



# EMPLOYMENT TRIBUNALS

**Claimant** Mr. W Nowak  
**Respondent** Aarti Popat (1)  
Leonard Cheshire Disability (2)  
Paul Smedley (3)

**Heard at:** Nottingham Tribunal  
**On:** 23 May 2023

**Before:** Employment Judge N Wilson

## Appearances:

**For the claimant:** Dr J Kerr (counsel)

**For the respondent:** Mr. P Sands (counsel)

## RESERVED JUDGMENT

1. The claimant has not established that he was suffering with a disability within the meaning of s.6 of the Equality Act 2010 [EQA] and his complaint of disability discrimination is therefore dismissed.

## REASONS

### Background

1. The claimant pursues a claim for unfair dismissal and direct disability discrimination.
2. He was employed with the respondent [a care home] as a Physiotherapist from 27 April 2009 until 21 December 2021 when he was dismissed with notice paid in lieu. He was employed in the respondent's Newlands House Care Home.

3. The claim is essentially about the claimant's refusal to be vaccinated against COVID 19 following the introduction of the Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021 ("the regulations"). These regulations required staff working in care homes in England to be vaccinated against COVID-19 (including both doses of the vaccine) unless they had a medical exemption. The second respondent wrote to its employees on 11 August 2021 advising of these regulations and subsequently invited them to individual meetings to discuss each person's situation in relation to the vaccine or medical exemption. The second respondent also advised that it would be unlawful to permit unvaccinated or non-exempt employees to enter the premises after 11 November 2022. Employees were also told if they were unable to prove vaccination or exemption, they would be invited to a further meeting to discuss employment options including redeployment and dismissal.
4. The respondent's position is the claimant refused to have the vaccination and he did not have a medical exemption. He later sent a 'letter certificate' drafted by this trade union and sought to rely on this as his medical exemption certificate. The respondent rejected this certificate. The respondent gave the claimant a further opportunity to provide a medical exemption certificate as requested following which on 12 October 2021 the claimant went on sickness leave citing anxiety.
5. The claimant states the respondent disregarded his health concerns about the vaccine and takes issue with the government exemption process. The claimant also cites refusal by the second respondent to accept his self-declared medical exemptions; referring to this being discrimination on the grounds of disability.
6. At a previous preliminary hearing the claimant has confirmed for the Tribunal the disability he wishes to rely on is the mental impairment of anxiety.
7. The claimant has also previously made an application to amend his claim to pursue a complaint of indirect discrimination on the grounds of religious belief and for harassment. That application was dismissed.
8. Today's hearing has therefore been listed to determine the issue of disability as a preliminary issue. The respondent does not concede disability.
9. I have before me a 151-page bundle plus evidence from the respondent which the claimant does not object to being admitted in evidence. The late evidence from the respondent is the Occupational Health ('OH') report of Infinity OH instructed by the respondent to carry out an assessment of the claimant. The date of that assessment was 1 December 2021. In light of the fact the claimant has previously seen this and there are no objections to it being relied upon and in the interests of justice I admitted the report in evidence.

