



EMPLOYMENT TRIBUNALS

Claimant: Mr L Gunn

Respondent: Thirsty Work Ltd

RECORD OF A PRELIMINARY HEARING

Heard at: Bristol (in public, by video - CVP)

On: 11 May 2026

Before: Employment Judge Livesey

Appearances

For the Claimant: In person

For the Respondent: Mr McDevitt, counsel

JUDGMENT

1. The Claimant was disabled at all material times within the meaning of s. 6 of the Equality Act by reason of chronic rhinitis and/or sinusitis.
2. The Claimant's complaint under the Part-Time Workers Regulations has no reasonable prospect of success and is dismissed under rule 38 (1)(a).

REASONS

Background

1. The Claimant claimed that he was disabled by virtue of chronic rhinitis/sinusitis. That issue was set down to be determined at a preliminary hearing, with appropriate case management directions which were issued on 8 December 2025.
2. Amongst other matters which fell to be determined at the hearing, the Respondent had applied to strike the Claimant's claims out on the grounds that they had no reasonable prospects of success under rule 38 (1)(a). The Judgment above reflects the fact that one part of the Respondent's arguments succeeded. Reasons for the dismissal of the claim under the Part-Time Workers Regulations are set out in the Case Management Summary of even date.
3. In respect of the disability issue, the Respondent provided a hearing bundle, pages to which had been referred to in square brackets below.

4. The Claimant gave evidence in support of his disability impact statement dated 31 October 2025 [39-42] and other accounts [133].

Legal principles

5. A person has a disability if he has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day to day activities (s. 6 of the Equality Act). These questions may overlap to a certain degree. However, the Tribunal should ensure that each step is considered separately and sequentially (*J v DLA Piper* [2010] ICR 1052, and *Goodwin v Patent Office* [1999] ICR 302). The burden was on the Claimant to prove the four conditions (*Kapadia v London Borough of Lambeth* [2000] IRLR 699 (CA)). Schedule 1 of the Act contains further guidance in relation to the definition. In addition, I have taken into account the '*Guidance on the Definition of Disability*' which we are required to do where relevant under Schedule 1, Part 1, paragraph 12.
6. In *Goodwin-v-Patent Office* [1999] IRLR 4, the EAT gave detailed guidance as to the approach which ought to be taken in determining the issue of disability. A purposive approach to the legislation ought to have been taken. A tribunal had to remember that, just because a person could undertake day-to-day activities with difficulty, that did not mean that there was no substantial impairment. The focus ought to have been on what the Claimant could not have done or could only have done with difficulty. The effect of medication ought to have been ignored for the purposes of the assessment.
7. The approach in *Goodwin* was approved in *J-v-DLA Piper UK LLP* [2010] ICR 1052, at paragraph 40. It was said at paragraph 38,
"There are indeed sometimes cases where identifying the nature of the impairment from which a Claimant may be suffering involves difficult medical questions; and we agree that in many or most such cases it will be easier – and is entirely legitimate – for the tribunal to park that issue and to ask first whether the Claimant's ability to carry out normal day-to-day activities has been adversely affected – one might indeed say "impaired" – on a long-term basis. If it finds that it has been, it will in many or most cases follow as a matter of common-sense inference that the Claimant is suffering from a condition which has produced that adverse effect — in other words, an "impairment". If that inference can be drawn, it will be unnecessary for the tribunal to try to resolve difficult medical issues of the kind to which we have referred."
8. Whether some one has an impairment is a question of fact and the word is to be given its ordinary meaning. Its cause is likely to be irrelevant.
"Impairment for this purpose and in this context, has in our judgment to mean some damage, defect, disorder or disease compared with a person having a full set of physical and mental equipment in normal condition. The phrase 'physical or mental impairment' refers to a person having (in everyday language) something wrong with them physically, or something wrong with them mentally." (*Rugamer-v-Sony Music Entertainment UK Ltd* [2001] IRLR 664).
9. The activities affected must be "*normal*". The Equality Act Guidance states:

“In general, day-to-day activities are things people do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities.” (Paragraph D3)

10. Normal day-to-day activities included those which were normal for the particular claimant as long as they were not specialised activities, as defined in paragraphs D8 and 9 of the *Guidance*. The correct approach involved a consideration of all matters, but particular attention had to be paid to those activities that the claimant could not do or could only do with difficulty (*Leonard-v-Southern Derbyshire Chamber of Commerce* [2000] All ER (D) 1327).
11. Mr McDevitt confirmed that the Respondent’s challenge to the issue of disability in this case focused upon the question of substantiality.
12. The statutory definition of “*substantial*” was “*more than minor or trivial*” under s. 212 (1). Section B1 of the Equality Act Guidance stated “*the requirement that an adverse effect on normal day-to-day activities should be a substantial one reflects the general understanding of disability as a limitation going beyond the normal differences in ability which may exist among people*”.
13. Factors that illustrated “*substantial effect*” under Section B of the Guidelines included: the time taken to carry out an activity; the way in which an activity was carried out; and the effects of environment. The Guidelines, however, ought only to have been considered if the answer could not have been found from a simple application of the statute (*Elliott-v-Dorset County Council* UKEAT/0197/20).
14. An impairment will be treated as having a substantial adverse effect on a person’s ability to carry out normal day-to-day activities if: (i) measures are being taken to treat it or correct it; and (ii) but for the measures, the impairment would be likely to have that effect. The effect of an adjustment, for example ought to have been ignored (*Elliott* above).
15. It was clear from paragraph 2 of Schedule 1 of the Act that an impairment was long term if it had lasted for 12 months or more, or was likely to have lasted that long or for the rest of the life of the Claimant. All three possibilities had to be considered (*McKechnie Plastic Components-v-Grant* UKEAT/0284/08).
16. The Guidance stated that conditions with effects which recurred only sporadically or for short periods could still have qualified as long term impairments for the purposes of the Act. If the effects on normal day to day activities were substantial and were likely to have recurred beyond 12 months after the first occurrence, they were to have been treated as long term. The Guidance set out examples of impairments with effects which could have recurred beyond 12 months, or where the effects could have been sporadic (paragraphs C5 and 6). It further stated that it was not necessary for the effect to have been the same throughout the period which

was being considered in relation to determining whether the 'long-term' element of the definition is met (C7). It set out what should have been considered in relation to the likelihood of recurrence. Essentially, it meant that all circumstances should have been taken into account including the way in which a person could have controlled or coped with the effects of an impairment, which may not always have been successful (C10).

