



EMPLOYMENT TRIBUNALS

Claimant: Natalja Solovjevskaja

Respondent: Iron Mountain (UK) Services Limited

RECORD OF A PRELIMINARY HEARING

Heard at: Watford (in private; by Cloud Video Platform)

On: 20 July 2026

Before: Employment Judge J Lewis KC

Appearances

For the Claimant: In person (assisted by Russian interpreter Margarita Ridhaa)

For the Respondent: Mr T Sheppard (Counsel)

RESERVED JUDGMENT

By and at all material times from mid July 2024 (but not before) the Claimant was a disabled person within the meaning of the Equality Act 2010 by reason of Bilateral De Quervain's Tenosynovitis with Intersection Syndrome. At the times material to her claim the Claimant did not have a disability by reason of Generalised Anxiety Disorder and Panic Attacks.

REASONS

1. This was a preliminary hearing directed by Employment Judge Freshwater on 20 March 2026 to, amongst other matters, determine whether at the times material to her claim, the Claimant was a disabled person within the meaning of the Equality Act 2010 ("EqA"). I heard evidence from the Claimant, and submissions from both parties. I have also considered all the documents in the bundle before me. The Claimant is a native Russian speaker, and I express the Tribunal's gratitude for the assistance provided during the hearing by the interpreter, Ms Margarita Ridhaa.

2. The Claimant relies upon the following alleged impairments:
 - 2.1 Bilateral De Quervain's Tenosynovitis with Intersection Syndrome (which I refer to by way of shorthand only as "Tenosynovitis") ; and
 - 2.2 Generalised Anxiety Disorder with Panic Attacks (which by way of shorthand only I refer to as "Anxiety").

A. Procedural matters

3. At the outset of the hearing, taking into account that the Claimant is a litigant in person, I provided an overview of relevant legal principles relating to disability. Mr Sheppard for the Respondent, confirmed that he took no issue with that summary. I also confirmed with the Claimant that she had reviewed the Government guidance on the meaning of disability, for which a link was provided in the Case Management Order of 20 March 2026.
4. One issue I specifically raised related to the requirement that the substantial effect on day to day activities must be long term. I explained that this has to be assessed by reference to the time of the alleged discrimination, and that it is not permissible to take into account what happened subsequently and rely on hindsight. I drew attention to the terms of C4 of the Guidance and to the guidance in in **All Answers v W** [2021] IRLR 612 (CA) in relation to this point. I noted that it might be said that the medical evidence in the bundle did rely on hindsight in stating that the effects on day to day activities had in fact continued after employment was terminated, rather than dealing with whether at the time of employment it could be predicted that the effects were likely to last for at least 12 months. Mr Sheppard confirmed that he did intend to take this point.
5. As I was not sure from her response that the Claimant had fully followed the point, I went over the issue again, sharing C4 of the Guidance, and then the headnote of **All Answers**, on the screen.
6. I then confirmed with the Claimant whether she was content to proceed or whether, in the light of the matters I had raised, she wished to seek an adjournment with a view to obtaining evidence specifically to address this matter (without prejudice to whether such a postponement would be allowed as to which I would need to hear from Mr Sheppard). The Claimant confirmed that she was content to proceed and did not seek an adjournment.
7. The parties had provided a joint Agenda for case management purposes and there was a draft list of issues, but this was not yet fully agreed. One query raised by the Respondent on the draft list of issues was the date in relation to which the Claimant contended that she was a disabled person within the meaning of the Equality Act 2010 ("EqA"). Because this was relevant to the scope of the issues to be determined I clarified the Claimant's position as to this at the start of the hearing. The Claimant stated that she contended that she was disabled from March 2024 in relation to Tenosynovitis, and from April 2024 in relation to Anxiety. (I address below the further oral evidence given bearing on this). For present purposes I treat that as the period material to the claim. It may be that relevant

period is only back to 18 April 2024, which is the first specific date mentioned in the Claim and in the list of issues. However some of the claims, such as for indirect discrimination, are less specific, and I have therefore considered the position on the basis the period back to when the Claimant states she became a disabled person is potentially relevant.

B. Overview of Material Facts

8. The Respondent provides storage and information management services for land transport activities. The Claimant was employed as a Scanning and Administration Assistant from 1 June 2022 until 23 February 2025. The role involved repetitive hand and wrist movements, handling documents and working to productivity targets.

GP records

9. There is an unsatisfactory gap in the medical records provided by the Claimant in relation to this period in that the first entry in the GP patient record provided by the Claimant is 29 August 2024. The Claimant stated in evidence that she did not know why there were no GP records from earlier and that she had downloaded the information that was in the system. I accept that the omission to provide earlier or more detailed GP records was not deliberate. It is likely that the explanation lies in the fact that it was only from 29 August 2024 that the Claimant was set up with online access, and that the Claimant relied on the online record. That is consistent with a note of 29 August 2024 indicating that the Claimant needed help setting up online access. However the result is that, in addition to not having records prior to 29 August 2024, nor is there information as to consultations with the GP of the nature that would typically be seen when obtaining on request the full GP record. There is therefore a lack of information about symptoms reported or discussed with the GP as might normally appear in GP records.

History of Ganglion cysts

10. In September 2023, the Claimant had attended an NHS Urgent Care Unit, where it was identified that she had a ganglion cyst on her right wrist [125]. The notes of a meeting with management on 18 April 2024 record that she had been driven to the care centre having experience pain whilst at work, and a scan revealed that it was a lump of muscle tissue that would need an operation [171].
11. Although the Claimant had referred to this in her grievance (raised on 20 November 2024), it was not mentioned in the Claimant's witness statement, where she instead stated that the problems with her wrist began in March 2024. In her oral evidence the Claimant explained that it had been a small cyst that had gotten better.
12. On 8 March 2024 the Claimant submitted a fit note referring to a "lump on the hand", and which indicated that she may need to be placed on light duties, avoiding heavy lifting [138]. The Claimant explained this in evidence as the cyst having reappeared. As she explained in her evidence, and I accept, it was diagnosed by her doctor as a ganglion cyst.

April 2024 meeting

13. From 18 April 2024 there were a series of meetings with management concerning whether the Claimant was complying with targets. In the first of those there was discussion of an issue with the Claimant's wrist, in which the Claimant said, in response to a question as to what processes in the role affected her condition, that:

“opening post and clipping passports can cause her arm to ache and lifting boxes.” [171]

14. There was a discussion as to whether the Claimant could carry out scanning level 0 and level 1 on the basis that this did not require her to open post or use scissors. The Claimant confirmed this was OK, and continued in that role. In response to a question as to what she felt was preventing her from achieving target, she said that pain in her arm prevented her from going fast as she had to slow down when using scissors.
15. It is part of the Claimant's case that she was threatened with dismissal in this meeting. It is unnecessary for the purposes of determining the issue as to disability to make any findings as to whether that was the case, and safer not to do so as it will be an issue relevant to liability and I have not heard evidence on this from any witnesses for the Respondent.