10. Dr Kerr also brought to my attention that no impact statement has been filed or served by the claimant. We discussed the terms of the Order of EJ Butler dated 13 December 2023 and notwithstanding counsel's arguments that the order is not specific regarding an impact statement, it is clear the order asked the parties to exchange witness statements they may want to rely upon and knowing the issue of disability was to be determined, given the claimant was also legally represented I consider it obvious that witness statements setting out the claimant's impairments and the day-to-day impact of any disability would be necessary for today's hearing. Whilst I note English is not the claimant's first language and there may have been a misunderstanding of what was required the claimant is legally represented and he appears to have a good understanding of English such that he is able to fully participate and give oral evidence today without the need for any interpreter.
11. There is, however, support information from the claimant at pages 53 and 54 of the bundle. I asked Mr Sands for the respondent's position in relation to the lack of an impact statement and no witness statement before us today. Mr Sands stated he had anticipated that the support information as set out at pages 53 and 54 of the bundle was going to be used by the claimant to establish disability and he is therefore happy to rely on that. However, he objects to any new information being relied upon to establish disability, which is not so contained within the support statement.
12. Given that Mr Sands accepts the claimant has set out the information he intends to rely upon to establish disability within the bundle [pages 53 and 54] and on the basis that the claimant is here to give oral evidence I consider it is possible for the parties to have a fair hearing today in relation to the issue of disability. I therefore agreed for the hearing to proceed today based on the support information at pages 53 and 54 of the bundle being used by the claimant as his impact statement/witness statement. I stated that no new matters were to be raised by the claimant that are not contained within that support information as set out at pages 53 and 54 of the bundle. I decided if any new matters were raised in evidence, I would deal with them if they arose ensuring that both parties had a fair opportunity to address any new matters.
13. The claimant gave sworn evidence and he made some corrections in relation to the contents of his support statement. The claimant stated the alleged discrimination complained of is referred to in the support information as occurring during 2020 and December 2021. The date of onset of disability is 19th of August 2014 [page 122 of the bundle]. The claimant refers to 'stress/anxiety since 2016' [page 54] but the claimant wants to amend this date to August 2014. The claimant clarified he was off work for three months in 2016. But that is in addition to the period in 2014.

## Legal Framework

### 14. Statutory definition

S6 Equality Act 2010

- (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**...
- (2) A reference to a disabled person is a reference to a person who has a disability.
- (3) In relation to the protected characteristic of disability –
  - a. A reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;
  - b. A reference to persons who share a protected characteristic is a reference to persons who have the same disability
- (4) This Act ...applies in relation to a person who has had a disability as it applies in relation to a person who has the disability; accordingly ...
  - a. a reference (however expressed) to a person who has a disability includes a reference to a person who has had the disability...
  - b. a reference (however expressed) to a person who does not have a disability includes a reference to a person who has not had the disability

15. Section 212 Equality Act 2010 defines “substantial” as being more than minor or trivial.

16. Paragraph 5 of Schedule 1 to the Equality Act 2010:

- (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 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.

### Findings of Fact

17. 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?
18. I find that whilst the claimant gave no explanation in his support information at page 53 and page 54 of the bundle as to why he was suffering with work related stress since 2016 (*'since 2016 where my stress/ anxiety began'*) there are entries within his GP records starting on 19 August 2014 where he attended his GP, referring to *under a lot of stress at the moment. Feels unsupported by management team against dangerous and aggressive patient'*. This results in a diagnosis of stress at work and a sick note being issued.
19. He attended his GP again on 26 August 2014 referencing *stress, lots of problems at work, things no better, seeing CAB re options for work including litigation*. A further sick note was issued for work stress. On 8 September 2014 he attended his GP again where it is recorded that he *'feels calmer for being removed from working environment'*.
20. On 23 September 2014 the claimant is issued with a further sick note without a face-to-face review referencing stress at work. On 10 October 2014 he is issued with another sick note without a face-to-face review referencing work related stress. On 4 November 2014, he is issued with another sick note and his records note that *he hopes to return to work on Monday. Things at work not really sorted yet. I have advised employer to seek independent occupational health assessment*.
21. There is thereafter no further attendance by the claimant on his GP in relation to work related problems stress or anxiety until an attendance on 10 March 2016.
22. Based on the claimant's medical records and on the claimant 's own evidence in cross examination I find the claimant had three months off from work in 2014 which arose from interactions with a patient at work who the claimant describes as dangerous and aggressive. This patient made various allegations against the claimant for example accusing the claimant of breaking her ankle. I find based on the evidence given by the claimant that these allegations took their toll on him as he had to have daily contact with this patient in his role and in his own words; he could not cope with it, and this resulted in him being signed off work between 19 August 2014 and 10 November 2014 for stress and anxiety.
23. I find the claimant also accepted this was an out of the ordinary patient.