Discussion and conclusions

17. The medical and other documentary evidence supplied by the Claimant painted the following picture;
 - 5.1 His first recorded GP attendance for rhinitis was on 2 February 2012 [137]. He presented with a history of nasal congestion over four weeks. He was prescribed antibiotics. A week later, he was complaining of continuing nasal congestion and a nasal spray was prescribed [137];
 - 5.2 By July, the condition was recorded as 'chronic rhinitis' which had recurred after he had stopped using the nasal spray [138];
 - 5.3 Everything seemed to go quiet until a year later when, on 6 June 2013, he was recorded as having had an episode of 'acute sinusitis' following one week of nasal congestion [138];
 - 5.4 Again, he appeared to be symptom-free until a further attendance in September 2014 [139]. He was then recorded as having been kept for a referral to an ENT consultant;
 - 5.5 The Claimant was seen by Ms Farmer, a Rhinology Fellow, at the Derriford Hospital, in November 2014. She identified a spur which was restricting his right-sided nasal airflow but, at that stage, did not advise anything more than conservative treatment [153]. That finding was effectively repeated a few months later [154] and he clearly then had some form of intervention because a subsequent letter reported an improvement following a 'septoplasty and turbinate reduction' procedure (September 2015 [155]);
 - 5.6 Nevertheless, it was clear that his problems continued because he had a CT scan of his sinuses in early 2016 when a maintenance plan was proposed by a Locum ENT Consultant [156];
 - 5.7 The next relevant attendance was nearly 3 years later, in February 2019, when the Claimant complained of 'ongoing nose issues' and was diagnosed as having a nasal infection [139]. Further antibiotics were prescribed;
 - 5.8 The Claimant came back to his GP two years later, in March 2021, complaining of left nasal symptoms [139]. The GP seemed a little bemused; no cause for his symptoms were seen, but regular flareups were being reported and another ENT referral was agreed ([140] and [157-9]). The notes recorded the following [141];

"When Mr Gunn has one of these episodes he finds it very difficult to breath through his nose although the right side is not affected and never has been."
 - 5.9 The Claimant was then seen back at Derriford Hospital in April 2021 by Mr Stavrakas, Consultant ENT Surgeon. He described the Claimant's history as that of "*allergic rhinitis and left nasal obstruction*" [160-1]. A conservative management plan was then proposed;
 - 5.10 The Claimant was re-referred in September 2023 [162-3] and seen by Mr Mehana, a Research Fellow in ENT, at the Rhinology clinic again in October. A deviated septum was still noted [143]. His GP recorded his symptoms then as follows [141];

“..saw ENT years ago who advised he has polyps and suggested that he returns if the sx worsen, which they have. He often has a blocked nose, ‘full-face’ feeling, frontal headaches, pain under the eyes and behind the cheeks, foul-tasting smelling discharge from nose and post-nasally, occasional pyrexial episodes, exhaustion and general malaise.”;

- 5.11 At around the same time, he was seen by an ENT Registrar, Mr Rekhade, who recognised his continued nasal congestion and recommended treatment for it (tablets and sprays) [145-6];
- 5.12 When the Claimant started employment in late February 2024, he disclosed the fact that he suffered from hayfever, a dust allergy and ‘sinusitis’ (assumed to have been sinusitis) [124-5]. He stated that he did not suffer any condition which impacted his ability to perform his role and he did not seek any reasonable adjustments [126];
- 5.13 By May 2024, his symptoms had not changed significantly when he was seen back in Hospital. Because his deviated septum was causing obstruction, a treatment plan was devised which included further surgery [147];
- 5.14 His operation took place in February 2025 and, thereafter, he experienced an improvement in his symptoms [149].
18. In the Claimant’s Disability Impact Statement, he described his condition as chronic rhinitis/sinusitis *“which causes recurring sinus infections, inflammation, headaches, breathing difficulty and sensitivity to dust and cold air”* [39]. He said that his condition had lasted for more than 16 years and that his surgery in 2025 had only been one stage of the ongoing treatment that he had received.
19. Whilst not grossly debilitating, the Claimant’s condition had waxed and waned over many years and had required surgical intervention twice. The reference, in 2023, to his symptoms then causing him a *‘blocked nose, ‘full-face’ feeling, frontal headaches, pain under the eyes and behind the cheeks, foul-tasting smelling discharge from nose and post-nasally occasional pyrexial episodes, exhaustion and general malaise’* was a description of symptoms which must have been unpleasant, intrusive and significantly annoying. They were, in my judgment, symptoms which were more than minor or trivial. Although the condition undoubtedly waxed and waned, it was chronic in nature, with repeated acute bouts of infection, inflammation, breathing difficulties and other symptoms. Together, these met the definition of disability. As the Claimant himself said repeatedly in answer to questions, ‘if you had these symptoms, you would not describe them as trivial’.

Employment Judge Livesey

Date 11 May 2026

Notes

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>
written record of the decision.