# EMPLOYMENT TRIBUNALS

**Claimant:** **Miss E Mberengwa**

**Respondent:** **Maison Care Limited**

**Heard at:** **London East Hearing Centre (by video)**

**On:** **22 July 2026**

**Before:** **Employment Judge Armstrong**

**Representation**
Claimant: In person
Respondent: Miss L Hatch (counsel)

# RESERVED JUDGMENT

1. At the relevant time the claimant was not a disabled person as defined by section 6 Equality Act 2010 because of work-related anxiety, depression and/or Post-Traumatic Stress Disorder.

2. The complaint of failure to make reasonable adjustments is therefore dismissed.

# FULL REASONS

## Claims

1. The claimant brings complaints of protected disclosure detriment, constructive unfair dismissal, and failure to make reasonable adjustments. This hearing was listed in order to determine whether the claimant was, at the relevant time, disabled within the meaning of section 6 Equality Act 2010 (EqA 2010).

## Conduct of the hearing

2. The hearing was conducted by video. The claimant represented herself. The respondent was represented by Miss Hatch of counsel.

3. The day before the hearing the claimant requested, by email, adjustments as follows: use of plain English, explanation of legal terms, and to be supported by her grandson. The Tribunal and counsel ensured that plain English was used throughout and any clarification or explanation requested by the claimant was provided. The claimant indicated at end of hearing that she had fully understood the proceedings.

4. The claimant's grandson was unable to attend on the day of the hearing, but instead her son was with her during the hearing to provide support. Regular breaks were also accommodated.

## Issues for the tribunal to decide

5. Directions to prepare for a preliminary hearing on the issue of disability were made in August 2025, including exchange of medical evidence, disability impact statement, and preparation of a bundle, which was due in January 2026 (**90**). It is not clear whether these directions were fully complied with at the time directed. However, by the start of the hearing the Tribunal and the parties were in receipt of the requisite documents.

6. There was a preliminary hearing due to take place in January 2026 but this was postponed to 26 March 2026 due to judicial availability. On that occasion, the parties agreed a list of issues and no specific further directions were given other than that a date would be fixed for this preliminary hearing. Miss Mberengwa was represented by a solicitor on that occasion. The order from that hearing was not approved until 7 July 2026 and was sent to the parties on 15 July 2026. The order did not include any further case management directions. The order addresses correspondence from Miss Mberengwa following her solicitor ceasing to act, and primarily concerned the list of issues. It also directed the parties to confirm whether they were ready to proceed today with a hearing to deal with the issue of disability.

7. The respondent confirmed in writing on 15 July 2026 that they were ready to proceed with the hearing to determine the issue of disability status (**SB88**). The claimant responded to the order on 18 July 2026 attaching some documents. She did not expressly confirm whether or not she was ready for a hearing (**SB98-99**). Both parties confirmed at outset of the hearing that they were prepared to deal with this issues and wanted the Tribunal to proceed to determine the issue.

8. As set out in list of issues agreed at the March 2026 hearing, reflecting the statutory definition of disability in section 6 EqA 2010, the issues for the hearing were therefore:

**Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide**

**5.1.1 Did she have a physical or mental impairment? The claimant relies on clinical depression/generalised anxiety disorder/PTSD.** The claimant confirmed at the outset of the hearing that she relies on these impairments.

**5.1.2 Did it have a substantial adverse effect on her ability to carry out day-to-day activities? If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?**

**5.1.3 Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?**

**5.1.4 Were the effects of the impairment long-term? The Tribunal will decide:**

**5.1.4.1 did they last at least 12 months, or were they likely to last at least 12 months?**

**5.1.4.2 if not, were they likely to recur?**

9. In accordance with the list of issues, the 'time of the events the claim is about' is 30 September 2024, being the date on which the claimant says the respondent required her to return to her contractual working hours (i.e. the date on which she alleges they refused to make reasonable adjustments).