May 2024 Occupational Health Report

16. The Claimant was referred to Occupational Health (OH), and attended an OH telephone assessment on 7 May 2024, which was followed by a report, dated 8 May 2024 [139-142]. The report noted that the Claimant had a ganglion cyst on her right wrist and that heavy lifting with that hand could exacerbate symptoms. However it also noted that the Claimant:

“has always done some tasks with her left hand and some with her right hand, for example she writes with the left, uses knives and scissors and a computer mouse in her right.

There are no planned investigations or treatments currently, she wears a splint that helps, rest reduces short term symptoms such as tingling and numbness in the location of the cyst. Pain is managed with over-the-counter anti-inflammatory medication a few times a week.

Since changing role recently and having a scanner in a certain position it has helped reduce her symptoms.

Miss Solovjevskaja seems to be pro-active in managing her symptoms and takes care of her mental and physical wellbeing, she can manage all her activities of daily living.”

17. The OH report did record, in response to a question as to whether the impairment was “long term”:

“Yes, I expect to last longer than 12 months however it is now causing a

substantial impairment to activities of daily living”

18. The report also noted that the condition could “last for a while or improve and then return”. However these observations were made in relation to the ganglion cyst which was the only condition identified at that time, rather than a discussion of Tenosynovitis.
19. The report concluded that the condition was unlikely to be a disability within the EqA. In particular, the OH considered that there was no substantial or physical impairment of the Claimant’s ability to undertake daily activities; she was “able to complete daily activities independently” and it was “not causing a substantial impairment of daily living”.
20. Thus although the Claimant was experiencing some pain, the report was to the effect that it was not having a substantial effect on day to day activities at that time. The report did not express address what the position would have been but for the over the counter anti-inflammatory medication taken at that time. But nor was there evidence before me as to what the effect would have been at that time without this.
21. In her oral evidence the Claimant did not seek to suggest that the OH’s conclusion was incorrect. Her evidence was that at the start there was only a ganglion cyst, but that she subsequently developed Tenosynovitis. She contended that if the Respondent had followed all of the recommendations and done all it had promised, and not instead required her to work as hard as possible, that deterioration may not have occurred. When asked when she had started to experience the symptoms of Tenosynovitis and the substantial effect on day to day activities she initially stated that this was in around the middle of June or 12 June. She later corrected this and indicated that it was in July, stating that the pain became worse from around the second half of July 2024.
22. Again it is not necessary for present purposes to make findings as to whether there was a failure by the Respondent to comply with recommendations. But it is relevant that, as I find, at the time of the OH report of 8 May 2024 there was not yet a substantial effect on day to day activities.
23. Further, the report expressly noted that there was “no other underlying medical conditions which are having a current impact at work”. Thus no issue was identified as to any mental health condition having an impact at work at that time.

Performance management meetings

24. In a meeting with management on 28 June 2024 there was discussion of the Claimant failing to meet targets. The notes of the meeting indicate that the Claimant was asked why this was happening and what could be done to help her. The notes do not record any mention of the Claimant’s wrist in the response. However the notes record that:

“NS then said to LP that if she comes to her every day to check up on her and give her advice on how to improve, that will mentally kill her. ... NS started crying and said: ‘Don’t ask me in the future why I’m having a high temperature because that will most likely be because of the stress you’re

causing me! ... As she got up and started walking towards the door Natalija S turned around and asked Livia P: 'Do you have a gun? Where do you keep the gun?' Livia P replied: 'No, I don't possess a gun! NS then towards VT waiting for him to answer and Vlad T said: 'I don't own a gun either!' NS then said: 'Just kill me now, and by the way thank you for a nice weekend.'"

25. It is part of the Claimant's case that, whilst not a literal statement, this expressed her severe emotional distress caused by the ongoing pressure and working conditions, management failing to take safeguarding action or provide meaningful support, and the pressure and performance-related measures continued unchanged. [89]
26. At a meeting on 12 July 2024 it was decided that the Claimant would be put on a "Personal Improvement Plan", elsewhere referred to as a "Performance Improvement Plan" (PIP) [170, 175]. In the following meeting the Claimant was informed that she was at 91% of targets, the same as at the previous meeting, whereas her target was 97%. The notes of the following meeting, on 22 July 2024 (with Livia Paraschiv (AM shift supervisor) and Vlad Tomescu (AM Team Leader) include the following [177]:

"...NS said she is feeling stressed ... LP asked NS what is stopping her from achieving her targets. NS said she is really stressed and that the company doesn't offer her anything such as "closing their eyes" with a few percent when it comes to targets because of her wrist condition. ... NS then told Livia P that if she doesn't think it is possible for her to meet the company's targets considering her wrist condition and that someone in the same situation would understand her. LP then offered Natalja to move on another station such as triage where the target is easier to achieve but Naalja said no."

Panic attack on 29 August 2024 and sickness absence

27. The Claimant mental health deteriorated. On 29 August 2024, she suffered a serious panic attack at work, with symptoms including difficulty breathing, dizziness, distress and temporary visual disturbance. She attended an Urgent Care Centre, and later visited her GP, who diagnosed severe stress and a panic attack [95]. She was issued with a fit note initially signing her off work from 29 August to 18 September 2024 with "Anxiety; panic attacks." [150] An entry of "Panic disorder" was recorded in the patient record of 29 August 2024 [149]. The Claimant remained signed off work for the remainder of her employment, although from 18 November reasons given was just stated as "anxiety", and then on 16 December 2024 and the two further fit notes during her employment, was stated as "anxiety disorder".
28. From 13 September 2024 the Claimant was prescribed anti-depressants (Sertraline) [149]

Diagnosis of Tenosynovitis

29. In relation to the Claimant's wrist condition, the first diagnosis of Tenosynovitis was

in a letter from an MSK physiotherapist, Mr Kaganov, set out in a letter of 30 August 2024 after the Claimant had attended for physiotherapy the previous day. The letter, which was addressed to the Claimant's surgery, stated:

"She was seen on 29 August 2024, reporting a one-year insidious onset of symptoms ...

Pain was aggravated by active wrists and thumbs movement and relieved by rest. NSAID [non-steroidal anti-inflammatory drugs] was found to be initially helpful. The Finkelstein test was +ve and the common tendon/anatomical snuffbox felt warm, enlarged and tender on palpation in both hands but more on her right hand.

