise medical cause.
60. It will not always be essential for a tribunal to identify a specific 'impairment' if the existence of one can be established from the evidence of an adverse effect on the claimant's abilities (see J v DLA Piper UK LLP [2010] ICR 1052, EAT.) Similarly, it is not always necessary to identify an underlying disease or trauma where a claimant's symptoms clearly indicate that he or she is suffering a physical impairment (see College of Ripon and York St John v Hobbs [2002] IRLR 185, EAT.)

Substantial adverse effect

61. The meaning of 'substantial adverse effect' is considered at section 212(2) EQA 2010 and paragraph B1 of the Guidance which provides "a substantial effect is one that is more than a minor or trivial effect". The Guidance lists at D3 activities which are to be regarded as normal daily activities; these include
- 'walking and travelling by various forms of transport, and taking part in social activities.... general work-related activities, and study and education-related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or a shift pattern.'
62. The Tribunal's focus, when considering adverse effects upon day-to-day activities, must necessarily be upon that which claimant maintains he cannot do as a result of his physical or mental impairment" (see Aderimi v London and South Eastern Railway Ltd UKEAT/0316/12, [2013] ICR 591).
63. The assessment of the likelihood of the adverse effect lasting for 12 months is to be made as at the date of the alleged discrimination and must not take into account anything only known or occurring after that time (see McDougall v

Richmond Adult Community College [2008] ICR 431, CA, and for an example of the principles application All Answers Ltd v W [2021] IRLR 612 CA).

64. In that context, the Appendix to Guidance includes examples of factors which it would be reasonable to regard as having a substantial adverse effect on normal day-to-day activities. These include:

- 64.6. “Difficulty going out of doors unaccompanied, for example, because the person has a phobia, a physical restriction, or a learning disability; difficulty using transport;
- 64.7. Difficulty entering or staying in environments that the person perceives as strange or frightening;
- 64.8. Frequent confused behaviour, intrusive thoughts, feelings of being controlled, or delusions;
- 64.9. Persistently wanting to avoid people or significant difficulty taking part in normal social interaction or forming social relationships, for example because of a mental health condition or disorder;
- 64.10. Persistent distractibility or difficulty concentrating.”

65. The Guidance provides an example of where those factors might amount to a substantial adverse effect at D15:

“A young man with severe anxiety and symptoms of agoraphobia is unable to go out more than a few times a month. This is because he fears being outside in open spaces and gets panic attacks which mean that he cannot remain in places like theatres and restaurants once they become crowded. This has a substantial adverse effect...”

(Emphasis added)

66. Conversely the Guidance indicates that the following factors would not reasonably be regarded as having such an effect: “Inability to hold a conversation in a very noisy place, such as a factory floor, a pop concert, sporting event or alongside a busy main road”

67. Day-to-day activities include normal day-to-day activities and professional work activities, even if there is no substantial adverse effect on activities outside work or the particular job (see Igweike v TSB Bank Plc [2020] IRLR 267). In conducting that assessment, the tribunal should disregard the effects of treatment (see Guidance at sections B12 to B-17).

68. The Tribunal must be careful to identify between stress, anxiety and low mood in relation to life events, and the incident of such symptoms which can legitimately be regarded as having a substantial adverse effect on day-to-day activities (see J. v DLA Piper [2010] ICR 1052 at paragraph 42):

“The first point concerns the legitimacy in principle of the kind of distinction made by the tribunal... 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'. We dare say that the value or validity of that distinction could be questioned at the level of deep theory; and even if it is accepted in principle the borderline between the two states of affairs is bound often to be very blurred in practice. But we are equally clear that it reflects a distinction which is routinely made by clinicians ... and which should in principle be recognised for the purposes of the Act. We accept 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 paragraph 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 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 commonsense observation that such reactions are not normally long-lived."

Recurring and fluctuating conditions

69. The Guidance addresses recurring or fluctuating effects at C5. Examples of how to address episodes of such conditions as depression, or conditions which result in fluctuating symptoms are given at paragraphs C6, C7 and C 11; they provide:

C6. If the substantial adverse effects are likely to recur, they are to be treated as if they were continuing. If the effects are likely to recur beyond 12 months after the first occurrence, they are to be treated as long term.

