



# EMPLOYMENT TRIBUNALS

**Heard at:** London South

**On:** 6 October 2025

**Claimant:** Mr A J Cooney

**Respondent:** WPP 2005 Limited t/a WPP IT

**Before:** Employment Judge Ramsden

**Representation:**

**Claimant** Mrs Cooney, the Claimant's wife

**Respondent** Mr Dennis, Counsel

## RESERVED JUDGMENT ON A PRELIMINARY ISSUE

### Background

1. The Respondent is part of a large corporate group (the **Group**) which works to provide technology and communications services to its clients. The Respondent is an IT service provider to the Group.
2. The Claimant worked for the Respondent as an IT Programme Manager from 25 February 2020 to 12 November 2024.
3. The Claimant has presented three Claims to the Employment Tribunal:
  - a) A claim presented on 15 February 2024 and given case number 2302099/2024 (the **First Claim**), after ACAS Early Conciliation that began on 30 January 2024 and ended on 1 February 2024;

- b) A claim presented on 28 October 2024 and given case number 2309093/2024 (the **Second Claim**), after ACAS Early Conciliation that began on 25 October 2024 and ended on 28 October 2024; and
  - c) A claim presented on 12 November 2024 given case number 2309603/2024 (the **Third Claim**),
- together, the **Claims**.
4. The complaints and issues in the Claims were recorded in Case Management Orders made by EJ Corrigan on 21 March 2025, and are complaints of:
- a) Unfair dismissal;
  - b) Automatic unfair dismissal for having made protected disclosures;
  - c) Detriments on the ground of having made protected disclosures;
  - d) Direct disability discrimination;
  - e) Discrimination arising from disability;
  - f) Harassment related to disability;
  - g) Failure to make reasonable adjustments; and
  - h) Victimisation.
5. A final Hearing had been listed to commence on 6 October 2025 in respect of the Claims, but EJ Corrigan converted the first day of that hearing (today) to consider:
- a) Any outstanding contested application to amend the Claims;
  - b) The question of whether the Claimant had a disability at the relevant time; and
  - c) Any case management orders necessary to prepare for the Final Hearing.
6. EJ Corrigan's Orders described the disabilities relied on by the Claimant, those being:
- a) The consequence of two strokes which the Claimant suffered in December 2023, including dysphasia (problem with speech), left hand side weakness in the body, face drooping and problems with both knees; and
  - b) Post-traumatic Stress Disorder (**PTSD**),
- together, the **Averred Disabilities**.
7. EJ Corrigan made Orders for the Claimant to provide the Respondent with information and evidence about each of the Averred Disabilities, and for the Respondent to clarify its position in relation to each of the Averred Disabilities, i.e.:
- a) Whether it accepts that the Claimant suffered with the Averred Disabilities at the times the disability discrimination complaints he makes were about (the **Relevant Times**);

- b) Whether it accepts that the Averred Disabilities amounted to disabilities for the purposes of the Equality Act 2010 (the **2010 Act**) at the Relevant Times; and
  - c) If it does not accept that either or both of the Averred Disabilities were disabilities for 2010 Act purposes, why it does not accept that.
8. The Claimant provided a Disability Impact Statement to the Respondent and the Tribunal on 18 April 2025 (the **DIS**).
9. The Respondent clarified its position on the Claimant's disability status on 14 August 2025.

### **The hearing**

#### Adjustments

10. At the outset of the hearing, the Employment Judge asked if either party was seeking any adjustments to the conduct of the hearing. Mrs Cooney asked if the Claimant needed to be seen on camera, and the Employment Judge said she would like him to be on camera when he gives his evidence, but otherwise he need not be. Mrs Cooney and the Claimant confirmed this was fine. Other than requesting a brief break before submissions (which was granted), no other adjustment was sought by or on behalf of the Claimant. No adjustments were sought by the Respondent.

#### Representation

11. The Claimant's wife, Mrs Cooney, presented the Claimant's case in this hearing, and the Respondent was represented by Mr Dennis.
12. Mrs Cooney is not a lawyer, and is (understandably) highly emotionally invested in the Claim. It is not surprising that she should find the process unfamiliar and the subject-matter difficult. However, at times she became aggressive, talking loudly over Mr Dennis and the Employment Judge, and levelling personal criticisms at both. She also, at times, as she put it, "*had a domestic*" with the Claimant. Generally, when her behaviour became inappropriate and this was pointed out she apologised and regained her composure, sometimes after a brief break. However, this was not managed at the end of the hearing, when she did not manage to regain her composure. The Employment Judge had to reserve judgment in any event, given it was 16:40 (having given Mrs Cooney more than 50 minutes to make submissions after a break she requested before doing so), but it was an unfortunate conclusion to the hearing.

#### Documentary evidence

13. The Respondent prepared a hearing bundle of 776 pages (the **Bundle**). The Bundle included the DIS written by the Claimant on 18 April 2025, and various pieces of medical evidence he wished to rely on.

14. The Claimant had received the Bundle on the Friday (3 October) before this hearing (which took place on a Monday). This is regrettable, as EJ Corrigan had Ordered that the Respondent send it to the Claimant and the Tribunal by no later than 11 September 2025.
15. The Claimant had identified three further documents he wished to be included in the Bundle, and those were sent to the Tribunal and the Respondent and admitted into evidence without objection from the Respondent.
16. The Claimant did not apply to postpone the hearing, or indicate that he had not been able to put forward the evidence he wished to because of the Respondent's late bundle preparation. However, Mrs Cooney for the Claimant *did* say that the Claimant could not put various pieces of medical evidence relating to the Claimant's mental ill health before the Tribunal because that evidence is not accessible for downloading or printing due to protections attached to it. When the Employment Judge asked whether there was anything that the Claimant had asked to be included in the Bundle that had not been, the Mrs Cooney indicated that the only further documents the Claimant wished to include were the three documents emailed (one of which – a schedule of loss that was not, in the end, referred to, was labelled as “without prejudice”, but she clarified that the Claimant no longer wished for it to be “without prejudice”). When asked whether the Claimant wished for the hearing to be postponed in light of the difficulties accessing some of his medical evidence, Mrs Cooney confirmed that the Claimant wanted the hearing to proceed, and they were “*ready*” for it to do so.
17. The Employment Judge made it plain to the parties that they could only rely on her reading and considering those documents in the bundle to which she was taken by written or oral witness evidence or submissions, and that the parties should not assume that the Employment Judge would otherwise read any contents of the bundle which neither party was relying on.
18. The parties each gave the Employment Judge a reading list before a reading break, and the Employment Judge read all of the documents to which she was directed.