Natalija was diagnosed with bilateral De Quervain tenosynovitis, however co-existing intersection syndrome was also considered as working diagnosis.

She had a treatment that consisted of education, support therapy, electrotherapy, and home exercises.

In addition, Natalija reported headaches, and she also appeared to be in low mood.

Given the intensity of her pain and its impact on her daily functioning, I strongly believe that she would benefit from stronger anti-inflammatory and pain-relief medications." [144]

30. As to this:

30.1 In reporting a "one year insidious onset" the Claimant was referring back to the cyst she had experienced in September 2023., which she explained had then gone away.

30.2 Whereas at the time of the OH report on 8 May 2024 the problem had only affected the Claimant's right hand, and that was a factor on which some emphasis was placed in that report, the problem by this stage was on both sides, albeit with the strongest effect on the right. That was reflected in the description as "bilateral" and the reference to being "in both hands but more on her right hand". From the end of July 2024 the Claimant tended to wear a wrist brace on both sides. She sometimes took it off the left wrist but generally kept it on the right wrist.

30.3 Although there was a recommendation that strong anti-inflammatory and pain-relief medications would assist, it was not until 3 February 2025 that Naxprofen (a non-steroid anti-inflammatory drug to relieve pain) was prescribed. Until then the Claimant tried to get by with over the counter painkillers and gel.

31. The Claimant's oral evidence was that at the meeting on 29 August 2024 the physiotherapist told her, when he prescribed exercises and a plan of recovery, that he predicted that that it was likely to last for a year, and wanted to see her in a year to review. The letter however makes no reference to any prognosis that the

condition would last for a year or indeed to a plan to review in a year's time. I do not accept the Claimant's assertion that she was told by the physiotherapist that the condition was likely to last for a year. Had that been said it is likely that there would have been reference to it in the letter and mentioned in the Claimant's witness statement. It is more likely, along the lines of Mr Sheppard's submission in the light of the Claimant's evidence, that having given the Claimant exercises and a plan of recovery that the physiotherapist suggested seeing her in around a year to review what had happened.

University course

32. In September 2024, during the period that the Claimant was signed off from work, the Claimant started a University Business and Management course. The Claimant's contention is that she had informed the Respondent of her intention to do so. It is unnecessary for present purposes to resolve whether that is correct.
33. The course entailed one on-campus teaching day and one online teaching day per week, and where necessary a weekend class could be requested. In closing submissions the Respondent submitted that the fact that the Claimant was able to undertake the course, and that there was no disability related needs assessment or supportive measures put in place until June of 2025 was telling against the Claimant's case as to effect on day to day activities. (I note that it was in June 2025 that Dr Mutlib, who carried out an occupational assessment of the Claimant in May 2025, wrote in support of the application for support and the date of the assessment report was October 2025).
34. I do not accept that submission. Other than confirming with the Claimant when her course started, no questions were put to the Claimant in relation to this during her evidence. It was not put to her that undertaking the course was inconsistent with the effect on day to day activities. The Claimant explained, in response to a question from me in submissions, that she had applied for support as soon as she became aware that she could do. In any event in the absence of this being tested in her evidence, I do not accept that there is a proper or sufficient basis for regarding the fact of undertaking the course as inconsistent with the case as to effect on day to day activities.
35. I reach that conclusion aside from the point made by the Claimant, in a note of 14 July 2026 [280] in which she asserts that the studies formed part of the Claimant maintaining structure, social engagement and personal development during a difficult period.

Grievance, Response to Grievance and Resignation

36. The Claimant submitted a grievance on 20 November 2024 [135-127]. Amongst other things the grievance contended that her treatment by the Respondent had worsened her wrist condition and that in August 2024 she had been diagnosed with bilateral De Quervain's tenosynovitis and intersection syndrome.
37. Ultimately the grievance was rejected by letter dated 20 January 2025 [128-135]. The Claimant submitted her resignation by letter dated 23 January 2025, giving a month's notice expiring on 23 February 2025 and claiming constructive dismissal. She stated that the decision had been made due to the deterioration in her health,

including ongoing wrist pain and the decline in her psychological well-being, both of which she attributed to failings on the part of the Respondent.

Further medical input following the termination of employment

38. In support of claim the Claimant has submitted further medical evidence which post-dates the termination of her employment. This included:

38.1 An update letter of 12 July 2025, from the MSK Physiotherapist, Mr Kalganov, which amongst other things, confirms the diagnosis of De Quervain's tenosynovitis and intersection syndrome and refers to the lack of improvement. However as addressed below, the assessment of disability has to be made without relying on developments which post-date the period of alleged discrimination.

38.2 Two reports, which are referred to as being occupational health assessments, from Dr Mutlib, of 18 May 2025 and 2 May 2026, and a letter of 9 June 2024. Again the utility of these documents is limited in so far as they deal with or found an opinion based on post-termination of employment events, rather than expressing a view on what could be predicted or anticipated during the period of employment and without the benefit of hindsight of what subsequently transpired.

38.3 A letter dated 23 May 2025 from her GP.

38.4 A letter from the physiotherapist of 12 July 2025, updating the position in relation to the Tenosynovitis, but again not addressing what could have been predicted viewed from the perspective of the time of employment.

C. Relevant legal principles

Overview of the statutory test

39. Section 6(1) EqA provides:

"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."

40. Further provisions are set out in schedule 1 to the EqA. I am also required to take into account relevant guidance in statutory codes of practice (para 12 of Schedule 1). I have therefore had regard to relevant provisions of the Government's 2011 "Guidance on matters to be taken into account in determining questions relating to the definition of disability" ("the Guidance") and the EHRC Code of Practice on Employment ("the EHRC Code").

41. In relation to the effect of medical treatment, paragraph 5 of Schedule 1 provides:

"(1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if—

- (a) measures are being taken to treat or correct it, and
 - (b) but for that, it would be likely to have that effect.
- (2) “Measures” includes, in particular, medical treatment and the use of a prosthesis or other aid.
- ...