C7. It is not necessary for the effect to be the same throughout the period which is being considered in relation to determining whether the "long-term" element of the definition is met. A person may still satisfy the long-term element of the definition even if the effect is not the same throughout the period. It may change: for example, activities which are initially very difficult may become possible to a much greater extent. The effect might even disappear temporarily. Or other effects on the ability to carry out normal day-to-day activities may develop and the initial effect may disappear altogether.

C11. If medical or other treatment is likely to permanently cure condition and therefore remove impairment so the recurrence of its effects would then be unlikely even if there were no further treatment, this should be taken into consideration when looking at the likelihood of recurrence of those are facts. However, if the treatment simply delays or prevents a recurrence, and a recurrence would be likely if the treatment stops, as is the case with most medication, then the treatment is to be ignored and the effect is to be regarded as likely to recur.

70. In all four contexts the Guidance stipulates that an event is likely to happen if it 'could well happen' (see para C3). This definition of the word 'likely' reflects the House of Lords' decision in Boyle v SCA Packaging Ltd (Equality and Human Rights Commission intervening) 2009 ICR 1056, HL

71. In Swift v Chief Constable of Wiltshire Constabulary [2004] IRLR 540 the EAT provided guidance as how to approach the issue of a 'recurring condition'.

"20. Firstly, was there at some stage an impairment which had a substantial adverse effect on the applicant's ability to carry out normal day-to-day activities?

22. Secondly, did the impairment cease to have a substantial adverse effect on the applicant's ability to carry out normal day-to-day activities, and if so when?

23. Asking and answering this question will ensure that para. 2(2) ['likely to recur' provision] does not enter too early into the process of the tribunal's reasoning. Paragraph 2(2) deems an impairment to continue when, and only when, it has ceased to have a substantial adverse effect on an applicant's ability to carry out normal day-to-day activities. Until that point, the duration of an impairment's effect is assessed in accordance with para. 2(1) of the Schedule.

24. Thirdly, what was the substantial adverse effect?

25. This question needs to be answered with a degree of precision, for as we shall see, para. 2(2) requires the tribunal to consider whether that effect is likely to recur. The question should be answered by reference to the functions set out in para. 4(1) of the Schedule.

26. Fourthly, is that substantial adverse effect likely to recur?

27. This is the question which must be answered if para. 2(2) is to come into play. The tribunal must be satisfied that the same effect is likely to recur and that it will again amount to a substantial adverse effect on the applicant's ability to carry out normal day-to-day activities."

72. Additionally, at paragraph 52 the EAT said this,

"When a person is recovering from a psychiatric condition there will frequently be short-lived symptoms. It does not follow that short-lived symptoms amount to a substantial adverse effect on the person's ability to carry out normal day-to-day activities in the way that they did while the psychiatric condition itself persisted. It will be a question for assessment in each case. We do not think the employment tribunal was bound to hold that such an impairment had occurred or was likely to recur"

[emphasis added]

Deduced effect

73. Where an impairment is subject to treatment or correction, the impairment is to be treated as having a substantial adverse effect if, but for the treatment or correction, the impairment is likely to have that effect.

74. This provision applies even if the measures result in the effects being completely under control or not at all apparent. Where treatment is continuing it may be having the effect of masking or ameliorating a disability so that it does

not have a substantial adverse effect. If the final outcome of such treatment cannot be determined, or if it is known that removal of the medical treatment would result in either a relapse or a worsened condition, it would be reasonable to disregard the medical treatment in accordance with paragraph 5 of Schedule 1 (see Guidance para B13).

75. In Woodrup v London Borough of Southwark [2003] IRLR 111 the Court of Appeal held that a claimant's assertion as to what might happen if medication were to be stopped is unlikely to be sufficient to satisfy such a proposition and tribunals require reliable evidence to make such findings. As Simon Brown LJ observed at paragraph 13:

"....In any deduced effects case of this sort the claimant should be required to prove his or her alleged disability with some particularity. Those seeking to invoke this peculiarly benign doctrine under para. 6 of the schedule [now para. 5 of Sch 1] should not readily expect to be indulged by the tribunal of fact. Ordinarily, at least in the present class of case, one would expect clear medical evidence to be necessary."

