EMPLOYMENT TRIBUNALS

Claimant: Ms K Brogan

Respondent: Dr S Zaidi

Heard at: Watford Employment Tribunal (in public; in person)

On: **25 April 2023**

Before: Employment Judge Quill (sitting alone)

Appearances

For the claimant: Mr P Dovey, solicitor
For the respondent: Mr G Probert, counsel

JUDGMENT

1. From no later than 9 December 2019, the Claimant had a disability (within the meaning of section 6 the Equality Act 2010).

REASONS

Introduction

1. This was an in-person hearing conducted in the Employment Tribunal. It was a public hearing and dealt with several matters, which have been addressed in other documents.

2. This judgment and reasons deals specifically with the fact that the Respondent concedes that the Claimant meets the definition of having the protected characteristic of "disability" from 31 August 2021. However, it does not concede that she met that definition from any earlier date.

3. I heard witness evidence from the Claimant and from her husband, Phil Heybourn.

4. I also had bundles of documents from each party, and the Claimant's bundle included her impact statement. The Respondent also called witness evidence during the hearing but that evidence was mainly relevant to the other matters which had to be decided).

The law

5. The relevant law in the Equality Act 2010 ("EQA"), section 6 defines disability and includes that :

> **6 Disability**
>
> (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.

6. The section also refers to the need to take into account Schedule 1. The paragraphs in that schedule include the following extracts in Part 1.

> **2 Long-term effects**
>
> (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.
>
> (3) For the purposes of sub-paragraph (2), the likelihood of an effect recurring is to be disregarded in such circumstances as may be prescribed.
>
> (4) Regulations may prescribe circumstances in which, despite sub-paragraph (1), an effect is to be treated as being, or as not being, long-term.
>
> **5 Effect of medical treatment**
>
> (1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if—
>
> (a) measures are being taken to treat or correct it, and
> (b) but for that, it would be likely to have that effect.
>
> (2) "Measures" includes, in particular, medical treatment and the use of a prosthesis or other aid.

7. Part 2 of Schedule 1 refers to the need to take the guidance into account.

8. In terms of whether or not an effect is likely to recur, in SCA Packaging Limited v Boyle [2009] UKHL 37; [2009] ICR 1056, the House of Lords made clear that in that context "likely" means something that could well occur as opposed to something that is more likely than not to recur.

9. As per paragraph 5 of schedule 1, it is important to effectively ignore any beneficial effects of medical treatment and to ascertain the effects on day-to-day activities as it would otherwise be but for that medical treatment.

10. As noted in the guidance, an impairment might not have a substantial adverse effect on a person's ability to undertake a particular day to day activity in isolation. However, it is important to consider whether its effects on more than one activity, when taken together, would result in a substantial adverse effect.

11. Guidance:

Effects of behaviour

B7. Account should be taken of how far a person can **reasonably** be expected to modify his or her behaviour, for example by use of a coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day-to-day activities. In some instances, a coping or avoidance strategy might alter the effects of the impairment to the extent that they are no longer substantial and the person would no longer meet the definition of disability. In other instances, even with the coping or avoidance strategy, there is still an adverse effect on the carrying out of normal day-to-day activities.
For example, a person who needs to avoid certain substances because of allergies may find the day-to-day activity of eating substantially affected. Account should be taken of the degree to which a person can reasonably be expected to behave in such a way that the impairment ceases to have a substantial adverse effect on his or her ability to carry out normal day-to-day activities. (**See also paragraph B12.**)

When considering modification of behaviour, it would be reasonable to expect a person who has chronic back pain to avoid extreme activities such as skiing. It would not be reasonable to expect the person to give up, or modify, more normal activities that might exacerbate the symptoms; such as shopping or using public transport.

B10. In some cases, people have coping or avoidance strategies which cease to work in certain circumstances (for example, where someone who has dyslexia is placed under stress). If it is possible that a person's ability to manage the effects of an impairment will break down so that effects will sometimes still occur, this possibility must be taken into account when assessing the effects of the impairment.

C5. **The Act states** that, if an impairment has had a substantial adverse effect on a person's ability to carry out normal day-to-day activities but that effect ceases, the substantial effect is treated as continuing if it is likely to recur. (In deciding whether a person has had a disability in the past, the question is whether a substantial adverse effect has in fact recurred.) Conditions with effects which recur only sporadically or for short periods can still qualify as impairments for the purposes of the Act, in respect of the meaning of 'long-term' (**Sch1, Para 2(2), see also paragraphs C3 to C4 (meaning of likely).**)

D3. 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.

