



EMPLOYMENT TRIBUNALS

Claimant: Ms C Higgins
Respondents: Sainsburys Supermarkets Limited

Heard at: Liverpool **On: 14 May 2021**
Before: Employment Judge Aspinall

REPRESENTATION:

Claimant: in person
Respondent: Ms Urquhart, Counsel

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant was not disabled for the purposes of Section 6 Equality Act 2010 at the dates of the acts of discrimination complained of.
2. Her complaint of disability discrimination stands dismissed.
3. Her complaint of constructive unfair dismissal will proceed to final hearing.

REASONS

Background

1. By a claim form dated 14 March 2020 the claimant brought claims for constructive unfair dismissal and disability discrimination. The respondent defended those claims and the matter came to a case management hearing before Employment Judge Shotter on 3 August 2020. EJ Shotter clarified the claimant's complaints and the disability relied on in relation to each set of allegations and listed a preliminary hearing to determine disabled status on 15 December 2020. The

claimant said that she relied on her heart condition for the first set of allegations (the Lee McCabe allegations) and her heart condition, bladder condition and stress condition for the second set of allegations (the Simon Fleury allegations).

2. There was a second case management hearing before Employment Judge Benson on 15 December 2020. The preliminary hearing was not able to proceed on that date as there had been confusion about the format of the hearing. The claimant attended in person and the respondent attended remotely. EJ Benson postponed the preliminary hearing and conducted a private preliminary hearing for case management purposes. EJ Benson again discussed the claimant's complaints and disabilities which were affirmed from the EJ Shotter Order. Some of EJ Shotter's case management orders were varied, the preparation for final hearing reviewed and the preliminary hearing relisted.

The hearing

3. At the outset of the hearing I asked the claimant to explain what she understood the hearing to be for today. She was able to tell me it was to decide whether or not she was disabled in order to bring her disability discrimination complaints.
4. I asked her to explain the consequences of today's decision and in discussion she confirmed that she understood that if I found she was not disabled for the purposes of Section 6 Equality Act 2010 then her discrimination complaints would come to an end today but her constructive unfair dismissal complaint would continue.
5. The parties had prepared an agreed bundle of documents which included extracts from the claimant's medical records. The claimant raised an issue about a page having been deliberately excluded (page 11). Ms Urquhart followed this up and found it must have been a copying error and related to a period in 2014 that was not the relevant period for determination of disabled status. The claimant was happy to proceed and confirmed that every document she wished me to refer to was included within the bundle.
6. The respondent had prepared an opening note setting out the relevant law on disabled status.
7. The claimant had prepared a Disability Impact Statement which she had entitled Personal Medical Statement. She had also prepared a Position Statement in which she referred to missed deadlines for compliance with case management orders and made an application, citing Rules 37 and 2 of The Employment Tribunal Constitution Rules of Procedure Regulations, to strike out the Response.

The claimant's application to strike out the Response

8. I explained to the claimant that the purpose of case management orders is to have matters ready to be heard at the listed hearing dates. It is important that they are complied with and that parties cooperate to prepare the case but that sometimes slippage does happen. Both sides confirmed that the disabled status issue is ready to be heard today. I explained that if the claimant wished to proceed with an application to strike out the Response then the respondent would need to be given notice of that application and have an opportunity to prepare written and or oral

submissions at a hearing. That would necessitate delay, as the respondent was not ready to defend a strike out application today. The claimant did not wish to delay and withdrew her application.

The issues for today

9. We then looked at the List of Issues for today from the List that had been submitted as an agreed List following Judge Shotter's Orders. Paragraphs 11- 16 were relevant for today. They are:
 - 9.1 Did the claimant on the dates on which the acts set out in paragraph 1 a (the Lee McCabe allegations) and paragraph 1B (Simon Fleury allegations) are alleged to have occurred suffer from a heart condition known as supraventricular tachycardia
 - 9.2 Did the claimant on the dates on which the act set out in paragraph 1 (b) (the Simon Fleury allegations) are alleged to have occurred suffer from a bladder condition
 - 9.3 Did the claimant on the dates on which the acts set out in paragraph 1B (the Simon Fleury allegations) are alleged to have occurred suffer from work-related stress
 - 9.4 If so, did the heart condition and/or bladder condition and all work-related stress (or in the period over which the acts alleged in paragraph 1B occurred, altogether) have an adverse effect on her ability to carry out normal day-to-day activities on those dates
 - 9.5 If so, was such effect, on those dates, substantial?
 - 9.6 If so,
 - 9.6.1 Had such effect lasted for at least 12 months
 - 9.6.2 Was such effect likely to last for at least 12 months or
 - 9.6.3 was such effectively likely to last for the rest of the life of the person affected