76. In Royal Bank of Scotland v Morris [2016] EWCA Civ 981 the Court of Appeal considered the need for medical evidence where deduced effect was relied to establish a mental impairment; the President Mr Justice Underhill observed at paragraphs 62 and 63:

"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 specifically addressing 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 life duration, deduced effect and risk of recurrence which arise directly from the way in which the statute is drafted."

77. I observe, first that that passage does not enunciate any principle of general application, it is clear that it is a question of fact and degree depending on the facts of the case. The extent to which the Court of Appeal were required to set out the evidence in relation to disability in the case before it prior to expressing this view emphasises that point.

78. Morris was approved in Morgan v Abertawe Bro Morgannwg Universities Hospital Trust [2020] ICR 1043. Paragraph 55 of Morgan addresses the decision in the Royal Bank of Scotland v Morris. It reads as follows:

"While there is no rule of law that an issue of this type can only ever be properly decided with the benefit of expert medical advice, as the EAT put it in Royal Bank of Scotland v Morris, particularly in relation to matters to do with mental health, the issues will often be too subtle for the Tribunal to be able to properly resolve, even if there are contemporaneous medical records, without the benefit of specific expert medical evidence prepared for the purposes of litigation."

79. I observe that in the case of Morgan the nature of the medical evidence in question was that of a particular doctor whose evidence was inconsistent with that of other doctors which had been provided at the time, and there was a conflict within the medical opinion as to the likely duration and the precise symptoms of the condition. That was of particular importance given claims for future loss (see paragraphs 57 and 58 of the Judgment).
80. Having carefully reviewed Morgan and Morris, I conclude that there is no legal principle that a claimant must place an expert medical report before the Tribunal addressing the question of deduced effect in order to prove that a condition constitutes a disability. Paragraph 55 of Morgan identifies that such a course may be necessary, but it creates no rule of law to that effect.

Discussions and Conclusions

81. I address the questions set out in Goodwin.

Did the claimant have a mental or physical impairment?

82. The claimant asserts that he had High Performance Anxiety between September 2021 and July 2024. I reject that assertion; there is no reference in any document produced by the claimant or medical record which identifies or even references 'high performance anxiety.' The GP records identify 'anxiety disorder', but I suspect that is a generic category, rather than a diagnosis, in the form of a drop-down menu on the system used by the surgery. The GP's letter to Birmingham Healthy Minds refers to 'problems with anxiety', and the GP provided the claimant with a link to generalised anxiety and panic disorder.
83. There is, of course, no need for the impairment to be diagnosed, but for references purposes in this Judgment I conclude that the claimant had a mental impairment caused by generalised anxiety disorder.

Did the impairment affect the claimant's ability to carry out normal day-to-day activities?

84. There is considerable dispute as to the precise nature of the impairment caused the condition. The claimant argues that the impairment had the effect detailed in the Further Information of his claim and his disability impact statement as detailed in paragraphs 49-51 above. The respondent argues that the claimant had no or no significant symptoms between 2021 and March 2023, and that he suffered isolated periods of anxiety, stress and low mood related to life events.
85. The difficulty that I have is that the symptoms the claimant describes and relies upon are not referred to at all in his GP notes, save for the reference to panic attacks, stress and anxiety. In March 2023, he described having anxiety for 18 months. The accounts he has given to the Tribunal in the Further Information and his statement about the impairments caused by that condition bear no relation whatsoever to those reported to or by his GP or to the respondent during the disciplinary hearing. They represent two entirely different presentations of the condition.
86. The claimant suggested in evidence that he sought to downplay and minimise the severity of his symptoms during the disciplinary investigation because he

feared he was the subject of a witch hunt and the respondent would seek and latch onto any potential reason to dismiss him. That evidence creates two concerns: first, that the claimant is willing by his own admission to distort or conceal the truth where it suits his needs. Secondly, if his accounts of the symptoms of his anxiety to the Tribunal are truthful, the claimant was not minimising them in February 2024, he was writing them out of existence. That raises the issue of whether the claimant is being truthful and candid in his account to the Tribunal or whether he was truthful when describing his symptoms to the respondent in the investigation.