42. The Claimant bears the burden of proof of establishing that she was a disabled person within the EqA.
43. Essentially the test for disability raises five questions:
- 43.1 Whether the Claimant had a physical or mental impairment.
 - 43.2 Whether the impairment had an adverse effect on the Claimant’s ability to carry out normal day-to-day activities.
 - 43.3 Whether the adverse effect was substantial. Section 212(1) EqA provides that “substantial” means more than minor or trivial. Paragraph B1 of the Guidance provides that the requirement for a substantial effect on normal day to day activities reflects the general understanding of disability as meaning “a limitation going beyond the normal differences in ability which may exist among people.”
 - 43.4 If there was not otherwise a substantial adverse effect:
 - (a) Were measures such as medical treatment taken to correct the impairment; and
 - (b) If so, would the impairment have had a substantial adverse effect on the ability to carry out day-to-day activities without the treatment or other measures?
 - 43.5 Was the substantial adverse effect long term? As to this paragraph 2 of Schedule 1 provides, so far as material, that:
 - (a) the effect is long term if it:
 - i. has lasted for at least 12 months,
 - ii. is likely to last for at least 12 months, or
 - iii. is likely to last for the rest of the life of the person affected.
 - (b) 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.
44. Those questions are generally to be considered sequentially and not together, though an entirely rigid and inflexible approach is unnecessary (see eg **J v DLA Piper LLP** [2010] ICR 1052 (EAT)).

Impairment

45. There is no need to establish the origin – or etiology – of a mental or physical impairment before a person can be regarded as disabled. As explained in the Guidance, at A3, provides 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, nor does the impairment have to be the result of an illness. In many cases, there will be no dispute whether a person has an impairment. Any disagreement is more likely to be about whether the effects of the impairment are sufficient to fall within the definition and in particular whether they are long-term. Even so, it may sometimes be necessary to decide whether a person has an impairment so as to be able to deal with the issues about its effects.”

46. Paragraph A6 of the guidance further provides that:

“It may not always be possible, nor is it necessary, to categorise a condition as either a physical or a mental impairment. The underlying cause of the impairment may be hard to establish. There may be adverse effects which are both physical and mental in nature. Furthermore, effects of a mainly physical nature may stem from an underlying mental impairment, and vice versa.”

47. Paragraph A7 provides:

“It is not necessary to consider how an impairment is caused, even if the cause is a consequence of a condition which is excluded. ...”

48. In **Igweike v TSB Bank Plc** [2020] IRLR 267 the EAT explained:

“50. Secondly, while there is no longer a rule of law that a mental impairment must be clinically well-recognised, nor is there any rule that such an impairment cannot ever be made out without medical evidence, nevertheless, as the discussion in both **J v DLA Piper UK LLP** and **Morris** explains, it is a practical fact that, in some cases of this type, the individual's own evidence may not be sufficient to satisfy the Tribunal of the existence of an impairment. In some cases, even contemporary medical notes or reports may not be sufficient, and expert evidence prepared for the purposes of the litigation may be needed. To say all of this is not to introduce either of these legal heresies by the back door. The question is a purely practical or evidential one, which is sensitive to the nature of the alleged disability, the facts, and the nature of the evidence, in the given case.”

49. A valid distinction can be drawn between a mental impairment and symptoms which are simply “a reaction to adverse circumstances (such as problems at work) or ... ‘adverse life event’ **Herry v Dudley Metropolitan Council** [2017] ICR 610 (EAT) at [54], citing **J v DLA Piper UK LLP** [2010] ICR 1052. Underhill J in **DLA Piper** stated as follows, at [42] (in the context of a claim where the impairment alleged was depression):

“The first point concerns the legitimacy in principle of the kind of distinction made by the tribunal, ... between two states of affairs which can produce broadly similar symptoms: those symptoms can be described in various

ways, but we will be sufficiently understood if we refer to them as symptoms of low mood and anxiety. The first state of affairs is a mental illness—or, if you prefer, a mental condition—which is conveniently referred to as ‘clinical depression’ and is unquestionably an impairment within the meaning of the Act. The second is not characterised as a mental condition at all but simply as a reaction to adverse circumstances (such as problems at work) or—if the jargon may be forgiven—‘adverse life events’. ... We accept that it may be a difficult distinction to apply in a particular case; and the difficulty can be exacerbated by the looseness with which some medical professionals, and most lay people, use such terms as ‘depression’ (‘clinical’ or otherwise), ‘anxiety’ and ‘stress’. Fortunately, however, we would not expect those difficulties often to cause a real problem in the context of a claim under the Act. This is because of the long-term effect requirement. If, as we recommend ... a tribunal starts by considering the adverse effect issue and finds that the claimant's ability to carry out normal day-to-day activities has been substantially impaired by symptoms characteristic of depression for 12 months or more, it would in most cases be likely to conclude that he or she was indeed suffering ‘clinical depression’ rather than simply a reaction to adverse circumstances: it is a common sense observation that such reactions are not normally long-lived.”

50. In the light of those observations it was suggested in DLA (at [38, 42]) that in some cases where impairment was in dispute an employment tribunal might first address the issues of whether there was a long term substantial effect on day to day activities, since this may assist on the issue of whether there was an impairment in difficult cases.
51. At the time of the decision in DLA there was a requirement that a mental impairment be a clinically well-recognised illness. That requirement no longer applies, but the distinction noted in DLA has been followed in subsequent cases since that requirement was removed, including Herry.
52. The EAT in Herry added the qualification to the effect that whilst adverse reactions to circumstances are not normally long lived, there may be exceptions. It noted one class of exception where a reaction to circumstances becomes entrenched, such where the person will not give way or compromise and return to work even though in other circumstances there is no or little effect on day-to-day activities, and that a tribunal is not bound to find that there was a mental impairment in such a case.
53. The question of whether there is a mental impairment is one for the tribunal to assess, subject to whether there is a sufficient evidential basis for its conclusions.

Substantial adverse effect on ability to carry out normal day-to-day activities

54. Appendix 1 of the EHRC Code of Practice states of normal day-to-day activities that:

“14. They are activities which are carried out by most men or women on a fairly regular and frequent basis. The term is not intended to include activities

which are normal only for a particular person or group of people, such as playing a musical instrument, or participating in a sport to a professional standard, or performing a skilled or specialised task at work. However, someone who is affected in such a specialised way but is also affected in normal day-to-day activities would be covered by this part of the definition.

15. Day-to-day activities thus include – but are not limited to – activities such as walking, driving, using public transport, cooking, eating, lifting and carrying everyday objects, typing, writing (and taking exams), going to the toilet, talking, listening to conversations or music, reading, taking part in normal social interaction or forming social relationships, nourishing and caring for one's self. Normal day-to-day activities also encompass the activities which are relevant to working life.”

55. Similarly paragraph D3 of the Guidance provides:

“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. Normal day-to-day activities can include general work-related activities, and study and education-related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or a shift pattern.”

