EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mrs Shaukia Mir	**v**	Iqvia Limited

Heard at: Bury St Edmunds (CVP) **On:** 12 May 2026

Before: Employment Judge Laidler

Appearances
For the Claimant: Did not attend and was not represented
For the Respondent: Ms L Usher, Solicitor

JUDGMENT on REMISSION

1. The Claimant was not disabled at the material time as original found in the decision of this Tribunal of the 6 May 2022.

2. There is no evidence before this Tribunal from which it could conclude that if the effect of the claimant's impairment had ceased to have a substantial adverse effect it is to be treated as continuing to have that effect if that effect is likely to recur. (Sch 1 Equality Act 2010, Part 1, section 2(2)

3. There is no evidence before this Tribunal from which it could conclude that but for the measures taken by the Claimant to treat or correct her impairment it would have a substantial adverse effect. (Sch 1, Equality Act 2010, Part 1, section 5)

REASONS

1. This was the hearing of the matters remitted by the Court of Appeal by its order of 5 December 2024, following the rejection of the Claimant's Appeal to the EAT in its decision of the 22 February 2024.

2. Leave to Appeal to the Court of Appeal was granted on 12 August 2024 on Ground 1 of the Claimant's Grounds of Appeal dated 15 March 2024 (while refusing permission on Ground 2). The Court of Appeal recorded that its Order of 5 December 2024 was made by consent. It stated:

2.1. Ground 1 of the Claimant's Appeal is allowed, namely, that 'the EAT erred in failing to remit the question of the Claimant's disability status to an ET, having found that the ET erred in failing to determine the issue of recurrence and whether, but for the measures taken by the Claimant, her impairment would continue to be substantial for 12 months".

2.2. The EAT Judgment is set aside in respect of the decision on the original Ground 1 of the Appeal to the EAT that "the Employment Judge should have considered an alternative basis for finding that the effect of the impairment was long term, namely that if the relevant effect had ceased, it was to be treated as continuing if likely to recur.

2.3. The EAT Judgment is set aside in respect of the decision on the original Ground 2 of the Appeal to the EAT, that "the Employment Judge failed to consider whether, but for the measures taken by Mrs Mir the impairment would have continued to be substantial".

3. It is noted that this was an agreed Order between the parties and not a determination by the Court of Appeal.

4. A Case Management Hearing was held on 11 July 2025 before this tribunal when it was made clear that the Remitted Hearing would take place having regard to the documents that were before the Judge on the last occasion in 2022. No new documents would be permitted as they were not relevant to the issue. What was relevant was what the Judge had when the original decision was made. At the time of this Hearing, no Order from any Higher Court had been received by the Employment Tribunal to change that position.

5. The Claimant did not attend this Hearing. A postponement request from the claimant in March had been refused and one was received on the 8 May 2026 from Solicitors now instructed by her and that application was also refused. The Tribunal's reasons were sent to the parties in a letter of the 11 May 2026. The Hearing proceeded in the Claimant's absence to determine the remission. As stated, when refusing the postponement request it was in accordance with the overriding objective to proceed with this matter. It started in 2020 and the original decision was made in 2022. A determination needed to be made.

6. Prior to the hearing before this tribunal in May 2022 there had been four preliminary hearings. There have been many occasions when listed hearings did not proceed. In a summary sent to the parties after a hearing on 7 January 2022 E J Michell recorded:

> The claimant was due to give evidence today on the issue of disability and had submitted an unsigned statement which addressed that issue (and various others) as well as assorted paperwork. However, she did not attend. Mr Liberti [who appeared for her] explained that she had informed him at 9:20 am today – for the first time – that she could not participate due to incapacitating jaw and ear pain which (he told me) was somehow related to her alleged disability. She apparently had an appointment with the GP at 3:10 pm which she

> had made this morning, in order to receive treatment. Mr Liberti could not provide me with anything to prove the fact of the appointment or that medical issue, or anything to substantiate the assertion that as a result of jaw and ear pain the claimant could not participate today. This was unsatisfactory. It led to tribunal time and resource being wasted.