## Evidence

10. The Tribunal was provided with a Preliminary Hearing Bundle comprising **693** pages. Page references in **bold** are to this bundle. It appears that this may have been produced in compliance with the earlier directions. The Tribunal was also provided with a supplemental bundle comprising 125 pages, produced on 18 July 2026. Page references in the format **SB1** are to pages in this bundle. The claimant provided documents by email on 18 July 2026 which are included in the supplementary bundle. The claimant sent further documents attached to an email on 20 July 2026. The respondent did not object to these documents being admitted. The documents were admitted and I have taken them into account. Most of the attached documents are more relevant to issues of liability, although the claimant relied in particular in respect of disability on emails in a document titled '*email thread Tribunal'*.

11. On the same date (20 July 2026) the claimant produced a witness statement. There was no objection from the respondent to the late submission of this witness statement and I was satisfied that it was central to the issues, and in accordance with the overriding objective to admit the statement.

12. I heard evidence from two witnesses: The claimant and Ms Karon Bosher (registered manager of The Bungalow). The claimant's witness statement is dated 20 July 2026, submitted by email as set out above. Ms Bosher's statement is dated 8 July 2026 and is at **SB118**. Again there was no objection from the claimant to the late submission of this witness statement and I was satisfied that it was central to the issues, and in accordance with the overriding objective to admit the statement.

## Findings of fact

13. On 1 July 2004 the claimant's continuous employment started.

14. On 13 August 2012 the claimant spoke to her GP because she was *'stressed at work'* (**263**). She was referred to NHS Talking therapies on 14 August 2012 (**500**) and underwent an initial assessment on 29 August 2012, where the main problem was recorded as *'work related stress / anxiety'* (**265**). She was discharged on 3 October 2012 because she decided not to accept a service from them at the time (**264**).

15. On 11 November 2013 the claimant mentioned *'being bullied'* to her GP, although this is in the context of an appointment which appears to be primarily regarding unrelated physical symptoms. No further action was taken at this time (**262**). On 28 July 2016, she reported to her GP a '*situation at work*' and the notes record that she '*feels anxiou*s' (**253**).

16. On 26 February 2024, a meeting took place between the claimant and Ms Bosher. The claimant claims that she was shouted at in that meeting and it forms part of her substantive claims. The content of the meeting is disputed and I make no findings about it today (**27-28, 62**).

17. On 27 February 2024 the claimant visited her GP. She reported '*feeling anxious – caused by work mana*ger'. The notes record, '*manager causing problems, going on for a long time, Friday got worse*'. She was prescribed a trial of sertraline with a review in three weeks (**268**). She was also referred for NHS talking therapies. Sertraline is not mentioned again in the claimant's records and she does not mention taking any medication in her statement or her solicitor's letter therefore it appears that she did not take this medication beyond the trial period.

18. On 14 March 2024 NHS talking therapies confirmed that after assessment, the claimant therapy sessions were recommended, and for the claimant to engage with the *'Support Time and Recovery Service'.* (**270**). This therapy did not take place until February 2025, I assume because of NHS waiting list times (**336**).

19. In August 2024, discussions took place about a change in the claimant's working pattern. Ultimately the claimant requested flexible working. Again, these are substantive issues for the final hearing (**64-65, 94**).

20. On 30 August 2024 the claimant called 111. The call is recorded as a *'crisis call'.* The notes record that the claimant *'has been struggling to cope feeling anxious at work'.* It is recorded that she *'would like to cope and get through her shift tonight and get an appointment with her GP and call the retention service in the morning'.* She was told she could call back if she needed to (**464**).

21. On 19 September 2024 the claimant was provided with a fit note, stating that she may be fit to work with altered hours and amended duties from 19 September 2024 until 14 October 2024, due to *'Anxiety. Left shoulder*

*chronic pain.'* It was noted that the functional effects were, *'recurrent dizziness triggered by anxiety.'* (**280**). At the consultation on 19 September 2024 the claimant reported to her GP that she had been *'feeling intermittent dizziness for since last week. First episode started at work…noticed to be triggered by her emotional stress and thinking of her latest encounter with her manager. This happened in March… symptoms seem to have improved in frequency and only had 1 episode yesterday because she feel relaxed at home, however more triggered when at work.'* (**273**). It was agreed in oral evidence that the claimant never presented this fit note to her employer and she continued working at this point in time.

