Case Numbers: 2201212/2023
2209987/2023

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**AND**	**Respondent**
Petre Craete		Atalian Servest Security Limited

Heard by: CVP

On: 30 January 2024

Before: Employment Judge Adkin (sitting alone)

Representations

For the Claimant: Mr S Ellis, Voluntary Representative
For the Respondent: Mr A Sendall, of Counsel

JUDGMENT

(1) At the times material to the present claim (on or around 20 September 2022) the Claimant was a disabled person as defined by section 6 Equality Act 2010 by reason of depression.

REASONS

1. Today's hearing was to determine the question of disability under s.6 of the Equality Act 2010 read together with Schedule 1 of the Equality Act.

Evidence

2. I had the benefit of a combined bundle of documents of 393 pages which included witnesses statements from the Claimant's witnesses, and two impact statements from the Claimant. The first impact statement was dated 30 April

2023 and the second of which was dated 10 January 2024. The Claimant was relying on the second of those two documents but both documents were in evidence and Respondent's Counsel cross examined on the content of both statements.

3. The time material for the question of disability was the **20 September 2022** which is the date relevant for the claim of failure to make reasonable adjustments.

4. I have made no finding as to the Respondent's actual or constructive knowledge of the Claimant's disability nor the Respondent's actual or constructive knowledge of substantial disadvantage said to be suffered by the Claimant as a disabled person. Those are matters to be determined at a final hearing.

Background of employment and claims

5. The Claimant commenced employment as a Security Guard on 17 October 2017 and his employment terminated on 28 July 2023 on the basis of gross misconduct alleged by the Respondent.

6. The first claim which is 2201212/2023 was presented to the Tribunal on 7 February 2023. That claim included a complaint of disability discrimination, and included the following wording in box 12 "disability":

> I am an individual who is struggling with depression and anxiety, and I feel it is imperative that I have someone by my side during the proceedings.
>
> Having a friendly and familiar face in room with me will help me to feel more relaxed and ease, especially in the event that I experience anxiety during the hearing. I understand that this may seem like a small... [*incomplete*]

7. In a document entitled "legal basis for the claim" undated but provided on 22 March 2023 the Claimant included the following particulars of his complaint:

> Section 20 of the Equality Act 2010
>
> The Respondent discriminated against the Claimant.
>
> …
>
> On 16th September 2019, I informed the company of my struggle with a mental illness and this information was documented in my personnel file. On 5th February 2020, Martin Harre, the Company Director, addressed a grievance and protected disclosure I raised. He acknowledged the impact my mental illness had on me and promised to approve reasonable adjustments to enable me to carry out my duties in a safe manner. These adjustments never

> materialized and I continued my duties without the adjustments I needed so much.

8. Also in that document he set out the basis of his claim under section 20 which related to the Respondent's denial of his request to be accompanied to a factfinding meeting on 20 September 2022 which was set up to investigate allegations of misconduct

9. The second claim 2209987/2023 was presented on 5 June 2023. The substance of that claim was substantially about victimisation under section 27 of the Equality Act 2010. Similar wording was included in box 12 of that claim about having anxiety and depression requesting a companion as a coping mechanism to manage symptoms.

Chronology relevant to question of disability

10. I have highlighted key terms below such as depression, low mood and anxiety in bold for ease of reference. I have attempted to replicate typographic errors in the medical notes without correcting them.

Childhood

11. The Claimant gives quite a long narrative in his second impact statement beginning on page 263 of the agreed bundle in which he describes how mental health matters were stigmatised in Romania, where he grew up. That background is provided by way of an explanation as to why he says it took him some time to seek treatment.

12. I accept in general terms that the Claimant did feel that there was a stigma relating to mental health matters and that he delayed seeking treatment.

2017

13. The Claimant saw his GP on 10 November 2017 to talk about mental health and he said that he had been depressed for about a month, this is corroborated by his GP record in which he says he is very active, his diet is good, he was feeling low for one month, denied any thoughts of suicide or self-harm and wants counselling. The diagnosis recorded by the GP is **depression NOS** (not otherwise specified).

14. At that stage the Claimant was prescribed Sertraline the anti-depressant 50mg tablet to be taken one each day. He was prescribed 28 tablets at that stage.

2018

15. He was seen again by the GP on 8 February 2018 at which point the GP recorded as follows:

> **depressive episode** he is on Sertraline with low mood but stable on medication – no red flags for suicidal intent – want to taper down

> medication and taking every other day – advise to review in 2/52 [i.e two months' time].

