



EMPLOYMENT TRIBUNALS

Claimant: Ms S Begum

Respondent: (1) Slough Borough Council
(2) Mr M Jarrett

Heard at: Reading
Before: Employment Judge Shastri-Hurst

On: 7 February 2023

Representation

Claimant: in person
Respondent: Mr T Lester (counsel)

RESERVED JUDGMENT

1. The second respondent is removed from these proceedings, and all claims against him are dismissed.
2. The claimant was a disabled person under s6 of the Equality Act 2010 from 25 June 2020 through to 11 June 2021 (the date of the claimant's dismissal).

REASONS

Introduction

1. The claimant was employed by the first respondent from 20 November 2006. At the time of her dismissal, on 11 June 2021, the claimant held the role of Early Years Deputy Manager at Chaley Grove Children's Centre.
2. Early conciliation against the first respondent started on 16 August 2021 and ended on 1 September 2021. Early conciliation against the second respondent started on 8 September 2021 and ended on 9 September 2021. The claim form was presented on 15 September 2021.
3. The claimant brings claims of unfair dismissal under s98 of the Employment Rights Act 1996, and of discrimination arising from disability under s15 of the Equality Act 2010. The

issues are fairly narrow and have previously been set out by Employment Judge Brown on 6 October 2022. In short, the complaints are limited as follows:

- 3.1 Unfair dismissal – the claimant alleges that dismissal was outside the range of reasonable responses;
 - 3.2 Discrimination arising from disability – the unfavourable treatment alleged is (1) the instigation of the disciplinary process and (2) dismissal.
- 4 The claimant represented herself, and the respondents were represented by Mr Lester: I am grateful to them both for their assistance throughout this hearing. In determining the issues today, I had before me a bundle of 310 pages. I also heard evidence from the claimant, who was cross-examined by Mr Lester. The claimant had not provided a disability impact statement. Having heard submissions from both parties on this, and Mr Lester stopping short of applying for any form of sanction to be placed on the claimant for this failure, I took the claimant through some of the medical evidence and asked some questions before cross-examination. I also heard closing submissions from both parties, as well as having sight of Mr Lester’s skeleton argument.

Issues

- 5 This matter was listed for an open preliminary hearing before me in order to consider three issues:
- 5.1 Whether the claimant was disabled at the relevant time by way of her mental health condition;
 - 5.2 Whether the second respondent should be removed from these proceedings; and,
 - 5.3 Whether a deposit order should be made against the claimant’s claims.
- 6 The issue of a deposit order is dealt with in a separate document.

Removal of second respondent

- 7 At the preliminary hearing on 6 October 2022, Employment Judge Brown told the claimant that, at this hearing, she would need to be able to explain how her complaints of disability discrimination are pursued against the second respondent (see paragraph 12 of that Order).
- 8 Just to clarify this, it is only an employer that may be the respondent to an unfair dismissal claim. That is why the only claim to which the second respondent could be a respondent is the discrimination claim.
- 9 The Judge on 6 October 2022 stated that it would be for the Tribunal to determine:

“whether or not [the discrimination claim against the second respondent] can proceed having regard to the pleaded claim, any proper further and better particulars and/or application to amend, and having regard to the prospects of success”.

- 10 I have the power under r34 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (“the Rules”) to remove any party that is “apparently wrongly included”.
- 11 The claimant has not provided any adequate further and better particulars. I say this, noting that the claimant did provide further detail in response to an early request from the Tribunal - [58]. However, it is clear from Employment Judge Brown’s orders and case summary from 6 October 2022 that he did not consider that document to contain pleaded complaints, given the lack of specific dates. In any event, the Judge found that the allegations were very old, and had no reasonable prospect of success – see paragraph 11 of his Order.
- 12 The claimant has made no application to amend her claim. The claimant made numerous allegations today during the course of her evidence and submissions. The claimant stated today, and for the first time, that the second respondent caused her dismissal, and bullied anyone with mental health conditions. She asserted that the second respondent had too much influence over the disciplinary process, being in numerous of the disciplinary meetings. The claimant also stated that the decision maker was managed by the second respondent.
- 13 Although the claimant made these allegations (and more) against the second respondent in the hearing today, none of those allegations are claims currently before the Tribunal. It is the claim as it currently exists that I must consider.
- 14 I therefore go back to the claim form itself to see what the claimant originally said about the second respondent. The only mention of the second respondent is as follows:

