Case number: 2601371/2019(V)

EMPLOYMENT TRIBUNALS

Claimant: Mrs B McNaught

Respondent: Croner Group Limited

Heard: Remotely via CVP **On:** Monday 19 October 2020

Before: Employment Judge Clark (sitting alone)

Representation

Claimant: In Person
Respondent: Ms L Robinson of Counsel

RESERVED JUDGMENT

1. By consent, at all material times the claimant's impairments of epilepsy and spinal problems amounted to a disability within the meaning of s.6 of the Equality Act 2010

2. At all material times, the claimant's impairments of psoriasis, diverticulosis and stress amounted to a disability within the meaning of s.6 of the Equality Act 2010

REASONS

1. Introduction

1.1 This hearing was originally listed by me at a preliminary hearing heard on 11 October 2019. I made orders directing a disability impact statement to be served together with copy of relevant medical records. Those orders were complied with in December 2019 although the claimant has obtained and disclosed only a summary of her medical records. As ordered, the respondent indicated its position in January 2020 and has maintained its position that the claimant was not disabled.

1.2 The original listing of this issue was for April 2020. That was postponed due to the Covid restrictions and the time estimate for today's hearing extended to two days. This hearing was itself converted from an attended to a remote hearing via CVP on 12 October 2020.

1.3 On Friday 16 October 2020, the respondent conceded disability in respect of two the claimant's contentions. That is in respect of the impairment of epilepsy and the physical impairment described as spinal problems resulting in surgical fusion. It continues to dispute

the other three impairments asserted, namely psoriasis, diverticulitis and stress provide a basis for her satisfying the statutory definition of disabled.

1.4 During the course of this hearing, Mrs McNaught withdrew two claims relating to indirect sex discrimination (set out as claims 12 and 13 of the case management summary sent to the parties on 25 October 2019) which will be dismissed.

2. Issues.

2.1 The issue is simply whether the evidence shows that those further impairments give rise to a disability within the legal definition.

3. Evidence

3.1 For the claimant I received a written disability impact statement. She was questioned on oath. I received a bundle of documents running to almost 400 pages although was taken to relatively little of it. The bundle contains a summary extract of her medical records, a GP report commissioned by Mrs McNaught and various contemporaneous occupational health reports.

3.2 Both parties made brief oral closing submissions, Mrs McNaught supplementing a written skeleton argument.

4. Law

4.1 The law is found principally in Section 6 and schedule 1 of the Equality Act 2010 ("the Act") including the 2011 guidance made under section 6(5) of the Act ("the guidance"). Section 6 of the Act states, so far as relevant:

> ***"(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."***

4.2 It remains good practice to state conclusions separately on the questions of impairment, adverse effect, substantiality and long-term nature: (*Goodwin v Patent Office [1999] ICR 302*) however, in reaching those conclusions the tribunal should not proceed by rigid consecutive stages. A purposive approach should be taken without losing site of the overall condition.

4.3 Impairment is to be given its ordinary meaning without more. Where there are more than one impairments, the totality of their effects may need to be considered when assessing the linked concepts of substantial and long term (see guidance paragraph B6, *Ginn v Tesco Stores Limited [2005] ALL ER (D) 259(Oct)* and *Patel v Oldham Metropolitan Borough Council [2010] ICR 603)*. Where the presence of a disputed impairment is not clear, it may be left until after the analysis of long term substantial effects. As Underhill P said at paragraph 42 of *J v DLA Piper UK LLP [2010] ICR 1052*: -

> ***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."***

4.4 Adopting that approach, in *Herry v Dudley Metropolitan Borough Council UKEAT/0100/16/LA* HHJ Richardson observed how: -

> ***"an Employment Tribunal might start with the question whether the Claimant's ability to carry out normal day-to-day activities had been impaired. This would assist it to resolve, in difficult cases, whether an impairment existed".***

4.5 By section 212(1) and paragraph B1 of the guidance: -

> ***"substantial" means more than minor or trivial***

4.6 This is a relatively low threshold for a claimant to establish. Substantial may be considered in respect of different times, different activities, the way an activity is done and having regard to modifications which are reasonable for the claimant to make but based on what the deduced effect, that is excluding the effect of medical treatment. There must be clear evidence on what the deduced effect would be (*Woodrup v London Borough of Southwark [2003] IRLR 111*). Although a low threshold, the claimant carries the burden of showing it. Substantial is likely to be made out where the degree of limitation established in the adverse effect goes beyond the normal differences in ability which may exist among people without a disability in the general population.