#### The Claimant's application

19. Mrs Cooney raised (via email on 14 August 2025, in the joint case management agenda, and orally in this hearing) that the Respondent had been late complying with EJ Corrigan's Order to confirm whether or not the Respondent accepted that the Claimant was disabled on the basis he asserts, and if not, why not. That confirmation and clarification was to be provided by the Respondent by no later than 14 May 2025, and in the event was only provided on 14 August 2025.
20. The Claimant applied to:
  - a) Strike-out the Respondent's Response; and/or
  - b) Bar or restrict the Respondent's participation in the proceedings; and/or

- c) Have a Preparation Time Order made against the Respondent, in respect of this delayed compliance.
21. In making her application, Mrs Cooney said that she had gone to great lengths to comply with EJ Corrigan's Orders on time, both parties having been warned of the possible consequences of non- or late compliance. Mrs Cooney described how she would stay up, often late into the night, so as to assist the Claimant in preparing his DIS, and gather relevant medical evidence, as required by EJ Corrigan's Orders, and she felt that the well-resourced and professionally-represented Respondent should face consequences for its late compliance.
22. Mr Dennis for the Respondent noted that the Respondent had been late complying but that it had complied, and apologised for that late compliance, giving the following as reasons:
- a) The Respondent's solicitor had failed to take a note of that action item; and
- b) When the Respondent's was reading the Orders again ahead of the judicial mediation which was listed for 14 August, it realised its error, but did not at that point want to threaten the viability of that mediation.
23. Mr Dennis noted that when the mediation concluded at around 1pm on 14 August, the Respondent's solicitor emailed the Claimant and Tribunal providing the information and clarification Ordered a short time later at 15:53. Mr Dennis said that strike-out or non-/reduced participation by the Respondent would be disproportionate responses to the late compliance. He said that it was an error, but the Claimant still had the requisite information around two months before this hearing, and so was not disadvantaged by the late compliance.
24. The Employment Judge refused the Claimant's application. She noted that:
- a) The Respondent's reasons for the late compliance were poor. The Respondent was professionally represented at the prior hearing, and its solicitors should have looked over the Orders carefully when the written record was sent to them (the written Orders were sent within two weeks of the hearing).
- b) Strike-out is a draconian response. It is rarely appropriate to strike-out a Claim or a Response involving complaints of unlawful discrimination for non-compliance with Orders, because there is a great public interest in those allegations being properly heard and determined. Here, strike-out would effectively label the Respondent, and its personnel involved in the actions impugned by the Claimant, as discriminators. That is something the Tribunal would do only in extreme cases, and here, where the Claimant had the Ordered information nearly two months prior to this hearing, strike-out was not a proportionate response. Strike-out is not a power that Tribunal's wield to punish, but should be exercised in accordance with the overriding objective. A fair hearing today was not impeded by the Respondent's tardiness.

- c) Similarly, barring or restricting the Respondent's participation going forwards is not in the interests of justice. Justice requires that the Claimant's complaints are heard, and that the Respondent is given a fair opportunity to answer them. Again noting that the Claimant had nearly two months between the date the Respondent clarified its position and this hearing, a fair hearing on the question of disability status was not impeded by the late compliance.
  - d) Mrs Cooney's efforts to ensure that her husband complied with the deadlines for the Orders issued to him were admirable and appropriate. The Tribunal expects the parties to comply with the deadlines set for them, particularly where those deadlines were discussed and agreed with them. However, Mrs Cooney and/or the Claimant would have needed to go to those lengths in any event to advance the Claimant's Claim, and they would have needed to gather that same information and compose that same DIS, regardless of the Respondent's late compliance – i.e., the Claimant was not put under additional time pressure with complying with his own Orders because of the Respondent's tardiness. The Employment Judge considered that the additional effort Mrs Cooney would have gone to because of that late compliance would be to send a few emails chasing the Respondent. A Preparation Time Order would not be a proportionate response in those circumstances.
25. None of this should be interpreted as the Employment Judge condoning the Respondent's late compliance – but the Tribunal's powers must be exercised in accordance with the overriding objective in Rule 3, and so this is about the Employment Judge's assessment of the appropriate response to that late compliance in the circumstances. None of the Orders sought by the Claimant were warranted when the Claimant still had nearly two months' notice of the Respondent's position on the question of the Claimant's disability status ahead of this hearing, and confirmed that he was, in fact, ready for this hearing to proceed.
26. Regrettably, this was not accepted by Mrs Cooney. She repeatedly returned to this matter, including after submissions, when she raised her voice and shouted over the Employment Judge and refused to accept the Employment Judge's decision.

### The Relevant Times

27. At the outset of the hearing, the Employment Judge sought to clarify the dates to which the Claimant's disability-related complaints relate. The Claimant confirmed that the date range for the complaints of direct disability discrimination, discrimination arising from disability and harassment related to disability were correct, i.e., the complaints relate to matters that occurred in the period 19 July 2024 to 12 November 2024.

28. Mrs Cooney clarified that:
- a) The List of complaints and Issues in EJ Corrigan's Orders are correct. While the Claimant had sent through further particulars on 19 April 2025, those further particulars do not seek to raise new complaints; and
  - b) The complaints of failure to make reasonable adjustments relate to the period 20 September 2024 to 7 November 2024.
29. Consequently, the Relevant Times for the purposes of the Claimant's disability discrimination complaints occur in the period 19 July 2024 to 12 November 2024.

#### Oral evidence

30. The Tribunal heard brief evidence from the Claimant. The Respondent chose not to cross-examine him, so the only questions asked of the Claimant were by the Employment Judge.
31. The Employment Judge was careful to ask those questions in a measured way, being sympathetic to his likely reaction, but as one of the impairments the Claimant relies on is PTSD, the Employment Judge sought to give the Claimant the opportunity to talk about the issues pertaining to that so as to enable the correct decision on whether that amounted to a disability at the relevant times was reached.
32. The Employment Judge also asked him about the source of one of the three documents he had added into evidence, a four-page document entitled "*Problems stroke victim can experience with their knees post stroke summary*", which document did not identify its author. The Claimant told the Employment Judge that this document represented the product of an instruction the Claimant gave to an Artificial Intelligence (**AI**) tool to provide information on that subject, and the Claimant noted that the sources that were examined by the AI programme to produce that document were listed at the bottom of it.

#### Submissions

33. Each of the Claimant and the Respondent made submissions in support of their respective positions. The Claimant's right of reply – exercised by Mrs Cooney on his behalf - descended, regrettably, into Mrs Cooney shouting at the Employment Judge about the decision reached in relation to the Respondent's late compliance with EJ Corrigan's Order to the Respondent to clarify its position on disability status. The Employment Judge, therefore, brought the hearing to a close, reserving judgment.

#### **Facts**

34. The Claimant commenced employment with the Respondent as an IT Programme Manager on 25 February 2020.

35. The Claimant's evidence is that, prior to February 2023, when he was seconded into a new team, he enjoyed good health.

The Claimant's health in August 2023

36. The Claimant says that in August 2023 he began to experience the following, which he believes is due to the treatment he received from the Respondent:
- a) His confidence lessened;
  - b) He experienced anxiety. In his words: "*he felt very anxious and going to work had stopped being a pleasure*";
  - c) He started to experience signs of depression, including frustration, feelings of dread;
  - d) His face started to go numb during meetings;
  - e) He became withdrawn from things he would usually enjoy, such as seeing friends in the evening;
  - f) He became angry;
  - g) He struggled to get to sleep;
  - h) He began to feel numbness in parts of his body; and
  - i) He experienced frequent headaches.

The Claimant's health in December 2023

37. On 5 December 2023, the Claimant received instructions from another member of the Respondent's staff who was more senior than him, CY, which added to the pressure the Claimant was feeling such that it reached the level of "*intense*". The Claimant's evidence is that he could not feel the lower half of his face, felt sluggish, and had pains in his head. He continued to work.
38. On 7 December 2023, the Claimant's wife was concerned that he was really unwell, as his face seemed to be drooping, and she offered to take him to the hospital, which the Claimant declined. However, later that day the Claimant did go to hospital. By that time, the left side of the Claimant's face was drooping, and his blood pressure had reached a critical level. The Claimant cried uncontrollably when explaining what had been happening at work. The hospital confirmed that the Claimant suffered an atypical stroke or a Transient Ischaemic Attack (**TIA**). In his DIS the Claimant recalled that at that time had physical symptoms of:
- a) Facial numbness;
  - b) Severe throbbing in his left arm;
  - c) Leg ache, which was sometimes severe, although not as bad as his left arm; and
  - d) An intense headache,

but the discharge notification from the hospital on 10 December 2023 noted that, by that time, *“symptoms were resolved”*.