“I then had to speak to the service lead and he made me feel very uncomfortable with comments he made about sickness previously, which is why I didn’t feel like discussing my sickness earlier with the workplace, as I was worried they would do this”.
- 15 There is nothing in the claim form that links the second respondent to the instigation of the disciplinary process, or the decision to dismiss. In fact, I note that the respondent says that the disciplinary officer who made the decision to dismiss the claimant was Johnny Kyriacou. There is no allegation before the Tribunal that the second respondent influenced that decision to dismiss.
- 16 Of relevance is also the fact that the first respondent is not seeking to run the statutory defence under s109 of the Employment Rights Act 1996. In other words, if it were to be found that the second respondent had acted unlawfully, the first respondent accepts that it would be vicariously liable for his actions. Therefore, if there was any unlawful act by the second respondent, the first respondent would pay any figure awarded to the claimant for that unlawful act. It is therefore not necessary for the second respondent to remain a party in order to ensure that the claimant has a route to recover any award made.

- 17 In order to make the decision as to whether the second respondent should be removed, I need to consider the prejudice to each side, and the balance of fairness.
- 18 If the second respondent remains a party, then he will be named on proceedings and any judgment. He will need to be involved in the litigation more so than if he were simply a witness for the first respondent, in a claim in which, currently, no allegation is made against him personally.
- 19 If the second respondent is removed as a party, the claimant loses nothing. The first respondent accepts that it is vicariously liable for the second respondent's actions, and, if the claimant were to succeed, the first respondent accepts that it would be responsible for paying to the claimant any award made. I therefore see no prejudice to the claimant in these circumstances, particularly where, on her current claim contained in the claim form, the second respondent does not appear to be an alleged perpetrator.
- 20 On balance, I consider that there is no good reason for the second respondent to remain a party. On the existing claim there is in fact no allegation against him. The claimant loses nothing by his removal.
- 21 I therefore order that the second respondent be removed from these proceedings. A judgment dismissing the claims against him will be issued.

Disability status

Issues

- 22 The issues to be determined regarding whether the claimant was at the relevant time a disabled person are set out below:
 - 22.1 Did the claimant have a mental impairment, namely mental health issues?
 - 22.2 Did that impairment have a substantial adverse effect on her ability to carry out day-to-day activities?
 - 22.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
 - 22.4 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?
 - 22.5 Were the effects of the impairment long-term? The Tribunal will decide:
 - 22.5.1 did they last at least 12 months, or were they likely to last at least 12 months?
 - 22.5.2 if not, were they likely to recur?

Law

- 23 The legal definition of “disability” is set out at section 6 of the **Equality Act 2010 (“EqA”)**, and is as follows:

“(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.”

- 24 In order therefore to determine whether a claimant has a disability, the Tribunal must ask itself four questions – Goodwin v Patent Office [1999] ICR 302:

24.1 Did the claimant have an impairment (mental or physical) at the material time;

24.2 Did the impairment affect his ability to carry out normal day-to-day activities;

24.3 Was the adverse effect substantial; and,

24.4 Was it long-term (had it lasted, or was it likely to last, at least 12 months)?

- 25 In order to assist with answering these questions, Tribunals have the benefit of two pieces of guidance, namely the “Equality Act 2010 Guidance on matters to be taken into account in determining questions relating to the definition of disability” (“the Guidance”) and Appendix 1 of the Code of Practice on Employment published by the Equality and Human Rights Commissions (“EHRC”) (“the Code of Practice”).

Impairment

- 26 The important issue to establish in relation to an impairment is the effect, rather than the cause. This is clear from the Guidance.