24. I find based on the claim's own evidence and his medical records, the claimant was given no prescription of any drug by his GP for any stress or anxiety for the period of his absence from work during 2014.
25. There is no evidence before me within the bundle and I take note of the claimant's oral evidence in particular in this regard, as to any continuing symptoms of stress and anxiety which were impacting his normal day to day activities substantially after 10 November 2014 and before 10 March 2016 when he next attended his GP. Therefore, I find the claimant was not suffering with anxiety such that it constituted a disability within the meaning of the Equality Act 2010 between 10 November 2014 and the date of his next attendance on his GP on 10 March 2016.
26. Whilst I accept the claimant's evidence as to the effect and the impact the stress and anxiety had on him during 2014, I find the impact was limited to a three-month period between 19 August 2014 and 10 November 2014 in relation to the specific incidents relating to the patient the claimant refers to as being dangerous and aggressive and the allegations that she had made against him. Understandably this would have resulted in a period of stress for the claimant, and it is evident from his GP records and his evidence that he suffered a stressful period consequently from August 2014 until November 2014. I also find during this time there was a substantial day to day impact of his stress and anxiety on his ability to do normal daily activities. I base this on his evidence that he would lie on the sofa all day, drive his car on the wrong side of road as well as him not being able to work during this period. However, I do not find there was a long-term substantial adverse effect to satisfy the criteria of s.6 of the EQA as the anxiety and stress he suffered with in response to the issues he had with this patient were limited to a 3 month period during 2014.
27. Whilst the claimant was asked about whether these symptoms continued after his return to work after 10 November 2014 he could not be clear in evidence as to whether the daily symptoms he described he was suffering with during the period he was signed off sick [between August 2014 and November 2014] continued when he was back at work. I find the claimant did not give any real evidence as to the normal day to day activities that were adversely affected by any anxiety or stress once he returned to work. In fact he stated he was not 100% sure for example if his inability to get out of bed was just when he was off work [as opposed to when he returned to work]. He also stated in evidence that his symptoms were 'not as strong' and he could still deal with patients when he returned to work.
28. Whilst the claimant stated in evidence that he still had problems with his memory and suffered with tension all the time I take note that he did not give any real evidence of how this affected him with day-to-day activities and neither are any memory issues referred to in any of his GP attendances/notes. I also take note that no attendance is made upon his GP between November 2014 and 10th March 2016 in relation to stress and anxiety when notably there is mention of '*return of problems at work*' and '*getting stressed*'. Given his previous attendances upon his GP for support when he says he suffered with

daily stress and work issues I find it more likely than not that had he been suffering with symptoms relating to anxiety or stress between November 2014 and 10th March 2016 to the extent that they were having an impact on his normal day to day activities, he would have returned to his GP. On this basis taking account of the claimant's lack of own evidence as to the day-to-day activities that were being impacted by any stress and anxiety following his return to work in in 2014 I find the claimant was not suffering with any disability [mental impairment] which had a substantial adverse effect on his ability to carry out normal day to day activities after his return to work in 2014. I find the mental impairment the claimant suffered with in 2014 did not last at least 12 months and therefore the effects were not long term. I find the claimant suffered with stress and anxiety at work between August 2014 and November 2014 based on the claimant's own witness evidence and his medical records.

29. Whilst the claimant's case is that there was a disability which continued from August 2014 until the termination of his employment, and I have found there was not I note there is a subsequent period of stress at work commencing in 2016 and I will therefore turn to whether the claimant had a disability as defined in section 6 of the Equality Act 2010 from 2016.

30. I find the claimant attended his GP on 10 March 2016 referencing a return of problems at work and that he was having problems with the same patient who was causing issues in 2014. At this point the patient had made a complaint to the police about the claimant and his GP issued a further sick note. I find based on the claimant's own evidence and what is recorded within his GP records that on this occasion he was prescribed medication for stress and anxiety. I find based on the claimant's evidence and the supporting medical records that there was only one incident of stress and anxiety reported to his GP in 2016 resulting in the prescription of medication. There are no more attendances by the claimant upon his GP thereafter where stress, anxiety or any mental impairment is referred to until September 2021 which is the first attendance in relation to the claimant being under stress due to the COVID-19 vaccinations.