16. The Claimant had a concern about becoming addicted to anti-depressants and did not follow the advice he was given about dosages tending to take less than the doctor had suggested.

17. The Claimant says that at this time he found his condition made it difficult for him to integrate into social settings and he preferred solitude. He also says that he felt self-conscious that something was wrong with him and that everyone would notice it, he says that his low mood and depressive state had a negative effect on his self-esteem and motivation. He said he was lethargic and would have long periods without sleep and then would crash exhausted after depriving himself of sleep. He says it had complications and affected his relationship with his partner and made it harder to access the help that he needed.

18. By 16 March 2018 the Claimant saw his GP again and the medical notes record depression, medication review, not on anti-depressants anymore and happy about this. It then says he is well and has engaged well with MHT which I take to be mental health therapy and services and happy with the treatment he has had.

2019

19. There is then no reference in the GP record at all for approximately nine months until 12 February 2019 when the Claimant reported being sprayed with CS gas at petrol station three days earlier. He reported blurred vision and there is a document attached to that where he was referred to talking therapy as requested and an information leaflet relating to talking therapy was provided. I find that the proposed treatment at that stage was mostly likely in relation to the sequences of a traumatic attack rather than treating spontaneously occurring depression.

20. The Claimant very unluckily was subject to another assault on 7 March 2019 which lead to him reporting blurry vision and the fact that his sister had driven him to A&E.

21. There is then a gap in the medical records for nearly seven months.

22. On 11 September 2019 the Claimant went to see his GP suffering from depression and the note records:

> suffer from **depression**
>
> feels low not motivated
>
> when waking in the morning not feeling happy was
>
> on anti deprsant before but not helped security
>
> manager the work made him **depressed**

not willing to have tablets, wants something different

declined in his depression since February having an attack in February would prefer someone to talk

not suicidal and socialising referred to

talking therapy

23. On 16 September 2019 the Claimant wrote to Alasdair Nicol, a Senior HR advisor at the Respondent as follows:

> I have taken a long time to come to this decision, but I believe is for the best for everyone: I found the courage to come forward about my mental health condition. For me, my mental health has been an ongoing issue ever since 2017 when I was first diagnosed with **depression and anxiety**. I was on medication for a while, then group therapy as well as other therapies. None of these helped so I tried to get over it by simply ignoring the fact that I am ill. I thought it would simply go away or I could just learn to live with it. I was even hopeful that I may get better someday, but unfortunately, I am still battling alone with this condition that has taken over every single aspect of my life for almost two years now.
>
> It was very hard for me indeed to finally accept that I truly have a problem that requires further help. I only recently managed to comprehend the extensive effects derived from my mental illness. I have always thought about myself that I am a strong, independent and intelligent person, that can be fully autonomous, however, I came to realize that I was wrong and I was in a constant battle with myself trying to understand if what I am going through is "normal". I came to the conclusion that nothing is normal about mental health and having to live with it, makes every aspect of life more challenging and frustrating. Having nobody to talk to makes it harder to ask for help and immerses one in a greater deal of stress and prolonged agony.
>
> Even though many people are affected by mental health issues and there are multiple campaigns to help people like me coming forward and seek the help we need, there is still a strong social stigma that amplifies the effects of the illness, making it far more difficult for us to recover. I may be wrong here but I still fear of being discriminated at my place of work or even to be dismissed because of my illness and I wish to be normal, but I know I am not. My personal life was immersed in a bowl of tragic events that changed me forever and made me feel sad. I don't want to go into details about particular aspects that involves sick members of my family, because they have absolutely no guilt for my mental health

decline and I am not blaming them, however, one thing is for sure: I require support and understanding as these are probably the darkest moments of my life.

What made it even worse for me was an incident that happened at work, on the 9th of Feb 2019 when I was attacked by a man in a petrol station whilst filling up the work vehicle. The attack was initiated without provocation simply because I was wearing the HS2 logo. After the attack, I tried to convince myself that it was just an isolated event and I tried to coach myself into believing that I was going to be fine. I wanted to ask for help then but I was too embarrassed to talk to anybody and admit that I needed help following the traumatic experience.

The thought that I am always at risk of being attacked and the thought that my life doesn't matter to anyone took over me. I became increasingly obsessed and even paranoid about the incident, to the point where I felt terrified to fill up the car. I had to force myself to do it just to make sure nobody would find out how terrified I was as I thought they will laugh at me. I was never a coward, nor afraid of anything in my entire life, but this illness turned me into someone that I barely recognise as myself.