D5. A normal day-to-day activity is not necessarily one that is carried out by a majority of people. For example, it is possible that some activities might be carried out only, or more predominantly, by people of a particular gender, such as breast-feeding or applying make-up, and cannot therefore be said to be normal for most people. They would nevertheless be considered to be normal day-to-day activities.

12. The point in time which the question of disability is to be determined is the date of the alleged discriminatory act or omission. That therefore is the date from which it has to be judged whether or not an impairment was likely to recur.

13. In Sullivan v Bury Street Capital Limited Neutral Citation Number: [2021] EWCA Civ 1694, the Court of Appeal approved the following list as setting out the questions that a tribunal will be required to address when determining whether or not a claimant is disabled for the purposes of the Equality Act.

    13.1 Was there an impairment?

    13.2 What were its adverse effects?

    13.3 Were they more than minor or trivial?

    13.4 Was there a real possibility that they would continue for more than 12 months or that they would recur?

14. These are questions that the tribunal has to decide, medical evidence is likely to assist but, ultimately, it is the tribunal's legal determination which is what counts.

15. In Rayner v Turning Point Appeal No. UKEAT/0397/10, it was held that (although the question of whether there is a substantial adverse effect is a matter of fact for the tribunal to determine), in circumstances where a claimant is diagnosed with anxiety by their GP and the GP advises then to refrain from work then that is in itself evidence of a substantial effect on day-to-day activities because were it not for the anxiety the claimant would have been at work and his day-to-day activities included going to work.

16. I have taken into account the guidance issued in J v DLA Piper UK LLP [2010] IRLR 936. Although decided on pre–Equality Act 2010 legislation, it gives guidance that is still relevant about the need to precisely analyse the effects of any alleged mental impairment and to distinguish between, on the one hand, that people's moods can change and people can have a low mood and can feel anxious about things because of life events (the type of thing that might affect almost everybody from time to time) and, on the other hand, the effects of an impairment. I do not need to list examples of the type of life events that can upset people and cause a great deal of distress, but the Court made it clear that it is important to note that even if somebody has been distressed on several different occasions, if each occasion was reacting to particular life events, then that might not demonstrate they had a "physical or mental impairment" or that they necessarily meet all parts of the definition in s.6 of the EQA.

17. As discussed in Sullivan (para 92), the point being made in DLA Piper is that where there are examples of symptoms at different periods, then one possible inference

from the facts, if the evidence supports it, is that those separate examples were all due to a continuing impairment, and are examples of the underlying condition being severe (or worse than typical) at those times. However, that is not the only possible conclusion from the facts. Another possibility is that they were separate reactions to separate life events.

Claimant's Evidence and Medical Evidence

18. Within her particulars of claim, the earliest allegations of wrongdoing against the Respondent appear to date from around March 2019.

19. The Claimant's impact statement includes:

> 8. I do not often leave my home. My husband, Phil, does all of the grocery and household shopping. I do my clothing shopping online. Again, this is not how I did things before.
>
> 9. This change in me began around my return to work from medical leave in September 2019, following the incidents surrounding the final 'disciplinary hearing' of July 2019, and has worsened over time because of the treatment that I received from the Respondent and the staff at Roxbourne Medical Centre acting on his behalf.
>
> 17. Despite the state of depression and anxiety I have been in for nearly four years now, …
>
> 20. When I first received the Occupational Health Report from Dr Julia Rees on 1st September 2021 which indicated that I was "likely to be considered as a disabled person", I was shocked. I could not believe that the situation had carried on for so long and gotten so poor that I was considered "disabled" as a result. Looking back now, I realise how true the statement in this report is. My depression and anxiety, brought on by the actions of the Respondent, have completely changed me. I am unable to leave my house. I am unable to carry out the normal day-to-day activities that I once did. Every relationship in my life has been affected. I am a shadow of my former self.
>
> 23. I think that this has been hardest on my husband. I wake up constantly throughout the night and sometimes leave the room so that he does not see me crying. Half the time I shower not because I need to but because in the shower nobody can see me crying. It's been very difficult, for me and for my family.