- 27 A distinction is to be drawn between a reaction to an adverse and tragic life event, and something that becomes an impairment. In Igweike v TSB Bank Plc [2020] IRLR 267, the Employment Appeal Tribunal (“EAT”) upheld the Tribunal’s decision that the claimant’s bereavement regarding the death of his father was not an impairment. The EAT held that:

“in some cases bereavement may lead to ordinary symptoms of grief that do not bespeak any impairments. In others, it may lead to something more profound which is, or develops into, an impairment over time”.

- 28 If, on the facts, this distinction proves a difficult line to draw, then it may be appropriate to consider the question of adverse effect first – J v DLA Piper UK LLP [2010] IRLR 936, [2010] ICR 1052.

- 29 The respondent in this case argues that, if the claimant has suffered anything, it has been an adverse reaction to a life event, which does not constitute an impairment.
- 30 For a claimant to succeed, the burden is on them to demonstrate that, on the balance of probabilities, they had an impairment at the relevant time.

Normal day-to-day activities

- 31 The Guidance contains a non-exhaustive list of activities that fall within the scope of “normal day-to-day activities” at paragraph D3, which states:

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

- 32 Domestic case-law has now confirmed that it is appropriate to consider the effect of an impairment on a claimant’s professional life (such as the ability to undertake examinations and assessments), following the case-law from Europe – Paterson v Commissioner of Police of the Metropolis [2007] IRLR 763 and Chacón Navas v Eurest Colectividades SA C-13.05, [2006] IRLR 706. In the case of Chief Constable of Norfolk v Coffey [2019] EWCA Civ 1061 Underhill LJ held that the phrase “working life” was preferable to “Professional life”.

Substantial adverse effect

- 33 Section 212(2) EqA sets out the meaning of “substantial” as “more than minor or trivial”. In determining whether the effects are substantial, the relevant test is what a person cannot do, as opposed to what they can do. It was held in **Paterson** that the relevant question to ask is:

“how the individual carries out the activity compared with how he would do it if not suffering the impairment. If that difference is more than the kind of difference one might expect taking a cross-section of the population, then the effects are substantial”.

- 34 In determining whether the adverse effect is substantial, the effect of any medication or treatment on that effect must be ignored – paragraph 5(1) Schedule 1 EqA.

Long-term

- 35 The definition of “long term” is found in section 2 of Schedule 1 to Part 1 of the EqA, which provides as follows:

“(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.”

36 In this context, “likely” means “could well happen” - SCA Packaging Ltd v Boyle [2009] UKHL 37. It does not mean “it is more probable than not that it will happen” - the Guidance paragraph C3.

37 The issue of whether effects are likely to last at least 12 months needs “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 take into account events that happened after the date of the alleged discrimination” – All Answers Ltd v W [2021 EWCA Civ 606], [2021] IRLR 612, para 26.

Findings of fact

Introduction

38 I make findings below only to the extent that they are relevant to the issue of disability. Any findings are made on the limited evidence I have heard and seen today, without the benefit of hearing and seeing all the evidence in the case that will be available at a final hearing. I therefore do not seek to bind any future tribunal by any findings of fact set out below.

39 The claimant was employed by the respondent from 20 November 2006. At the time of her dismissal, on 11 June 2021, the claimant held the role of Early Years Deputy Manager at Chaley Grove Children’s Centre.

40 The claimant says that she suffers from mental health conditions amounting to a disability, and has done since 2018. These conditions were exacerbated by the Covid-19 pandemic from Spring 2020. The claimant was not ready to inform her employer of her difficulties, and so informed them instead that her daughter was seriously ill, and that the claimant had to work from the hospital in which her daughter was staying. The claimant states that she was scared to disclose her mental health issues, as anyone who had such issues was bullied by the second respondent. She had been using her daughter’s health as a cover since 2018.