22. On 30 September 2024 a meeting took place during which the claimant's working pattern was discussed again. This is the date on which it is alleged that the respondent decided against making the reasonable adjustments sought by the claimant. Again, I make no further findings about the content of this meeting as this is properly an issue for final hearing, if necessary.

23. On 1 October 2024 the claimant commenced sick leave (**20**). She was provided a fit note stating that she was not fit to work from 1 October 2024 until 15 October 2024, due to *'Anxiety disorder'* (**272**). The GP records do not contain much further information about this consultation, but a further consultation the next day again records *'feeling stressed, chest pain'* (**267**).

24. The claimant never returned to work for the respondent.

25. On 21 October 2024 the claimant reported to her GP *'mood still low and family have tried to help.'* The entry notes *'work related issues and not wanting to return to work – discrimination issues same workplace for 21 years and been an issue for the whole time but not coping well. Has 3 investigations and now there is another one going on. Seen Samaritans and now on NHS for IAPT…was shouted out by manager.'* (**266**). Again, this suggests that the claimant was on the waiting list for talking therapy at this point in time. She was provided with a fit note stating that she was not fit for work until 30 November 2024, because of *'work related anxiety and low mood reaction'* (**276**).

26. On 28 November and 2 December 2024 the claimant was provided with further fit notes, both stating that she was not fit to work due to *'anxiety disorder'* (**278-9**). The claimant continued to be provided with fit notes thereafter, including one from 20 April 2025 until 1 June 2025, due to anxiety (**68**).

27. The claimant continued to visit her GP, citing similar issues. For example, on 2 May 2025 the claimant visited her GP, citing *'ongoing problems at work, case still going on, pt is not willing to give up and planning to fight'.* By that date she was having CBT via therapy for you and was on the 10th of 15 sessions. She reported that it was helping her a lot (**300**). On 1 July 2025 the claimant requested a further fit note from her GP, stating that she was still attending CBT sessions and was *'not yet ready to return'* to work (**292**).

28. On 21 July 2025 the claimant was discharged from Therapy for You, having completed her treatment (**307**).

29. On 10 September 2025 the claimant was re-referred to Therapy for You. The reason for referral states *'ongoing anxiety and stress'* (**282-3**).

30. On 30 September 2025 the claimant requested a renewal of her fit note, stating that *'my anxiety and stress levels have worsened and I recently contacted the 111 crisis team for support. I am unfit for work…I feel more vulnerable and need more time and treatment before I can safely consider returning'.* (**290**). On the same day, she was discharged from therapy after missing her scheduled telephone assessment (**296**).

31. On 2 October 2025 the claimant was provided with a fit note stating she was not fit to work due to *'work related anxiety secondary to bullying'* (**284**). It appears that the discharge was 'corrected' and the claimant attended an assessment appointment shortly thereafter. She was referred for therapy sessions with a high intensity practitioner, and to engage with Support Time and Recovery Service (**285**).

32. On 17 October 2025, Gareth Walton, Head of Service for Therapy for You North East Essex provided a letter summarising their input (**336**). It confirms that her first contact with the service was in August 2012, following referral from her GP. The reason for that referral given by her GP was *'stress reaction to workplace problems.'* The claimant attended an assessment, where she described feeling *'harassed, bullied and humiliated'* and being *'victimised'.* The records indicate that the claimant was discharged following difficulties contacting her after the assessment.

33. The letter goes on to confirm that the claimant self-referred to the service on 27 February 2024, and attended an assessment appointment on 14 March 2024. During assessment the claimant described having raised concerns about the practice of others at work, and experiencing a negative response to this from her manager. The letter records, *'Edna reported experiencing moderate symptoms of depression using the PHQ-9 scale, and severe symptoms of anxiety using the GAD-7 scale at assessment. Following assessment, Edna was offered High Intensity Cognitive Behavioral Therapy (CBT) for depression.'*