31. Again, I heard little or no evidence from the claimant as to the ongoing effects of any mental impairment in the form of anxiety or stress between March 2016 and the attendance relating to the COVID-19 vaccination to his GP in September 2021. I therefore find that the attendance in relation to stress and anxiety in March 2016 was an isolated incident relating to a specific issue with the same patient that he had encountered difficulties with in 2014. In coming to this finding, I also take note of the claimant's own support information at page 53 of the bundle where he states there was '*then a period of normality until we came into lockdown and the issue with management trying to coerce me into having a mandate vaccine due to their policies. I then felt pressure into adhering to they demand having no choice but to take something against my will and religious beliefs.*' Therefore, I find whilst it clearly had an effect on the claimant, the episode of stress and anxiety in March 2016 was also an isolated incident. The claimant has not established that it had a substantial adverse effect on his ability to carry out normal day-to-day activities beyond March 2016. The

claimant also stated in evidence that the patient who was causing issues was eventually removed from the care home sometime between 2016 and 2018 and he stated the '*stress started to come back to me*' in September 2021 when his employer '*pressured me to wear a mask*' and there were first discussions of having to have jabs in the future. This again supports my finding that the stress and anxiety referred to in 2016 was again limited. Whilst the claimant was prescribed medication during this period his evidence was this was confined to a 4-week prescription, and he did not wish to continue to take medication after this.

32. Whilst Dr Kerr in closing submissions referred to a 3 month period of absence from work following the March 2016 consultation with his GP I can see no record of any MED3 (sick note) having been issued to the claimant on 10 March 2016 [page 123]; there being a record on this date by his GP that the claimant wants a note of the problems at work in case he needs to take further action. In any event I find even if a 3-month period of absence from work followed the 10 March 2016 attendance on his GP for anxiety the claimant gave little or no evidence as to the adverse effects on his day-to-day normal activities arising from this mental impairment for March 2016 let alone the 3 month period he was signed off sick beyond March 2016 [or indeed any longer period].
33. The next relevant period is in relation to the COVID-19 vaccinations. The claimant's support information at page 54 of the bundle refers to his stress increasing since June 2021. From 15 October 2021 he was off sick due to work related stress until the termination of his employment on 21st December 2021. As referred to at paragraph 31 of this decision the claimant in evidence stated his '*stress started to come back to me*' in September 2021 when his employer wanted him to wear a mask and there were indications of the requirement to have the vaccination.
34. I find based on the claimant's evidence, that his stress and anxiety started from September 2021 and related specifically to the requirement for him to have the vaccine. I find his support information at page 53 and 54 of the bundle insofar as it references pressure being placed on him to have a vaccine '*against my will and religious beliefs*' is contradicted by his oral evidence (and indeed his medical records) that he has had other vaccines previously. I find therefore his refusal to have the vaccine was not predicated on religious belief but based on his own evidence that he considered it was breaching his human rights and that he was not prepared to be a Guinea pig for treatment.
35. The claimant accepted in evidence that when asking for a medical exemption from his GP on 6 September 2021 his GP recorded that he had stated he wanted this for a '*million different reasons*' and I find based on the claimant's response to questioning that he was not aware that anxiety could be seen as a disability. However, he also accepted in evidence he was not aware of what the exemptions were for the vaccine until the end of 2021 a few months after this attendance and I find at the time of requesting a medical exemption he did not mention that he was suffering with any anxiety but did say he was under a lot of stress due to his employer wanting him to have the COVID 19 vaccination.



His GP did not issue him with any medical exemption certificate and instead advised him to speak to his OH department at work.