4.7 The focus in an assessment of disability should be on what an employee cannot do or can only do with difficulty, and not on what they can do. I am required to look at the whole picture and it is not simply a question of balancing what an employee can do against what they cannot. If the employee is substantially impaired in carrying out any normal day-to-day activity, then they are disabled notwithstanding their ability in a range of other activities.

4.8 Long-term and substantial go hand in hand; they each qualify the other and the adverse effect within the statutory test (*Cruickshank v VAW Motorcast Ltd [2002] ICR 729 EAT*). The effects need not be the same over the period.

4.9 By Schedule 1 of the Act, further provision is made for the determination of the question whether a person is disabled. Specifically, paragraph 2 provides: -

> ***"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.***

4.10 Where it is necessary to project forward to determine whether an impairment is long-term (see paragraph 1(b)) the tribunal must consider the evidence as it stood at that point in time and address the question whether it was likely to last the necessary period. In that regard, whether something is "likely" under the act is to be interpreted as "could well happen (see **SCA Packaging Ltd v Boyle [2009] ICR 1056 HL** and paragraph C3 of the guidance)

4.11 As for what is relevant to the determination of this question, a broad view is to be taken of the symptoms and consequences of the disability as they appeared during the material time. (**Cruickshank)**.

5. The Facts

5.1 So far as it is necessary to determine the outstanding issues, I make the following findings of fact on the balance of probabilities.

5.2 The claimant's evidence was structured and succinct. This is not a case of a witness at all over embellishing their case. I found her to be honest and credible in the accounts she gave. The areas on which she was, quite properly, cross examined focused on the gaps in the contemporaneous evidence and identified the areas and times in which it seemed she was able to cope with day to day activities as opposed to directly challenging the assertion of the effects she described on her day to day life. I therefore accept the factual matters advanced by the claimant.

5.3 The claimant was employed as an employment consultant between 2009 and March 2019 when she resigned. She was aged 64 when she resigned.

5.4 On 4 February 2011 the claimant had been formally diagnosed with diverticulitis following a private investigation conducted by Dr V A Ramon in January 2011. I accept that she had suffered with gastro intestinal problems for a number of years prior to this and that, on the balance of probabilities, this diagnosis was in respect of this same impairment.

5.5 The respondent correctly points to the fact that the evidence in the bundle shows images of what was (at the time of the photo) the current prescription of co-codomol and colofac which is after the relevant period. There is no contemporaneous record of medication. However, I am satisfied that the claimant gave an honest account of the history of medication which was consistent with the other evidence of an earlier formal diagnosis. In short, over the years she has been prescribed a variety of medications to ease the symptoms of this condition.

5.6 I find the symptoms of diverticulitis are abdominal pain, cramps and bloating and the condition results in irregular bowel movements from constipation to diarrhoea. There is no cure and the medication is for symptom relief. The impairment is permanent and I find its symptoms and effects are also permanently present but I find the severity of those symptoms experienced by Mrs McNaught varies from time to time such that it, and its effect on day to day activities, may properly be described as fluctuating between manageable, to unmanageable during an acute flare up. I find that during an acute flare up of these effects the claimant would be reluctant to leave the house. To put it bluntly, she required to be close

to a toilet for frequent and immediate toilet visits which, at an extreme, would be necessary to avoid soiling herself. I find there were consequences of this on her day to day activities. She suffered from lethargy and lack of motivation. Socially she would refrain from staying with friends out of embarrassment of the potential for her to need to use the toilet. Journeys of any length would be avoided or would need to be carefully planned and their duration extended to incorporate the necessary toilet stops. In her working routine, she was conscious of the time and frequency she would spend in the toilet and she developed a potentially harmful practice of taking Imodium daily to attempt to prevent her need to visit the toilet during her working week. This generated its own side effects which she would then seek to relieve at weekends by taking laxatives which in turn would restrict her ability to leave the house for shopping and socialising.