34. The letter records that the claimant attended 20 treatment appointments with a CBT therapist between 17 February and 21 July 2025. She again reported similar concerns during therapy sessions. The letter records *'Edna also disclosed symptoms of PTSD during her depression treatment. Following completion of her depression treatment, re-referral to Therapy for You to consider treatment for PTSD symptoms was discussed.'* This re-referral was made on 10 September 2025 and an assessment took place on 2 October 2025. During assessment, she *'disclosed having been the victim of 'racist comments and remarks, shouting, intimidation, discrimination.'* The claimant *'described experiencing flashbacks, intrusive memories of events at work, and nightmare. She experiencing [sic] severe symptoms of depression using the PHQ-9 scale, and severe symptoms of anxiety using the GAD-7 scale at this assessment.'* The claimant then

joined the waiting list for *'High Intensity Treatment for PTSD'* and had not commenced this by the date of the letter (17 October 2025).

35. At the hearing, the claimant relied on this letter as evidence of her assertion that she is disabled as a result of, in particular, clinical depression and PTSD.

36. On 29 October 2025 the claimant requested a fit note because she felt *'vulnerable and overwhelmed'* (**286**).

37. On 7 November 2025 the claimant's (then) solicitors provided a letter, apparently in compliance with the direction for a disability impact statement (**226-243**). The letter contains a number of substantive factual allegations, but also sets out how the claimant's alleged impairment is said to affect her day to day. It is not signed by the claimant but by her solicitors.

38. The letter states, for example, that the claimant lives with anxiety, depression and trauma *'that began in 2012 and continues today'.* The letter states that *'the effects worsen under pressure, hostility, or reminders of bullying. In calm and safe environments, I function better and can think clearly.'* Physical symptoms are said to include *'headaches, trembling, dizziness, chest tightness, dry mouth, and fatigue',* The letter states that the most severe period was 2022 to 2024. Her sleep is said to be affected, causing exhaustion, dizziness, poor concentration and frequent headaches. During low periods, she is said to skip a bath for a day and may forget oral hygiene. She relies on ready-meals or skips meals entirely, and lost interest in television, reading and crossword puzzles. Her social interactions are limited and she has not visited family in Zimbabwe for five years.

39. The claimant provided a lengthy statement dated 20 July 2026, comprising 15 pages. I have read the statement carefully and I do not propose to repeat its contents at length within this judgment. In the statement, the claimant sets out *'The respondent's impact on my disability'.* She describes how meetings in February and August 2024 *'exacerbated my anxiety and left me emotionally exhausted'.* She also sets out how a number of other alleged events left her feeing anxious and emotionally overwhelmed (paragraphs 2.1 - 2.12).

40. The claimant sets out some information about the effect on her day-to-day life more broadly at section 4. She states that there are significant difficulties with her day-to-day life. She then describes *'persistent rumination, intrusive thoughts, hypervigilance, and overthinking',* and gives some specific examples from 30 August to 25 September 2024 (paragraph 4.2). The claimant also describes the effects of her *'anxiety, persistent rumination, and mental preoccupation'* on her day-to-day life. She asserts that her personal care routine has changed significantly, often lacking motivation to have a bath, and frequently cancelling plans as a result. She states that her lack of attention to her oral hygiene has led to the extraction of three teeth (although there is no evidence to confirm this from her dentist in the bundle). She then gives a number of specific examples, from 20 April to 26 September 2024, including misplacing personal items, oversleeping, and having little appetite.

41. The claimant goes on to state that *'The progress I have made through intensive therapy is the only reason I was able to continue working at all.'* She describes supportive telephone calls encouraging her to take deep breaths, remain calm, and focus on positive coping strategies in order to be able to go to work at The Bungalow. In oral evidence, the claimant again referred to grounding techniques a number of times, stating that by using these she was able to continue working when she would not otherwise have been able to. However, this seems at odds with the chronology above, as the claimant did not commence a period of therapy until February 2025.