39. The Claimant was deemed unfit for work by his GP by reason of:

*“Left sided headache and facial droop  
? TIA or Atypical Stroke”*

for the period 10 December to 31 December 2023.

40. The Claimant was seen at the hospital again on 17 December 2023, after he experienced symptoms on 15 December 2023. The doctor’s notes from 17 December 2023 record that the Claimant experienced dizziness, weakness in his left arm and numbness and facial droop on the left side of his face on 15 December 2023. They go on to say:

*“These symptoms were transient and recurrent to being seen by the stroke team a week ago. He was discussed with the on call Stroke Consultant who felt could be managed in TIA OP clinic. He was discharged”*.

41. The Claimant was assessed by the Department of Stroke Medicine in the York Teaching Hospital on 18 December 2023. Dr Wanklyn, Consultant Stroke Physician, saw the Claimant and wrote to his GP that the Claimant had developed numbness in the left side of his face and a feeling of drooping when shopping with his wife on 15 December 2023. However, the letter recorded that:

*“By the 17th though the symptoms were settling, and by today he’s feeling almost back to normal.”*

42. The Claimant’s GP deemed him unfit for work from 29 December 2023 to 14 January 2024 due to *“Recent TIA”*.

#### The Claimant’s health post-December 2023 to 18 July 2024

43. The Claimant says that he was diagnosed with PTSD on 13 February 2024, and prescribed diazepam and then propranolol, but there was no evidence provided of this in the bundle besides the Claimant’s witness evidence in his DIS.

44. The Claimant was deemed unfit for work by his GP on 23 February 2024 until 15 March 2024, due to *“Stress related problem”*.

45. On 8 March 2024 the Claimant was assessed for some talking therapies, saying that he was *“struggling to face work... normally manage big teams of people and deal with problems all the time, now I can’t think straight, dispute with work, nothing physically wrong with me – stress for 6 months prior, reliving it again reporting for an investigation... I now have this deep-seated fear of going back over the events”*.

46. In March 2024 a further staged return to work was organised.

47. The Claimant was seen in the Department of Stroke Medicine at the York Teaching Hospital on 28 March 2024, and Dr Pushpan wrote to the Claimant's GP to record that:
- Since 17 December 2023 *"He has had no further stroke symptoms. I have informed him that everything came back as normal."*
48. The Claimant's evidence is that his health was generally improving in the period March to July 2024. The exceptions to this were:
- a) The Claimant says that he continued to suffer with the severe throbbing in his left arm after the December 2023 stroke/TIA, and indeed it only began to ease in July 2024, although that throbbing increased with stress; and
  - b) He experienced bouts of aggression, throwing household objects out of frustration and anger, or smashing objects.
49. As for the leg ache, that continued after the initial effects of the stroke/TIA such that the Claimant was not able to manage long walks, though he could manage shorter ones until June 2024. He treated this with support bandages.
50. The Claimant says the numbness to his face lessened considerably by July 2024.

The First Claim, and events at work in the period February to July 2024

51. The presented the First Claim on 15 February 2024. In that claim he averred that he had been subjected to detriments on the ground that he had made protected disclosures. He did not complain of disability discrimination.
52. In early February 2024 the Claimant attended a grievance meeting. The Claimant says that he *"blacked out"* after that meeting, suffering a huge mental strain, and that his physical injuries intensified.
53. On 8 July 2024 the Tribunal notified the Respondent that the Claimant had brought the First Claim.
54. On 19 July 2024 BF, the Claimant's line manager, set a target for the Claimant to be more succinct and improve his communication by the end of 2024. This, the Claimant avers, was:
- a) Direct discrimination on the ground of disability (poor and more verbose communication being, the Claimant says, a known side effect of having had a stroke); and
  - b) Harassment related to disability.
- This, the Claimant says, caused him to suffer huge mental stress, which exacerbated his PTSD and worsened his physical symptoms.

The Claimant's health after 19 July 2024

55. (There are other health effects referred to in the Claimant's DIS, but the summary below relates to the matters pleaded by the Claimant as impairments amounting to disabilities.)
56. The Claimant believes he experienced a nervous breakdown in July 2024, after the meeting with BF on 19 July 2024 at which BF set the Claimant a target to become more succinct and improve his communications. The Claimant says that, following that meeting, his therapy was increased to once a week for an hour, from once every two weeks for half an hour.
57. The Claimant stated in his DIS that, while his facial numbness had "*lessened considerably by July 2024*", it then returned after his meeting with BF on 19 July 2024. In oral evidence he told the Employment Judge that, in July 2024, the facial numbness was "*equal to*" that he experienced in December 2023. In his DIS the Claimant wrote that his facial numbness, was, in April 2025, "*beginning to lessen again now he is away from the stressful situation of July 2024 to November 2024*". Elsewhere in that statement, the Claimant said that he experienced facial numbness "*throughout 2024*", and still "*Very occasionally*" in 2025.
58. Similarly, in his DIS the Claimant says that the "*severe throbbing*" he experienced in his left arm "*began to ease by July 2024*", but it returned "*in the following months*", which the Claimant attributes to "*the stress experienced*" in that period.
59. The Claimant was seen by a Consultant Orthopaedic Surgeon on 10 September 2024, whose letter to the Claimant's GP records that the Claimant sought that specialist advice "*regarding disabling pain in both knees*", and that the Claimant had, "*Over the last few weeks... developed a flare of relatively new right knee symptoms with medial mechanical discomfort and significant swelling, he denies any other joint symptoms*". The letter recorded that the Claimant may benefit from "*aspiration and steroid injection on the right, or even arthroscopic surgery on both*".
60. The Claimant's GP deemed him unfit for work for the period 18 September to 15 October 2024, due to:  
*"H/o Transient Ischaemic Attack in Dec 2023*  
*Post Traumatic Stress disorder undergoing psychotherapy*  
*Work related stress"*.
61. The Claimant's GP considered the Claimant would be fit to return to work, with "*workplace adaptations*" (though none were specified) from 18 September to 17 October 2024.
62. The Claimant applied to amend the First Claim to include complaints of disability discrimination on 1 October 2024.

63. Also on 1 October 2024 the Claimant was seen by the same Consultant Orthopaedic Surgeon again on 1 October 2024. The surgeon wrote to the Claimant's GP, noting that the Claimant had had an MRI scan of his knees, which: *"showed more of a degenerative/arthritis change than the plain images suggest, with moderate loss of articular cartilage in the medial compartment. Both knees showed moderate patellofemoral degenerative change and the left knee showed a posterior horn tear of the medial meniscus"*.
64. The Claimant says that his medication for PTSD was doubled in October 2024.
65. On 8 October 2024 the Claimant was seen against by the surgeon, who wrote to the Claimant's GP recording some treatment given to his knees, and noted that: *"given the extent of the degenerative changes on both femoral condyles in the absence of major mechanical discomfort, I will defer consideration of arthroscopic surgery for the time being"*.
66. On 17 October 2024, the Claimant had a consultation with GP, who recorded that the Claimant's PTSD has been *"managed... under psychotherapy"*, *"Associated knee pains, worsening, Walking with stick... Unable to use arms very well"*, *"No facial weakness now..."*, *"FAST negative"* and *"Diagnosis: Ongoing PTSD"*.
67. His GP, in a Fit Note of the same date (17 October 2024) which repeated the reasons for the Claimant's not being fit for work from the 18 September 2024 note, recommended that he be able to work from home for the period 17 October 2024 to 16 April 2025, while undergoing medical treatment in North Yorkshire *"due to safety concerns"* (those were not specified).
68. The Claimant avers that his PTSD symptoms, anxiety and depression increased again in November 2024 after his dismissal.