36. The claimant remained off from work from 15 October 2021 on a series of sick notes until his dismissal on 21 December 2021. Following this the next GP entry where stress and anxiety is referred to is on 25 July 2022 some 7 months following his dismissal. His GP records at this time record that stress triggers his anxiety. In a letter from his GP surgery dated 8 August 2022 (page 135) I take note of the fact his GP states he was diagnosed with anxiety on 15 October 2021. His medical record entries between 6 September 2021 until December 2021 refer to both stress and a diagnosis of anxiety. However, I find again beyond this period and indeed following the termination of his employment there is no further evidence in his medical records of continuing anxiety or stress until his anxiety appears to be triggered again in or around July 2022.
37. Again I heard little or no evidence as to the impact of any mental impairment on the claimant's normal day to day activities beyond the termination of his employment. Indeed the anxiety and stress the claimant referred to between September 2021 and December 2021 appears to me to specifically relate to the stress he felt under to have a vaccination which he did not want to have and the concurrent stress of his job therefore being at risk given in line with government guidance issued at the time he would no longer be able to work in a care home setting without being vaccinated. It is of course entirely understandable this would place the claimant under stress and would have triggered his anxiety. However I find that from 6 September 2021 and the termination of his employment in December 2021 the anxiety he suffered with during that period was a response to a specific situation; namely his feelings about not wanting to have a vaccination which was being made mandatory for his job. His feeling under stress and experiencing anxiety in response to this was an entirely reasonable response but I heard no real evidence as to the day-to-day normal activities which were substantially affected during this period and even less evidence as to how his mental impairment continued to impact him with normal day to day activities beyond the termination of his employment. Whilst his support information (page 54) refers to the claimant no longer being able to perform daily activities I heard no real evidence from the claimant as to how his ability to carry out day to day activities was impaired during this period. He gave some evidence about this for the period he was affected in 2014 but for the period that he was signed off from September 2021 the claimant gave no oral evidence (and nor is this amplified in his support information at page 53 and page 54) as to the day-to-day activities that were affected.
38. I find the claimant was unclear in his evidence regarding his levels of stress increasing in July 2022. He indicated this was due to the covid vaccine and more formal regulations but his employment with the respondent had already ended at this point. Based on his evidence that around this time he was applying for other jobs which he accepted was stressful I find this was the likely trigger for any increased levels of anxiety in or around July 2022 resulting in him seeing his GP again.

39. He accepted he was prescribed medication in or around 25 July 2022 but his GP letter at page 135 states he was not taking any medication for his anxiety and was managing his anxiety through walking and swimming. The claimant sought to give contradictory oral evidence to that which is recorded in the letter from his GP and stated he was taking the medication but then he stated he could not remember what he had said to his GP. I find it likely his GP surgery recorded accurately what the claimant advised them of as to the whether he was or was not taking the medication prescribed. In support of this I also take note that he advised his psychological wellbeing practitioner [page 147] during an assessment on 13 September 2022 that he was not using medication.
40. It is clear from the claimant's own evidence that following the termination of his employment after 21 December 2021 he was able to engage in normal day to activities such as applying for jobs, going through an interview process, signing up with an agency to get temporary work, going swimming and walking and taking an exam to become a lorry driver. I therefore do not find that the claimant was suffering with a mental impairment within the meaning of s.6 of the EQA 2010 during 2022 until his attendance on his GP on 25 July 2022 when he attended his GP referring to stress triggering his anxiety. During this attendance it is also noted he was drinking 15-20 bottles of beer a week.
41. I therefore find the period of stress and anxiety the claimant had from September 2021 until his employment was terminated on 21 December 2021 related specifically to the requirements which he knew were coming into force to wear a mask coupled with him not wanting to have a vaccination which he knew was also going to be mandatory for his job unless he had a medical exemption.
42. Finally, I find the claimant had the opportunity to discuss his anxiety and the stress he was under and how he was impacted by it when he was assessed by OH on 1 December 2021. This report is admitted in evidence in addition to the bundle. The claimant admitted in evidence he did not mention to the OH doctor any issues with his memory or how his anxiety was impacting him on a day-to-day basis because he stated he did not trust the doctor. The doctor does however confirm the claimant at that time was not fit for work because of significant stress with components of anxiety and mild depression. He could not say whether this related to a severe work-related stress or a definable medical disorder. I find that at the time of this OH assessment the claimant was suffering with the effects of anxiety and stress relating specifically to the work-related requirement to have the Covid 19 vaccination based on his own evidence as to why he was under stress during this period.
43. Dr Kerr seeks to persuade me that whilst the claimant visited his GP only 3 times and did not take any medication (although prescribed on one occasion) these were not 3 isolated individual attendances relating to isolated incidents but they were lengthy periods of time the claimant was off work for from 19 August 2014 until 10 November 2014, again from 10 March 2016 for 3 months and finally from 6 September 2021 until 14 October 2021. However, I note the

period off work following the attendance on 6 September 2021 was from 15 October 2021 until 4 January 2022 (pages 127-129)