Clarifying the time line

10. We discussed the time line for the determination of disabled status. To assist the claimant I described an umbrella sitting over the McCabe allegations (26 June 2018 until 29 December 2018) and a separate umbrella sitting over the Fleury allegations (10 May 2019 until 23 December 2019).
11. We agreed, as set out in EJ Shotter's Case Management Summary (CMS) that in respect of the heart condition the relevant period ran throughout both sets of factual allegation (McCabe and Fleury) that is from 26 June 2018 until 23 December 2018. If this were a drawing there would be a continuous line running left to right under both umbrellas.
12. Again, relying on EJ Shotter's CMS, and if this were a drawing we would draw a separate line under the second umbrella Fleury allegations for the bladder condition from May 2019 until 23 December 2019 and a separate line under the second umbrella for the stress condition.
13. At this point the claimant said that the drawing was helpful and that this was not right. She wanted to rely on all three conditions from 26 June 2018 until December 2019 both individually and in the alternative, taken together, as amounting to a disability throughout those periods.
14. The respondent pointed out that this was new, that this was not what had been agreed before EJ Shotter, or EJ Benson and had not been raised by the claimant at any time since those CMS discussions nor in agreeing the list of issues or at any

other time until today. It was not the basis on which the respondent had prepared its cross examination of the claimant.

15. The claimant said that she had raised this in discussing the list of issues in a draft she had sent to the respondent's solicitors and that her amendments had not been included. She accepted she had not responded to correct the position neither at the time of the CMS documents, nor the List of Issues being sent in, nor in preparation of her Position Statement for today. She said that was an oversight on her part but it mattered very much to her to have all of her disabilities taken into account.
16. I explained that she would need to make an application to amend the basis on which she put her case. That would need to be done in writing. I told her that it would need an adjournment and that the relevant test would be the balance of hardship and injustice. I called a short adjournment to allow the claimant to consider her position.
17. Following the adjournment Ms Urquhart was able to tell us that she had taken instruction and found that the document that the claimant had agreed as the List of Issues was exactly that which appeared in the bundle. Those instructing her had reviewed the correspondence from the claimant contributing to the List, in September and December 2020 it showed amendments being accepted, and the List as produced here, agreed. Ms Urquhart was instructed to raise the possibility of a costs application should the matter not proceed today.
18. I summarised the options for the claimant: proceed today on the timeline drawn above and risk not being found to be disabled because her bladder and stress weren't taken into account under umbrella 1 (the Lee McCabe allegations) or adjourn, make an amendment application in writing showing what the amendment was and why it couldn't have been raised earlier, have that adjudicated on the balance of hardship and injustice test, risk a costs award. There was a short adjournment for the claimant to consider her position.
19. The claimant accepted that she had not corrected the position in the List of Issues, that it was an oversight on her part, that she had prepared well for today and did not want to adjourn and did not want to risk a costs application against her. She withdrew her objection to the time lines and made no application to amend.
20. It was agreed the heart condition is relevant to all allegations, the bladder and stress conditions only to the "second umbrella" Fleury allegations. It was by this time after 12 noon but we agreed to start hearing evidence.
21. I found the claimant gave her evidence in an evasive way. She often referred to other documents that were not within our bundle despite having previously said everything was included, and she disputed the content of documents for the first time. I have set out the occasions on which I found her to be evasive and alternately to overstate at paragraph 59 below.
22. The claimant had remained on oath over a 40 minute lunch break. After lunch cross examination was concluded and both parties made closing submissions. In closing submission the claimant said for the first time that the respondent's

witnesses in particular Mr McCabe and Mr Humble would support her position at final hearing that her condition had had a day-to-day effect on her in that she had been criticised and investigated for using the toilet too much. She had earlier in the day accepted that if she could not establish disability today that would be the end of her discrimination complaint.

23. I reserved my decision, it was after 4pm and we had had a long day of CVP. I explained I wanted time to revisit the medical records and the look over my notes of evidence before reaching my decision.

The facts

24. The claimant worked as a trading assistant for the respondent from 3 August 2009 until her resignation on 23 December 2019 taking effect on 20 January 2020.