- 41 It is the respondent's case that, on 24 April 2021, a colleague met the claimant's husband, which led to a conversation in which the claimant's husband disclosed that the claimant was not at her daughter's bedside in Birmingham Children's Hospital, but was at home, and had been since November 2019. The claimant disputes that this is how the conversation went. It is not for me at this stage of proceedings to make findings about this conversation.
- 42 There came a stage in May 2020 when the claimant was signed off as not fit to work, due to "mixed anxiety and depressive disorder".
- 43 On 29 May 2020, the respondent wrote to the claimant setting out what conduct she was alleged to have committed. This was the commencement of a disciplinary process against the claimant on the basis of a dishonesty matter, based on her deception around her daughter's health.
- 44 The disciplinary investigation concluded on 26 March 2021, and the disciplinary hearing took place over two days, on 4 and 20 May 2021. On 11 June 2021, the claimant was dismissed without notice. The respondent says that the reason for the claimant's dismissal was gross misconduct or, in the alternative, some other substantial reason, namely a breakdown in trust and confidence. The claimant appealed the decision to dismiss, but that appeal was unsuccessful.

Disability

- 45 The relevant chronology for the purposes of the disability issue can be split into three separate periods of time, as follows:
- 45.1 October 2018 to June 2019;
 - 45.2 June 2019 to May 2020;
 - 45.3 May 2020 to June 2021.
- 46 Matters pre-dating October 2018 do not have a bearing on the issue of disability, as the claimant has not claimed that she had any mental health conditions prior to October 2018.

October 2018 – June 2019

- 47 The claimant was signed off as not fit to work by reason of a stress-related problem from 25 October 2018 to 17 May 2019 – [158-163] & [281-282].
- 48 In November 2018, the claimant started taking Zopiclone, which was a treatment for her sleep problems. During her visits to the GP during November 2018, the claimant explained to the GP that her daughter was unwell, and in hospital with a lung condition – [264]. Specifically, on 26 November, the claimant told her GP that her daughter was on a ventilator: the claimant told me today that this had not been true.

- 49 In February 2019, the claimant was prescribed Citralopram, an antidepressant, again having told her GP that her daughter was on a ventilator. The claimant's account that her daughter was on a ventilator was repeated to the GP throughout this period.
- 50 The claimant seems to have been on some form of antidepressant from February 2019 through to April 2019, at which point there was a break during which the claimant was off medication for around 1 year.
- 51 She returned to work on 20 May 2019, then was briefly off sick again from 3 to 23 June 2019, again for a stress-related problem - [164]. The claimant then returned to work on 24 June 2019.

June 2019 – May 2020

- 52 As mentioned, the claimant was back at work from 24 June 2019, and off any medication. She remained at work for 10 months without needing to see her GP, until 14 April 2020, at which point she attended her GP surgery. It was noted on that occasion that the claimant had been feeling better and so had not taken her medication. The GP recorded "see last issue all meds – 1y back!!!".
- 53 The claimant told me that she in fact had started taking medication again, using left over pills from her last prescription from April 2019. The claimant's evidence was initially that she just took the odd one when she needed to, but that she was weaning off the medication. Then her evidence expanded slightly to be that the claimant would have 4 bad days a week that would require her to take one of the pills that she had left. I find that the claimant's original evidence on this point is more likely to be true, and that she then exaggerated her evidence slightly. In other words, I find that the claimant had the odd bad day in the period April 2019 to April 2020, when she would take a pill to assist. This is more in line with the claimant using up an old prescription: if she had been having bad days 4 days a week, and needing to take something on those days, she would have run out of medication very swiftly, given that she had no new prescriptions for around 12 months.
- 54 As set out above, 24 April 2020 was the day on which the respondent alleges that a colleague ran into the claimant's husband, at which point the respondent became aware that the claimant had not been telling them the truth about her location or her daughter's health.
- 55 On that same day, the claimant rang her GP at 1727hrs asking for a letter for her employer to state that her daughter needed to shield against Covid-19. The GP recorded that there were no hospital letters on their system regarding the claimant's daughter since May 2017, and therefore they would not be able to provide a letter.