20. Her husband's statement includes

> 2. Before March 2019, Kellie was confident and outgoing. She was the matriarch of the family and ran the household. She kept the house pristine, and she could handle anything that came her way. I would describe her as a 'glass half full' type of woman. She enjoyed socialising and entered a room with confidence. Kellie and I used to enjoy going abroad on holidays and she had close, strong relationships with our 2 sons.
>
> 3. Around March 2019, when issues began to arise at Roxbourne Medical Centre with Dr Zaidi, Kellie's demeanour started to shift. She would come home upset and stressed, particularly around the times when the 'disciplinary meetings' occurred.
>
> 4. When Kellie returned to work in September 2019, following her sick leave after the 'disciplinary hearing' of 4th June 2019, she would come home from work defeated and frustrated. She felt that she was being undermined at work and that the treatment she was receiving was demeaning.
>
> 5. Around that time, Kellie's demeanour began to deteriorate. For nearly 4 years now, she has been a completely changed person.
>
> 6. Kellie no longer does many of the things that she used to enjoy and she struggles to

> concentrate. She used to read 4 to 5 books a week. Now she cannot focus and does not read at all. She cannot even sit through an entire movie. Kellie also used to be great at keeping up with regular chores and day-to-day tasks. Her approach has changed now to "I'll do it another day." She avoids and puts things off.
>
> 7. Kellie no longer wants to leave the house, and rarely does. She no longer goes out shopping. I do the grocery shopping and any clothing that she needs she will buy online, and I will go out to do any returns for her.
>
> 8. We have 2 dogs, which we cannot walk locally because Kellie is concerned she could encounter Dr Zaidi in our local area. We have to drive to a different borough to walk the dogs to ensure that we do not run into him.
>
> 9. Kellie and I used to go out and socialise with friends at least weekly. Kellie would be excited to enter a room of people or friends and would say hello to everyone. Now we rarely go out, and if we do, Kellie will spend much of the time looking around anxiously and checking her watch. She looks for a corner to sit in and avoids others. She will no longer take holidays abroad as we once did.
>
> 10. Kellie has several close friends whom she used to speak with regularly. Now, if they send her a message, she will take days to answer, if at all.
>
> 11. Where before Kellie enjoyed a strong, close social relationship with our sons and could talk about anything with them, now she barely speaks. When we are all sat at the dinner table, it is as if she is not there. She does not speak. It is completely different to how she was before.
>
> 12. The relationship between Kellie and myself has been difficult as a result as well. I have to constantly reassure Kellie that things are okay. Her confidence is totally gone, and it often feels like walking on eggshells around her. Kellie wakes up several times a night, sometimes crying. Sometimes she will go downstairs to cry, I think to hide it from me.

<u>Dr Callman's reports</u>

21. I note the contents of Dr Sarah Callman's report of 31 January 2023. It was based on meeting the Claimant on that date, and on instructions from the Claimant's lawyer to prepare a report to be used in the litigation. Dr Callman is a chartered psychologist. This particular report does not assist me with establishing the dates of the commencement of any effects on the Claimant of any impairment.

22. I note the contents of Dr Callman's 9 March 2021 report, which is based, at least partly on, information from the Claimant. It does not clearly state what other sources of information Dr Callman had at the time. It refers to events at work the Claimant's said to have originated in July 2019, which led to the Claimant being (according to the information given to Dr Callman by the Claimant) being asked to resign.

23. Following a passage which related other events, but without specifying any further specific dates, the report continued:

> Ms Brogan described this period of seven weeks whilst still attending work as 'mental torture'. Ms Brogan's interpretation was that this was an attempt to force her out of the practice and stated that others noticed the detrimental treatment she received.
>
> Ms Brogan **now** feels frightened to go out locally for fear of bumping into her employer. She will take the car outside of the area in order to walk her dogs on a daily basis. She

> has not left the house to go food shopping **since the incident happened**. **Before this**, Ms Brogan used to enjoy her local area and felt a sense of pride working for the local NHS practice. She has nightmares and flashbacks daily and has not slept a full night since the incident.
>
> I believe that Ms Brogan remains unable to move on with her life whilst she remains employed in a practice where she feels she has been taken advantage of and made to feel like a scapegoat for administrative errors within the practice. I believe that were Ms Brogan able to leave work, this would help her to break the cycle of anxiety and negativity which has been causing her so much distress and over time, help her to continue the progress she made in therapy towards realising her life goals and building on her protective factors and strengths on the road to recovery.