56. Illustrative examples of what might be regarded as or not regarded as day-to-day activities are set out in the Appendix to the Guidance. The illustrations of things it would be reasonable to regard as having a substantial effect include:

- “• Difficulty preparing a meal, for example, because of restricted ability to do things like open cans or packages, ...
- ...
- Persistent general low motivation or loss of interest in everyday activities;
- ...
- Difficulty operating a computer, for example, because of physical restrictions in using a keyboard, ...”

57. The illustrative list of things that it would not be reasonable to regard as having the requisite substantial adverse effect include:

- “• Inability to move heavy objects without assistance or a mechanical aid, such as moving a large suitcase or heavy piece of furniture without a trolley;
- ...
- Inability to reach typing speeds standardised for secretarial work;
- ...
- Inability to undertake activities requiring delicate hand movements, such as threading a small needle or picking up a pin.”

58. The phrase may encompass activities relevant to participating in working life (**Chief Constable of Norfolk v Coffey** [2019] EWCA Civ 1061).
59. It is necessary to focus on what the Claimant could not do, or only do with difficulty, rather than on what he could do (Guidance at B9).
60. There must be a causal relationship between the impairment and the effect on normal day-to-day activities: **Primaz v Carl Room Restaurants** [2022] IRLR 194 (EAT).
61. In deciding whether there is the requisite substantial adverse effect it may be material to take into account whether the person can reasonably be expected to modify their behaviour using coping or avoidance strategies. Paragraph B7 of the Guidance provides:
- “Account should be taken of how far a person can reasonably be expected to modify his or her behaviour, for example by use of a coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day-to-day activities. In some instances, a coping or avoidance strategy might alter the effects of the impairment to the extent that they are no longer substantial and the person would no longer meet the definition of disability. In other instances, even with the coping or avoidance strategy, there is still an adverse effect on the carrying out of normal day-to-day activities.”
62. However it was not contended that the Claimant failed to take steps to modify her behaviour.
63. In addition, as noted above, an impairment will be treated as having the adverse effect if measures are taken to treat or correct it and, but for that, it would be likely to have the requisite effect. “Likely” in this context means that it is something that “could well happen” (Guidance at C3).

Long term effect

64. In determining whether the effect of an impairment has or is likely to last for at least 12 months, the focus is on the substantial adverse effect of the impairment rather than the impairment itself: **Royal Borough of Greenwich v Syed** UKEAT/0244/14/LA, 26 June 2015.
65. Again, in determining whether the effect of an impairment is likely to last at least 12 months and whether the substantial adverse effect is likely to recur, “likely” means that it could well happen; it is not necessary that it was more probable than not: Guidance at C3; **All Answers Ltd v W** [2021] IRLR 612 (CA) at para 25.
66. Whether the effect is likely to last 12 months, or is likely to recur, is to be assessed by reference to the facts and circumstances at the time of the alleged discrimination (though not limited to matters within the actual or constructive knowledge of the Respondent). This Guidance at C4 provides:

“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).”

67. It is not permissible to have regard to what in fact subsequently transpired. As set out in **All Answers** at [26]:

“The question, therefore, is whether, as at the time of the alleged discriminatory acts, the effect of an impairment is likely to last at least 12 months. That is to be assessed by reference to the facts and circumstances existing at the date of the alleged discriminatory acts. A tribunal is making an assessment, or prediction, as at the date of the alleged discrimination, as to whether the effect of an impairment was likely to last at least 12 months from that date. The tribunal is not entitled to have regard to events occurring after the date of the alleged discrimination to determine whether the effect did (or did not) last for 12 months.”

68. Hindsight is therefore not permissible.
69. In his closing submission, Mr Sheppard submitted that the test of whether that disability was likely to last 12 months or was likely to recur, was to be assessed by reference to the last act of discrimination. The context of that submission was that he identified the last allegation as being the rejection of the grievance, and he contended that since the Anxiety was because of stress at work it was unlikely to last 12 months because the Claimant resigned in response to the grievance outcome and so the impact of work related factors was likely to end.
70. I reject the submission that even for prior acts of discrimination the relevant time by which to carry out the assessment is the last alleged act of discrimination. The requirement is to make an assessment at the date of the alleged discrimination. The proposition advanced by Mr Sheppard is contrary to the guidance in **All Answers**. In any event, if Mr Sheppard were right, it would still not be permissible to look only at the last alleged act of discrimination because there has been no findings of discrimination. On his approach (which I reject) it would be necessary to go back and consider the position at the time of each previous act of discrimination in case that was upheld but not the later alleged acts.

D. Discussion

71. Before turning to my conclusions, I note that although in closing submissions Mr Sheppard did take issue with the whether the Claimant had made out the various elements of disability, most of the Claimant's evidence was unchallenged in cross-examination. Mr Sheppard asked only two questions in cross-examination. First, he confirmed with the Claimant that she started her University course in September 2024. In closing submissions it was asserted that this was inconsistent with her case as to effect on day to day activities. However that was not put to her in cross-examination. Second Mr Sheppard elicited confirmation of paragraphs 5.21 and 5.22 of the Grounds of Resistance (in which it was pleaded that the Respondent

had requested permission on 19 December 2024 to access her medical history and that the Claimant had replied that she would not be providing any further medical evidence or access to her medical records). The Claimant confirmed this. There were further questions put to the Claimant, but by me.

72. When I raised with the Respondent in closing submissions that most of the Claimant's evidence was unchallenged, Mr Sheppard submitted that the issues as to disability are often determined solely on the papers and sometimes with evidence and that he was entitled to point to lack of sufficient evidence to support the claim and to point to inconsistencies in the evidence. I accept that only in part. It was a permissible approach to point to gaps in the evidence and make submissions on that basis, and to rely on the burden of proof upon the Claimant. However in assessing the Claimant's evidence on factual matters which were in dispute it is relevant to take into account where that evidence was not challenged or tested when the Claimant gave evidence, whilst also taking into account the evidence as a whole, including in response to questions raised by me.

Period relevant to the claim

73. The period relevant to the claim goes back to at least 18 April 2024. That is the date of the first matter relied upon in relation to the claims of harassment and victimisation. In relation to failure to make reasonable adjustments, the position is less clear given the nature of the PCPs. However the first date when the Claimant contends in her particulars that she alerted the Respondent to her health condition and document's recommendations, and when it is alleged that there was a failure to offer support and instead emphasis on targets, was 18 April 2024. In relation to indirect discrimination there is not the requirement of knowledge, and so scope to contend for example that the requirement to meet high productivity targets applied earlier. However nothing turns on that in the light of my conclusions below as the when there was a substantial effect on day to day activities.