42. A particular feature of this case was the existence of two versions of both an equality and diversity monitoring form and a medical questionnaire, all four documents being said to have been completed in August 2023. The copies disclosed by the claimant are at **648-654** and the respondent's versions are at **656-663.**

43. The differences are highlighted in Ms Bosher's statement at paragraph 14 (**SB121-22**). Of note, in the claimant's copy of the medical questionnaire she ticked '*yes*' to the question '*do you have any…disability*', and included narrative referring to '*ongoing anxiety and emotional distress due to persistent difficulties and unfair treatment in the workplace*.' On the respondent's version she has simply ticked '*no*'. In the claimant's version in response to '*mental health problems*' she has stated '*I had no history of mental health problems prior to experiencing workplace issues at The Bungalow which began affecting my wellbeing*'. On the respondent's version she has ticked '*no*.' Conversely, on the respondent's version in response to various questions she has described physical issues including back pain, varicose veins, and Covid, none of which are mentioned on her own version.

44. On the equality and diversity questionnaire, again in respect of disability the claimant has ticked '*no*' on the respondent's version and '*yes*' on her version. In her version she goes on to state '*my anxiety and stress that is work related*'. She has also provided different answers in relation to questions about flexible working / job share and caring responsibilities.

45. In her witness statement, the claimant states that she completed these forms on 8 August 2023 (para 1.8). She stated that these were provided to her by Karon Bosher, *'in connection with a deed of contract dated 27 July 2023.'* She stated that during supervision on 24 August 2023, deputy manager 'Vicky C' gave her further health forms *'dated 10 August 2023 to complete by 28 August 2023.'* She stated that as she had just finished a night shift, she subsequently finished the forms *'with Manager Karon Bosher on 27 August 2023, who signed them as a witness.'*

46. Ms Bosher completely denies this version of events in her statement at **SB118-125.** Ms Bosher states that she had never seen the version of the documents produced by the claimant prior to disclosure in these proceedings. Ms Bosher states that the claimant had staff supervision with Vickie Clasper on 24 August 2023 and this was when the documents were handed to the claimant to be completed. These were completed by the

claimant herself and returned on 27th and 28th August 2023. She points out that this is consistent with the content of the supervision notes and the date for completion of the documents agreed at that meeting (**218,220**), and the claimant's personnel file (**655**). This statement was produced before the respondent had sight of the claimant's witness statement.

47. In response to cross-examination, the claimant stated she had been given two versions of these forms. She said she was given a set on 27 July 2023 by Ms Bosher, which she filled in on 8 August 2023, and then a further set on the 24 August 2023, which she filled in in the presence of Ms Bosher. When asked to explain why the contents of the two versions were different, she stated that things were more stable when she filled in the second version. In her words, by then *'the stress was a bit stable'.* The claimant denied that she had completed her version of the form at a later date for the purposes of bolstering this claim.

48. In oral evidence, Ms Bosher confirmed that she had not been present when the claimant completed the forms. She stated that 27 August 2023 was a Sunday and she was not at work, 28 August 2023 was a bank holiday and she again was not working. The claimant was then on annual leave for six days until 16 September 2023 (she did not work 5 days per week). Ms Bosher had gone on annual leave on 14 September 2023 and so she did not see the claimant from 25 August until 25 September 2023. She also denied giving the claimant a pack of forms on 27 July 2023. She described the process for providing the documents to employees and stated that two sets of forms would not have been provided. She also denied that the claimant's updated contract or these questionnaires needed to be signed by a witness.

49. I prefer the respondent's evidence regarding these documents. It is consistent with the contemporaneous notes of the review with the claimant's line manager, and with her personnel file. The claimant's explanation is not credible for a number of reasons. Firstly, it is not credible that her mental health situation would have changed within such a short a period of time, from 8 to 27 August. Secondly, there are no GP records around that time recording mental health issues. Also, the forms are not signed as witnessed by Ms Bosher, as asserted by the claimant, and I accept Ms Bosher's evidence that she did not see the claimant at work from 25 August to 25 September. Finally, the claimant's version of the forms has omitted important information such as her physical impairments, which suggests that her version was deliberately created at some later point to emphasise the impairments she relies on in these proceedings. I also find that the claimant is not a reliable narrator, because in her statement she refers to only being able to go into work at The Bungalow because of counselling, but this started after she had stopped attending there.