56 The claimant was signed off as not fit to work from 4 May 2020 - [165].

May 2020 – June 2021

57 The claimant remained off sick from 4 May 2020 through to the effective date of termination, on 11 June 2021.

58 The fit note relating to the claimant's period of absence commencing on 4 May 2020 stated that the reason for her absence was "mixed anxiety and depressive disorder" - [165]. The fit notes that followed set out the reason for absence as being "severe depression (possible PTSD)", "PTSD with depression" or "depression and anxiety" - [247]-[258].

59 In terms of evidence of the effects of her mental health on the claimant, I note firstly that she was off work a year prior to her dismissal.

60 On 13 June 2020, there is a record of an out of hours call at [166]. This lists the following symptoms:

60.1 Sleep up and down;

60.2 Very tearful;

60.3 No toshi/si (threats of self-harm or suicidal ideation) and "denied any previously as well";

60.4 The clinical code used at that time was "depressed/anxiety states".

61 On 15 June 2020, the claimant had an urgent referral to a consultant psychiatrist with an "ongoing history of depression". The consultant noted that "I am suspecting" post-traumatic stress disorder ("PTSD") - [169].

62 By the next day, 16 June 2020, the claimant had self-referred to Talking Therapies, who were unable to assist as she was under a different service - [174].

63 On 25 June 2020, the respondent's Occupational Health Therapist ("OHT") produced a report, which is at [175]. In that report the OHT recorded that the claimant was diagnosed with depression 3 years previously, although she was self-managing stress related symptoms in the years previous to this. The OHT records the claimant's symptoms at this time as being:

63.1 Feeling withdrawn and emotional with continuing low mood;

63.2 Palpitations;

63.3 Rushing mind;

63.4 Tumbling thought patterns;

63.5 Intrusive dreams;

63.6 Poor levels of interrupted sleep.

- 64 On 3 July 2020, the claimant's GP referred her to the consultant psychiatrist - [179].
- 65 On 9 July 2020, the claimant was the subject of a common point of entry ("CPE") assessment by a mental health practitioner - [181]. This assessment states that the claimant suffered at that point from mild anxiety and PTSD due to historic events, that was triggered by the pandemic and a recent death in the family - [183].
- 66 I note that "stressors" include "facing disciplinary action at work as has been too scared to reveal her symptomology".
- 67 Symptoms at the time of this assessment were recorded as follows [182-183]:
- 67.1 Mood 2/10 poor energy, motivation, socially isolating, pressure of controlling severe distress and tears associated with flashbacks and panics;
 - 67.2 At consultation tearful and distress;
 - 67.3 Worried that she was not able to control images, worried about Covid, worried about work as she was scared to tell people about why she is not fit to work;
 - 67.4 Concentration poor, unable to focus, her mind keeps wandering to distressing images;
 - 67.5 Appetite very poor, the claimant was hardly eating, and had lost weight;
 - 67.6 Sleep very poor due to flash backs and visions of dead people;
 - 67.7 Flashbacks/vivid images;
 - 67.8 Anxiety – regular panic attacks with heart palpitations & breathlessness, despite putting in place strategies to assist in this respect.
- 68 Under the sub-heading of "risks" it was noted that the claimant presented "no risks of self-harm".
- 69 On 12 August 2020, at [188], a referral was accepted by the Enhanced Trauma Pathway (ETP) for the claimant.
- 70 In September 2020, the claimant was referred to Talking Therapies by Berkshire Traumatic Stress Service, and undertook a series of 15 sessions with them - [222-224].
- 71 On 23 November 2020, at [201], the claimant's GP wrote a letter stating that the claimant is known to suffer from PTSD and depression. The GP went on to state

that the claimant was continuing on regular medication for this and was having therapy too.