25. Duties included working on the tills, loading shelves with stock cleaning, dealing with customers, taking phone calls and sometimes heavier lifting and physical duties.

26. In 2013 the claimant was referred by her GP to see a cardiology consultant after she had reported periods of light headedness and feeling faint

27. She saw the consultant who reported on what he described as intermittent dizziness. He discharged her from the cardiology service. His letter said "there is no pathological arrhythmia".

28. On 23 August 2013 the claimant attended A&E reporting chest pain and palpitation following attendance at a music festival. She was discharged after several hours having been shown a breathing technique involving breathing into a syringe.

29. She was again referred to cardiology. The consultant reported in October 2013 "it may be postural hypotension". Whilst he arranged for some additional tests to take place he described the condition as a nuisance that most patients learn to live with,

30. In December 2014 the claimant changed GP practice. On 18 December 2014 the new GP notes following a telephone consultation, record that the claimant reported having been diagnosed with supraventricular tachycardia (SVT). The new GP referred her back to cardiology services.

31. In August 2017 the claimant had joined at third GP practice at Ormskirk and the GP recorded "new to surgery, known SVT past, not taking any medication".

32. In December 2017 the claimant was prescribed Trimethoprim for a urinary tract infection.

33. On 1 March 2018 the claimant reported irregular heart beats. The GP notes record "ventricular ectopic beats" (VET) (first)" showing this was the first time the claimant had presented with the issue. She was again referred to cardiology and seen on 7 June 2018. The claimant was offered a referral to occupational health by the respondent in June 2018 but chose not to go.

34. In August 2018 the claimant was wearing a fit bit, of her own volition, to keep an eye on her heart rate. In a return to work discussion on 25 August 2018 the claimant confirmed that her condition does not affect her work and that she did not need any adjustments.
35. In an attendance review meeting on 1 September 2018 the claimant said that work did not affect or aggravate her condition and that she did not need any action or support to be taken. She was at that time being investigated for having had 7 absences from work that year. She had brought a fair treatment (grievance) complaint against her manager relating to the way in which she had been treated because of her absences, which was also under investigation.
36. In November 2018 the claimant was treated for a suspected urinary tract infection with Trimethoprim for 14 days. On 5 December 2018 the claimant saw the GP about her infection and requested a fit note. The notes record "*patient thinks she passed a stone*". In a return to work interview following a return on 14 December 2018 the manager conducting that interview recorded that the claimant had told him that she had been diagnosed with kidney stones, and had been advised by her GP to drink plenty of water but otherwise was fine.
37. Around this time the claimant graduated from a masters degree in psychology she had been undertaking for the previous two years. She had not needed any adjustments to her study or assessment on the degree. She had done an exam in around April 2017 and in around April 2018 submitted a major piece of written work.
38. In December 2018 the respondent referred the claimant to occupational health but the claimant was not responding to their attempts to contact her so the manager suggested that they contact her during her working hours.
39. On 31 December 2018 the claimant was signed off sick for work related stress for two weeks. She told the GP she was being singled out by her boss for having had time off re her heart. She was reviewed on 14 January and signed off for a further two weeks and again reviewed and extended until 25 February 2019. The claimant then returned to work. She was not taking any medication for stress, she was not referred to counselling, therapy for stress and no mental health condition was diagnosed. She did not consult the GP again about stress until 31 July 2019.
40. On 8 June 2019 the claimant met with a manager to discuss reasonable adjustments. The respondent referred to it as a Workplace Adjustment Plan or WrAP. The condition the claimant reported was SVT. She told the respondent at that meeting that she was under "constant medical supervision". She said she did not need any adjustments.
41. On 31 July 2019 the claimant was signed off sick with stress until 25 September 2019. She was offered and declined counselling and or medication. Her fit notes were extended to October and then from October 23 until 18 December 2019. During the July to December 2019 period when the claimant was suffering stress related to her work she experienced changes to her eating and sleeping patterns, sometimes she stayed with family rather than stay alone and suffered some reduction in the pleasure she had previously taken in socialising. She did not report this symptomatology to the GP at the time, did not need medication or therapy.