50. At the time to which these proceedings relate, the claimant also had another job as a carer with another employer. There is a dispute around the extent to which the respondent was aware of this, and that is a matter for any final hearing.

51. In cross-examination, the claimant described her other job, as follows: From 2017 to date, she has cared for a young lady. She was caring for this young lady in September 2024. Throughout, including in September 2024 and to date, the work involved living in with the young lady 24 hours a day alternate weeks, for one week, Monday to Sunday. She has complex needs and receives a 24-hour care package, and another provider provides personal care for her. The claimant provides companionship. The claimant makes sure she is safe, and sometimes supports with personal care, such as washing and bathing, if necessary. She mostly is able to dress and undress herself, but the claimant supports with some things e.g. shoes and straps. The claimant prepares meals for her, supports her with cleaning, does laundry for her, and takes her shopping. The young lady largely takes her own medication but the claimant will prompt sometimes, and records the medication taken. The claimant takes her out to social activities and whilst out will monitor her wellbeing, observe her mood and general health, and complete care notes. The claimant communicates with the young lady's family. The claimant chats to her and organizes activities for her. There are four days during the week when the claimant is not caring for her constantly, as she attends a day centre two days and the more medical care supplier provides care two days per week. The claimant therefore has a break on those two days although she is still staying at the young lady's home so she will be there in the morning and evening and overnight.

52. The claimant is keen to point out that this job is a very different environment from her employment with the respondent. She states that it is a supportive calm environment and it supports her mental health difficulties (witness statement paragraph 4.4.2.). At the hearing, she emphasised that remaining in work was important for her own mental health.

**Relevant law**

53. Section 6(1) EqA 2010 provides:

*'(1) 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.'*

54. Schedule 1, paragraph 2 EqA 2010 provides:

*'(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.'*

55. Schedule 1, Paragraph 5(1) EqA 2010 provides (the 'deduced effect'):

*'(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.'*

56. The statutory guidance, *'Disability: Equality Act 2010 – Guidance on matters to be taken into account in determining questions relating to the definition of disability'* ('the Guidance'), at para B9 states (emphasis in original) :

*'Account should also be taken of where a person avoids doing things which, for example, cause pain, fatigue or substantial social embarrassment, or avoids doing things because of a loss of energy and motivation. It would* ***not*** *be reasonable to conclude that a person who employed an avoidance strategy was not a disabled person. In determining a question as to whether a person meets the definition of disability* ***it is important to consider the things that a person cannot do, or can only do with difficulty****.'*

57. In *Goodwin v Patent Office* [1999] ICR 302 (decided under the Disability Discrimination Act 1995 but still applicable), the EAT highlighted:

*'What the Act of 1995 is concerned with is an impairment on the person's ability to carry out activities. The fact that a person can carry out such activities does not mean that his ability to carry them out has not been impaired. Thus, for example, a person may be able to cook but only with the greatest difficulty. In order to constitute an adverse effect, it is not the doing of the acts which is the focus of attention but rather the ability to do (or not do) the acts. Experience shows that disabled persons often adjust their lives and circumstances to enable them to cope for themselves.[…] The focus of attention required by the Act of 1995 is on the things that the applicant either cannot do or can only do with difficulty, rather than on the things that the person can do.'*

58. In *J v DLA Piper* [2010] ICR 1052 (also decided under the preceding legislation), Underhill J set out the approach the Tribunal must take on determining the question of disability (para 40):

*'(1) It remains good practice in every case for a tribunal to state conclusions separately on the questions of impairment and of adverse effect (and, in the case of adverse effect, the questions of substantiality and long-term effect arising under it) as recommended in Goodwin v Patent Office [1999] ICR 302.*
*(2) However, in reaching those conclusions the tribunal should not proceed by rigid consecutive stages. Specifically, in cases where there may be a dispute about the existence of an impairment it will make sense, for the reasons given in para 38 above, to start by making findings about whether the claimant's ability to carry out normal day-to-day activities is adversely affected (on a long-term basis), and to consider the question of impairment in the light of those findings.'*