I am not sure if the post-traumatic stress, following the abovementioned event was amplified because of my pre-existing mental health issues, but it made it harder for me to concentrate and function at my full capacity. Following the attack, the attacker was charged and he pleaded guilty in Court, however I was never looking for retribution or punishment for him. I simply wanted to get better. The psychological scars that I was left with, combined with the continuous stress and challenges that I am facing every time at work and in my day to day life made me feel segregated, marginalized and further depressed; this is the reason why I have decided to ask for help to deal with this matter more robustly. I cannot do it alone and at this moment in time, I haven't got anybody to help me with anything and is hard. I feel that everyone wants to put me down and I don't feel that I am supported in any way by nobody.

I am sure you can appreciate how hard it is for me to open up and talk about my mental health. I would like you to keep this strictly confidential. I want to continue in my job without interruption, but I do require the Company's support and understanding every step of the way.

I know this may come at a bad time because all the proposed changes happening at work, however, I was told that there is never too late or too early to ask for help when it comes to mental

> health. This is the motto that motivated me and gave me the courage to ask for help from the Company now.
>
> Regarding my role: I have always fulfilled my duties to the best of my ability and I have never received any complaints or criticism from the Client or my managers. Despite my problems, I still managed to maintain a high level of professionalism and dedication to my job. I do require, however, some adjustments at work which will enable me to continue my mental health treatment and look after my family at the same time. I am simply asking to keep my shift patern on nights until my circumstances will improve. The solution to accommodate this is already to hand and was in force for the past 19 months.
>
> Ofcourse I have requested a letter from my GP documenting my mental health condition. This will be made available to you in due course.
>
> Please note: Due to my therapy sessions I cannot be contacted between 14:00 and 16:00 when I'm working the previous night, and between 09:00 and 12:00 when I'm off the previous night. I apologise in advance if I cannot be contacted between the aforementioned time frames.
>
> [emphasis added]

24. That was the first reference to anxiety in contemporaneous documents. This is not a medical document and is written in the Claimant's own words.

25. The following month on 4 October 2019 the Claimant again attended his GP surgery and what is recorded is

> **LOW MOOD** history on going issues with low mood, pt [patient]
>
> says ongoing for 1 years. no obvious cause or reason
>
> having talking therapies, but wants to move to the next step of management
>
> has had Sertraline before unsure if worked at the time, keen to try alternative
>
> denies any thought or self-harm/suicidal ideation
>
> working in security, denies any drugs, minimal ETOH [reference
>
> to drinking alcohol] has family support

26. The next entry in the GP record is on 21 December 2019 where the Claimant again discusses low mood and is prescribed Sertraline, 50mg tablets, half a tablet a day to begin with, work up to one per day, 28 tablets.

27. The note contains:

> ongoing issues with **low mood** – Citalopram not working at all and worried about developing an allergy to it as had sore throat and rash after taking it recently. Still feels low, sleeping better, no DSH/suicidal ideation, no drugs and minimal ETOH.

2020

28. In an investigation meeting as part of a grievance heard on 23 January 2020 by Martin Harre, Operations Director at the Respondent, the Claimant told him that he had been diagnosed with a mental-health condition, and mentioned **anxiety**. He mentioned having had a severe reaction to a change in medication in October 2019 he said

> "I passed out, I had an anaphylactic shock (similar to a reaction to nuts). I raised the issue on handover reports, on 24/11/2019 (am), and 2/12/2019 (am) – I called NHS for emergency assistance (2/12)."

29. He explained that the circumstances were that he was driving and he felt sick and pulled over. He said he called the NHS and explain the symptoms and took the advice to take a rest.

30. He confirmed that the medications changed back (to the previously prescribed antidepressant sertraline) on 21/12/19. He said that now the medication had been changed back he felt okay.