Approach to considering the alleged impairments

74. In order to consider whether the requirements for disability are made out, I address each of the alleged impairments in turn. In doing so I do not lose sight of the fact that in assessing the cumulative effect on day to day activities it is relevant to take into account the combined effect. Further if one or other of the matters relied upon is not itself a disability, it may still be relevant to take into account if it has an aggravating effect on the other.

D.1 Tenosynovitis

Impairment

75. The impairment relied upon is "Bilateral De Quervain's Tenosynovitis with Intersection Syndrome", which as noted above I refer to Tenosynovitis for shorthand. As explained in the report of 18 May 2025:

"De Quervain's Tenosynovitis involves inflammation of the tendons on the thumb side of the wrist, leading to swelling, severe pain, and restricted movement, especially during gripping, lifting, or repetitive hand tasks. Intersection Syndrome affects the point where tendons intersect in the

forearm, and can cause aching, burning pain during wrist and thumb movement.”

76. Although this post-dates the dismissal, I accept it as a description of the nature of these conditions, save that the addition of the term “Bilateral” also indicates that it affected both wrists. I accept that this was an impairment to which the Claimant was subject at least by the time of the diagnosis and continuing throughout the remainder of employment.
77. A question arises as to when the Claimant first became subject to this impairment. The evidence before me does not support a finding that the Claimant already had this impairment in March 2024 when her GP diagnosed her as having a Ganglion cyst. That was not the Claimant’s evidence. Instead her contention was that the Tenosynovitis developed due to a failure by the Respondent to implement recommendations. Nor is it established by the physiotherapist letters. The letter of 30 August 2024 diagnosed her at that time as having Tenosynovitis. Whilst it noted that the Claimant reported “a one year insidious onset of symptoms” it was not said that the Claimant had the Tenosynovitis throughout that period.
78. In practice, I regard this issue on the facts of this case as tied in with the issue as to whether there was a day to day activities. I therefore return to it below in the light of my findings on that issue.

Substantial effect on day to day activities?

79. Subject to the issue I address below as to when a substantial adverse effect on day to day activities began, I accept the Claimant’s evidence on this issue set out in her disability impact statement. As noted above the Claimant’s evidence as to this was largely unchallenged by Mr Sheppard when she gave evidence. His closing submissions on this issue largely focussed on when the effect on day to day activities started and whether the effect was long term. I have addressed above the broader submission made challenging credibility of the evidence by reference to when the University course started and when support was sought in relation to it.
80. Mr Sheppard also relied on the fact that the absences from 29 August 2024 did not mention the wrist. Again that was not something that was put to the Claimant in her evidence. In any event I do not regard it as a persuasive point in circumstances where the impact on daily functioning was expressly noted in the physiotherapy report of 30 August 2024.
81. Reference was also made to the OH report of 8 May 2024 which noted that the Claimant could manage all her activities of daily living. However that does not answer the evidence as to subsequent deterioration with the development of Tenosynovitis. There is corroboration for that deterioration in the fact that by August the condition to which the Claimant was subject was bilateral, whereas at the time of the OH report it was an issue relating to a cyst affecting only the right wrist and some emphasis was placed on the ability to use her left hand (including writing left handed).
82. Whilst I accept that the Claimant experienced some symptoms of pain from March 2024, and as referenced in the notes of the meeting of 18 April 2024, I also accept

that at that stage and by the time of the OH report of 8 May 2024 there was not yet a substantial effect on day to day activities. In relation to this I have regard not only to the Claimant's evidence as to when the symptoms became worse and when the impact went beyond the effect of the cyst, but also to the terms of the OH report of 8 May 2024.

83. Conversely I accept that by the time of the physiotherapy report of 30 August 2024 the Claimant had developed Tenosynovitis which I accept, as stated in the physiotherapy letter, was impacting the Claimant's daily functioning. I also accept the substantial effect on day to day activities had started for some time prior to that. Having regard to the Claimant's oral evidence as to when there started to be the substantial effect on day to day activities, that the pain became stronger and more continuous from the second half of July 2024, and that I accept that by the end of July 2024 matters had progressed to the point where she was wearing a wrist brace on both wrists (though more continuously on the right), and that the difficulty caused by the wrist condition was again raised by the Claimant in the meeting on 22 July 2024, I accept matters had progressed to the point where there was a substantial effect on day to day activities by mid July 2024. I am not satisfied that there was a substantial effect on day to day activities prior to that.
84. As to the nature of the symptoms I accept that they involved pain affecting the Claimant's wrists, hands and grip, reduced grip strength, difficulty using her hands for repetitive movements, difficulty lifting and carrying, discomfort when holding objects and difficulty in using her wrists safely. I also accept the Claimant's explanation in her statement as to the effect on her ability to prepare food, the difficulty when hot drinks and hot food due to reduced drip and wrist pain and increased risk of dropping items, the difficulty with cleaning tasks (and the example was given in her particulars of 13 July 2025 of vacuuming) and difficulty with, amongst other things, writing, typing (with reference in her particulars of 13 July 2025 to typing of more than 5 to 10 minutes causing increased pain levels). On bad days she had to take a pause after short periods of typing, cooking, cleaning, or carrying items because of pain, weakness or fear of dropping things. In terms of what was meant by short periods, she explained that after around 15 minutes she may need to stop and take a break before getting back the task. I also accept that there were other substantial impacts on day to day activities as set out in the Claimant's statement, including affecting sleep, ability to shop independently and an effect on creative activities involving drawing or other hand tasks.
85. I also accept that the effect was exacerbated by the anxiety which the Claimant was also suffering in the period from mid July 2024 (and earlier). Whether or not that itself amounted to a separate impairment/ disability, as addressed below, I accept that it added to the impact. The Claimant gave the instance of anxiety that things, such as hot drinks, would fall out of her hand, which added to the restriction on being able to carry hot drinks or food.
86. I have considered whether, in relation to the period from mid-July to when the Claimant went off work on 28 August 2024, her account of the effect upon her is inconsistent with the fact that she was able to remain at work in a role which required repetitive work. I also take into account that in the last three performance meetings before going off sick, on 9, 20 and 23 August 2024, the Claimant was able to hit targets. I am not satisfied that this is a sufficient basis to reject the evidence as to impact on day to day activities. I take into account that these are

not points that were put to the Claimant in her evidence, and that the threshold is met by an effect with is more than minor and trivial, and it is not inconsistent with this to persevere through pain when under the pressure of a having to seek to meet performance targets. It is not necessary that the Claimant was unable to carry out the day to day activities at all; it may be sufficient that they could only be done with difficulty.