#### The presentation of the Second Claim on 28 October 2024 onwards

69. After a further period of ACAS Early Conciliation which commenced on 25 and ended on 28 October 2024, the Claimant presented the Second Claim on 28 October 2024. The Claimant referred to the First Claim, and also complained that he had been subjected to further detriments on the grounds of having made protected disclosures, as well as asserting that he had been discriminated against on the basis of disability.
70. The Claimant's employment with the Respondent terminated on 12 November 2024. He presented the Third Claim on that date, complaining that he was unfairly dismissed and that he was dismissed for the sole or principal reason that he had made protected disclosures.

#### The Claimant's health as at 18 April 2025 (the date of the Claimant's DIS)

71. The Claimant says that some of the physical symptoms associated with the stroke/TIA are still experienced by him to this day, those being:

- a) Restricted movement of his left arm – he cannot lift it above shoulder level;
  - b) He continues to take paracetamol and ibuprofen for the throbbing pain in his left arm;
  - c) Exhaustion – the Claimant has to regularly lie down and have a nap during the day. The Claimant is not sure whether to attribute this to pain or the effects of his medication;
  - d) Unbearable knee pain, such that even moving to a standing position is excruciating. This has meant that the Claimant cannot cook dinner or shower himself;
  - e) Cognitive issues – the Claimant says he is unable to string a sentence together, that he sometimes thinks he has said something out loud which he has not, sometimes he forgets the end of the sentence he wanted to say by the time he gets there – this is being addressed with an NHS therapist via online tutorials;
  - f) Debilitating head pain, which is constant on some days, and which has never gone away for longer than a week or so at a time, though it lessened in 2025;
  - g) Occasional facial numbness; and
  - h) Mental health difficulties – feelings of anger, depression and helplessness, tearful.
72. The Claimant continues to receive therapy for PTSD.
73. This matter is listed for a ten day Final Hearing beginning on 14 and ending on 25 February 2028.

## Law

### Disability status

74. The 2010 Act defines the protected characteristic of “*disability*” in section 6(1) as follows:
- “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.”
75. The burden of proof is on the claimant to show, on the balance of probabilities, that they were disabled at the relevant time (*Morgan v Staffordshire University* [2002] IRLR 190).
76. When considering the meaning of section 6(1), the following should be considered:

- a) The terms of Part 1 of Schedule 1 of the 2010 Act, entitled “*Determination of disability*”;
- b) Guidance issued by the Disability Unit on matters to be taken into account in determining questions relating to the definition of disability (section 6(5)), the latest version of which was published on 8 March 2013 (the **Guidance**); and
- c) The Code of Practice on Employment (2011), published by the Equality and Human Rights Commission (the **EHRC Code**),

and indeed, an Employment Tribunal *must* take account of (b) and/or (c) where it considers the Guidance and/or EHRC Code, as applicable, relevant, pursuant to paragraph 12 of Part 1 of Schedule 1 of the 2010 Act.

77. The leading case on the examination of whether a person is disabled is the EAT decision of *Goodwin v Patent Office* [1999] I.C.R. 302. While that case concerned the predecessor legislation to the 2010 Act, the four questions identified in *Goodwin* remain appropriate:

(1) *The impairment condition*: Does the claimant have an impairment which is either mental or physical?

(2) *The adverse effect condition*: Does the impairment affect the claimant's ability to carry out normal day-to-day activities, and does it have an adverse effect?

(3) *The substantial condition*: Is the adverse effect (upon the claimant's ability) substantial?

(4) *The long-term condition*: Is the adverse effect (upon the claimant's ability) long-term?

78. The assessment is done as at the date of the alleged discriminatory acts to determine whether the claimant was disabled then (*Cruickshank v VAW Motorcast Ltd* [2002] ICR 729).

**(i) Does the claimant have an impairment which is either mental or physical?**

79. Some conditions are prescribed as being, or as not being, impairments for these purposes in the Equality Act 2010 (Disability) Regulations 2010, but none of those are relevant for the Claimant's purposes.

80. Besides those prescribed conditions, the question of whether a claimant has an impairment is a matter for the tribunal to determine. It is not answered by a medical diagnosis or an absence of such a diagnosis – though the existence or absence of a diagnosis may be evidence for the tribunal to take into account (*Herry v Dudley Metropolitan Council* UKEAT/0100/16).

81. The Guidance notes that: “*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*” (paragraph A3). Similarly, the EHRC Code states: “*There is no need for a person to establish a medically diagnosed cause for their impairment.*”

*What it is important to consider is the effect of the impairment, not the cause”* (Appendix 1, paragraph 7).

**(ii) Does the impairment affect the claimant’s ability to carry out normal day-to-day activities, and does it have an adverse effect?**

82. This assessment is personal to the claimant.

83. As the EAT in *Goodwin* observed:

The examination is of the “*impairment on the person’s ability to carry out activities. The fact that a person can carry out such activities does not mean that his ability to carry them out has not been impaired. Thus, for example, a person may be able to cook but only with the greatest difficulty. In order to constitute an adverse effect, it is not the doing of the acts which is the focus of attention but rather the ability to do (or not do) the acts.*”

*“The focus of attention ... is on the things that the applicant either cannot do or can only do with difficulty, rather than on the things that the person can do.”*

**(iii) Is the adverse effect upon the claimant’s ability substantial?**

84. This is a question of fact. The effect must be “*more than minor or trivial*” (section 212(1) of the 2010 Act).

85. An effect is either minor or trivial, or it is substantial – there is no sliding scale between the one and the other (*Aderemi v London and South Eastern Railway Ltd* UKEAT/0316/12).

**(iv) Is the adverse effect long-term?**

86. The focus for examination is on whether *the substantial adverse effect* was long term, not the impairment (*Royal Borough of Greenwich v Syed* UKEAT/0244/14).

87. Under paragraph 2(1) of Schedule 1 to the 2010 Act, the effect of an impairment is long term if it:

- a) Has lasted for at least 12 months;
- b) Is likely to last for at least 12 months; or
- c) Is likely to last for the rest of the life of the person affected.

88. This assessment (including as to the likelihood of recurrence) is made as at the date of the alleged discriminatory act(s), by reference to facts and circumstances existing at that date (*McDougall v Richmond Adult Community College* [2008] EWCA Civ 4). The tribunal is not entitled to have regard to events occurring after that date to determine whether the effect did, or did not, last for 12 months (*All Answers Ltd v W* [2021] IRLR 612), or to look at the evidence with the benefit of hindsight as to what in fact happened subsequently (*Thyagarajan v Cap Gemini UK plc* UKEAT/0264/14).

