



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

Ms Samia Akram

v

The Shared Learning Trust

## RECORD of a PRELIMINARY HEARING

**Heard at:** Norwich

**On:** 9 and 10 May 2022

**Before:** Employment Judge Postle

### Appearances

**For the Claimants:** Ms Ferber, Counsel

**For the Respondent:** Mr S Profitt, Counsel

## PRELIMINARY HEARING JUDGMENT

The Claimant's mental impairment of depression and anxiety from 22 February 2018, which was substantial, adverse and long lasting, satisfies the definition of disability under Section 6 of the Equality Act 2010.

## REASONS

1. This is a Preliminary Hearing to deal with the specific issue of what periods, if any, the Claimant suffered from a disability, namely depression and anxiety, in the period May 2017 to July 2020; disability having been conceded from July 2020 by the Respondents in respect of anxiety and depression.
2. In this Hearing we have had the substantive Bundle of documents originally for the Full Merits Hearing. We have also had the benefit of the Claimant's substantive Witness Statement, the relevant paragraphs for the purposes of this Hearing are 64 - 68 and the Claimant's Impact Statement. Particularly relevant documents are the GP notes at pages 815 - 842 and we have had the Occupational Health Reports in October 2019 at page 524 and the Occupational Health Report in July 2020. There was also a report from the Claimant's therapist dated 20 February 2020.

3. The Claimant gave evidence and was cross examined. The Law in this matter is common ground between Counsel. The Tribunal also had the benefit of very helpful written submissions from both Counsel for the Claimant and Counsel for the Respondents. The burden of proof again is common ground, of proving disabilities rests with the Claimant.
4. If one looks at the evidence in the period May 2017 to February 2018, the Tribunal are left with no medical evidence to suggest that during this period the Claimant was suffering from a mental health impairment. The GP notes first mention depressive mood in February 2018 when the Claimant sought help. Prior to that, there is evidence the Claimant was undergoing a number of medical tests for stomach and gastric problems.
5. The Claimant's Impact Statement stated,  
  

*"The effects of my depression and anxiety commenced in October 2016 which is when I started receiving treatment."*
6. However, there appears to be no medical evidence from 22 November 2016 when the GP notes start, that the Claimant was receiving treatment for depression and anxiety. There is simply no recording in the GP notes and no medication appears to be prescribed during that period for anxiety and depression. The Claimant, during this period, was certainly undergoing tests for stomach and gastric problems as the notes record, but the Claimant has produced nothing in the way of medical evidence such that these problems were related to, or caused by, depression and anxiety.
7. The Claimant says that since October 2017,  
  

*"My medication was increased linking events to work"*
8. The Tribunal asked what medication was increased from October 2107, again the GP notes do not support this fact and there is no evidence, other than undergoing tests, of any medication being prescribed or increased during 2016 / 2017, apart from a note on 12 October 2017 that Amitriptyline was prescribed but the GP notes give no reason for this being prescribed.
9. The first time the Claimant is diagnosed as having depression is on 22 February 2018, when the GP notes record depressive mood. At that stage the Claimant is prescribed medication for it which is altered as the first medication was not helping and the subsequent medication dosage was steadily increased over that period.
10. During this period which we suggest is from February 2018, the condition diagnosed as depression appears to be getting worse and the need for medication increased and thus was having an adverse impact on the Claimant's day to day activities. These were clearly exacerbated because

by the time she went off sick in September 2019 and the Occupational Health Report commissioned and dated 23 October 2019, records amongst other things that the Claimant had a constant racing of the mind, increase in heart rate, uncontrollable shaking, cold sweats, a disturbed sleeping pattern, an increased levels of fatigue, feelings of worthlessness, decreased appetite, random onset of crying and decreased energy to complete activities of daily living. They clearly were ongoing issues and the Tribunal conclude going back to when the Claimant was first diagnosed in February 2018, was clearly affecting from that period onwards her normal day to day activities.

11. The Occupational Health Report concludes that given the current levels of symptoms and severity, recovery time frames even with the earliest return would be six months. The Tribunal are in no doubt the Claimant was unwell prior to February 2018, for which she was clearly undergoing a number of tests, but whether at that stage the gastric and stomach problems related to depression or anxiety is unclear and there is no medical evidence to support that fact.
12. The Tribunal are left to conclude on the limited evidence available to them that the Claimant had a mental impairment from February 2018 at best and that impairment affected the Claimant's ability to carry out normal day to day activities which at that stage was substantial and long term.
13. At the end of the Judgment, discussion then took place regarding removal and / or amendment to the List of Issues bearing in mind the above.
14. In relation to the List of Issues which is to be found at pages 62 – 78 of the current Bundle of documents, the following paragraphs can now be deleted as being withdrawn:
  - Paragraph 20 and 21 – although the issue of knowledge remains to be determined in relation to the period February 2018 to July 2020;
  - Paragraph 24.1 and 24.2 – are withdrawn and dismissed; and
  - Paragraph 29.1 and 29.2 – are withdrawn and dismissed.
15. In relation to the failure to make reasonable adjustments, the Claimant's Counsel has agreed to confirm the dates from when the Claimant suffered a disadvantage.
16. There was then a general discussion about the Bundle and Employment Judge Postle's concern that the Bundle ran to approximately 900 pages. The reality was in the course of the Hearing unlikely that the Tribunal will be asked to consider every page and whether it is possible that the parties could discuss between themselves, slimming down the Bundle.
17. Finally, there was concern expressed by Mr Profit, Counsel for the Respondents, in respect of the length of the issues that the Tribunal is

being asked to determine, in the region of 110, and whether the Claimant can effectively revisit some of the claims as he expressed concern as to how they were advanced.

18. In effect, Mr Profitt on behalf of the Respondents was putting a marker down for Costs and wished for that to be recorded in today's Judgment.
19. Ms Ferber, Counsel for the Claimant indicated she had no pre-warning from Mr Profitt regarding his comment in the absence of an Application to Strike Out or for a Deposit Order. She had very little response other than she was comfortable with the way the case had been advanced on behalf of the Claimant.
20. Employment Judge Postle emphasised his comments on the first day of the Hearing, namely the question of proportionality having regard to the overriding objective appears to have been lost given the extent of the List of Issues and whether it is possible for the Claimant to revisit and reduce, or concentrate on the major issues and parking some of the other issues pending the decision on the main areas of concern.
21. Other than that, Employment Judge Postle clearly did not express an opinion other than to re-emphasise proportionality.

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Employment Judge Postle

Date: 15/6/2022

Sent to the parties on: 30/6/2022

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For the Tribunal Office.