59. At paragraph 38, Underhill J stated:

*'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.'*

60. With particular reference to mental impairments where the underlying cause may be workplace-related he observed:

*'The first point concerns the legitimacy in principle of the kind of distinction made by the tribunal [at first instance], as summarised at para 33(3) above, 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 dare say that the value or validity of that distinction could be questioned at the level of deep theory; and even if it is accepted in principle the borderline between the two states of affairs is bound often to be very blurred in practice. But we are equally clear that it reflects a distinction which is routinely made by clinicians—it is implicit or explicit in the evidence of each of Dr Brener, Dr MacLeod and Dr Gill in this case—and which should in principle be recognised for the purposes of the Act. 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 at para 40(2) above, 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.'*

61. The relevant time at which to assess the disability is the date of the alleged discriminatory act (*Cruikshank v VAW Motorcast Ltd* [2002] ICR 729). The

issue of how long an impairment is likely to last should be determined as at the date of the discriminatory act, not at the hearing (*McDougall v Richmond Adult Community College* [2008] ICR 431). A Tribunal should not have regard to subsequent events when determining this issue, and should consider the evidence which was available as at the relevant time (*Singapore Airlines Ltd v Casad-Guijarro* EAT 0386/13).

62. The Guidance states, at para 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).'*

**Conclusions**

63. Dealing with each of the elements of the test, and their interaction with each other, as set out above:

**Substantial adverse effect**

64. The claimant's statement and the letter from her solicitor set out some substantial impacts of her mental health difficulties. It is not clear from the statements what time period is being referred to in respect of each of the effects. There are some specific dates given in her witness statement. However, the examples on these dates are of relatively limited impact, for example forgetting items, and are sporadic occasions.

65. I place limited weight on these two documents. Firstly, because they contain the claimant's assertions, with limited support from medical records (see below). Secondly, the claimant's credibility is affected by my conclusions regarding the alleged 8 August 2023 documents. Finally, the claimant's statement in particular was written such a long time after the relevant date (20 July 2026) that there is a real risk that her recollection of her experience nearly two years earlier may not be accurate, and may be conflated with her feelings after the event. This is important because I must disregard anything which happened after the alleged discriminatory act.

66. It is apparent from the claimant's GP records that she has consulted her GP a number of times over the years regarding mental health difficulties linked to her work. However, the information recorded therein about the impact of this on her day-to-day life is limited. The notes primarily briefly note that the claimant is stressed and/or anxious as a result of difficulties at work. There is nothing recorded between July 2016 and 27 February 2024. I also note that although the claimant was provided with a fit note in September 2024, she did not provide it to the respondent or take sick leave at that point in time, suggesting that the impact on her day-to-day life at that point was perhaps not significant.

67. I note that on 14 March 2024, the NHS talking therapies service recorded that the claimant reported moderate symptoms of depression and severe symptoms of anxiety. This is likely to be an indicator that she was suffering an impact on her day-to-day life. However, this observation is of limited assistance in isolation.

68. It is significant, in my finding, that the claimant was able to continue with her other job throughout this period of time. I remind myself, as set out above, that I must focus on what the claimant cannot do rather than what she can do. I also accept the claimant's submissions that continuing to work is important and I acknowledge that this job may well have been a very different environment for her than her perception of the atmosphere at the respondent.

69. However, in circumstances where available detailed and credible evidence of what the claimant could not do in September 2024 is limited, the fact that she was able to continue with this employment is useful in helping me to assess what she could not do at the time. In contrast to the assertions made in her statements, she was able to focus sufficiently to be responsible for a disabled young lady with complex needs for a full week at a time, 24 hours per day. This included recording medication, keeping care records, planning activities and taking her out into the community. She was also able to carry out a large number of activities of daily living for this lady, including cooking, cleaning, and supporting with personal care. The fact that she undertook these type of tasks is particularly useful in helping me to assess whether the claimant was not able to do these things for herself.

70. It is clear that the impact on the claimant's ability to carry out tasks, and her feelings of anxiety, were very specifically linked to this job. I am not satisfied that they were generalised into the rest of the claimant's life, as of 30 September 2024. The effects may have escalated since (and I note that in particular that in July 2025 a referral was agreed because the claimant was showing symptoms of PTSD), but I must confine my decision to the impact in September 2024. I am not satisfied that at that point in time there was a substantial adverse effect on the claimant's day to day life.