87. I have further concerns about the accuracy and truth of the claimant's account in that regard – in December 2023, three months prior to the disciplinary investigation, he had proposed he would leave the respondent if he received a financial package. I conclude from that that from late November or early December 2023 he was seeking an exit from the respondent and no longer saw his future there. In consequence, the fact that a potential outcome of the disciplinary investigation might have been a termination would not have been as great a concern to him as he suggested it was to me; he was already seeking to leave long before. That is supported by the fact that his mood was good in June 2024 when his dismissal was communicated to him; he did not plummet into a downward spiral, quite the opposite. I reject the claimant's evidence therefore that he was seeking to minimise the effect of his condition upon him during the disciplinary investigation; I regard his account of his condition to the respondent as an accurate account.

Was the adverse condition was a long-term one?

88. For the reasons I have given in the factual background, I am persuaded that the claimant's symptoms in the period September 2021 to November 2022 were as he described to the respondent; they did not have a substantial adverse effect on his day-to-day activities. The claimant commuted to work, worked, socialised and carried out social and family activities just as he had before that period. He may have experienced intermittent moments of anxiety, but they were not so acute as to affect his day-to-day activities. Had they done so, he would have approached his GP.
89. In October 2022 the claimant came under scrutiny at work, the friction with Mr Knox and other directors was growing. That was exacerbated by the stress in his home life caused by his reaction to his father-in-law. He had two isolated panic attacks in February and March 2023 which led him to approach Ms Ogborn's fiancé first and subsequently his GP. Each panic attack had a substantial adverse effect on his ability to carry out day to day activities. It was for that reason that he approached his GP; he was genuinely shaken and fearful of experiencing more.
90. Whilst the claimant may have had generalised anxiety with isolated panic attacks, its effect prior to March 2023 was not so acute as to have a substantial adverse effect on his day-to-day activities of itself. I reach that conclusion because the claimant began taking sertraline on 5 April 2023, the medication generally takes 4-6 weeks to build up to a level to have the necessary effect, and in the period between 31 March and 3 May 2023 the claimant did not report having any further panic attacks; that may have influenced by the fact that there was a two week period in April when either the Knoxes or the claimant were on

holiday, but if the condition were one of general application, unrelated to the stress of work, the claimant was just as likely to have a panic attack in that period even if he had no contact with Mr and Mrs Knox, and he did not. By the end April 2023, the sertraline had the effect of reducing the claimant's underlying anxiety, leading the claimant to say to the GP that he was 'feeling brighter' on 11 April and 'feeling more positive/lively' on 3 May.

91. It is not in dispute that in the period between April 2023 and July 2024 there is no record of the claimant reporting having experienced any panic attacks. The claimant suggested for the first time in re-examination that he had panic attacks once every three weeks, but I reject that evidence – it is wholly unsupported by any medical evidence and is directly contradicted by it and is inconsistent with the claimant's accounts to his GP and the respondent.
92. Stepping back, to answer the question in paragraph 86 above, I have concluded that the claimant has exaggerated his account of his symptoms in the Tribunal proceedings.
93. The matter does not end there, however, because I have to consider how severe the effect of any impairment was in the period between April 2023 and July 2024 when the claimant benefitted from the effects of the sertraline, and in particular when the impairment had lasted for 12 months as at October 2023, the first pleaded act of discrimination.
94. In my judgment in October 2023, the condition had not lasted for 12 months but for only six. I therefore have to consider whether the claimant's anxiety condition, which had first manifested itself in late February to early March 2023 as two panic attacks, either continued for a total of 12 months from that point (i.e. for a further 6 months beyond March 2023), or if it did not, whether it was likely to last for 12 months after that, so as to have created an impairment which had a substantial adverse effect on the claimant which would last for at least 12 months. Finally, I have to consider whether it was likely to recur so as to create an impairment for 12 months.
95. Mr Young argues that the fact that the claimant's GP continued to prescribe sertraline from April 2023 until October 2024 is of itself sufficient evidence to compel me to conclude that the impairment would have continued to have the adverse effect at least until May 2024 and therefore satisfies paragraph 2(1)(a) of Schedule 1. Additionally, he relies upon the GP's entry, in September 2024, that 'previous panic attacks, [were] controlled with sertraline.'
96. Conversely, however, I must weigh the following factors against that argument:
- 96.6. First, the claimant's panic attacks in February and March were reactive, caused by stressful events, thus, absent such events, the likelihood of panic attacks reduces. There was no evidence that issues with the claimant's father-in-law continued after March 2023. Those relating to the Knoxes clearly did, but in my judgment once the claimant was not at work they did not have that effect; as demonstrated by the improvement in the claimant's mood in April 2023 when he and the Knoxes had periods of annual leave. That stressor did not continue beyond 5 February 2024 when the claimant began to work from home and thereafter there was limited contact as the disciplinary investigation was in progress and was followed