89. The assessment is an objective one – looking at all the evidence available at that time, not just that known to the employer (*Lawson v Virgin Atlantic Airways Ltd* EAT/0192/19).
90. Paragraph C4 of the Guidance states that:  
*“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).”*
91. Paragraph 2(2) of Schedule 1 of the 2010 Act provides:  
*“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”.*
92. The House of Lords in *Boyle v SCA Packaging Ltd (Equality and Human Rights Commission intervening)* [2009] ICR 1056 concluded that “likely” in this context means “could well happen”, which is a lower standard than a 50 per cent. probability.
93. The focus of examination is on the recurrence of the effect, not the impairment. Where the facts of the case engage paragraph 2(2) therefore, the Tribunal must ask itself whether, as at the time of the alleged discriminatory act, it could well happen that *the effects* of the claimant’s impairment would last longer than 12 months, taking a broad view of the available evidence (*Nissa v Waverly Education Foundation Ltd* UKEAT/0135/18).
94. The continuation of the impairment without the recurrence, or likely recurrence, of the effect is not enough to satisfy paragraph 2(2) (*Guinness Partnership v Szymoniak* UKEAT/0065/17).
95. There must, though, be a link between the earlier effect and the later one – the effect must be a *recurrence*, and they must both be caused by the same impairment. Although the impairment does not need to recur to satisfy paragraph 2(2), the later effect must still be an effect of the same impairment. A substantial adverse effect resulting from a different impairment is not a “[recurrence]” (*Swift v Chief Constable of Wiltshire Constabulary* [2004] ICR 909).
96. The Guidance (in paragraph C6) gives uses the following examples:  
*“A young man has bipolar affective disorder, a recurring form of depression. The first episode occurred in months one and two of a 13-month period. The second episode took place in month 13. This man will satisfy the requirements of the definition in respect of the meaning of long-term, because the adverse effects have recurred beyond 12 months after the first occurrence and are therefore*

*treated as having continued for the whole period (in this case, a period of 13 months).*

*In contrast, a woman has two discrete episodes of depression within a ten-month period. In month one she loses her job and has a period of depression lasting six weeks. In month nine she experiences a bereavement and has a further episode of depression lasting eight weeks. Even though she has experienced two episodes of depression she will not be covered by the Act. This is because, as at this stage, the effects of her impairment have not yet lasted more than 12 months after the first occurrence, and there is no evidence that these episodes are part of an underlying condition of depression which is likely to recur beyond the 12-month period. However, if there was evidence to show that the two episodes did arise from an underlying condition of depression, the effects of which are likely to recur beyond the 12-month period, she would satisfy the long term requirement.”*

97. As noted by the EAT in *Royal Bank of Scotland plc v Morris* UKEAT/0436/10, “*in cases where the disability alleged takes the form of depression or a cognate mental impairment, the issues will often be too subtle [on the duration of the disability] to allow it to make proper findings without expert assistance”.*
98. An “*expert*” view need not necessarily mean the expertise of a clinician with a mental health specialism. In *J v DLA Piper UK LLP* UKEAT/0263/09 the Tribunal was found to have made an error of law by failing to give weight to the evidence of the claimant’s GP on the issues both of impairment and of deduced effect because the GP was not a specialist.

#### Contemporaneous documentary evidence versus human memory

99. Leggatt J (as he then was) made some observations on the reliability of evidence based on witness recollection in the case of *Gestmin SGPS SA v Credit Suisse (UK) Ltd and another* [2013] EWHC 3560 (Comm). He noted that:
  - a) Human memory is subjected to powerful biases, and “*such processes are largely unconscious and that the strength, vividness and apparent authenticity of memories is not a reliable measure of their truth*”;
  - b) “*The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. This is obvious where the witness is a party or has a tie of loyalty (such as an employment relationship) to a party to the proceedings. Other, more subtle influences include allegiances created by the process of preparing a witness statement and of coming to court to give evidence for one side in the dispute. A desire to assist, or at least not to prejudice, the party who has called the witness or that party’s lawyers, as well as a natural desire to give a good impression in a public forum, can be significant motivating forces*”;
  - c) “*Considerable interference with memory is also introduced in civil litigation by the procedure of preparing for trial. A witness is asked to make a*

*statement, often (as in the present case) when a long time has already elapsed since the relevant events. The statement is usually drafted for the witness by a lawyer who is inevitably conscious of the significance for the issues in the case of what the witness does nor does not say. The statement is made after the witness's memory has been "refreshed" by reading documents. The documents considered often include statements of case and other argumentative material as well as documents which the witness did not see at the time or which came into existence after the events which he or she is being asked to recall. The statement may go through several iterations before it is finalised. Then, usually months later, the witness will be asked to re-read his or her statement and review documents again before giving evidence in court. The effect of this process is to establish in the mind of the witness the matters recorded in his or her own statement and other written material, whether they be true or false, and to cause the witness's memory of events to be based increasingly on this material and later interpretations of it rather than on the original experience of the events"; and*

- d) *"In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth".*

**Application: Whether the Claimant was disabled for 2010 Act purposes by reason of either of the Averred Disabilities at the Relevant Times**

The First Averred Disability: The consequence of two strokes in December 2023 including dysphasia (problem with speech), left hand side weakness in the body, face drooping and problems with both knees

100. As noted above, the Relevant Times for the purposes of the Claimant's complaints cover a period beginning on 19 July 2024 and ending on 12 November 2024.

*(i) At the Relevant Times, did the Claimant have an impairment which was either mental or physical?*

101. The medical evidence supports a clear finding that, prior to the Relevant Times, the Claimant suffered with dysphasia, left hand side weakness in the body, numbness to the left side of his face and facial drooping in December 2023, when he suffered an atypical stroke or a TIA. However, ahead of the Relevant Times the medical evidence suggests that these consequences of the atypical stroke/TIAs had resolved, notably:
- a) The Department of Stroke Medicine wrote to the Claimant's GP on 18 December 2023, which letter stated that the Claimant was feeling "*almost back to normal*";
  - b) The Claimant confirmed, as part of his assessment for talking therapies on 8 March 2024, that there was "*nothing physically wrong with [him]*"; and
  - c) When seen again by the Department of Stroke Medicine on 28 March 2024, the letter to the Claimant's GP recorded that "*He has had no further stroke symptoms*".
102. What is clear from the Claimant's witness evidence (in his DIS and his oral evidence to the Employment Judge) is that some of these impairments returned in July 2024, at some time shortly after the Claimant's meeting with BF on 19 July 2024 (i.e., at some proximate time to the first Relevant Time), namely facial numbness, and throbbing pain in his left arm.
103. In relation to facial numbness:
- a) The Claimant's evidence in his disability statement records that:  
*"The numbness to the Claimant's face which started through stress mid 2023, lessened considerably by July 2024. However, due to undue pressure at work, discrimination and other stresses, it returned and is still prevalent, although once again beginning to lessen again now he is away from the stressful situation of July 2024 to November 2024"*.
  - b) His oral evidence to the Employment Judge was that the facial numbness returned after the meeting with BF on 19 July 2024, and that "*it was really significant when it returned*", being "*equal*" to that he experienced in December 2023.
104. The Claimant's assessment with his GP on 17 October 2024 recorded "*No facial weakness now*", so the Tribunal finds that while the Claimant experienced facial numbness from or shortly after 19 July 2024, it had resolved by 17 October 2024. The Claimant therefore had the impairment of facial numbness at the Relevant Times that occurred in the period 19 July 2024 to early October 2024.
105. In relation to his left arm:
- a) The Claimant's DIS refers to "*The severe throbbing began to ease by July 2024, but the stress experienced in the following months brought throbbing feeling back severely*".