31. A couple of weeks later there was an outcome to the Claimant's grievance from Mr Harre by a letter dated 5 February 2020. He upheld the Claimant's grievance. Of relevance to the question of disability he wrote as follows under the heading "Wellbeing":

> "You demonstrated that you have been and currently are suffering from **anxiety and depression** and this is being treated by medication and therapy. There was also a period between October and December whereby your medication was changed. The new medication caused physical side effects causing you to black out at work on the 24th November and again on the 2nd December, 2019.
>
> While the physical side effects are no longer an issue due to the change back to your original medication, and you explained that

> you do not feel that any adjustments need to be made at this time to help you with your medical condition"

32. The next entry in the GP record is on 10 July 2020 when there was a telephone consultation (this is now the time of the Covid-19 pandemic). The record has:

> history: patient takes Sertraline half a tablet **prn**, feels like he will become dependent on the medication and does not want that, wants to know if "training supplement" such as L-Arginine and LCitrulline" have an effect on Sertraline, few days ago started **feeling low** due to thought of the passing away of some family members, retsrated Sertraline half tablet daily.
>
> No self-harm/suicidal thoughs, no change to appettie, no sleep disturbance, motivated enough to go to work as Security Manager
>
> (*sic*)

33. "prn" means "when necessary" (from the Latin "*pro re nata*"), indicating as I understand it that the Claimant was taking the medication on an *ad hoc* basis rather than strictly and regularly as prescribed by the GP.

34. There is an entry on 22 June which seems somewhat similar Claimant asking to know if a performance supplement affected Sertraline tablets and

> Advise the patient as long as the product only contains L-arginine and L-citrilling no infortamtion (*sic*) to state the affect sertraline in anyway
>
> Explained to the patient hos setraline tablets were sent to the pharmacy of his choice on the 11/6/2020 patient was not sure it was there will pick medication and restat r/v any concerns/new or worsen symptoms

35. That appears to be the last entry explicitly relating to the Claimant's mental health in the GP record. There are other later items in the record e.g. automatic system items relating to text messages, Covid vaccination and the like.

2021

36. In May 2021 the Claimant applied to HSBC for critical illness cover. In that application form he provided the following information:

> "Have you ever sought medical advice or received treatment for:

> A mental health disorder, including anxiety or depression, that has required time off from work, hospital treatment or referral to a psychiatrist?
>
> [Answer:] **Yes**
>
> Additional Information: **anxiety and depression** in the past but never taken time off work. Had medication and theropy since 2017. Hasnt taken medication for the last few months.

37. Of relevance to the Claimant's disputed alleged application for a shotgun licence are the following entries in the GP record.

38. There is an entry in the GP record on 17 December 2021 where it says administration: patient spoke to Yvonne re: police document – please confirm charge with Dr AA – only last page needs to be filled in by Dr AA.

2022

39. On 18 November 2022 the GP record says "PAID Â£40 for private form on 18.11.2022. Taken by Haffizah [Ms Haafizah Ahmed].

40. The final relevant entry is on 23 December 2022, it says there is a comment put in by Dr Anthony Annan –

> "Has applied for firearms certificate form completed and signed."

Shotgun license application

41. There was an energetic dispute between the parties about the details of whether the Claimant did or did not apply for a shotgun licence in approximately November or December 2022 or thereabouts.

Respondent's application for specific disclosure

42. The Respondent made an application for an order for specific disclosure of the Claimant's application for the grant or renewal of a firearm and/or shot gun certificate, initially in correspondence and developed by counsel in the hearing before me.

43. The Claimant and his representative firmly opposed this application. By an email dated 2 January 2024 the Claimant confirmed that he had abandoned plans to apply for a shotgun licence in December 2022 and had never made an application so there was nothing to disclose.

44. I think it possible that the parties may have been talking at cross purposes in relation to disclosure. The Claimant was (I think) asserting that he had never put an application in to the relevant authority. The Respondent it seems to me

was understandably interested in the document submitted to the GP for his input.

45. I refused the Respondent's application to make an Order for disclosure of that document because it seemed to me likely that that would mean the adjournment of this hearing which was not proportionate nor in the interests of justice that there be a delay, when the question of the content of the shotgun license application was in my judgment a somewhat peripheral matter.

46. I did in making that decision tell the Claimant in the hearing that an inference might be drawn by his failure to disclose the document provided to the GP and gave him the opportunity to disclose it voluntarily. No such voluntary disclosure was made.

Evidence on shotgun license application

47. During the course of his oral evidence, later on in the hearing, the Claimant was adamant that he had never applied for a shot gun licence at all and on more one occasion likened this to his desire to climb Mount Everest, by which he explained he meant that it was some sort of unrealised dream which he had thought about but not taken any steps to make happen. He said that this was in view of his mental health based on advice that he had received at a clay pigeon shooting club at which he had become an enthusiastic member and that he decided not to proceed with this application to get a shot gun licence. He said it was his mental health and also other costs such as needing a gun cabinet and the application fee that put him off.