87. In the light of my conclusion as to the effect on day to day activities, the issue does not arise in relation to the period from mid July 2025 of what would have been the deduced effect on day to day activities but for steps taken to treat the impairment. Nor am I satisfied that the Claimant has discharged the burden of establishing that but for treatment that there would have been a substantial effect on day to day activities prior to that period. It was not the evidence that prescribed medication was being taken prior to that point, nor was there evidence of other treatment at that point. In any event, to the extent that steps were being taken prior to that to treat the impairment, there was no evidence before me to indicate that the deduced effect without that treatment would have been a substantial effect on day to day activities.

Impairment revisited

88. I regard my findings as to the point by which there was a substantial impact on day to day activities as also indicating that there was an impairment of Tenosynovitis by that point. That appears the most likely explanation for the increase in pain and greater impact than had been the case previously when only affected by the cyst, and consistent with the development of an impact affecting both wrists.

Long term?

89. By the time termination of the Claimant's employment, the effect on day to day activities had not continued for 12 months. I turn therefore to the issue of whether at the times material to the claim the substantial adverse effect on day to day activities was like to last for at least 12 months. As noted above, I must approach that issue without the benefit of hindsight, and so without taking into account the evidence that it did in fact continue for more than 12 months.
90. I have also considered whether it is relevant to take into account the history of problems that the Claimant had experienced with her wrists, going back to September 2023, and then recurring in and from March 2024, with a condition that the OH report of May 2024 considered as likely to last 12 months. Further the physiotherapist referred to a one-year insidious onset of symptoms being reported. That might indicate that he saw some relevance in the history of symptoms. However the force of that that is weakened by it being a reference to what the Claimant reported. I also take into account that this had a distinct cause, being by reason of the cyst, and my findings that there was not at that stage a substantial effect on day to day activities. In the absence of medical evidence I do not consider that I can safely attach relevance to the previous symptoms as providing an indication of how long the Tenosynovitis was likely to take to resolve. Even if there had been a long build up related to Tenosynovitis, it does not follow without medical evidence that I can assume that provides an indication of the time it would be likely take to resolve.

91. As to the prognosis that might generally apply for Tenosynovitis, I note that the response to the Claimant's grievance included the following observation:
- “Upon reviewing the NHS website around De Quervain's syndrome it outlines that it is not harmful which means its safe to use and however it could be a painful nuisance. It stated milder cases recover over a few weeks without treatment and most improve over time.”
92. On my findings, the Claimant's was not a mild case of Tenosynovitis. Whilst the above extract suggested that most instances of Tenosynovitis improve over time, it did not give a timeframe for the improvement. I infer that it is likely that the NHS guidance does not give a more definite timeframe. Had it included wording to the effect that it was likely to resolve within less than 12 months, I infer that would have been cited in the response to the grievance and would no doubt have been included by the Respondent in the material put before me.
93. I take into account that there is no prognosis in the physiotherapist's letter of 30 August 2024 as to how long the condition was likely to last. As set out above, I do not accept the Claimant's contention that the physiotherapist predicted that the Tenosynovitis condition would last for a year (and indeed what matters is whether the effect on day to day activities would last for that period), but I accept that he suggested a review in a year. I regard that time frame for review as providing some support for the Claimant, applying the “could well happen test”. It suggests that 12 months was a reasonable time to measure whether the self help steps had been successful and to review the position if it had not been resolved.
94. Viewed from the perspective of the last alleged specific act of discrimination, being the rejection of the grievance, it is also of relevance that the problem had not resolved or improved despite the Claimant having been away from work for over four months, and that the effect on day to day activities had continued for half a year without any sign of improvement. Clearly that is not a consideration that can be applied across the period that the Claimant had the effect on day to day activities. Conversely if predicting the position prior to 29 August 2024 it would not be appropriate to assume the then future fact of being off work.
95. I keep in mind that the burden of proof is on the Claimant to establish that he substantial adverse effect was likely to last for 12 months or more. As against that the test of whether this “could well happen” is a relative low test, which allows for some uncertainty in prediction and does not require that it must be more probable than not. Taking into account the matters set out above in the round, including the absence of a clear time frame in the NHS guidance, that this was not a mild case, and the physiotherapist's time for review, I accept that that the effect on day to day activities was likely to last for 12 months in the sense that it could well happen. Whilst that conclusion applies to the period from which I have found there was a substantial effect on day to day activities, it is reinforced for the latter part of the period of employment by the time for which the condition had persisted without improvement, despite the Claimant's self-help programme and despite being away from work.

D.2 Generalised Anxiety Disorder with Panic Attacks

Impairment

96. As noted above, the Claimant was initially signed off from work on 29 August 2024 with “Anxiety, panic attacks” [150]. From 18 December 2024 the fit note referred to “Anxiety Disorder”. A letter from her GP of 23 May 2025 refers to her having been off work with “panic attacks and anxiety disorder” [164]. The OH assessment of 18 May 2025 also refers to her having a diagnosis of anxiety disorder, but appears to rely on the GP certification to that effect. Had I concluded that there had otherwise been a long term substantial effect on day to day activities, it would have been necessary to review in the light of those conclusions whether there was an impairment going beyond the scope of what could be regarded as a reaction to adverse circumstances relating to the situation at work. That does not arise in the light of my conclusion on the issue as to long term effect set out below.

Substantial effect on day to day activities

97. The Claimant’s evidence was that her mental health deteriorated significantly during 2024, such that she experienced increasing anxiety, panic symptoms, distress, difficulty coping with pressure, sleep disturbance, and reduced ability to function normally, with symptoms including intense anxiety, panic attacks, racing heart / tachycardia, shortness of breath, dizziness, nausea, fear, crying, difficulty concentrating, brain fog, and feeling overwhelmed.
98. As to the effect on day to day activities she explained that she would feel overwhelmed by interaction, pressure, conflict, unexpected communication, or situations where she felt judged or unsafe. She had difficulty attending meetings, answering calls, dealing with formal correspondence, and managing stressful administrative tasks without becoming anxious or distressed. She referred to this affecting her decision making and ability to complete tasks calmly. During periods of anxiety she would become physically unwell, with episodes, including racing heart, nausea, dizziness, breathing difficulty and feeling unable to function normally. Her concentration and memory would be affected. She gave as an example of the effect on her concentration that when reading a text she would lose the essence of what she had read and have to read it over and over again. As to the effect on her memory she explained that she would forget important things or tasks, such as forgetting to pay her rent. She would experience avoidance and isolation, finding it difficult to be around people for long periods and would often need to withdraw to feel safe. Her sleep was affected by anxiety, panic symptoms and worry, and poor sleep would then affect her energy, concentration and ability to manage the next day. Her ability to maintain a normal routine, look for work, study consistently, manage appointments, and participate in ordinary social and practical life was affected.
99. Her evidence was that the impact on her mental health started on 18 April 2024. Her perception of that meeting was that she was unable to protect herself at work. She initially said that the situation deteriorated in July 2024 in the light of the series of meetings when, as she saw it, the Respondent was telling her that she was not doing enough at work, and she felt that there were meetings continuously being held. When subsequently referred to notes of the meetings of 28 June 2024 she

referred to matters becoming worse around then, but then stated that she would say that the effect on day to day activities started in April when she contended she had been told she would be dismissed in the meeting on 18 April 2024.