42. On 24 November 2019 the claimant reported a urinary tract infection. The GP notes recorded it as first presentation. There had been no bladder or urinary tract issues about which the claimant had needed to see the GP between December 18 and November 2019. There was no specialist referral by the GP in relation to the urinary tract infection.
43. On 5 December 2019 the claimant reported that she felt she was having SVT incidents again. Her fit note was extended for stress at work until 20 January 2020.
44. In the summary overview section of the notes the GP notes record the urinary tract infection as a minor past issue, stress at work as a minor past issue and the SVT as a significant past issue. The GP alternately described it as palpitations.
45. The claimant resigned on 23 December 2019. From her resignation decision on 23 December 2019 she no longer suffered any stress. She started a new job in March 2020 in her chosen field of psychology.

Relevant Legal Framework

Legislation

46. The disability discrimination complaints were brought under the Equality Act 2010. Section 6 defines a disability as follows:

“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.”**

The section goes on to provide that any reference to a disabled person is reference to a person who has a disability..

47. The word “substantial” is defined in section 212(1) as meaning “more than minor or trivial”.
48. There are some additional provisions about the meaning of disability in Schedule 1 to the Act. Paragraph 2 provides that the effect of an impairment is long-term if it has lasted for at least 12 months or is likely to last for at least 12 months, and that

“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.”

49. Under paragraph 5 of Schedule 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.”

Guidance

50. Section 6(5) of the Act empowers the Secretary of State to issue guidance on matters to be taken into account in decisions under section 6(1). The current version dates from 2011.

51. Section D of the guidance contains some provisions on what amount to normal day-to-day activities, and paragraph D3 provides:

“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 shift pattern.”

52. The guidance also includes an appendix which sets out an illustrative and non-exhaustive list of factors which if experienced it would be reasonable to regard as having a substantial adverse effect. These are indicators not tests and include:

- difficulty in getting dressed, for example, because of physical restrictions, a lack of understanding of the concept, or low motivation
- difficulty carrying out activity associated with toileting,
- difficulty preparing a meal, for example, because of restricted ability to do things like open packages because of an inability to understand and follow a recipe
- frequent confused behaviour, intrusive thoughts, feelings of being controlled, or delusions
- persistently wanting to avoid people significant difficulty taking part in normal social interaction or formal social relationships
- persistent difficulty in recognising and remembering names of the people
- persistent distractibility or difficulty concentrating

53. There are also examples of factors where it would not be reasonable to regard them as having the required effect.

54. The relevant date for considering the impact of the condition on the ability to carry out normal day to day activities is the date or dates of the acts of discrimination complained of.

Applying the law to the facts

Did the claimant on the dates on which the acts set out in paragraph 1 a (the Lee McCabe allegations) and paragraph 1B (Simon Fleury allegations) are alleged to have occurred suffer from a heart condition known as supraventricular tachycardia

55. Yes, the claimant had a condition known as supraventricular tachycardia. It is an abnormally fast heart rhythm and it was described by the consultant cardiologist as a nuisance that people learn to live with. It did not need any medication or other treatment.

If so, did the heart condition have an adverse effect on her ability to carry out normal day-to-day activities on those dates

56. The claimant had the burden of proof in establishing that she was disabled under section 6. The claimant has not provided sufficient evidence of any adverse effect that her SVT had on her ability to do normal things like getting washed and dressed, going shopping, going to work or completing a Masters degree, throughout the period from June 2018 until her resignation on 23 December 2019.

57. On the contrary, I saw evidence that she was able to complete her masters degree on time in April 2018. She declined an occupational health referral in June 2018. She told her employer on 1 September 2018 that work did not aggravate or affect her condition and that she needed no action or support. I saw evidence in June 2019 that she told her employer she was fine, she did not need any reasonable adjustments.

If so, was such effect, on those dates, substantial?

58. I find that the effect was minimal. I reject the evidence in the claimant's Disability Impact Statement. I find that the claimant overstates the symptomatology that she experienced between June 2018 and December 2019. By her own account she suffered from incidents or events of SVT (palpitations) less than once a month and managed them with breathing techniques (blowing into a syringe). I find that she is unlikely to have had any effects from the SVT between June 2018 and December 2019 because she did not report anything to her GP about any SVT impact at all between March 2018 and 5 December 2019. She was not someone who was reluctant to present to the GP. The reality was that during the relevant period the SVT did not stop her doing anything that she needed to do.

