



# EMPLOYMENT TRIBUNALS

**Claimant** Mr S Stutt

**Respondent** Wessex Retail Ltd

**Heard at:** Exeter ( by CVP)

**On:** 21 March 2025

**Before:**  
**Employment Judge Goraj**

**Representation**

**The Claimant:** in person.

**The Respondent:** Mr C McDevitt, counsel

## RESERVED JUDGMENT FOLLOWING A PRELIMINARY HEARING

**The Judgment of the Tribunal is that:-**

1. The claimant was not a disabled person for the purposes of section 6 of the Equality Act 2010 at the relevant time (13 February 2023- 3 June 2024) by reason of any of the contended impairments.
2. The claimant's complaints of disability discrimination are therefore dismissed and the Hearing presented listed on 21 – 25 July 2025 is therefore vacated.

## REASONS

### BACKGROUND

1. By a claim form presented to the Tribunals on 5 April 2024, the claimant brought complaints of discrimination on the grounds of disability. The claimant was employed by the respondent between on or around 13 February 2023 and 3 June 2024 as a store assistant. At a case management preliminary hearing on 26 September 2024, the claimant was given leave by the Tribunal to amend his claim form to add a further complaint of disability discrimination (discrimination because of something arising from his disability) in respect of his dismissal (which had occurred after the presentation of his claim form). In his claim form the claimant referred to a number of contended medical conditions/ disabilities namely, stress, hernia (paragraph 9.2), "bad lower back"/ dysgraphia/ dyslexia/ADHD /undiagnosed Aspergers (paragraph 12).
2. The claimant commenced the ACAS Early Conciliation process on 12 March 2024 and the EC certificate was issued by ACAS on 28 March 2024.
3. The allegations are denied by the respondent including that the claimant was at any relevant time a disabled person for the purposes of the Equality Act 2010 ("the 2010 Act").

### **The case management hearing on 26 September 2024**

4. This matter was the subject of a case management hearing on 26 September 2024 and the associated Order ("the Order dated 26 September 2024") is at pages 39-59 of the bundle which has been prepared for this hearing ("the bundle"). This matter was listed at that time for a **final hearing for 5 days commencing on 21 July 2025**.
5. The Tribunal recorded the following in the Order dated 26 September 2024:-
  - (1) That the disabilities upon which the claimant relied for the purposes of his complaints of disability discrimination are (a) lower back pain (b) ADHD (c) OCD and (d) Aspergers/ autism. The claimant was ordered to provide a witness statement containing further details of the impairments upon which he relied together with details of the effects of the impairments on his normal day to day activities. The claimant was also ordered to provide a copy of any relevant medical evidence.

- (2) The List of the Issues to be determined at the Final Hearing (pages 49 – 54 of the bundle) including whether the claimant was a disabled person for the purposes of the 2010 Act at the relevant times. In summary, the Tribunal identified complaints of discrimination arising from disability (section 15 of the 2010 Act ) a failure to make reasonable adjustments (sections 20 and 21 of the 2010 Act) and harassment (section 26 of the 2010 Act).
6. The claimant subsequently provided a Disability Impact Statement (“the Disability Statement”) dated 6 November 2024 which is at pages 96 -99 of the bundle. The claimant stated in his Disability Statement that he had had lower back pain since 2017 and the remaining mental impairments since birth. The claimant had also previously provided on 18 September 2024 (pages 83-95 of the bundle) various disability information and supporting documents.
7. The respondent subsequently confirmed its position on disability as stated in its letter dated 21 November 2024 at page 150 – 157 of the bundle. In summary, the respondent denied that the claimant was a disabled person by reason of any of the above impairments at the relevant time including that:- (a) there was any evidence that any back injury had any impact on the claimant’s ability to carry out any normal day to day activities during the relevant time and (b) the claimant had not provided any medical evidence the he had been diagnosed with any neurodiverse condition and /or was struggling with any symptoms of any neurodiverse conditions at any time. The respondent made an associated application for the Disability Issue to be determined at a Preliminary Hearing.
8. The matter was subsequently listed, pursuant to a Notice/ Order dated 10 January 2025 (pages 80-82 of the bundle), for a Preliminary Hearing to determine whether the claimant was a disabled person for the purposes of his claims of disability discrimination pursuant to the 2010 Act , in the light of the respondent’s contentions that there was no medical evidence in support of the contended conditions. The purpose of this Preliminary Hearing is therefore to determine the Disability Issue and to deal with any further case management issues. It was agreed, on the basis of the Issues set out in the Order dated 26 September 2024, that the relevant dates of the alleged acts of disability discrimination are from 13 February 2023 (paragraph 2.2.1) to the date of the claimant’s dismissal – paragraph 2.1.7, ( which the parties confirmed at the hearing was on 3 June 2024) (“the Relevant Time”).