7. At a subsequent hearing before E J Wyeth on 21 March 2022, he refused to strike out the claims but made an unless order stating:

> "The claimant has given various reasons by way of explanation for her failings in a witness statement before me today. I indicated that I was sceptical that those reasons were sufficient to explain why she has been unable to take the steps necessary to progress her claim to date. I expressed profound concern over the significant waste of judicial time and resource that contributes to the delay of other equally just cases…'

8. The claimant was referred to the Presidential Guidance on postponements when her request of 4 March 2026 for a postponement was refused. No medical evidence was then sent. When Grapple Law wrote on the claimant's behalf on the 8 May 2026 all that was referred to was a Fit Note for the period 1 - 30 April 2026.

9. The Tribunal had written submissions from the Respondent's solicitor, a bundle of legal authorities and the original bundle of 142 pages.

Relevant Law

Equality Act 2010, Schedule 1, Part 1

10. Schedule 1, Part 1 of the Equality Act 2010 provides,

> ***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.

5(2). "Measures" includes, in particular, medical treatment and the use of a prosthesis or other aid.

Guidance on the definition of disability (2011)

11. ***Effect of treatment***

11.1. B12. **The Act provides** that, 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. In this context, 'likely' should be interpreted as meaning 'could well happen'. The practical effect of this provision is that the impairment should be treated as having the effect that it would have without the measures in question (**Sch1, Para 5(1)**). **The Act states** that the treatment or correction measures which are to be disregarded for these purposes include, in particular, medical treatment and the use of a prosthesis or other aid (**Sch1, Para 5(2)**). In this context, medical treatments would include treatments such as counselling, the need to follow a particular diet, and therapies, in addition to treatments with drugs. (**See also paragraphs B7 and B16.)**

11.2. B13. 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.

11.3. B14. For example, if a person with a hearing impairment wears a hearing aid the question as to whether his or her impairment has a

substantial adverse effect is to be decided by reference to what the hearing level would be without the hearing aid. Similarly, in the case of someone with diabetes which is being controlled by medication or diet should be decided by reference to what the effects of the condition would be if he or she were not taking that medication or following the required diet.

12. ***Extracts from section C – meaning of 'long term'***

12.1. C1. **The Act states** that, for the purpose of deciding whether a person is disabled, a long-term effect of an impairment is one:

- Which has lasted at least 12 months, or
- Where the total period for which it lasts, from the time of the first onset, is likely to be at least 12 months, or which is likely to last for the rest of the life of the person affected (Sch1, Para2).

12.2. Special provisions apply when determining whether the effects of an impairment that has fluctuating or recurring effects are long term, (see paragraphs C5 to C11).

13. ***Meaning of 'likely'***

13.1. C3. The meaning of 'likely' is relevant when determining:

- Whether an impairment has a long term effect, (Sch 1, Para 2(1), see also paragraph C1),
- Whether an impairment has a recurring effect, (Sch 1, Para 2(2), see also paragraphs C5 to C11),
- Whether adverse effects of a progressive condition will become substantial, (Sch 1, Para 8, see also paragraphs B18 to B23), or
- How an impairment should be treated for the purposes of the Act when the effects of that impairment are controlled or corrected by treatment or behaviour, (Sch 1, Para 5(1), see also paragraphs B7 to B17).

In these contexts, 'likely' should be interpreted as meaning that it could well happen.

13.2. C4. In assessing the likelihood of an effect lasting for 12 months, account should be taken of the circumstances at the time the alleged discrimination took place. Anything which occurs after that time will not be relevant in assessing this likelihood. Account should also be taken of both the typical length of such an effect on an

individual, and any relevant factors specific to this individual (for example, general state of health or age).