59. The claimant's Disability Impact Statement is in direct conflict with the content of the contemporaneous GP and employer notes. For the following reasons I prefer the evidence of the contemporaneous notes than the recent content from the Disability Impact Statement (DIS);

59.1 Often, when taken to contemporaneous records, rather than accept that the impact of her condition was not as she had subsequently described in her DIS, she alluded to other documents (return to work notes, or GP records or hospital letters) that were not

provided for today's hearing but which she said would support her disabled status.

59.2 The claimant also disputed the contents of notes that she had signed. She said that potentially changes have been made to the return to work meeting notes made by Lee McCabe in December 2018, to the effect that she did not say at that meeting that she was fine. She had not raised this before.

59.3 The claimant overstated the impact of SVT when she told her employer she was under constant medical supervision at Aintree Hospital, there was no evidence of that in the medical notes.

59.4 The claimant said she had suffered an SVT event at work and been taken to hospital by her manager. She couldn't remember when this was and accepted that there was no record of it in the medical notes. She asserted that it would be in the return to work minutes and when it was not she alleged that there must have been another return to work interview the minutes of which had not been provided.

59.5 The claimant said she was wearing a "heart monitor" in August 2018 and had a record of the impact of an alleged act of discrimination on her heart rate at that time. It transpired she had been wearing a fit bit, and has no record of the heart rate rate at that time.

60. When pressed under cross examination the claimant accepted that the medical records did not support the contentions she made in her disability impact statement.

61. The claimant's SVT / VET condition does not meet the test of substantial within the Equality Act 2010. For that reason, the claimant's heart condition does not meet the definition of disability within section 6.

Did the claimant on the dates on which the act set out in paragraph 1 (b) (the Simon Fleury allegations) are alleged to have occurred suffer from a bladder condition

62. The claimant had 3 separate incidents of urinary tract infection, in December 2017, November 2018, and again in December 2019 though on the last occasion the UTI took a little longer to clear up than the previous two had.

63. During the separate incidents and for periods not lasting longer than a couple of weeks in relation to the first two incidents and possibly up to a month in relation to the third incident, the impact of the condition on the claimant's ability to carry out her normal day-to-day activities may have been substantial. She was unable to go to work, had a temperature, stinging sensation on urination and was taking antibiotic.

64. During the relevant period of 10 May 2019 until 23 December 2019 for these (second umbrella / Fleury) allegations the claimant had just one incident of infection, the third infection in December 2019 which lasted for around four weeks. There were therefore four weeks when the claimant had a condition that was substantial during the relevant period.

65. It had not as at the date of the acts of discrimination complained of in December 2019 lasted twelve months and was not likely to last twelve months. The GP prescribed antibiotic and did not require a review. The claimant had had this before and it had cleared up quickly. There was nothing to suggest in December 2019 that the substantial adverse effects of the urinary tract infection were anything other than short lived with a possible duration of 2 – 4 weeks. It was not a long term adverse effect and therefore the bladder condition does not meet the test of the definition of disability
66. However, had the claimant persisted with her application for an amendment and succeed so as to have me consider whether or not the bladder condition was a disability for the first umbrella (McCabe) allegations as well as the second then I would have found it was not. It is not necessary for me to make these findings but I do so for completeness so that the claimant might feel reassured that her decision not to seek an amendment has not prejudiced her position.
67. The claimant overstated the impact of her urinary infections in relation to their duration. She deviated significantly from the medical records and her disability impact statement in evidence today. She said that she had suffered a urinary tract infection problems on multiple occasions between December 18 and December 19 but had managed them herself with support from a pharmacist because she didn't want to be someone who is constantly going to the doctor. She made no reference to ongoing, pharmacy supported management of her urinary tract infections in her disability impact statement and it is not recorded in the GP notes. I find it implausible that the claimant had a recurring condition of the kind she described under cross examination (but not in her Disability Impact Statements). She is someone who presented at the GP and who reported things to her GP. The GP notes report that she thought she had passed a kidney stone. It is implausible to me that the claimant would report that in November 2018 and not tell the GP in December 2019 that since she had passed the kidney stone she had had ongoing urinary tract issues that she had managed with the pharmacist. It is also implausible to me that if that had been said the GP would not have both recorded it and acted on a year's worth of symptomatology. Further, it is implausible to me that if a patient was repeatedly presenting at the pharmacy with the same symptoms, the pharmacist would not refer the patient back to the GP and that this claimant, if that had happened, would not have gone to the GP. For those reasons I reject the claimant's assertion that she was suffering from an ongoing condition between December 2018 and late November 2019. I think it was her attempt, with hindsight, to try to have her condition be seen to have lasted twelve months by December 2019 so as to meet the "long term" aspect of the section 6 test, or to establish a recurring effect, when in fact, I find, as corroborated by the medical records, the claimant had separate incidents of urinary tract infections, only one of which was in the relevant period for her complaints and was not long term in effect.