48. The Claimant says that he does not remember paying £40 to the GP and is adamant that there is an inaccuracy in the record. He suggested that he has or at least he will raise this with the GP.

49. My finding on the balance of probabilities is that the Claimant did pay £40 as is recorded in the GP record on 18 November 2022 where it says PAID £40 for private form on 18.11.22 taken by Haafizah and that is a reference to Ms Haafizah Armed who appears to be one of the administrative staff.

50. I find as a fact that the GP did complete a form relating to an application for a shotgun licence on or around 23 December 2022 as per the record and this was scanned on 28 December 2022 as per the record on page 227 of the agreed bundle.

Content of shotgun application form

51. There is at page 191 in the agreed bundle a template of the application for grant or removal of a firearm and/or shot gun. I have considered that document and that there is a requirement for a GP to sign it off and that the form itself contains various requirements so for example, it directs the applicant "I understand that I am expected to notify the police if I am diagnosed with or treated for a medical condition listed in note 5 while the certificate remains valid".

52. Note 5 which is at page 204 includes **depression or anxiety**.

53. Depression and anxiety is what it is that the Claimant is saying that he had at the material time in September 2022 i.e. only two months before the Claimant paid £40 for this form to be completed.

Conclusion on shotgun application

54. It is unsatisfactory that the Tribunal does not have the shotgun licence application form submitted to the GP.

55. While I note that the Claimant says that he did not pursue this matter, there is the fact of the GP record. It seems highly unlikely that the administrative staff in a GP practice would record that the Claimant had paid £40 if he had not and again unlikely that the record would reflect that the GP filled in the form if he had not. The Claimant admits that he had an interest in having a shotgun licence. The only real dispute is how far he got in the application process

56. It is difficult to determine precisely what happened. I can only deal with this on the balance of probabilities. On the balance of probabilities I find that the Claimant did initiate the process of getting his GP to complete documentation to support his application for a shotgun licence. The GP record speaks for itself and I consider the possibility that this is all an administrative mistake is unlikely.

57. I do accept what the Claimant told me more than once in the hearing that he decided not to pursue the application for a shotgun license. That was the position he set out in inter-party correspondence in his email dated 2 January 2024.

58. What did the Claimant submit to the GP surgery? It may have been a blank form for the GP to fill in, which the Claimant was going to complete later. The Claimant may have completed the form himself and send it to the GP for the doctor to add his part. On balance I think that latter interpretation is more consistent with the GP's comment "*Has* applied" which suggests that this was something that was already in train.

Relevance to disputed disability

59. Is there anything on that form which is relevant to the present case?

60. I am alive to the possibility that the Claimant gave less than a full account of his mental health history in the form that he submitted to GP. The reasons are first, the Claimant is an intelligent person who would understand that if he declared a lengthy history of depression and anxiety that would be likely to cause difficulties in an application for a shotgun licence. There is another words a reason to downplay that mental-health history.

61. Second, the Claimant is adamant that a document should not be disclosed and indeed has gone as far as denying that he ever took any steps to obtain a shotgun licence, a position which in my view the content of GP record

undermines. He did take steps. He paid £40 to his GP to complete the GP part of the application form. The Claimant would be concerned that disclosing such a document might undermine his contention in this hearing that he had depression and anxiety amounting to disability.

62. While this is all part of the factual matrix I have decided that it is not essential to my reasoning on the disputed matter of disability to attempt to make a detailed and definitive finding. This is primarily because of the length of the GP record which stretched back four years before the shotgun application was submitted to the GP. Even if the Claimant had said nothing about his mental health in the shotgun application that would still leave the earlier GP record.

Evidence of Claimant's supporting witnesses

63. The Claimant called evidence from various former colleagues.

64. First was Mr Hillary Ndoke who gave evidence that the Claimant had behaved sometimes in a volatile way and that he had told him that he had had treatment for depression but that 70% of the time he considered he was fit for work. He said that there was abnormal behaviour, he was sometimes agitated, angry and that there were mental issues.

65. The next witness was Mr Vitali Grimalo who worked with the Claimant until March 2022 from December 2017 although he stopped working directly for the Claimant in 2021 and thereafter had less contact although he said that he fairly regularly saw him at lunchtime. He gave evidence that the Claimant was crying about the unfairness of the Respondent's treatment of him and saying that he was depressed about the environment in which he worked. He says that it was 50-50 whether the Claimant was fit for work in the sense that he said 50% of the time he thought he was and 50% of the time he thought he was not and Mr Grimalo was trying to tell the Claimant that he should relax and have a good tea. Mr Grimalo suggested he formed the impression that the Claimant became more and more depressed.