14. ***Recurring or fluctuating effects***

14.1. C5. **The Act states** that, if an impairment has had a substantial adverse effect on a person's ability to carry out normal day-to-day activities but that effect ceases, the substantial effect is treated as continuing if it is likely to recur. (In deciding whether a person has had a disability in the past, the question is whether a substantial adverse effect has in fact recurred.) Conditions with effects which recur only sporadically or for short periods can still qualify as impairments for the purposes of the Act, in respect of the meaning of 'long-term' (**Sch1, Para 2(2), see also paragraphs C3 to C4 (meaning of likely).**)

14.2. C6. For example, a person with rheumatoid arthritis may experience substantial adverse effects for a few weeks after the first occurrence and then have a period of remission. **See also example at paragraph B11**. 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. Other impairments with effects which can recur beyond 12 months, or where effects can be sporadic, include Manières Disease and epilepsy as well as mental health conditions such as schizophrenia, bipolar affective disorder, and certain types of depression, though this is not an exhaustive list. Some impairments with recurring or fluctuating effects may be less obvious in their impact on the individual concerned than is the case with other impairments where the effects are more constant.

15. ***Likelihood of recurrence***

15.1. C9. Likelihood of recurrence should be considered taking all the circumstances of the case into account. This should include what the person could reasonably be expected to do to prevent the recurrence. For example, the person might reasonably be expected to take action which prevents the impairment from having such effects (for example, avoiding substances to which he or she is allergic). This may be unreasonably difficult with some substances.

15.2. C10. In addition, it is possible that the way in which a person can control or cope with the effects of an impairment may not always be successful. For example, this may be because an avoidance routine is difficult to adhere to, or itself adversely affects the ability to carry out day-to-day activities, or because the person is in an unfamiliar environment. If there is an increased likelihood that the control will break down, it will be more likely that there will be a recurrence. That possibility should be taken into account when assessing the likelihood of a recurrence. (**See also paragraphs B7**

to B10 (effects of behaviour), paragraph B11 (environmental effects); paragraphs B12 to B17 (effect of treatment); and paragraphs C3 to C4 (meaning of likely).)

15.3. C11. If medical or other treatment is likely to permanently cure a condition and therefore remove the impairment, so that 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 effects. However, if the treatment simply delays or prevents a recurrence, and a recurrence would be likely if the treatment stopped, 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.

Relevant Authorities

16. In Swift v Chief Constable of Wiltshire Constabulary [2004] ICR 909 it was made clear that in considering recurrence, it is the 'substantial adverse effect 'that the Tribunal must consider. At paragraph 27, the court said,

> "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". In considering whether something is 'likely to recur" the court stressed that the test is if it is more probable than not that the effect will recur."

17. In Roofe – Stewart v Macintyre Care Ltd [2025] EAT 24 at paragraph the Court acknowledge that the legal bar set by the test of 'likely to recur' is a low one but that,

> "What the tribunal needed to consider, drawing on such evidence as it had, was, in the case of this particular condition, as it affected this particular individual, what the fact that there had been a period of quiescence of some years, meant for the question of whether a substantial adverse impact (in the requisite sense) could well happen in the future."

18. In Linton v The Athelstan Trust [2024] EAT 14 the Court found that there was medical evidence before the Tribunal,

> "54. In many cases the fact that the adverse effect in issue had ceased over a period of some 23 years would simply be fatal to an assertion of disability for section 6 EqA purposes: this would suggest that the case would fall to be considered as akin to the first example posited by the EAT at paragraph 45 DLA Piper (see paragraph 37 above). On the medical evidence before the

> ET in the present proceedings, however, there was a clear basis for the claimant's assertion that the same illness or impairment (PTSD) had continued throughout, which – although largely leaving him symptom free for many years – was likely to recur if his suppressed memories of the original trauma (the scuba diving accident) were revoked by a triggering event (here, the requirement to wear a face covering); see the extracts from Dr Nabavi's report set out at paragraph 20 above. Although the assessment required by section 6 EqA was ultimately for the ET, there was clearly medical evidence before it that linked the original trauma – and adverse effects – suffered by the claimant to what was said to have been the resurgence of his symptoms when faced with a requirement to wear a mask during the Coronavirus pandemic."

19. In Woodrup v London Borough of Southwark 2002 EWCA Civ 1716 in commenting that no medical evidence had been called to support the claimant's case and that it was confined to what the claimant surmised would have happened, went on to state,

> "13. I would just add this. 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 paragraph 6 of the schedule 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."