5.7 I accept Mrs McNaught's evidence that she experiences an increase in the symptoms during stressful periods.

5.8 I find Mrs McNaught has a further physical impairment related to her skin. She was formally diagnosed with Psoriasis in May 2013 after suffering for a number of years. In the medical report dated 14 January 2020, her GP Dr Ullah labels the condition as "Psoriasis with Palmar Plantar Pustulosis". I find the condition is focused particularly, but not exclusively, on her hands and feet and can also affect elbows and eyebrows and even under finger nails. It results in patches of hard, scaly skin where the result of the physical impairment means the skin cells multiply at an accelerated rate resulting in scales. These dry and harden and then crack resulting in bleeding. Again, I find the symptoms share a similar pattern to those of diverticulitis insofar as the condition is permanent but its effects vary from time to time such that the acute flare ups are properly described as intermittent. I accept Mrs McNaught's account that her exposure to stress has a direct effect on the likelihood of a flare up of her symptoms and that once in an acute flare up, the effects can last for months at a time. Past stressful life events, such as the death of her mother in 2004 have brought on an acute flare up. Indeed, these proceedings and this hearing is itself something she associates with her current outbreak on the heel of both hands. There is no cure but Mrs McNaught treats the symptoms of the condition with topical moisturising creams and steroidal ointments which have their own side effects, particularly the effect of steroids thinning the skin. She has undergone ultra violet light therapy without any success.

5.9 I find that during a flare up the principal sites of the outbreaks, being on the feet and hands, has particular implications for mobility and dexterity. Her ability to walk without pain is compromised and I accept that certain movements associated with general mobility, such as climbing stairs can cause particular pain because of the effect the movement has on the feet. When the skin has lost is suppleness and elasticity, I find it cracks, rather than stretches and causes pain to the point Mrs McNaught describes as unbearable. She is restricted in the types of hosiery and footwear she can wear and cannot wear nail varnish which in itself means she is unable to cover up the visible signs when it attacks her fingers. When suffering with an attack on the hands, she experiences similar reduction in her manual dexterity. She is unable to drive due to the inability to grip a steering wheel and this can affect other day to day tasks requiring her to hold something. She described, albeit in her closing submissions,

being unable to properly use a vacuum cleaner as she could only hold the handle by reversing her grip.

5.10 The claimant also seeks to rely on a mental impairment which she describes as stress. This impairment has evolved somewhat to include anxiety and depression, at least in its origins and evolution to its current state. The current GP medical report obtained for these purposes refers to Mrs McNaught having a very difficult time with her mental health between April 2017 and March 2019 and refers to the work-related stress reported by the claimant and her feeling nervous, anxious and overworked due to changes concerning targets. It does not mention any current clinical diagnosis or treatment. However, I accept her evidence that in her past she has experienced the effects of mental impairments and that she is particularly vulnerable to the impact of life stressors. I find her mental make up to be such that she is likely to suffer an extreme adverse response to such stressors over and above the normal reaction to abnormal events. During the early to mid-1980's, when dealing with a family relocation and subsequent diagnosis and treatment for cancer, I accept she suffered with depression. That appears to have lasted for some time and her mental fragility was seen again in 1986 when she underwent a hysterectomy; an episode of work related stress in the late 1990's; and again in 2004 when dealing with the emotional response to her mother's death from bone cancer. In response to her mental ill health in the earlier episodes, I accept her evidence that she was prescribed anti-depressant medication including Ativan, Diazepam and Librium and took it for long enough to become dependent on it. I accept that she eventually took a decision to force herself off it. That resolve has manifested more recently in her refusing those and similar drugs when it has subsequently been suggested by her GP in response to her presentations at the time. Whilst she has not accepted the medication, I find the fact that it was suggested as the medical response to be informative of the degree of symptoms. The fact she has not taken it is, I find, due to her fear of becoming addicted to it once again.

5.11 I find the most recent occasion on which medication has been suggested by her GP to be in 2017, a time relevant to the present episode of mental ill health she describes "merely" as stress. I have no doubt in Mrs McNaught's recollection of this, and as a lay person can readily accept the apparent seriousness of those circumstances and can imagine the likely effect on one's mental wellbeing. I have little contemporaneous information going to the medical assessment and treatment at the time. Dr Ullah does not relate the stress at work to any early medical conditions or the suggestion of anti-depressive medication in 2017. Throughout all of her absences from April 2017, the fit notes describe "Stress at work". The occupational health reports, however, do record these earlier life events and do consider them relevant to the state of ill health at that time.

5.12 Mrs McNaught attributes the cause of this episode of stress at work to a change in management generally after 2015 and, in particular, a change to the performance targets introduced in or around August 2017.