24. The emphasis is added by me, and is not in the original.

25. It seems that, based on Dr Callman's interpretation of what the Claimant told her, Dr Callman believes that the Claimant became extremely upset about what the Respondent (allegedly) said to her in July 2019, which led to the events described in Dr Callman's report immediately prior to the extract that I have just cited, after which, the Claimant returned to work for around 7 weeks. In fact, based on the Claimant's witness statement, the alleged suggestion that she resign was dated March 2019. Whereas 4 July 2019 was the disciplinary hearing date.

26. Dr Callman has referred to PTSD (seemingly a reference to the alleged July 2019 events) and that the Claimant was responding well to treatment as of March 2021.

<u>Occupational Health reports.</u>

27. I have the report of Dr Julia Rees, Specialty Doctor Occupational Medicine, dated 29 October 2019. Under "current situation" it said:

> Kellie is currently absent from work on medical suspension following several months of work-related stress. She is currently symptomatic and exhibiting signs and symptoms of anxiety and depression associated with her work situation. There are no domestic stresses that are currently impacting upon her health. She has taken appropriate action and is under the care of her GP who has provided her with appropriate medication with which she is compliant. Unfortunately the medication has yet to provide her with significant relief from her symptoms.

28. Under "specific questions" it said:

> She is currently unfit for work but is expected to make a full recovery in due course and will be able to offer a regular and efficient service in the future. The only health condition affecting her performance and attendance at work is the anxiety and depression that has been precipitated by her work circumstances. Her anxiety and depression make her unfit for all work at present but it is anticipated she will be able to carry out the full range of duties once she has started to recover and provided she has the supportive environment that she needs in the workplace. A phased return to work would be of benefit when she is able to return following workplace adjustments. A work stress risk assessment may well be of benefit in this case. Her rehabilitation and early return to work could be facilitated by adjustments in the workplace so that she returns to her usual role and is provided with regular support for some 3 to 4 months while she settles back in. There is no further requirement for medical support or intervention; the workplace requires adjustment in order to reduce her stress.

29. Dr Rees's 14 January 2020 report included:

> Current Situation:

She remains anxious regarding return to work because of her perception of the management style and this is causing significant stress. She has no other significant stresses in her life. She remains under the care of her GP who is treating her appropriately and she is compliant with treatment: her mood has improved since she was last seen. The main issue is the way that she has been managed at work and she would like to return to work in her former role; unfortunately she now feels that she is not wanted in this workplace.

Specific Questions:

Her return to work is unlikely unless the work issues have been resolved; I therefore recommend independent mediation be undertaken as quickly as possible in order to enable an early return to work. Following external mediation and resolution of issues I would expect her to be able to provide regular and efficient service. The only underlying health condition affecting her at present is the work-related stress which requires external mediation. She should be able to return to work and carry out the full range of duties of her job following mediation. With regard to adjustments to her role to help facilitate rehabilitation or early return to work, this would be external mediation. In addition the recommendations made regarding a phased return to work and stress risk assessment should be undertaken as previously advised when she does return to work. With regard to permanent adjustments to the role or environment, appropriate support should be provided by management. There is no further requirement for medical support or medical intervention. The health problem is unlikely to meet the criteria for disability as defined by the Equality Act 2010. With regard to redeployment or early retirement on health grounds this is not recommended at the current time as she is expected to make a full recovery.

30. Dr Assoufi's 4 November 2020 report included:

She told me she has been stressed due to work issues since March 2019. I understand there have been some perceived managerial issues and she was suspended from work for a period of time in 2019 due to work related investigations. She informed me she resumed work in September 2019 and she went off sick again 7 weeks later. She has been off sick since then. She was diagnosed with anxiety and depression and she has been receiving medication and she has been undergoing psychotherapy. She has already had 2 sessions and she is expected to have a long term psychological therapy.

Current position:

At present, she continues to have symptoms related to her condition. She informed me that her symptoms have not improved.

Answer of the specific questions and Occupational Health recommendation:

Following my assessment today, I advise that she is unfit for work. It is difficult at this point in time to predict when she will be able to return to work. I expect she will be unfit for three months. I am hoping that with the therapy she has been receiving her symptoms will continue to improve.