44. Whilst I accept that the claimant gave evidence regarding using alternative therapies like acupuncture and swimming and walking, as I have referred to earlier in this decision, the claimant did not give clear evidence about how his symptoms outside of the periods he was signed off sick for affected him with normal day to day activities. Nor was there evidence before me of how there was an adverse long term effect on his ability to carry out his normal day to day activities as opposed to stress and/or anxiety relating to the specific incidents relating to the patient he had difficulties with in 2014 and 2016 and the issues arising from the mandatory introduction of vaccines for those working in care homes in 2021. The claimant cannot seek to rely on the earlier effects and incidents of anxiety arising from his interactions with a difficult patient in 2014, then again in 2016 to argue that he had a mental impairment which is substantial and long term to evidence that he was disabled within the meaning of s.6 of The Equality Act 2010 at the time of the alleged discriminatory act in 2021.
45. There is of course a valid distinction to be drawn between a normal reaction to an adverse and tragic life event and something that is more profound and develops into an impairment. In **Igweike v TSB Bank plc** UKEAT/0119/19/BA, the Tribunal was entitled to conclude that the Claimant's grief after the death of a parent was not an impairment at the material time despite the doctor's use of the word "depression". Mr. Sands seeks to persuade me the claimant's responses to the incidents in 2014, 2016 and 2021 were such normal reactions to an adverse life event. I find that whilst it was entirely an understandable response to difficult situations the claimant had encountered in 2014 and 2016 the claimant, based on the evidence, did develop a mental impairment at the time of these events. I do find at the times he was signed off sick and/or attended his GP in 2014 and 2016 the effects of the mental impairment were substantial in that had his anxiety not been having a substantial impact on his day-to-day activities at those times he would have been able to work. However, I do not find the claimant gave any real evidence to support that the mental impairments were having an adverse effect on his normal day to activities beyond the period of sickness absence in 2014 and the attendance on 10 March 2016 (and any 3 month sickness absence which followed his GP attendance in March 2016 albeit as referred to above I cannot find any record of a sick note being issued following this attendance). The claimant gave some evidence relating to the impact on his day-to-day activities following the incident with the patient in 2014 but he did not give any evidence as to the day-to-day activities affected once he was able to return to work. He also gave little or no evidence in relation to any alleged effects on his normal day to day activities in or around March 2016. Further he gave no evidence aside from not wishing to have the vaccination against his will as to the day-to-day activities effected by any mental impairment from September 2021. His evidence referred to being under extreme stress but there is nothing within his support statement and there

was nothing stated in oral evidence which supported an adverse impact on his day-to-day activities from September 2021. Even if I accept that as he was signed off work during this period (from October 2021 until December 2021) this in itself is indicative of an adverse impact on his day to day activities (and I am in some difficulty in making this finding for this period as unlike the period in 2014 where he gave evidence regarding the impact on him of his anxiety on day to day activities I am troubled by the fact that this period of inability to work appears to arise solely relating to his refusal to have the COVID 19 vaccination) I do not find that he was suffering with a mental impairment within the meaning of s.6 of the EQA 2010 after the termination of his employment on 21 December 2021. I find that again any mental impairment which the claimant states he began to experience in 2021 commenced in or around September 2021 (which he confirmed in evidence) when his employer in his own words '*pressured me to wear mask*'.

46. I find the claimant was no longer suffering with any mental impairments within the meaning of s.6 of the EQA after 21 December 2021 when his employment was terminated (and certainly by the time he was certified fit for work from early January 2022) based on both lack of evidence from the claimant, lack of attendance on his GP when historically he had sought assistance when his anxiety was effecting him and importantly in light of his evidence as to being able to apply for jobs, sign up with agencies and undergo training to become a lorry driver after his employment with the second respondent ended.