20. The burden of proof is still on the Claimant.

Conclusions

Likely recurrence

21. The original decision of this Tribunal found that,

    21.1. The Claimant sustained an arm injury in December 2019;

    21.2. She saw her GP on 13 January 2020 with right arm pain; and

    21.3. She was referred for physiotherapy.

22. Paragraph 17 of the original decision stated,

17. No sick notes were seen by the Tribunal and the Claimant did not give evidence of any period off work in relation to her arm injury. The Claimant relies on a physiotherapist Report dated 26 August 2021, (page 98). It is not really in the form of a Report but answers to questions. The Tribunal did not hear from the physiotherapist. Of relevance are the answers to questions 4 and 7:

    Q4. If you do know the date of diagnosis, has the condition lasted (or is likely to last) for 12 months or more?

    The answer given was yes.

    Q7. Has this effect(s) lasted for or likely to last more than 12 months?

    The answer given was yes.

    Having not heard from the physiotherapist the Tribunal cannot be satisfied that she was considering these questions from the viewpoint of what would have been known in the period with which this Tribunal is concerned, mainly January to March 2020. Clearly by the time she did her Report in August 2021 the condition had lasted for more than 12 months and that was known.

23. Paragraph 18 of the original decision stated,

    18. In the same Report, however, at the end is set out what the Claimant reported on 11 March 2020 when she attended her first physiotherapy appointment. She reported 'difficulties in using her arm with daily living such as cutting vegetables', also lying on her right side and carrying heavy objects. Her condition was eased by resting, massage and previously prescribed exercises. She did not report any difficulties with sleeping, numbness or specific time of day when pain was at its worse. The Claimant was not on any medication that had been prescribed. She does make reference elsewhere to taking painkillers. On examination the Claimant had near full pain free active range of movement of her cervical spine, except reporting a stretch sensation on stretch to opposite side flexion. She was pain free active range of movement shoulders, elbows, wrists and thumbs. Muscle strength of right shoulder, elbow and wrist were observed as 5/5 on Oxford Scale. The right grip and opposition of thumb were noted as normal. Thoracic spine rotation was noted as stiff and was reduced bilateral (1/2) range of movement.

24. There was no relevant evidence on the issue of recurrence. In answer to the question the physiotherapist 'did not know'. This was clearly not evidence from which the Tribunal could or can conclude that the condition was likely to recur.

25. It is not for the Tribunal to guess or surmise that a condition might recur without the relevant evidence before it.

26. It is the case that the Guidance refers to specific conditions that can recur but the Claimant's is not amongst those.

Deduced effects

27. In the original decision the tribunal accepted that the claimant's condition was still having a substantial adverse effect on her at March 2020 but that it did not come within the definition of 'long term'. In the particulars attached to her ET1 the claimant stated that the pain in her arm went by March but she was still having physiotherapy treatment (para 34). The question is whether after March 2020 the impairment is to be treated as having a substantial adverse effect if, but for the physiotherapy treatment, the impairment is likely to have that effect, ie substantial and adverse. The authorities make it clear that what would need to be established by the Claimant is that but for the measures the impairment would have continued to be substantial.

28. There was no evidence before the Tribunal on which it could come to that conclusion.

29. The Claimant's impact statement, paragraph 25, page 110 of the original bundle states,

> "25. If I did not have any treatment for my injury (which was actually starting in November / December the difference on how I could go about my day to day life would have been huge. The intense pain would have lasted longer, I would not have been able to sleep, I would not have been able to do my job, my arm and hand would have even less movement and I would have been unable to do many more things than before. Also, not being able to get out of bed or speak to anyone, losing my appetite, having muddled irrational thinking, lacking ability to concentrate and constantly feeling irritable and despair."

30. The physiotherapist, however, did not deal with this issue and there is no further medical evidence. The Claimant has just set out what she thinks might have happened which is not the approach the authorities require. (See Woodrup)

31. The Claimant has therefore failed to establish that the condition was likely to recur or that but for the measures taken by her it would have continued to have a substantial adverse effect.

32. The tribunal's conclusion remains that the Claimant did not at the material time satisfy the statutory definition of disabled.

Approved by:

Employment Judge Laidler

Date: 21 May 2026

Sent to the parties on: 27 May 2026

For the Tribunal Office.

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