Case Number: 6005922/2024

EMPLOYMENT TRIBUNALS

Claimant: Mr S Pinto

Respondent: The Stepstone Group UK Ltd

V

Heard at: Reading (CVP)

On: 17 November 2025

Before: Tribunal Judge G D Davison sitting as a Judge of the Employment Tribunal

Appearances:

For the Claimant: **In Person**

For the Respondent: **Ms C Ashiru (Counsel)**

Background

1. There have been previous Preliminary Hearings. At a Preliminary Hearing of 28 July 2025 the following issues were set down for consideration:

   19.1 If pursued, the claimant's application dated 21 June 2025 to include without prejudice correspondence in his amended claim on the grounds of 'unambiguous impropriety';

   19.2 If pursued, the claimant's application dated 21 June 2025 under r.41 of the Employment Procedure Rules 2024 regarding reputational harm by the respondent post-dismissal. The claimant should set out the jurisdictional basis he says the Tribunal can make orders about these matters.

   19.3 If considered appropriate by the Employment Judge hearing the PPH to determine prior to the final hearing, whether the claimant is a disabled person within the meaning of section 6 and schedule 1 of the Equality Act 2010.

2. In addition to these issues further Case Management Orders were discussed to finalise the list of issues, and are addressed in the Record of a Preliminary Hearing of today's date.

RESERVED JUDGMENT

i) The claimant's application of 21 June 2025 to include without prejudice correspondence on the grounds of "unambiguous impropriety" is refused.

ii) The claimant's application of 21 June 2025 to amend his claim to include a claim of reputational harm post-dismissal is refused.

iii) The claimant is not a "disabled person" within the meaning of Section 6 and Schedule 1 of the Equality Act 2010.

REASONS

Without prejudice correspondence

1. The claimant appeared to have misunderstood the nature of a "private" hearing. He had sent to the Tribunal two annexes (A and B). These contained a submission on why the without prejudice documentation should be admitted and the without prejudice documentation that he wished to have considered. The hearing before the Tribunal was listed as a Public Preliminary Hearing. The without prejudice documentation that the claimant was seeking to rely upon had not been disclosed to the respondent. There is a DRA hearing listed in January 2026 and the final hearing for this matter is listed in February 2026 for 20 days. The respondent invited the Tribunal to consider the documentation and assess whether the threshold of "unambiguous impropriety" had been met. Although the respondent was unsure exactly which documentation the claimant had annexed in the application having reviewed, in general terms, some of the without prejudice correspondence within the respondent's solicitor's files, the respondent's counsel was confident that there was no documentation that would reach the relevant threshold. The claimant was content for the application and documentation annexed thereto to be assessed in this manner. Given the upcoming hearings and the overriding objective I saw no unfairness in proceeding to decide the application in the manner suggested. The only prejudice would be to the respondent in not having had sight of the documents / submission.

Garrod (appellant) v Riverstone Management Ltd (respondent) [2023] IRLR 191

"….the without prejudice rule will not be applied if the exclusion of the evidence would "act as a cloak for perjury, blackmail or other unambiguous impropriety": Unilever plc v Proctor & Gamble Co [1999] EWCA Civ 3027.

From the review of the authorities at paragraph [22] of Mezzoterro it can also be seen that the rule will be disapplied only in "the very clearest of cases" or "in truly exceptional and needy circumstances", the latter per Rix LJ in Savings & Investment Bank Ltd v Fincken [2004] 1 WLR 667 at [57].

That is why the rule can be displaced only by very clear and very serious wrongdoing. Making a settlement offer which could, on one view, provide a clue to a party's discriminatory attitudes falls far below that threshold."

2. The claimant has sought to rely upon various matters such as an agenda or list of issues not being provided in a timely manner, Data Protection requests not being complied with properly (a complaint not upheld by the ICO), time pressure being placed upon the claimant to make decisions regarding possible settlement. This is not a complete list but representative of the types of issues raised by the claimant. As can be seen from the above extracts the rule can only be displaced by very clear and very serious evidence of wrongdoing. Perjury or blackmail are mentioned. Having reviewed the submission and the documents relied upon in support I find the claims advanced fall a very long way short of this elevated threshold. I therefore refused the application to have the without prejudice correspondence included.

3. The implications of this finding were made clear to the claimant. All references to without prejudice communications must be removed and any without prejudice correspondence that he seeks to rely upon must not be included in the final bundle. The claimant was put on notice that a failure to abide by this decision may lead to cost implications, particularly if a final hearing has to be vacated due to the service of without prejudice correspondence.

Reputational harm post-dismissal

4. The claimant made no further application to amend any of his claims. The respondent skeleton argument (paragraph 19) confirms that this was the claimant's position at the last Preliminary Hearing. His application to have postdismissal reputational harm added has been phrased as a Rule 41 application. At the time of the dismissal the claimant was working on a 75% contract and so was paid proportionately. Sometime towards the end of March 2024 the respondent clawed back some of his salary paid in advance. Unfortunately, when this salary was clawed back it was done at a full or 100% contractual rate. The respondent has subsequently acknowledged this error and indicated to the claimant that any sums owed will be paid to him. The pleadings are dated 13 March 2024. The events that took place after this date, at the time of drafting, the claimant can have had no knowledge. The claimant

has provided no jurisdictional basis for the Tribunal to admit a claim for postdismissal reputational harm when, as at the date of claim, no such harm had occurred. As noted the claimant made no other application to amend his claim. He did not wish to do so. In the circumstances I refuse the application to admit an anticipatory claim of post-dismissal reputational harm.