5.13 Whilst the focus of the impairment is very much on the claimant's ability to perform her role at work, I accept that most other aspects of her life were affected. She was unmotivated in daily tasks and activities which manifested as being unable to take a walk. I find she

became overwhelmed by basic things and anxious thoughts started to physically manifest in sweats and increased heart rate She became forgetful and having absences of mind to the extent she began making notes for herself to remind her what she needed to do and then forgot about the notes. She describes a level of heightened emotional fragility such that she would burst into tears in response to the most unusual and unlikely triggers. She began to experience nightmares.

5.14 I find the fact that she began to take exercise and joined fitness classes during this time is not inconsistent with her condition or the seriousness of it. It is clear she was advised to try to get out every day, to exercise. I find she attempted counselling with a referral through her employer but this was aborted following a loss of trust in confidentiality.

5.15 I have seen email reports from a number of periodic update reviews between Mrs McNaught and her managers have no doubt the report that the issues are all about work and her confidence in relation to this are accurate. That is not surprising as I find Mrs McNaught had worked in this organisation for a number of years and I find was competent at her job and enjoyed the professional satisfaction she derived from it. As I have already stated, I find there is an overlap between the triggers, symptoms and effects of diverticulitis and psoriasis and stress and vice-verse. Some aspects become circular. For example, I accept experiencing stress in the workplace exacerbated Mrs McNaught's symptoms of diverticulitis and because this, in turn, affected her perception of her ability to perform in the workplace she experienced greater stress. The reports note positive developments, things she is becoming able to do again and feeling better.

5.16 There are four occupational health reports during the period 2017 to 2019.

5.17 The report dated 8 March 2017 followed a referral for a skin rash caused by work related stress. Mrs McNaught was described as being extremely emotional throughout a 45 minute conversation. The rash was routinely appearing the day before she was due to attend work. It was said to be classic case of a stress induced viral infection. Mrs McNaught reported difficulty sleeping and concentrating, and was constantly tired. She reported two flare ups of diverticulus that year related to her stress.

5.18 The reports state the often-stated truism that "stress is not a medical diagnosis but is a natural response to adverse circumstances. However, if it prolonged, it can lead to psychological, emotional and behavioural symptoms which may require specific medical and psychological interventions." The report noted "her normal mental resilience is likely to remain lowered for some time, possibly months…" and recommended a referral again in 2-3 months. A reference was given to explore cognitive behavioural therapy techniques.

5.19 The follow up took place on 14 July 2017 with a different adviser. Much of the previous report was restated. It advised incorporating as much exercise as possible but recognised the ongoing symptoms of fatigue, low moods, anxiety, poor sleep reduced concentration/memory/alertness and ongoing worries, all related to the workplace. It recorded she was in receipt of prescribed medication and reviews but not anti-depressant medication. She was described as being unfit for work but "once her perceived issues are

further discussed and resolved to a reasonable state that she can RTW to a perceived and safe psychological environment". Whilst recognising that the question of disability status under the Equality Act was a matter for a Court or Tribunal, she opined that Mrs McNaught was likely to be covered by the Act because "she has suffered from reduced psychological ill health since first being diagnosed 25 years ago, and has been medicated intermittently, albeit on an on/off basis and infrequently."

5.20 A further referral took place on 17 January 2018 before yet another adviser. It recorded broadly the same background, this time noting that medication was not required but that Mrs McNaught had tried counselling. It gave the same statement about the non-medical nature of "stress" and gave the same broad advice on her return to work. The adviser also suggested that the claimant would meet the legal definition of disabled but specifically in respect of her epilepsy.

5.21 Mrs McNaught returned to work during 2018 with some further intermittent sickness absence.

5.22 On 31 January 2019 a fourth adviser assessed Mrs McNaught. She described how she suffered with diverticular disease and recorded her practice of taking medication during the working week leading to flare ups at the weekends. Mrs McNaught was assessed as fit for work with adjustments if the work-related issues can be reviewed and addressed. The adviser opined that Mrs McNaught was likely to be covered by the Equality Act.

6. Discussion and Conclusion

6.1 By reference to the actual allegations of discrimination, the point in time at which the question of disability status has to be assessed is generally, between 2017 and March 2019. Should the issue of "long term" be in question during those dates such that there may be a conclusion that the claimant's situation met the definition during some, but not all of the period, the specific reference points in time to consider are: -

a) From August 2017 when the new performance targets were introduced.

b) The periods of sickness absence from April 2017.

c) The letter of concern dated 11 January 2019.

d) The meeting of 7 March 2019.