Did the claimant on the dates on which the acts set out in paragraph 1B (the Simon flurry allegations) are alleged to have occurred suffer from work-related stress

68. The relevant period here is from May 2019 until December 2019. The claimant was signed off sick by her GP for work related stress for 8 weeks from July 2019. This was extended by a further four weeks on 25 September 2019 and again in October and again from 20 December 2019 for four weeks so that she was absence from work from July 2019 until her employment ended on 20 January 2020.

69. The respondent submitted that work related stress is not a condition within the definition in Section 6. Miss Urquhart referred me to an authority Morgan v Staffordshire University [2002] ICR 475. The burden of proof to establish a mental impairment lay with the claimant. The claimant did not adduce medical evidence to support her position. The GP made no formal diagnosis of a mental health condition, medication counselling were offered and declined. The GP did not refer the claimant to a consultant psychologist or psychiatrist.

70. I considered the impact of the claimant's stress on her ability to perform her normal day to day activities. Her Disability Impact Statement said that during July to December 2019 she was too ill to go to work, couldn't eat or sleep and was afraid to stay alone and went to stay with her mother sometimes. The claimant said under cross examination that she was not socialising at that time and had lost enjoyment in doing normal things. When it was put to her that she had not reported any of this to her GP the claimant said that she had reported it and had been offered sleeping tablets and anti-depressants. The effects she described were not reported in her GP notes.

71. I find that the claimant overstated the impact that the stress at work was having on her during July to December 2019. Her symptoms of disrupted sleep and eating patterns were minimal and entirely reactionary to the way she perceived she was being managed at work. The claimant was off sick due to work related stress but this did not amount to a mental impairment in July to December 2019.

If so, did the work-related stress (or in the period over which the acts alleged in paragraph 1B occurred, altogether) have an adverse effect on her ability to carry out normal day-to-day activities on those dates

72. If I am wrong about that, and despite the absence of a diagnosis of a mental impairment such as anxiety or depression by the GP, the claimant did have a mental impairment then its effects on her ability to carry out her day to day activities was limited to an effect in response to being absence managed. The GP notes record that the claimant reported problems at work because of the way she was being managed for absences. I find that if the respondent had dropped the absence management interventions then the claimant would not have been stressed.

73. Her reaction and her worry about being absence managed disrupted her sleeping and eating but not to the extent that would amount to a substantial impact on her ability to carry out her normal day to day activities. The claimant did not give evidence as to the things that she could not do at that time. She wasn't able to go to work because she found the management of her absence stressful but otherwise she did not meet the burden of proof in establishing that the impact of any condition on her ability to perform her normal washing, dressing and going about her life, was substantial.
74. Ms Urquhart gave the claimant ample to describe the impact of her condition on her. She was asked explicitly to say what it was that she could not do, or did with difficulty because of her condition. She described only disruption to sleep and eating patterns, a reduction in socialising and enjoyment and needing to stay with her mother from time to time.
75. Even if it had been substantial for the following reasons the claimant's stress would not have met the "long term" criteria. Long term means to have already lasted twelve months or to be likely (in the sense that it could well happen) to last twelve months. The claimant's stress in February 2019 had cleared up quickly and she had returned to work without medication or counselling and worked until July. She was someone with a history of picking up quickly following stress related absence. There was no medication or counselling. It looked in September 2019 when the fit note was reduced to one month as though the claimant was picking up quickly again herself. There was nothing to suggest a condition that had lasted or would be likely, in the sense of could well happen, to last twelve months at any of the dates of acts of discrimination complained of between July and December 2019.
76. The claimant's work stress absences during the umbrella period for the Simon Fleury allegations from 10 May 2019 until 23 December 2019 do not amount to an impairment, in the alternative were not substantial and further in the alternative were not long term.
77. Accordingly, having failed to meet the definition of disability in section 6 the claimant's claims under the Equality Act 2010 are dismissed.
78. Her constructive unfair dismissal complaint continues to final hearing.

Employment Judge Aspinall

Date: 14 May 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON
20 May 2021

FOR THE TRIBUNAL OFFICE

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