**The 'deduced effect'**

71. As set out above, I must disregard the effect of any treatment, such as medication and/or therapy.

72. The claimant was not taking any medication. Sertraline was trialled but she did not continue taking it. In terms of therapy, none was actually undertaken in 2012. There was then no further talking therapy support until she was referred in February 2024. However this treatment did not start until 2025, after the events to which this claim relates. Therefore as of 30 September 2024 there was no treatment the effect of which I ought to disregard.

**Long-term adverse effect**

73. As set out above, I am not satisfied that there was a significant adverse effect on the claimant's day to day life as of 30 September 2024. However,

if I am wrong about that and the effect was substantial, I am also satisfied that at that point in time, the effect had not lasted 12 months and was not likely to last 12 months or to recur. In 2012, 2013, and 2016 when stress at work was reported to the claimant's GP, the effect was clearly minimal as no steps were taken. There is an escalation in the effects reported in February 2024, when the claimant was prescribed a trial of sertraline. However, she continued to work two jobs from then until 30 September 2024. There was an escalation in symptoms after that date, as reported in Gareth Walton's letter. There is no medical evidence that on 30 September 2024 any symptoms were likely to last at least 12 months. Therefore I am satisfied that any adverse effect was not long-term as of 30 September 2024.

**Impairment**

74. There is no evidence of clinical depression anywhere within the claimant's records. Her GP has not provided a diagnosis in these terms, or in fact referred to depression anywhere in the records. The height of the evidence is the recording that on 14 March 2024 she reported moderate symptoms of depression. This is not the same. She reported severe symptoms of depression on 2 October 2025, but this post-dates the relevant time.

75. There is no mention of PTSD in the claimant's records until 2025. She reported symptoms of it during a course of therapy between February to July 2025 and was referred for treatment *'for PTSD symptoms'* on 10 September 2025. Again, there is no clinical diagnosis and the GP records do not mention PTSD. The referral post-dates the relevant time.

76. Also of note is that the claimant's own statement and solicitor's letter do not describe specifically the impacts which are said to be due to clinical depression and/or PTSD, but focus on anxiety as a result of the respondent's alleged actions.

77. There is reference throughout the GP records to symptoms which, although various terms are used, can essentially be characterized as *'work-related anxiety'.* It is clear from every entry which refers to anxiety that it is related to difficulties in the workplace. The claimant herself describes a lot of the effects as being the consequence of the respondent's actions. There are some fit notes which refer to *'anxiety disorder'* but the term is used inconsistently and there is no diagnosis of an underlying impairment

78. I am satisfied and find that the claimant did not have a mental impairment, specifically clinical depression, PTSD and/or anxiety disorder at the relevant time. The medical records clearly set out a reaction to workplace stressors at the time and do not make reference to any underlying impairment. As set out above, I am satisfied that any impact on the claimant is specifically related to this workplace. Taking those factors into account, I am satisfied and find that in this case the claimant suffered an adverse reaction to life events. I do not infer from the evidence that there was an impairment.

## Conclusion

79. Because the effect is so specifically related to this workplace, I do not consider the claimant had a mental impairment as asserted. Also I am not satisfied that on 30 September 2024 there was a substantial adverse effect on the claimant's day to day life, because the effects were so specifically related to this job, and the claimant's evidence carries limited weight. Finally, by 30 September 2024 any adverse effect had not lasted for 12 months and there is insufficient evidence to conclude that at that stage it was likely to last more than 12 months, or likely to recur.

80. The claimant was not disabled and therefore the complaint of failure to make reasonable adjustments is dismissed.

81. The claimant's other claims will proceed to a final hearing as set out in separate directions.

**Approved by:**
**Employment Judge Armstrong**
**Dated: 5 August 2026**

**Notes**

All judgments (apart from judgments under Rule 51) and any written full reasons for judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimant(s) and respondent(s).

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