100. I accept that the Claimant found the situation at work from 18 April 2024 highly stressful. That is reflected in some of the comments in the meetings such as the meeting on 28 June 2024. As against that, the first instance the Claimant identifies in her evidence of having suffered a serious panic attack was on 29 August 2024. On that occasion she suffered symptoms including difficulty breathing, dizziness and temporary visual disturbance. It was at that point that she consulted a GP in relation to her condition. I note that the OH assessment of May 2025 does state that during employment the Claimant experienced regular panic episodes, particularly triggered by management pressure and repeated performance meetings. However had there been a previous incident of significant panic attacks causing her to feel unwell, it is likely that they would have been identified in her statement. It was from that point that the impact on her mental health was such that she was signed off work, and from soon afterwards, in September 2024, she was prescribed anti-depressants, with further medication prescribed subsequently (medication for acute migraine attacks associated with distress from 23 January 2025, and a beta blocker after the termination of employment for panic symptoms, tachycardia and heart pain).
101. I have found the occupational health assessments of May 2025 and May 2026 as of only limited assistance. In relation to whether there was a long term effect (addressed below) they do not specifically address what could be predicted during the period of employment. There is also a lack of specificity as to what symptoms were suffered during the period of employment, other than the reference noted above to regular panic episodes particularly triggered by management pressure and repeated performance meetings and that weekly reviews contributed to emotional distress and a sense of humiliation. There is then a reference to the "current impact" without specification of how far back those matters had been experienced (save that the reference to incapacity for work must refer back to 29 August 2024). There is a view expressed as to disability said to be based on the "severity, persistence, and life impact of the conditions", but the reference to persistence appears to make clear that it is taking into account the persistence of symptoms until the date of the report, which post-dates the employment and the last alleged act of discrimination by several months. The same difficulty applies in relation to the letter of 9 June 2025 (which takes into account that the Claimant had been unfit for work for a period in excess of 28 weeks) and the May 2026 OH report (which relies on the fact that the effects had lasted well over 12 months).
102. I also take into account that although the Claimant contended at one point in her evidence that the effect on day to day activities went back to 28 April 2024, there is no support for this in the OH report of May 2024.
103. As noted above I have considered whether the Claimant's account as to the effect of Anxiety is undermined by having been able to undertake her University course. That the Claimant was able to undertake the course, and that it helped her in trying to maintain structure, social engagement and personal development, is not in my judgment sufficient to reject her evidence as to the impact of her condition, and still less in circumstances where that issue was not tested in cross-examination.

104. Taking these matters together, I accept that from the date on which the Claimant suffered the serious panic attack and was signed off from work on 29 August 2024, that there was a more than minor or trivial impact on day to day activities broadly of the nature explained by the Claimant. Whilst I accept that the Claimant suffered escalating stress and anxiety in the period prior to that, I am not satisfied that this had reached the point of having a significant effect on day to day activities, save to the extent that as noted above stress and anxiety impacted upon effects of the Tenosynovitis. In the event however nothing turns on whether the effect on day to day activities was only from 29 August 2024 or also from when, as the Claimant initially said in evidence, there was a deterioration in July 2024, since this would not affect my conclusion as to whether there was an effect on long term activities which I address below.
105. Nor is there evidence before me to indicate that but for the effect of treatment there would have been an effect on day to day activities prior to 29 August 2024. In any event there is no evidence that the Claimant consulted her GP in relation to anxiety symptoms prior to 29 August 2024, and the treatment which she identifies appears to have been subsequent to that date.

Long-term?

106. I turn to the issue of whether the substantial adverse effect on day to day activities was likely to last for at least 12 months.
107. As noted above, Mr Sheppard submitted that since the cause of the Claimant's anxiety was clearly and on her own case the situation at work, once the Claimant resigned it became unlikely that any substantial adverse effect would continue for 12 months because the cause would be removed upon leaving.
108. I accept the first step in Mr Sheppard's argument that the evidence was to the effect that the Claimant's Anxiety condition was triggered by her work situation. However I regard the second step in the argument as problematic. It falls foul of the requirement not to assess the long term effect with the benefit of hindsight. To take two examples, there are allegations in the draft list of issues as to failure to provide appropriate support to the Claimant following the medical episode of 29 August 2024 and the proposal of a home visit during sickness absence. To take into account the subsequent termination of employment would be impermissibly to have regard to what transpired in the future.
109. Indeed the same applies to the rejection of the grievance on 20 January 2025. It is not in my view permissible to assess whether there was a long term effect by reference to the fact of resignation which occurred only subsequently. Further, by that stage the Claimant had been off work for over four months without the anxiety related effect on day to day activities having improved.
110. As against that, however, there is no medical evidence before me providing any prognosis or prediction as to how long the effect on day to day activities was likely to continue viewed from the perspective of the time material to the alleged discrimination. There is nothing akin even to the material noted above in relation to Tenosynovitis, such as the plan for review in a year by the physiotherapist. I keep in mind the burden of proof upon the Claimant. Further the evidence as to the nature of the underlying condition is minimal, essentially relying on the

diagnosis in the fit notes, with little further explanation other than the explanation of the symptoms to explain why, without the benefit of hindsight, it could be predicted in the light of the nature of the impairment that it was likely to persist for at least 12 months. Even allowing for the relatively low test of “could well happen” I am not satisfied that it is permissible to take the leap of finding that the impact of the anxiety could well last for a year without anything further to support that conclusion when excluding the benefit of hindsight. Nor is there any basis for a finding that if the effect on day to day activities had ended, that it was likely to recur.

Conclusion

111. I conclude therefore that the Claimant was a disabled person from around mid-July 2024 (but not before) by reason of Bilateral De Quervain’s Tenosynovitis with Intersection Syndrome, but was not a disabled person by reason of any other impairment. I will deal by way of a separate Order with further directions in this case.

Approved by:

Employment Judge J Lewis KC

27 July 2026

SENT TO THE PARTIES ON

27 July 2026

FOR THE TRIBUNAL OFFICE