- b) When asked questions by the Employment Judge which of the stroke symptoms were continuing in 2024, the Claimant replied that it was “*mainly around numbness and my arm*”, and it was “*thought to be stress-related*”.
106. The Employment Judge accepted the Claimant’s evidence on these point, albeit that there is dearth of medical evidence on these matters at this time. The Tribunal finds that the Claimant had the impairments of:
- a) Facial numbness from 19 July 2024 (or shortly thereafter) to early October 2024; and
- b) Throbbing left arm pain from 19 July 2024 (or shortly thereafter) to 12 November 2024.
107. As part of this First Averred Disability the Claimant also contends that he experienced “*problems with both knees*” in consequence of two strokes which affected him in December 2023. (The Respondent does not take a point on whether the two occurrences experienced by the Claimant in December 2023 were strokes or TIAs.)
108. The medical evidence shows that the difficulties with the Claimant’s knees began to be noticeable in late August/early September 2024, with the letter from his surgeon recording that “*Over the last few weeks*” the Claimant had started to experience “*disabling pain in both knees*”. This was continuing when the Claimant saw his GP on 17 October 2024, when he was “*Walking with stick*”. It is therefore probable that the Claimant would have continued to suffer significant pain in the latter part of the Relevant Times to 12 November 2024, and this is supported by the fact that the Claimant’s DIS refers to the fact that he had exploratory surgery on his knees in February 2025.
109. That evidence also indicates that the cause of the knee pain was “*degenerative/arthritis*”, and that the left knee had suffered a meniscus tear (the surgeon’s letter of 1 October 2024).
110. It is clear, therefore, that for some of the Relevant Times (late August to 12 November 2024) the Claimant had disabling pain in both knees, although there is no medical evidence for the Claimant connecting the knee pain he experienced to his atypical stroke/TIAs.
111. The Claimant had, using AI, produced a paper that refers to “*stroke victims often [experiencing] a range of knee-related problems*”. The Tribunal places no reliance on that document given:
- a) The Tribunal has no way of knowing whether the AI-generated document is a fair reflection of the source documents listed in it;
- b) The Tribunal has not seen the instructions the Claimant gave the AI programme; and

- c) The Tribunal has no evidence before it as to whether the sources the AI programme apparently used are themselves reliable sources in this context,

but in any event, the reliability or otherwise of this document is irrelevant given there is no factual evidence to connect *the Claimant's* knee problems to his stroke/TIAs.

112. The Claimant's DIS observed that:

*"The Claimant had not previously [i.e., pre-stroke/TIA] experienced knee issues, but they deteriorated from the point of the stroke, which can be a common occurrence, as described in medical journals, as a lack of fluids to the knees following a stroke",*

but it does not say that the Claimant was advised that *his* knee problems arose from, or were likely to have arisen from, his stroke/TIAs.

113. In his oral evidence to the Tribunal the Claimant said that his surgeon had observed a correlation between stroke victims and knee pain, but his surgeon does not appear to have indicated a belief that *the Claimant's* knee problems were connected with his atypical stroke/TIAs, given the surgeon's letters to the Claimant's GP postulate that his knee problems were "*degenerative/arthritis*", with the left knee suffering with "*a posterior horn tear of the medial meniscus*".

114. The Respondent relied on guidance from the NHS website (which is evidence the Tribunal can accept, given NHS guidance is intended to be relied upon by the public, and may therefore be accepted by the Tribunal as a reliable source of general advice) that, as regards meniscus tear in the Claimant's left knee, it "*usually gets damaged because of an injury*".

115. However, as is clear from the Guidance: "*It is not necessary for the cause of the impairment to be established*" (paragraph A3), and this is stated in equivalent terms in the EHRC Code: "*There is no need for a person to establish a medically diagnosed cause for their impairment. What it is important to consider is the effect of the impairment, not the cause.*" (Appendix 1, paragraph 7). It is sufficient for the Claimant to establish that he suffered the impairment of problems with his knees – he does not need to show that those problems were in consequence of the strokes he suffered.

116. The Tribunal finds that the Claimant had the impairment of knee problems at the Relevant Times that occurred from late August 2024 until 12 November 2024.

*(ii) At the Relevant Times, did the impairment affect the Claimant's ability to carry out normal day-to-day activities, and did it have an adverse effect?*

117. As noted above, the Tribunal finds that the Claimant's facial numbness and throbbing left arm pain returned on 19 July 2024 or shortly thereafter, and continued until:

- a) Early October 2024 in the case of the facial numbness; and

- b) The latest of the Relevant Times on 12 November 2024 in the case of the throbbing left arm pain.
118. The Claimant has offered no evidence whatsoever of any effect on his normal day-to-day activities caused by facial numbness, and therefore the Tribunal cannot find that it had any.
119. The Claimant's DIS does record, though, that during that time the Claimant experienced severe throbbing pain in his left arm that he treated with paracetamol and ibuprofen. The notes of his 17 October 2024 GP meeting record that he was "*unable to use arms very well*". His inability to use his arms very well would, in the Tribunal's judgement, have had an adverse effect on the Claimant's ability to carry out normal day-to-day activities.
120. The medical and witness evidence shows clearly that the Claimant's knee problems did adversely effect his ability to carry out normal day-to-day activities at the Relevant Times when he experienced them (late August 2024 to 12 November 2024) as:
- a) They began with "*disabling pain*" – the nature of "*disabling*" pain is that it does have an effect on a person's ability to carry out day-to-day activities; and
- b) The Claimant walked with the aid of a stick on 17 October 2024, which the Tribunal finds is sufficient to support a finding that the Claimant's normal day-to-day activity of walking continued to be adversely effected until at least 12 November 2024. The Tribunal considers it a reasonable conclusion that if the Claimant needed a stick on 17 October 2024, that his knee problems would have continued to have an adverse effect on his ability to walk until 12 November 2024.

*(iii) At the Relevant Times, was the adverse effect upon the Claimant's ability substantial?*

121. As above, the Claimant's evidence does not address whether any adverse effect on him resulting from facial numbness was substantial. The Tribunal is therefore unable to conclude that it was.
122. As for the left arm pain, the Tribunal finds that its adverse effect upon the Claimant in the Relevant Times occurring 19 July 2024 to 12 November 2024 was substantial, on the basis that he was "*unable to use arms very well*", and experienced a level of pain that he described in his DIS as "*severe*".
123. As above, the fact that the Claimant experienced "*disabling pain*" from late August 2024, and that he needed to use a stick for walking by 17 October 2024 supports a finding that the adverse effect of his knee problems was substantial at the Relevant Times between the period late August 2024 to 12 November 2024.

(iv) *At the Relevant Times, was the adverse effect long-term?*

124. The Claimant's evidence is that the facial numbness that had begun in "mid 2023" had waned by July 2024, but then returned following the meeting with BF on 19 July 2024 and "remained throughout 2024", although he told his GP that he had "No facial weakness" by 17 October 2024. At the Relevant Times, therefore, which began on 19 July 2024 and which the Tribunal finds ended in early October 2024, the Claimant's facial numbness had lasted for at least 12 months, and was therefore long-term in accordance with paragraph 2(1)(a) of Schedule 1 of the 2010 Act.
125. In relation to the throbbing left arm pain experienced by the Claimant, at the Relevant Times:
- a) This had not lasted for 12 months, given it had begun in December 2023; and
  - b) Would not have been thought likely to last for the rest of the Claimant's life, given it had:
    - (i) At worst, "[begun] to ease" before the Claimant's meeting with BF in July 2024 when compared to what the Claimant had experienced in December 2023 – as described in the Claimant's DIS; and
    - (ii) At best had resolved by 17 December 2023 - according to the medical notes of his assessment at the Emergency Department on that date.