by mediation on 16 and 17 April, and further meetings to try to agree a statement relating to the claimant's role for the staff and public consumption on 23 and 25 April and 3 May 2024. It is noteworthy that those exchanges did not cause any significant spike in the claimant's symptoms such that he had cause to speak to his GP about them. Indeed, during a 3 -monthly review on 7 March 2024, he told his GP he was 'doing well' with 'no low mood' and was *'looking to come off [sertraline] in the near future,'* and on 4 June 2024, during his 3 monthly review for the period March to June 2024, he told the GP that he had had no low mood was sleeping well, and *'had been away from work recently and found anxiety better.'*

96.7. Secondly, the objective evidence which I have found to be reliable is inconsistent with the claimant's account of his symptoms during the period: he continued to commute and stay away from home for two nights a week, he continued to work at a high level, he continued to have an active social and family life; he reported to his GP that he was sleeping and eating well as detailed above. He socialised with his friends, family and work colleagues and attended large sporting or other events variously in March, July, September and December 2023 and in February 2024. I entirely reject the claimant's evidence of hypersensitivity and auditory overload during that period or that it prevented him for attending or participating in such events. I also reject his evidence that he slept poorly and woke frequently.

96.8. Thirdly, I have found that the claimant has exaggerated the account of his symptoms, and that applies equally to his account of suffering panic attacks once every two to three weeks.

96.9. Lastly, it is for the claimant to prove the adverse effect, as Woodrup makes clear, with some particularity, which may require medical evidence. I referred the parties to Morgan in the case management hearing in May this year (see paragraph 95 of the case management record) which further emphasises the potential need for medical evidence where a party relies on deduced effect. It is true, of course, that I added a note of caution about the likelihood of a condition being found to be a disability where medication had been prescribed for between March 2023 and July 2024, but it is for a claimant to run his case and prove it and he must have know of the lack of references to any symptoms in the medical evidence. Moreover, my caution was against the instruction of a single joint expert, not against the need for medical evidence per se. It was open to the claimant to obtain a fuller account from his GP of the symptoms the claimant reported, or the GP's perception of them and the reasons why the prescription of sertraline was continued, and of what may have happened if the claimant had not taken the prescription. He did not. The absence of such independent and specialist evidence weighs heavily against the claimant in the circumstances of this case.

97. I conclude, therefore, that the impairment ceased to have a substantial adverse effect on the claimant's day to day activities in February 2024 because at that stage the claimant was no longer at work, he was therefore removed from the stressor which was the trigger for his only evidenced symptom, that of panic attacks, and there is no evidence that absent such triggers he experienced

panic attacks or any other symptom. At that stage the adverse effect had lasted for 11 months.

98. I must, therefore, consider whether the adverse condition was likely to last for 12 months; that is whether the evidence shows that having ceased to have such an effect, it might have had done for a further 12-month period from February 2024. Given the claimant reported no symptoms to his GP in that period, and ceased to take sertraline in October 2024, it follows that the condition was not likely to have an adverse effect on the claimant's day to day activities for a 12-month period.
99. There was no evidence put before me that the condition is likely to recur. It is therefore unnecessary to consider paragraphs 2(2) and 2(3) of schedule 1.
100. Conclusion: The claimant was not a person with a disability by reason of a mental impairment caused by an anxiety condition in the period between October 2023 and July 2024.
101. The claims of disability discrimination are not therefore well-founded and are dismissed.

**Approved by
Employment Judge Midgley**

Date 14 September 2025

JUDGMENT AND REASONS
SENT TO THE PARTIES ON
13 October 2025

FOR THE TRIBUNAL OFFICE

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