66. The next witness was Mr Daniel Flynn who was keen to emphasise that he is a mental health first aider who has done a two day course although he acknowledged that that is not a professional medical qualification, he said that he has a personal history from his own personal past some awareness of mental health issues although that was not clear whether that was from family members or for himself personally. He says that after he ceased working with the Claimant which was in December 2021 he has remained in some contact with the Claimant and because they had bonded over some shared experiences and he had checked in on him to see if he was "on an even keel".

67. The next witness was Mr Stacee-Martin Ellis who also was the Claimant's lay i.e. voluntary representative who denies that he takes payment from the Claimant or other colleagues who are also suing the same Respondent. He drew on his own experience of a family member with depression and emphasised that sometimes an individual would put on a brave face whereas

in fact they are suffering from clinical depression. It was his view that the Claimant was depressed.

Claimant's oral evidence

68. The Claimant gave evidence in a thoughtful and apparently credible way in his oral evidence. There was nothing about the way that he presented himself or his demeanour that led me to question what he was saying.

69. The Claimant gave oral evidence in which he denied that his first impact statement had significantly exaggerated or over egged the extent of his disability, he was cross examined on a number of apparent inconsistencies in the documentation but in particular the way that he had described the reactions to an anti-depressant medication Citalopram in his impact statement as being

pretty close to life threatening experience whereas in the medical record on 21 December 2019 it says simply this:

> "Citalopram not working at all and worried about developing an allergy to it as he had a sore throat and a rash after taking it recently".

Claimant's written evidence

70. In his written evidence the Claimant describes at the bottom of page 246 "the allergic reaction to Citalopram had a severe impact on my physical and mental wellbeing, shaking my confidence in taking medication all together"

> "The symptoms I experienced after my medication was changed from the Sertraline to Citalopram were alarming severe, I would spontaneously lose consciousness and find myself unable to breath. These episodes culminated in debilitating panic attacks, triggered by the adverse reactions caused by my Citalopram allergy. The experience was harrowing – if felt as though I was dying and it significantly impaired by ability to function normally".

71. There is a striking contrast between the Claimant's impact statement on this reaction to a drug and what is recorded in the GP record about it. The contrast between his impact statement page 246-247 of the agreed bundle and the medical record at page 231 of the bundle relating to December 2019 raises a significant question about the credibility of the evidence contained within his first disability impact statement.

72. I bear in mind however that the Claimant described the adverse reaction to Citalopram to Mr Harre of his employer during the grievance in more dramatic terms.

73. In the hearing before me the Claimant was only seeking to rely on the second witness statement which is written in rather more muted terms and perhaps is closer to the medical evidence.

74. Some of the first impact statement is not directly relevant to the question of disability since it relates to the treatment by the Respondent of the Claimant. There is a list of 40 "impediments" that the Claimant suffered which he describes as only being a few examples of his disability. There is a list of 20 alleged impacts on day-to-day activities which the Claimant "would have" experienced as he not received treatment. There is also a list of 26 specific ways that the Claimant's mental health affected him which seem to in large part be criticisms of the Respondent as his former employer. The first two of these lists resemble as being generic checklists of possible symptoms and effects of depression rather than specific symptoms personally suffered by him.

75. There is a list of alleged impacts on the Claimant's life in the second impact statement beginning at page 268 running through to 274 which does read something like a check list of possible depressive symptoms which I have treated with a certain amount of circumspection in particular because of the inconsistencies regarding Citalopram and the shotgun application.

Submissions from the parties

76. The Respondent says that the Claimant's impact statement is "massively over egged". Mr Sendall says it's the worst that he has seen in thirty years of practice and says that it is wholly untrustworthy, riddled with exaggeration, misrepresentation of the position and that the Claimant has failed the evidential burden on him.

77. On the other side of the argument Mr Ellis for the Claimant made submissions in a more anecdotal and less technical way. He pointed out that various people, including celebrities, have downplayed their mental health problems only for these to become dramatically apparent for example in the case of a suicide.

Law

Where oral evidence and contemporaneous written evidence conflict

78. I have taken account of the caution urged by Leggatt J in **Gestmin SGPS SA v Credit Suisse (UK) Limited** [2013] EWHC 3560 (Comm) at [16]-[22] in relation to memory and witnesses who seem to be confident of the recollection after the event in their oral testimony where this conflicts with contemporaneous written evidence.