The Claimant has made no argument to the Tribunal that the left arm throbbing pain is expected, or was expected at any Relevant Time, to last for the rest of his life.

126. The key question when assessing whether the Claimant's throbbing left arm pain was long-term, then, was whether, at each of the Relevant Times, it was likely to last for at least 12 months. This means either:
- a) That the throbbing left arm pain was likely, at each of the Relevant Times, to last from this occurrence until 18 July 2025 or later; or
  - b) If this throbbing left arm pain was a recurrence of the left arm pain the Claimant had experienced from 7 or 15 December 2023, that this pain was expected, at the Relevant Times, to last until 6 or 14 December 2024.

- Was the throbbing left arm pain the Claimant experienced around 19 July 2024 a recurrence of the left arm pain he experienced in December 2023?

127. Paragraph 2(1) of Schedule 1 of the 2010 Act refers to "the effect" of an impairment being long term if it meets one of the three options listed at subparagraphs (a), (b) and (c). Paragraph 2(2) provides that an effect is to be treated as continuous if "that effect" is likely to recur. Where there have been two periods of left arm pain, the Tribunal is to examine:

- a) Whether those two occurrences are of *the same effect* (as is clear from the language of those provisions); and
  - b) Whether those two occurrences are both caused by the same impairment (*Swift*).
128. It is clear here that it was the same effect on both occasions: the Claimant referred, in his DIS, to the stress experienced by him in the months following July 2024 having “*brought [the] throbbing feeling back*”.
129. The impairment relied upon by the Claimant is “*the consequence of two strokes in December 2023*”. On the facts here, the Claimant attributes the throbbing pain he experienced in July 2024 to the stress he experienced at work. However, he also gave evidence that prior to the events he complains of he worked successfully in environments that many people would find stressful: working for investment banks, supporting other clients in the corporate world, “*at the top of his field*”, ordinarily charging £1,000 per day for his services as a contractor (and this work history and record was not questioned by the Respondent). There is no medical evidence before the Tribunal as to whether the throbbing pain the Claimant experienced in his left arm in July 2024 was a recurring effect of the stroke/TIAs he experienced in December 2023, but given that the Claimant had, pre-December 2023, managed stress without experiencing that left arm pain, it is reasonable to infer that the impairment that caused it in July 2024 was the consequences of the stroke/TIAs he experienced in December 2023, triggered by stress.
130. The Tribunal therefore considers that it is appropriate to regard the Claimant’s throbbing left arm pain in December 2023 as continuous with the left arm pain he experienced in July 2024. That effect was therefore long-term if at the Relevant Times it was likely to last, or recur, until at least December 2024.
- How long was the Claimant’s left arm pain expected to last at the Relevant Times?
131. The Claimant’s evidence from April 2025 (when he produced his DIS) was that he had been taking pain killing medication continually since December 2023, however the Tribunal cannot take account of what has happened since the Relevant Times (*Thyagarajan, All Answers*). The relevant examination is whether, at the Relevant Times, the Claimant’s throbbing left arm pain was thought likely to last for at least 12 months (*McDougall*).
132. There is very little evidence available as to the prognosis for the Claimant’s left arm at the Relevant Times. The Tribunal must therefore make findings based on reasonable inference from the evidence that was available at that time.
133. In order to do so, the Tribunal has first to decide which account to prefer of the speed with which the Claimant’s left arm pain eased following the December 2023 stroke/TIA, being:
- a) *Either* the account of the medical evidence from December 2023, which indicates that the left arm pain had more-or-less resolved by 18 December

2023. The source of this is the letter from the Department of Stroke Medicine to the Claimant's GP dated 18 December 2023, in which it was stated that the Claimant reported that his symptoms, which had included some throbbing in his hand, "*were settling*", and that he was feeling "*almost back to normal*".

- b) Or the account given by the Claimant in his DIS that the left arm pain had "*[begun] to ease by July 2024*", but not ceased.

134. The early resolution account is supported by:

- a) A letter from North Yorkshire Talking Therapies to the Claimant's GP on 8 March 2024, in which the Claimant was reported to have said that there was "*nothing physically wrong with [him]*"; and
- b) A further letter from the Department of Stroke Medicine to the Claimant's GP on 26 March 2024, in which it was recorded that the Claimant has had "*no further stroke symptoms*",

as the Claimant would be unlikely to say there was "*nothing physically wrong with [him]*" if he was experiencing severe throbbing pain in his left arm. The reference to "*no further*" stroke symptoms could mean no 'new' stroke symptoms, and not take account of symptoms still persisting from the original stroke/TIA, but it would in any event be surprising if the Department of Stroke Medicine were to have failed to mention ongoing throbbing left arm pain from the December 2023 stroke/TIA in its letter to the Claimant's GP in March 2024, which was clearly designed to put his GP 'in the picture' about the current state of affairs as regards the Claimant's recovery from the December 2023 occurrence.

135. On balance, the Tribunal prefers the contemporaneous medical documents that the Claimant's left arm pain more-or-less resolved within two weeks of the original stroke/TIA in December 2023. While the Claimant was regarded by the Employment Judge as truthful in his evidence, he said that one of the lingering effects of his health challenges was that he can get confused. It is understandable that when a person has been in severe pain, as the Claimant's clear evidence is that he has been since July 2024 with his left arm, he may be confused as to the degree of pain he experienced in the period 20 months ago to 15 months ago. In addition, as noted in the *Gestmin* case, through no conscious action of a witness, their recollection will be affected by what has since happened, and by the process of preparing for a hearing such as this. The Tribunal – preferring what the contemporaneous documents record - finds that the Claimant's left arm pain was largely gone by 18 December 2023.

136. Turning back, then, to what objectively would have been the expected duration of the Claimant's throbbing left arm pain at the Relevant Times (*Lawson*), the Tribunal finds that:

- a) At the earliest Relevant Time (19 July 2024, immediately after the BF meeting when the throbbing pain - which had been easing - returned

“*severely*”), it is reasonable to infer that it was likely that the Claimant’s left arm pain would have been expected to pass in the coming days or weeks, based on his experience in December 2023, when he felt “*almost back to normal*” after a couple of weeks (as recorded by the Department of Stroke Medicine in the assessment of 18 December 2023). There is nothing in evidence before the Tribunal to suggest that there was anything about the throbbing left arm pain that recurred following July 2024 that would have indicated (to the Claimant or an objective outsider) that it would last longer than the previous bout of left arm pain the Claimant experienced in December 2023.

- b) Throughout the subsequent Relevant Times, while the Claimant’s throbbing left arm pain would, by those times, already have lasted longer than the left arm pain he experienced in December 2023, there is nothing in evidence before the Tribunal to indicate that the Claimant’s arm pain would have been expected at those Relevant Times to last to or beyond the 12-month anniversary of when it first began. The medical evidence indicates that the Claimant did not consult a medical professional in connection with his arm pain during this period, when he was consulting other professionals about other issues (such as his knees, and whether he was fit to physically return to work in London). This suggests that the arm pain was resolving and was expected by him to resolve in less than 12 months.
137. The Tribunal therefore finds that the Claimant’s throbbing left arm pain was not likely to last for at least 12 months on any of the Relevant Times when he experienced it, and therefore it was not long-term on any of those occasions, as it did not satisfy any of sub-paragraphs (a), (b) or (c) of paragraph 2(1) of Schedule 1 of the 2010 Act.
138. The Claimant’s knee problems had not begun by the first of the Relevant Times on 19 July 2024. They only began in late August 2024. The chronologically latest Relevant Time was 12 November 2024, so for none of the Relevant Times had the Claimant had his knee problems for at least 12 months (so sub-paragraph 2(1)(a) of Schedule 1 of the 2010 Act was not satisfied by the Claimant’s knee problems). Nor is there any evidence before the Tribunal that they were thought likely at those Relevant Times to last for the rest of the Claimant’s life (so sub-paragraph 2(1)(c) of Schedule 1 of the 2010 Act was not satisfied). Once again, therefore, the question as to whether the Claimant’s knee problems were long term at those Relevant Times when he had them was whether they were likely to last for at least 12 months (so as to satisfy sub-paragraph 2(1)(b)).
139. The only evidence available to the Tribunal about the expected duration of the Claimant’s knee problems in the Relevant Times was that from the Claimant’s surgeon. The Claimant’s DIS understandably is focused on the pain he was *experiencing*, but does not help the Tribunal understand the expected duration of

that pain or other substantial adverse effects of the Claimant's knee problems at the Relevant Times.