31. Dr Rees's 1 September 2021 report, based on a discussion with the Claimant on 31 August 2021, included:

Background:

Thank you for referring Kellie to the Occupational Health Department for further advice regarding her long-term sickness absence associated with anxiety and depression due to perceived managerial issues. I undertook a telephone assessment.

Current Situation:

There has been no significant change in her condition since she was last assessed and she remains unfit for work. She has completed a long period of counselling which she

has found to be supportive but which has not otherwise changed her condition. She is also on appropriate medication and is compliant with treatment.

Specific Questions:

It is unlikely that she will be fit to return to work until the conflict with management is resolved. She believes that she is not welcome back at work and she does not understand why independent mediation was not proceeded with after a recommendation was made regarding this. The situation appears to have been exacerbated by an apparent financial offer which was made on 2 occasions. Her absence is likely to last until the issues have been resolved but the breakdown in the relationship will be difficult to mend. It is expected that she will be able to provide regular and efficient service in some capacity once the issues have been resolved and therefore redeployment and ill-health retirement are not recommended at this time.

She has no physical limitations and once her depression and anxiety have resolved she would be able to undertake the full range of duties of her current post. The condition has now lasted for over a year and is affecting activities of daily living such it is likely that she would be considered a disabled person for the purposes of the Equality Act 2010. The only additional adjustment may increase the likelihood of a return to work is that of independent mediation however she feels that it is likely that so much time has passed it is unlikely to be effective. It is expected for her recovery to take many months once the conflict has been resolved. She agrees it is unlikely that she will return to work in this job due to the breakdown of relationships.

GP Report

32. The Claimant's GP has produced a letter dated 23 January 2023, which sets out details of some of the Claimant's appointments and medication. She was prescribed sertraline 50mg daily as an antidepressant in October 2019, and the dosage was increased the same month. The same month she was also prescribed sleeping medication and referred (again) for counselling. No relevant history prior to July 2019 is recounted.

33. In December 2019, it was noted that she had been seen by counselling services and noted to have severe levels of depression and anxiety and put on a waiting list for CBT. Sertraline dose was increased to 200mgs daily

Analysis and Conclusions

34. To the extent that the Claimant invites me to decide that she deliberately failed to report things to her GP because she believed that the Respondent would be able to access her GP records, I am not persuaded of that. There is (and I do not intend this as a criticism of the Claimant) a lack of detailed contemporaneous medical evidence. Her GP notes have not been produced; her GP's letter is light on specific details of particular effects on the Claimant on particular dates, and so are both the Callman reports. A fear by the Claimant that Dr Zaidi might have access to the Claimant's GP notes would not explain why there is not more specific information in the Callman reports.

35. The actual events between March and September 2019 may be matters about which the final hearing needs to made findings of fact, and some of the events are likely to be in dispute.

36. However, the period of absence from March 2019 to early July 2019 appears to have been because of suspension. The period of absence from 8 July 2019

followed the events described in the Claimant's witness statement and Dr Callman's report, and are covered by the Claimant's Fit Note dated 8 July 2019 which referred to "stress and depression".

37. The Claimant resumed work around 2 September 2019, and worked until around 21 October 2019. Several matters which she alleges (a) happened and (b) caused her distress were within that period, including alleged changes to her pay, contact from police, lack of support from her employer.

38. I note that paragraphs 8 and 9 of the Claimant's statement appears to refer to dates of around September 2019 for some specific changes in her mood, and outlook on life. That is consistent with Dr Callman's assessment that (she was told by the Claimant that) changes occurred from July 2019 and later. I consider that, to the extent that the Claimant's and her husband's current recollection is that changes occurred around March 2019, then any such changes were a result of the suspension, rather than that the Claimant already had a mental impairment as of then. I am sure that they are each trying to recall accurately, but they were thinking back to events from 4 years previously. If the Claimant had been suffering the effects of a mental impairment by then, there would have been likely to be either some contemporaneous medical evidence, or, at a minimum, some mention of it in the later medical evidence. There is not.

39. Dr Callman's report is imprecise as to any findings of a specific start date of any impairment, and the dates in the report do not tally up precisely with the Claimant's evidence. This is not intended as any criticism of Dr Callman in the slightest. I am simply remarking on the fact that the March 2021 meeting with the Claimant was 18 months to 2 years after the March 2019/September 2019 period and appears to have been based on the Claimant's oral history of events.