Disability

79. The Equality Act 2010 contains the following provisions:

> 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.

Schedule 1

Long-term effects

2(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.

80. Underhill J (President) sitting in the Employment Appeal Tribunal in the case of **J v DLA Piper UK LLP** 2010 ICR 1052 (UKEAT/0263/09/RN) gave some guidance on the question of disability:

40. Accordingly in our view the correct approach is as follows:

(1) It remains good practice in every case for a tribunal to state conclusions separately on the questions of impairment and of adverse effect (and, in the case of adverse effect, the questions of substantiality and long-term effect arising under it) as recommended in Goodwin v Patent Office [1999] ICR 302 .

(2) However, in reaching those conclusions the tribunal should not proceed by rigid consecutive stages. Specifically, in cases where there may be a dispute about the existence of an impairment it will make sense, for the reasons given in para 38 above, to start by making findings about whether the claimant's ability to carry out normal day-to-day activities is adversely affected (on a long-term basis), and to consider the question of impairment in the light of those findings.

(3) These observations are not intended to, and we do not believe that they do, conflict with the terms of the Guidance or with the authorities referred to above. In particular, we do not regard the Ripon College and McNicol cases as having been undermined by the repeal of paragraph 1(1) of Schedule 1 , and they remain

> authoritative save in so far as they specifically refer to the repealed provisions.

81. In that case guidance was given on cases in which mental-health, particularly depression, is said to amount to a disability:

> 42. The first point concerns the legitimacy in principle of the kind of distinction made by the tribunal, as summarised at para 33(3) above, between two states of affairs which can produce broadly similar symptoms: those symptoms can be described in various ways, but we will be sufficiently understood if we refer to them as symptoms of low mood and anxiety. **The first state of affairs is a mental illness—or, if you prefer, a mental condition—which is conveniently referred to as "clinical depression" and is unquestionably an impairment within the meaning of the Act. The second is not characterised as a mental condition at all but simply as a reaction to adverse circumstances (such as problems at work) or—if the jargon may be forgiven—"adverse life events"**. We dare say that the value or validity of that distinction could be questioned at the level of deep theory; and even if it is accepted in principle the borderline between the two states of affairs is bound often to be very blurred in practice. But we are equally clear that it reflects a distinction which is routinely made by clinicians—it is implicit or explicit in the evidence of each of Dr Brener, Dr MacLeod and Dr Gill in this case—and which should in principle be recognised for the purposes of the Act. We accept that it may be a difficult distinction to apply in a particular case; and the difficulty can be exacerbated by the looseness with which some medical professionals, and most lay people, use such terms as "depression" ("clinical" or otherwise), "anxiety" and "stress". Fortunately, however, we would not expect those difficulties often to cause a real problem in the context of a claim under the Act. This is because of the long-term effect requirement. If, as we recommend at para 40(2) above, a tribunal starts by considering the adverse effect issue and finds that the claimant's ability to carry out normal day-to-day activities has been substantially impaired by symptoms characteristic of depression for 12 months or more, it would in most cases be likely to conclude that he or she was indeed suffering "clinical depression" rather than simply a reaction to adverse circumstances: it is a common sense observation that such reactions are not normally long-lived.

Conclusion on disability

Reliability of Claimant's written evidence

82. There are three reasons why I feel I cannot simply accept the Claimant's written account of his alleged disability at face value.

83. First is the Claimant's account of the extent of the effect of his reaction to Citalopram the anti-depressant. It is not obvious to me that this is conscious exaggeration. The GP record may not have captured the full picture. The discrepancy however between the GP record and the Claimant's written account is so stark that it raises a question about the reliability of his account.

84. Second, I cannot reconcile all of what the Claimant has said about the shotgun license application with the GP record. I think that some of what he said about this was simply wrong. He was plainly in the process of trying to obtain a shotgun licence even if he did not pursue to its conclusion. Again this means I have to approach the reliability of his evidence on this point with degree of caution.

85. Third, much of the evidence about the alleged effect on Claimant's day to day activities in particular at pages 252-255 and 255-257 lacks specific detail relating to the Claimant's personal circumstances. Much of it is generic and reads as if it is a synthesis of possible symptoms of depression which leads me to doubt whether much of it is reliable. I do not take it all at face value.