140. It is for the Claimant to satisfy the Tribunal that his knee problems were long-term at these Relevant Times (*Morgan*). The Tribunal is not satisfied that he has done so based on an objective analysis of the Claimant's surgeon's letters to his GP. The key points from those are summarised below:
- a) On 10 September 2024, the surgeon regarded the knee problems as a "flare" – indicating that they were seen as temporary, although he acknowledged that the Claimant may benefit from "*aspiration and steroid injection on the right, or even arthroscopic surgery on both*". The use of the word "even" suggests that surgery was considered, at that time, the least likely, though possible, treatment. An objective read of the 10 September 2024 letter is not that the Claimant's knee problems were thought likely to last more than 12 months at that time.
  - b) The surgeon's assessment of the position had worsened by 1 October 2024, when he characterised the Claimant's knee problems as "*more of a degenerative/arthritis*" problem, which might suggest the effects would be felt on a longer-term basis than had been supposed on 10 September 2024. However, the treatment plan still involved consideration of a steroid injection on his right knee, with possible surgery to his left, which was thought, by this time, to involve a torn meniscus. The NHS guidance pointed to by the Respondent indicates that a meniscus tear "*can get better on its own without treatment, but it can take a while to heal*". While this is pointing to a more long-lasting effect, the Claimant has not satisfied the Tribunal that his knee problems were objectively likely to last longer than 12 months (from when they started in late August 2024) based on the facts at that time.
  - c) On 8 October 2024, the Claimant's surgeon re-evaluated the situation slightly, considering that physiotherapy should be tried, and that "*in the absence of major mechanical discomfort, [he would] defer the consideration of arthroscopic surgery for the time being*". This is strongly suggestive that the absence of mechanical discomfort, plus physiotherapy, may resolve the difficulties the Claimant was experiencing. The Tribunal finds that, as at 8 October 2024, the substantial adverse effects of the Claimant's knees would not be thought likely to continue until August 2025.
141. The Claimant's knee problems were therefore not "*long term*" for the purposes of section 6 of the 2010 Act at any of the Relevant Times when they existed (i.e., those from late August 2024 to 12 November 2024).
142. These conclusions mean that none of the three impairments relied on by the Claimant from the First Averred Disability (facial numbness, throbbing left arm pain and knee problems) amounted to a disability for 2010 Act purposes at any of the Relevant Times.

The Second Averred Disability: PTSD

*(i) At the Relevant Times, did the Claimant have an impairment which was either mental or physical?*

143. The Claimant says that, at the Relevant Times, he had PTSD, having been diagnosed with that condition in February 2024. Further, he says that he was treated for this condition continuously throughout the period in which the Relevant Times occurred. Regrettably, there is very little contemporaneous evidence before the Tribunal pertaining to this, that being:

- a) Correspondence from the Claimant to others, where the Claimant refers to the fact that he has PTSD;
- b) A Fit Note from the Claimant's GP dated 18 September 2024; and
- c) Notes from the Claimant's consultations with his GP on 4 October 2024 and 17 October 2024, which refer to the Claimant's having PTSD, without identifying a date from which the Claimant first began experiencing the effects of that PTSD.

144. The Respondent notes that there is no medical diagnosis of PTSD, and says therefore that the Claimant has failed to prove that he had PTSD at the Relevant Times.

145. The Tribunal notes that, while a diagnosis from a specialist is desirable in such cases, the fact that the Claimant's GP recorded that he had PTSD on 4 and 17 October 2024 is sufficient to show that the Claimant had PTSD on those dates (as per the *DLA Piper* case), and given the nature of PTSD, the Tribunal considers it reasonable to suppose that the Claimant continued to have that impairment until the last Relevant Time on 12 November 2024.

*(ii) At the Relevant Times, did the impairment affect the Claimant's ability to carry out normal day-to-day activities, and did it have an adverse effect?*

and

*(iii) At the Relevant Times, was the adverse effect upon the Claimant's ability substantial?*

146. Taking these two elements together, regrettably, despite the terms of EJ Corrigan's Orders, the Claimant's DIS does not set out the effects of his PTSD on his ability to day day-to-day activities during the Relevant Times, but rather it sets out a chronology of things the Claimant says the Respondent did that contributed to the feelings of anxiety and attack the Claimant was experiencing.

147. In order to conclude that the Claimant was disabled for 2010 Act purposes by reason of his PTSD, the Tribunal would need to conclude (and the burden sits with the Claimant to prove) that not only was the Claimant's ability to carry out day-to-day activities adversely affected, but the size of that adverse impact was substantial (in the sense of being more than minor or trivial). While this is not a

significant hurdle, there is simply no evidence put by the Claimant that these elements of the legislative test were satisfied at the Relevant Times.

*(iv) At the Relevant Times, was the adverse effect long-term?*

148. The Respondent avers that it would be unsafe for the Tribunal to make a finding that, at the Relevant Times, any PTSD suffered by the Claimant was long-term without medical evidence. It relies on the case authority of *Morris*.
149. The Tribunal agrees. Even if the Claimant's assertion that he was diagnosed with PTSD on 13 February 2024 is accepted, there is no evidence whatsoever as to whether its effects were likely to last for 12 months. The Tribunal cannot conclude that the Claimant's PTSD was long-term at the Relevant Times (even though, accepting the Claimant's evidence from April 2025 when his DIS was written, we now know it to have been so - *McDougal*) – there is a total lack of evidence on this point, and *Morris* issues a clear warning that it is unsafe to make findings without expert assistance.

## **Conclusions**

150. In summary, the Tribunal has concluded that the Claimant was not disabled on any of the bases asserted, for the following reasons:
- a) In relation to facial numbness, the Claimant has failed to present any evidence that the effects of that impairment had a substantial adverse impact on his ability to carry out day to day activities at the Relevant Times.
  - b) As regards each of the throbbing left arm pain and the problems with the Claimant's knees, these effects were not long term at the Relevant Times.
  - c) As for the Claimant's PTSD, the Tribunal does not have the evidence before it to conclude that the impairment had a substantially adverse effect on his ability to carry out day-to-day activities, or that any such effects were long term, at the Relevant Times.
151. For all of the above reasons, the Tribunal finds that the Claimant was not disabled for Equality Act 2010 purposes at the Relevant Times.
152. The Claimant's complaints of disability discrimination are therefore dismissed.

Employment Judge Ramsden

Date 20 October 2025

JUDGMENT AND REASONS SENT TO THE PARTIES ON  
21 October 2025

For the Tribunal Office

P Wing

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