40. To the extent that there were noticeable differences in the Claimant's behaviour or outlook on life in the period March to September 2019, I am not satisfied that these were the result of any underlying mental (or physical) impairment, as opposed to being a reaction to being suspended and being informed about potential disciplinary action.

41. I have taken into account the Claimant's hospital admission at the start of July and the reasons for it. On the totality of the evidence, this was not caused by an underlying impairment, but was a response to work events. In making this comment, I am not seeking to underestimate how severely affected the Claimant might have been by those work events (though that will be for another Tribunal to assess), but I am simply addressing the cause of the hospital admission.

42. As well as the Claimant's GP assessing that the Claimant would be fit to return to work in September 2019, the Occupational Health report in October (after a new absence commenced) expressed the opinion that the Claimant was not suffering the effects of any impairment whose effects were likely to last for more than a few months (at most). Furthermore, the reports in late 2019 and early 2020 attributed the Claimant's absence to work events, rather than an underlying condition. That

is also consistent with the Claimant's own description of events during the 7 week return to work period which she alleges brought about a situation where she was no longer fit enough to work.

43. I am not satisfied that the Claimant's sickness absence from July to September 2019 and the absence from late October 2019 onwards had the same trigger. They may each have been response to things which the Respondent had done (though this potentially remains a dispute to be resolved at the liability hearing), but, if so, they were different responses to different things done on different dates. Relevantly, the evidence does not satisfy me that the Claimant had a mental impairment which was expected to last at least 12 months at the time that either of those absences commenced.

44. By the time the Claimant saw Dr Assoufi in November 2020, she had been absent from work for (more than) 12 months. Although absence from work in and of itself does not necessarily demonstrate that there is an impairment which has had (or is having) a substantial adverse effect on day to day activities, taking account of the medical evidence and the evidence from the Claimant and her husband, I am satisfied that by some time prior to November 2020, the Claimant had already fulfilled all elements of the definition in section 6 EQA.

45. I note that by the time the Claimant saw Dr Rees for the second time, on 10 January 2020, the Claimant's ongoing absence was slightly less than 3 months. I note what is said in that report, but I must also take into account the evidence in the GP's letter about the assessment that the surgery and the counselling service had made in December 2019. Notwithstanding the contents of the January 2020 OH assessment, I am satisfied that by December 2019, the Claimant had fulfilled all elements of the definition in section 6 EQA. Taking into account, the events of 4 July 2019, the absence from July to September 2019, the perceived need to refer the Claimant for counselling, the medication which the Claimant had been prescribed, and the new absence starting from late October 2019, I am satisfied that, by the time the Claimant saw Dr Ryan on 9 December 2019, the Claimant had a mental impairment which was likely to last for (either continuously, or with periods of improvement, and then recurrence) at least 12 months.

46. However, I am not satisfied that the Claimant met the "long term" requirement by the time of the first meeting with Dr Rees on 29 October 2019. By that time, it was not likely that the effects on the Claimant's day to day activities were likely to last for one year. It is necessary to ignore the benefits of counselling and medication, of course, but the talking therapies had not yet commenced, and the medication had only started a couple of weeks previously. At the time, from an objective point of view, it seemed likely that the Claimant had suffered an adverse reaction to some incidents in her life (an ongoing and – on her case – escalating dispute with her employer) from which she was expected to recover fairly soon (at least on the assumption that the dispute was resolved promptly).

47. The GP fit notes refer to anxiety and depression (as well as stress). Dr Callman's reports both refer to PTSD.

48. I think it appropriate to leave any specific decisions about the Claimant's exact diagnosis to the tribunal which will determine liability and, if appropriate, remedy, in due course. However, regardless of whether the impairment is "depression" or "PTSD" (or both), I am satisfied that, from around September and October 2019 onwards, the effects on the Claimant's day to day activities (in terms of mood change, and being less sociable and less willing to leave the house) were as described in the Claimant's and her husband's statements. From late October 2019, the effects on day to day activities became more pronounced and she was unable to leave the house to attend work and to perform the activities that she would need to do in order to perform her work duties.

49. From no later than December 2019, it became likely that the effects of the impairment would be "long term" (within the meaning in EQA).

50. She is therefore "disabled" within the meaning of EQA from December 2019 onwards.

Employment Judge Quill

Dated: 24 July 2023

Sent to the parties on:
25 July 2023
For the Tribunal:
GDJ