47. In **Goodwin v Patent Office [1999] I.C.R. 302**, Morison J (President), provided some guidance on the proper approach for the Tribunal to adopt when applying the provisions of the Disability Discrimination Act 1995. Morison J set out four questions to be answered by the Tribunal in order. This four-stage approach was approved more recently by the Court of Appeal in **Sullivan v Bury Street Capital Limited [2021] EWCA Civ 1694**, where Singh LJ listed the questions as:

- i. Was there an impairment? (the 'impairment condition');
- ii. What were its adverse effects [on normal day-to-day activities]? (the 'adverse effect condition');
- iii. Were they more than minor or trivial? (the 'substantial condition');
- iv. Was there a real possibility that they would continue for more than 12 months? (the 'long-term condition').

48. Singh LJ emphasized that these are questions for the Tribunal; although it may be assisted by medical evidence, it is not bound by any opinion expressed.

49. Mr. Sands refers me to **Herry v Dudley Metropolitan Borough Council (1) and Governing Body of Hillcrest School (2) [UK EAT 0101/16]** where the claimant was unable to establish disability. I have taken note of the decision and as stated above I have found that in 2014 during the 3-month period he was signed off work for the claimant did suffer the mental impairment of anxiety. I also found he did not establish the requisite substantial long term effect of this mental impairment certainly beyond the period of his 3 month sickness absence in 2014. I heard little or no evidence of the effects of his stress and anxiety on his ability to carry out normal day to day activities from September 2021 either and whilst taking note of the decision in **J v DLA Piper UK LLP [2010 WL 2131720]** I have found that during the periods he was signed off sick in 2014 and 2016 the claimant was suffering a mental impairment as opposed to his stress and anxiety being a reaction to life events. I have however also found the effects were not long term.
50. However, the same cannot categorically be said for the stress the claimant states he suffered from September 2021. There is a question mark as to whether the claimant's reaction to the mandatory measures being put in place in light of the COVID 19 pandemic and his strong views about the vaccination as was clear in his evidence today resulted in him becoming entrenched in his position without amounting to a mental impairment. I say this because of the little or no evidence I heard about the effect of any stress or anxiety from September 2021 (aside from him being signed off sick from work) on his normal day to day activities. The claimant largely gave evidence about the strong objections he had to the vaccination. This is also recorded in his GP entry on 6 September 2021. Considering this I find it highly likely that due to his views about the vaccination and his telling his GP he was under stress this resulted in the issuing of sick notes not necessarily because he was suffering a mental impairment but likely due to his strong reaction to the mandatory vaccination. I am therefore not persuaded he was suffering with a mental impairment from September 2021 during the period he was signed off from work as distinct from him suffering with stress as a result of his unhappiness about the mandatory vaccination.
51. In any event I find [even if he had been suffering with a mental impairment from September 2021 until December 2021 when his employment was terminated] he was no longer suffering with any mental impairment within the meaning of s.6 of the EQA after his employment was terminated in December 2021. I heard little or no evidence that any mental impairment was adversely affecting his normal day to day activities following the termination of his employment and I find the claimant did not therefore establish the requisite substantial long-term effect.
52. I therefore do not find that at the time of the alleged discriminatory act the claimant had been suffering with a disability [mental impairment] as defined in s.6 of the EQA which had a long-term adverse effect on his ability to carry out normal day-to-day activities.

53. As the claimant has failed to establish disability his claim for disability discrimination is dismissed and the claimant's surviving claim will be his claim for ordinary unfair dismissal.

**Public access to employment tribunal decisions**

All judgments and written reasons for the judgments (if provided) are published in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the parties in a case.

\_\_\_\_\_  
Employment Judge N Wilson

Date: 14 August 2023

JUDGMENT SENT TO THE PARTIES ON .

.....  
..16/08/2023.....  
FOR THE TRIBUNAL OFFICE