6.2 The issue in this hearing seems simple. It is not as simple as it sounds when an individual such as Mrs McNaught suffers with a range of medical conditions. I remind myself that the legal definition of disability is a based on a social model and not a medical model. Much of the focus of both party's case has been hung on the presence or absence of medical confirmation for the conditions and their effects. There is only one human being at the centre of this legal test. The guidance makes clear that the effects of more than one impairment should be considered in their totality (paragraph B6). Similarly, it may also be said that even if one element is not in itself or with other impairments a disability, it nevertheless may be relevant to those other impairments which are disabilities. The alleged impairment of "stress",

for example, is a difficult concept on its own to fit within the definition a disability but it is well recognised that being in a state of heightened stress, or experiencing it for extended periods, may be a factor in how other conditions manifest and the effects that are then caused. All of which may have implications for the way the forms of prohibited discriminatory conduct are then analysed in the claims themselves.

6.3 I start with the two remaining physical impairments in dispute and, in the first instance, consider the impairments in isolation.

6.4 The claimant has, and will always have diverticulitis. This has been formally diagnosed since 2011. It has periods when its consequences are reasonably manageable and even without medication, at those times it is unlikely on the evidence to have a substantial adverse effect. However, it also has frequent periods when a flare up causes acute symptoms and I am satisfied that during those episiodes it has a substantial adverse effect on the ability to carry out normal day to day activities. This includes the ability to go on shopping trips, socialising, taking journeys. These are all examples of matters in normal day to day life which are substantially adversely affected by the impairment. I do not regard the measure of adverse effects as properly falling within the exception of “minor or trivial”. As to the duration, I have no doubt that those adverse effects had been experienced by the claimant long before the formal dagnosis in 2011 but, for present purposes, it is sufficient to conclude that from 2011, the long term element has been satisfied in various ways. It is a permant life long condition. Between then and 2017, the earliest point in my reference period, the effects had either lasted 12 months or, to the extent they were fluctuating it can be said with confidence that the effects were likely to recur again over a reference period of greater than 12 months. The test of likelihood is that it could well happen. That is enough for the definition to be made out. The better view may well be that the likelihood was something far more probable than what that low threshold convevys and it seems to me to be the case that other factors, including stress, are likely to increase the likelihood of a recurrance to the level of a substantial adverse effect. It follows that I am satisfied that the impairment of diverticulitis meant the claimant was disabled at all material times.

6.5 My conclusions on psoriasis take much the same route. I have no doubt there is a physical impairment. There is no doubt that the claimant has suffered with this for some time, being formally diagnosed in 2013. As with diverticulitis, and as is comon with most ailments, a patient usually suffers with the consequences and effects of the condition long before it is formally diagnosed by their doctor. Again, this is an impairment which is permanent but the effect it has on the ability to carry out normal day to day activities fluctuates from time to time and according to other triggers and factors. I accept that there have been times when the adverse effect on the ability to carry out normal day to day activities may not have been substantial. It may be that by taking reasonable steps, the effects of the impairment can be mitigated to a minor or trivial level. However, there are equally frequent periods when the consequences of an outbreak or flare up is such that the adverse effect is not only substantial in the legal sense of being more than minor or trivial but is subtantial in all its meaning. The prospect of temporarily losing mobility due to the pain that is caused during an acute flare up where the natural movement in walking or climbing stairs is such that the hardened skin

cracks open and bleeds is nothing but substantial. The fact it can aflict the hands and other various parts of the body causes an adverse effect on driving and basic housework, all of which are day to day activities.

6.6 As to long term, once again this is a permanent impairment where the ebb and flow of the outbreaks mean the nature of the adverse effects are not constant. They are not always substantial, but are substantial at sufficiently frequent and regular times to be recurring and likely to recur. They will recur with sufficient certainty to be able to say from 2013 (if not long before) it was likely that the substantial adverse effects would either last 12 months or recur after 12 months.

6.7 Those two physical conditions share some common characteristics. On Mrs McNaught's personal experiences I have also found the control of the symptoms they present is influenced by pscyhological triggers and stressors. The more the claimant is stressed, the more likely she is to experience an acute flare up in both.