- 72 On 24 December 2020, the OHT produced a follow-up report, which indicated that the claimant at that point was likely to qualify as a person with a disability under s6 EqA - [205].
- 73 On 5 January 2021, at [209], a “Gateway Adult Mental Health Referral Form” was completed for the claimant.
- 74 The claimant was dismissed on 11 June 2021.
- 75 I have seen two letters from Talking Therapies, dated 14 and 15 June 2021 respectively – [220/222]. In the 14 June 2021 letter, it is noted that the claimant was experiencing suicidal thoughts by this point. In the 15 June 2021 letter, it is recorded that the claimant was undergoing CBT sessions to attempt to reduce symptoms of PTSD. At this point, work matters and the Tribunal proceedings were specifically mentioned as examples of external triggers preventing progression of the therapy. On 15 June, the claimant’s symptoms are recorded as follows:
- 75.1 Flashbacks;
 - 75.2 Nightmares;
 - 75.3 Hyper-vigilance;
 - 75.4 Avoidance (people, places, activities);
 - 75.5 Emotional numbing;
 - 75.6 Experiencing suicidal thoughts.
- 76 On 29 June 2021, the claimant’s GP wrote a letter, at [225], stating that she was experiencing “ongoing significant mental health issues...first consulted for these in 2018, when the presentation was documented as stress related issues, and seems this was an initial presentation of her depression and post-traumatic stress disorder which was diagnosed in 2020.”
- 77 The claimant’s final CBT appointment was on 6 July 2021, having undergone a course of 15 sessions – [224]. At this stage, her symptoms remained at the severe range, but it was agreed that any further treatment would be halted until September as the claimant had “a lot going on”, including the Tribunal process, and several family bereavements. The record of her PHQ9 and GAD7 scores across her CBT sessions, from September 2020 to July 2021 range from (PHQ9) 20-27 and (GAD9) 19-21, both of which indicate severe depression and anxiety.

Conclusions

Credibility

- 78 The respondent has made the submission that the claimant's credibility is so damaged that I cannot place any great weight on any evidence she has given today, and this is compounded by the lack of witness statement provided by the claimant for the purpose of this hearing.
- 79 The respondent relies on the following points to support this assertion:
- 79.1 The claimant accepted during the disciplinary process that she had lied to the respondent about her daughter's health;
 - 79.2 The claimant told the same untruths to her GP, about her daughter being on a ventilator (e.g. [261], [264]), which today she accepted was untrue;
 - 79.3 At [175], the claimant told the OHT that she had been suffering with depression for 3 years, when in fact this (on the sick notes) was not the case;
 - 79.4 The respondent says that there has been an expansion of the claimant's allegations. On this point, I accept that, given the lack of detail in the claim form, I have heard many allegations made against the second respondent today. I note that there is no application to amend to include any such allegations at this stage.
- 80 I remind myself that, just because an individual is found to have lied on one matter, does not mean that they will have lied on another (drawing a parallel from the Lucas direction in criminal courts).
- 81 Although it concerns me that the claimant did not provide a witness statement today, despite the tribunal's clear guidance, and despite being reminded by the respondents' solicitors, this is unfortunately not particularly unusual. Many litigants in person do not understand the need for them to provide a witness statement, despite the clear guidance sent in the Tribunal's case management orders.
- 82 I do accept that the claimant has, on occasion, exaggerated or expanded her evidence (specifics are set out in this judgment).
- 83 However, I am not satisfied that it would be the correct approach to simply disregard the claimant's evidence as being incredible. As I have said, it is not as straight forward as saying that she has lied on one point and so must have lied on everything else. Where there is divergence between the claimant's evidence and the medical evidence, I prefer the medical evidence, being more objective, and (mainly) contemporaneous.

Impairment

- 84 The claimant had a mental impairment, namely anxiety and depression, from around 4 May 2020. This became PTSD at some point in the coming months.
- 85 Although the claimant's symptoms were initially triggered and then exacerbated by various life events (including bereavements and Covid-19) over the course of a number of years, I find that as of May 2020 (but not before), the claimant consistently suffered something more profound than a short lived reaction to life events – Igweike v TSB Bank Plc.
- 86 The respondent argues that any mental health issues from May 2020 onwards are in fact due to the adverse situation at work, and therefore are reactionary and should not constitute an impairment. I do not agree with this. Evidently, the situation at work was one factor (as recorded in some of the medical evidence). However, I accept that there were other factors that triggered the claimant's mental health, including family bereavements and the Covid-19 pandemic.
- 87 In case I am wrong on this, I move on to consider the existence and extent of adverse effects of the claimant's mental health, as suggested in J v DLA Piper.