Disability

5. It was noted at the previous Preliminary Hearing that the issue of Disability may be left to the Final Hearing. However, it was also noted that should the parties be prepared to address the same it could be addressed at this Preliminary Hearing. The respondent indicated that there was to be no challenge to the evidence provided by the claimant in his impact statement and the medical evidence. In these circumstances, given there was to be no oral evidence, I saw no unfairness in proceeding to consider the issue of disability.

6. It is not in dispute that the burden is on the claimant to establish that he was disabled at the relevant time. The applicable definition is in Section 6 of the Equality Act 2010. The Tribunal cannot consider events after the date of the alleged discrimination, *All Answers Ltd v W and another [2021] IRLR 612 at [26].*

7. The claimant must therefore establish that:

   i) At the relevant time (June 2024 to 7 March 2025) he had a physical or mental impairment;
   ii) That impairment had a substantial adverse effect on his ability to carry out normal day-to-day activities; and
   iii) That the substantial adverse effect was long-term. In considering whether the effect is long-term the assessment is whether it had lasted for at least 12 months, was likely to last for at least 12 months, or that it was likely to re-occur. *"Likely*" in this context means *"could well happen*" in the sense of being *"a real possibility*": *SCA Packaging Ltd v Boyle [2009] ICR 1056.*

8. As noted in the skeleton argument; 'a reaction to adverse life events does not amount to an impairment for the purposes of s.6 of the EqA: see ***Herry v Dudley Metropolitan Council*** **[2017] ICR 610, EAT**; ***Igweike v TSB Bank Plc*** **[2020] IRLR 267.**

9. The claimant was dismissed on 7 March 2025. Having considered all the evidence and submissions I find that the claimant at various times has suffered from stress, depression and/or anxiety. In May 2024 he was signed off work with "stress at work". In June 2024 this became "work stress and anxiety". In July 2024 his sign off from work was recorded as "stress at work". By October 2024 it was described as "mixed anxiety and depressive disorder". The claimant was prescribed various medications.

10. The entry in his medical records from 7 October 2024 refers to him as having a "four-month history of work-related stress, low mood." This would suggest his mental health issues began in around June 2024.

11. Given the claimant was first signed off from work in May 2024 with stress at work, I find this is when his issues with his mental health started. This would accord with the other GP records and him being subsequently being started on a course medication.

12. The Occupational Health Report of 25 September 2024 noted:

    "*With the evidence presented to me today it is my opinion that Mr Pinto's condition, without suitable treatment, is not likely to be classed as a disability because his current mental health impairment has not had a substantial impact on his daily activities for more than 12 months. However, as his symptoms are still ongoing it is possible that this could change, but it's ultimately a legal rather than medical decision as to whether the provisions of the Equality Act 2010 apply in any particular case. Best practice would require discussion of reasonable adjustments prior to making deployment or employment decisions."*

13. The report also notes that as at September 2024 the claimant is not yet *"optimally treated*". It was anticipated that with prescribed medication it may take 4 to 6 weeks for his treatment to be effective.

14. By January 2025 the claimant is taking medication. The consultation note from his GP of 8 January 2025 records that the claimant is feeling "much better on mirtazapine and feels sleep is corrected which was a major part of him feeling down." It also notes he has made a partial return to work and that the mirtazapine may have been affecting his concentration. This is also noted in the claimant's impact statement.

15. By 26 March 2025 the GP notes that the claimant "feels better-wants to finish the mirtazapine and end it." In the 'comments' section the GP notes that; "I feel he has progressed well and I don't need to follow him up."

16. I find that the claimant was suffering from mental health issues from May 2024. I find that he received appropriate treatment for this. The medical evidence does not disclose that there was a substantial adverse effect on the claimant's ability to carry out normal day-to-day activities. If there was any suggestion that the claimant's mental health had had such a substantial adverse effect, there is no indication that the effect lasted for 12 months or was likely to last for 12 months. On 30 January 2025 the claimant informed his GP that on the lower dosage of mirtazapine he had better concentration and was driving better. He also described his family life being more stable and this being a "better" situation. This medical note highlights that the claimant is to be made redundant yet despite knowing this his mental health appears to be improving. There is

therefore some overlay between his family life and work conditions/position being the cause of his mental health issues. By March 2025 the claimant himself is wishing to end his medication. Stating he feels better and his GP was satisfied he had progressed well and did not need to follow him up. There was at this stage therefore no likelihood of re-occurrence of his mental health issues. The claimant was on a phased return to work he started at 50% and had moved to 75%.

17. The claimant's issues with his mental health I find were linked to life events. The claimant wishing to come off his medication and stating that he feels much better occurred approximately 3 weeks after the termination of his employment. I find that the claimant in the run-up to his employment ending was enduring a stressful period of time both at home and at work. His need for medical intervention was a reaction to these adverse life events rather than him suffering from an underlying mental impairment.

18. In conclusion I find the claimant did not have a physical or mental impairment. I find the claimant was suffering from mental health issues linked to his life events. Even if I were wrong in this conclusion and the claimant was suffering from a, on his case, mental impairment, I find that the claimant has not established on balance that this impairment had a substantial adverse effect on his ability to carry out normal day-to-day activities; nor do I find that the substantial adverse effects were long-term. I find by January, or at the very latest March 2025, the claimant was seeking to cease medication and there was no indication that he would require further medical intervention. He did not therefore meet the third limb of the test. For these reasons I find he is not a 'disabled person' under Section 6 of the Equality Act 2010.

Approved by:

Tribunal Judge G D Davison sitting as a Judge of the Employment Tribunal

17 November 25

Sent to the parties on

04/12/2025

For the Tribunal