6.8 I then turn to stress itself as a disability. The difficulty in this case is that stress is not in itself an impairment. As the occupational health reports all repeatedly state, it is a normal reaction to adverse cirucumtances. Viewed in isolation, I accept Ms Robson's submissions on the point and would be reluctant to find an impairment in the mere absence from work due to work related stress. That is not to say the claimant has an unjustified sense of greivance keeping her from work, far from it, but if there is no conclusion of some sort of impairment, the definition of disability cannot be made out. However, there are two points that require further conisderation.

6.9 The first is that the Act does not require a medical diagnosis. It requires an impairment. The cause or label of that impairment are less important than any substantial adverse consequences it has on the sufferers ability to carry out normal day to day activities. Indeed, as *J v DLA Piper* and *Herry v Dudley* show, the presence of the substantial adverse effect can be of great assistance in the identification of the presence of an impairment. The second is the interplay between the various impairments and the claimant's mental health and how that unfolds on the analysis of the social model of disability required by the act, compared to a medical one.

6.10 It seems to me that there is sufficient evidence before me to require me to accept that the claimant does have an underlying impairment and was suffering adverse effects on her ability to cary out day to day activities durign the period between 2017 and 2019. Sleeping, socialising, leaving one's house and engaging with others are normal day to day activities. I am also satisfied being able to remember what one is doing when performing mundane household tasks means that when one is abnormally forgetful, the person suffers an adverse effect on their ability to perform those every day houshold tasks. Some of those matters may not be significant in isolation but the cummulative scale of these effects is, in my judgment, more than minor or trivial. It meets the legal definition of substantial. It is substantial when these activities are prevented. It is still substantial when they can happen but in a disfunctional or reduced manner. The claimant clearly was able to engage in some social interaction but there remained a substantial adverse effect where her emotional fragility in

such encounters meant that she would unexpectedly have no control over her emotional composure at the most unforeseen of triggers leading her to burst into tears.

6.11 The long term question is more difficult. I cannot say that the adverse effects remained substantial at all times throughout the 2 year period, focusing on 2017 to 2019. The claimant was not experiencing those subtantial adverse effects on her abilty to carry out normal day to day activities constantly. They varied over time. However, I also have to factor in where she has come from in her past. Albeit many years earlier, she did experience a mental impairment of such significance to her fuctioning that from a period in the early 1980's it may have met the current legal definition of disability in itself. Whilst I suspect it probably did cause a susbstantial adverse effect for a period of at least 12 months, I cannot say with sufficient certainty that it did as I do not have sufficient contemporaneous evidence. What I can say is that there have been repeated episodes throughout the claimant's life where her psychological fragility at times of emotional stress has led to a recurrance of the sort of substantial adverse effects seen again from 2017 onwards. The test requires me to consider not just the duration of the episode of adverse effects, but the the likelihood of a repeat of those substantial adverse effects. In that regard my conclusion is that, even if the effects were not sufficiently foreseeable to recur in the early 80's when it was first experienced, it was correct to describe it as likely to recur after the further episode in 1999 and again in 2004. It follows that during 2017 onwards it was always likely to recur again in the future. The mental impairment may be medically imprecise, but is it sufficient for my purposes under the provisions of this statutory enactment to conclude that there is something within her mental functioning which is adversely affecting the claimant and I am satisfied on the balance of probabilities that it has been the same impairment operating on her abilities at various times since the mid-1980's. I have concluded that impairment will, at times, manifest itself in a way which has a substantial adverse effect on her ability to carry out normal day to day activities and particularly when dealing with life stressors that other individuals may cope with within the ranges of normal human emotional responses or that they may suffer for a much shorter period. Her impairment means that her personal functioning and repsonse to such stressers goes beyond the normal reaction and enters the realms of an abnormal reaction to events. That impairment is, it seems, part of the claimant's make up and her particular psychological fragility has been recorded in the medical evidence I have before me.

6.12 Whilst the legal interpretation is that of the tribunal and the views of the occupational health advisers is by no means determinative, as they themselves state, I am nonetheless reassured in my own conclusions as to the long term" and "substantial" tests that the clinical assessment of at least one of the advisers considered this to be a disability under the act. I am therefore satisfied Mrs McNaught was disabled at all material times by virtue of all the impairments she has relied on.

EMPLOYMENT JUDGE R Clark

DATE 6 December 2020

JUDGMENT SENT TO THE PARTIES ON

……...……

.

AND ENTERED IN THE REGISTER

……...……

.

FOR SECRETARY OF THE TRIBUNALS