Substantial adverse effect on normal day-to-day activities

- 88 From May 2020, the claimant was signed off as unfit to work due to anxiety, depression and then PTSD. Being able to attend work is a normal day to day activity, and so the inability to do this for any significant length of time is, I find, a substantial adverse effect.
- 89 Throughout the period of May 2020 to the time of the claimant's dismissal, there are various medical documents that record symptoms she suffered, including for example sleep problems, low mood, poor appetite. These are all normal day-to-day activities under the Guidance.
- 90 In terms of the severity of the effects, I note that the claimant was on some form of antidepressant for a sustained period of time, from April 2020 onwards. The fact that the claimant's GP was content to keep her on that medication (trailing different varieties to find the most efficacious one) for any length of time suggests in itself that, being off that medication would lead to the effects on her daily life being even more substantial and adverse.
- 91 The substantial nature of the effects is corroborated by the claimant's PHQ9 and GAD7 scores for the period September 2020 to July 2021 (again, whilst she was on medication), which indicate severe depression and anxiety.
- 92 In terms of the period before May 2020, I have limited contemporaneous evidence from medical experts prior to May 2020. All references to the long nature of the claimant's symptoms appear in medical documents dated after May 2020, and are

based upon the claimant's recollection of her symptoms, as opposed to experts' observations from prior to May 2020. I also note that the claimant had a spell of around 10 months (from June 2019 to April 2020) with no medication and no visits to the GP, during which time she was able to attend work and perform her job. Further, the claimant's own evidence today was that, although she was experiencing problems from 2018, there was a distinct step change when the Covid-19 pandemic started in March 2020.

- 93 I therefore conclude that, prior to May 2020, the adverse effects of any impairment were not substantial. However, from May 2020, I am satisfied that the effects were of a substantial and adverse nature.

Long-term

- 94 I have found that the claimant suffered an impairment that had a substantial adverse effect on her ability to carry out normal day-to-day activities from May 2020. It is therefore only by May 2021 that the effects had lasted for at least 12 months, as is required by s2(1)(a) of Schedule 1, Part 1 EqA.
- 95 The two acts that form the basis of the claimant's claim are the disciplinary process (commenced on 29 May 2020) and the claimant's dismissal on 11 June 2021.
- 96 I must therefore consider whether, at the time of the commencement of disciplinary proceedings on 29 May 2020, and through to May 2021, the effects of the claimant's impairment could well have lasted for 12 months, under s2(1)(b) of Schedule 1, Part 1 EqA.
- 97 To determine this point, I consider what a GP is likely to have said in May 2020, if asked whether the claimant's symptoms would be likely to last at least 12 months. I remind myself of the evidence I have from around this time:
- 97.1 The claimant went back on Citralopram on 14 April 2020;
- 97.2 At the beginning of May 2020, the claimant was signed off as unfit to work for a period of 2 weeks with mixed anxiety and depressive disorder - [165].
- 97.3 Matters then seemed to escalate in June 2020, with evidence of intervention:
- 97.3.1 On 13 June 2020 the claimant made an out of hours call, for which I have seen the incident report - [166];
- 97.3.2 On 15 June 2020 the claimant's GP referred her to a Consultant Psychiatrist, asking for contact "as soon as possible" - [169];
- 97.3.3 On 25 June 2020, an OHT report was prepared in which it was noted that there was no indication of a return to work date, and that time was needed for the claimant's medication and mental health

team support to have an impact. It was also noted that, even when the claimant did return to work, she would need a phased return – [175].

- 98 Based on this evidence, I find that, by 25 June 2020, the claimant was likely to have substantial adverse effects lasting at least 12 months.

Conclusion

- 99 I find that the claimant was disabled by way of anxiety and depression from 25 June 2020, through to her dismissal on 11 June 2021.

Employment Judge Shastri-Hurst

Date 4.4.2023

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

11.4.2023

GDJ
FOR EMPLOYMENT TRIBUNALS