86. There are a whole series of alleged conditions contained in the disability impact statements which are not supported by medical evidence. To take some examples: erectile dysfunction, anxiety in social settings, alcohol abuse, panic attacks and fear of public spaces. The Claimant attended his GP with reasonable frequency. The absence of these matters in the GP record I find is significant.

Other evidence

87. I feel I can place more reliance on contemporaneous documentary evidence (i.e. the GP records) than on the content of the disability impact statements which have been prepared for the purpose of this hearing.

88. My conclusion is that between 10 November 2017 and 22 June 2020 which is a period of some two and a half years the Claimant was reporting to his GP symptoms of depression on a series of different occasions. At different stages he been prescribed Citalopram and Sertraline or referred to talking therapies.

89. The Claimant's supporting witnesses have plainly attended to support him. To that extent they are not independent. While I would not elevate their opinions to the level of medical evidence, there did seem to be a common theme running through their accounts of the Claimant reporting to them that he was depressed. That is consistent with what he was telling his GP on multiple occasions.

Impairment

90. I find, in view of the supportive contemporaneous medical evidence that the Claimant was suffering from **depression**, which was a mental impairment.

91. Conversely I am not satisfied that the Claimant has discharged the burden on him to show that he was suffering from **anxiety**. Anxiety and depression commonly occur together, but it does not follow that this occurs in every case. These are two distinct symptoms.

92. Notwithstanding his references to anxiety in the grievance process, the HSBC application for critical illness cover and in the ET claim forms, these are his descriptions of his condition as a layman. He was not medically trained. There is no reference to anxiety in the GP record. Given the number of times that the Claimant did attend his GP, in the region of eight or nine distinct occasions in relation to depression and given that he described symptoms which were recorded, sometimes with a degree of detail, the lack of reference to anxiety I take to be significant.

Substantial adverse effect

93. I accept that the Claimant was suffering from a disturbed sleep pattern and that this was affecting his relationship with his partner. That his sleep disturbed is supported by an entry on 10 November 2017 in the GP record where he had scored 3/3 for sleep disturbance and a further entry on 21 December 2019 “sleeping better”.

94. As to motivation I note the argument put forward by Respondent that the Claimant was sufficiently motivated to go to work. Nevertheless I find that his motivation was affected. The GP record references little interest or pleasure in doing things and feeling tired. There is also a reference to difficulty concentrating which is a distinct but perhaps related symptom.

95. I do not find that the Claimant’s ability to socialise was significantly compromised. The medical evidence suggests that he was still socialising. I accept however that he may have felt at times disinclined to socialise.

96. In terms of the Claimant’s participation in his workplace, I accept the evidence of the Claimant’s former colleagues that he was struggling at work. This was not a specialist task at work, but participation at work in a general sense and simply getting along with colleagues. He was struggling. He was sometimes agitated or angry. This was sufficiently substantial that his colleagues noticed. In my judgment was more than a trivial adverse effect on his participation at work which was a day-to-day activity.

97. For reasons given above do not find that many of the other claimed effects and symptoms in the Claimant’s impact statement have been proven. I have not taken these matters at face value where there is no supporting evidence. Nevertheless I cannot simply discount the Claimant’s medical record. He kept returning to his GP reporting depression and low mood. He was struggling generally and at work as his colleagues noticed.

98. Considering the threshold of "substantial", meaning more than trivial, on balance I find that the effects of **depression** on the Claimant's day to day activities were adverse and substantial.

Long-term

99. I have considered carefully the guidance of the Employment Appeal Tribunal in the case of **J v DLA Piper** and considered whether this might be characterised as a temporary reaction to events. There have been events which have been triggering for mental-health difficulties. The Claimant reports being attacked twice. Those alleged assaults occurred in February and March 2019. That does not explain the entire history, however between 10 November 2017 and 22 June 2020.

100. Given the length of time that symptoms were reported, I find that the effect of the impairment was long-term. Albeit that there is not contemporaneous evidence of the Claimant's mental state in September 2022, there was a likelihood of recurrence. Likely in this context means "could well happen" (**SCA v Boyle**).

Summary

101. I find that the Claimant was at the material time a disabled person by reason of depression.

102. I do not find that the Claimant has proven on the balance of abilities that anxiety was an impairment which caused a substantial and long-term adverse effect on his day-to-day activities.

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Employment Judge Adkin

Date 19 February 2024

JUDGMENT SENT TO THE PARTIES ON

29 February 2024

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M PARRIS

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FOR THE TRIBUNAL OFFICE