## **Documents**

9. The Tribunal has been provided with a Preliminary Hearing bundle/ index ("the bundle") together with written skeleton arguments/ authorities from the parties.
10. During the course of the hearing, the Tribunal also admitted further documents from the claimant relating to (a) his Universal Credit claim / telephone Work Capability assessment in July 2020 (the extract at page 90 of the bundle) and (b) confirmation of emails with Cornwall Counselling Hub. These documents were provided by the claimant at the request of the Tribunal including as the Tribunal noted that only page 1 of the claimant's Universal Credit Claim – Work Capability Assessment decision had been included in the bundle.
11. The bundle includes the claimant's Disability Statement as referred to above. It was agreed that the claimant's Disability Statement together with the claimant's email dated 18 September 2024 and the claimant's skeleton argument would (to the extent that they contain matters of fact) be treated as the claimant's witness statement for the purpose of this Preliminary Hearing and the claimant gave evidence to the Tribunal accordingly.

## **The conduct of the hearing / adjustments**

12. It was recorded at paragraph 10 of the Order dated 26 September 2024, that the claimant is neurodiverse and says that he finds it hard to explain what he means/ requested that his understanding be double checked with him/ that he might require extra breaks. The claimant was therefore afforded regular breaks and was permitted a full opportunity to explain his case during the confirmation of the issues, his oral evidence and closing submissions.

## **Confirmation of the Issues**

13. At the commencement of the hearing the Tribunal sought to confirm the issues (as recorded in the Order dated 26 September 2024) in particular with the claimant in the light of the matters recorded at paragraph 12 above. During that discussion the claimant confirmed that the alleged discriminatory treatment about which he complains / seeks compensation is as recorded at paragraphs 2 – 4 of the Order dated 26 September 2024 (pages 50 – 53 of the bundle).
14. The claimant further indicated however during the preliminary discussion regarding the confirmation of the issues, that he seeks to rely, for the purposes of determining whether he was a disabled person for the

purposes of section 6 of the 2010 Act, not only on the contended disabilities identified at paragraph 22 of the Order dated 26 September 2024 (namely lower back pain, ADHD, OCD and Aspergers/ autism) but also on further additional contended impairments previously identified in his email dated 18 September 2024 (page 83 of the bundle). After further discussion with the claimant regarding the contended additional medical conditions, including regarding their potential relevance to his claims (as identified at paragraphs 2- 4 of the Order dated 26 September 2024), the claimant confirmed that:-

- (a) He does not seek to rely on his hiatus hernia or gastritis for the purposes of determining whether he was a disabled person pursuant to section 6 of the 2010 Act. The claimant confirmed that he does not say that he was discriminated against because of his hiatus hernia and that it is his case that his gastritis was the consequence rather than the cause of any discriminatory treatment.
- (b) He continues to seek to rely on his back injury as an impairment as previously identified.
- (c) He wishes to rely on his contended hearing issues ( alleged hearing loss in the left ear) for the purposes of determining whether he was a disabled person for the purposes of section 6 of the 2010 Act at the Relevant Time. It is the claimant's case that he does not hear people properly because of his hearing problems and therefore asked them to repeat things which caused people such as Gareth Gibby to find him irritating and frustrating and accordingly subject him to the discriminatory treatment identified in the Order dated 26 September 2024.
- (d) He wishes to rely on Ehlers – Danlos Syndrome (“EDS”) for the purposes of determining whether he was a disabled person by reason of a mental impairment for the purposes of section 6 of the 2010 Act. The claimant contends that there is a link between ADHD and EDS and that the ADHD/ EDS ( and notwithstanding that he acknowledged that neither conditions had been formally diagnosed) formed part of his personality and characteristics which caused the discriminatory treatment identified in the Order dated 26 September 2024. The claimant relies on the fact that a sibling has been diagnosed with EDS which he says is a hereditary condition. The claimant stated however that he accepted that the respondent would not have had an opportunity to know that he had EDS.
- (e) He wishes to rely on depression for the purposes of determining whether he was a disabled person for the purposes of section 6 of the 2010 Act. The claimant contends that he was treated badly/ discriminated against by

the respondent because of his depression including that Mr Gibby treated him badly notwithstanding that he knew that the claimant was struggling with depression.

- (f) Anxiety – the claimant confirmed that he does not say that he was treated badly because of his anxiety – he says that his anxiety was a consequence rather than a cause of the alleged discriminatory treatment.

15. After discussion with the respondent it was agreed that although the additional contended medical conditions/impairments upon which the claimant now seeks to rely had not been referred to in the claimant's claim form / are not recorded in the Order dated 26 September 2024 the claimant had referred to them in his email dated 18 September 2024 and further that the conditions of hearing loss and depression are referred to in the medical evidence provided by the claimant. In all the circumstances and including the observations regarding the claimant at paragraph 12 above and that the respondent did not object to the claimant relying on the additional contended conditions referred to above, the claimant was permitted to rely on them on the basis of the available medical and associated evidence contained in the bundle/ the claimant's evidence.

## **FINDINGS OF FACT**

16. The following facts are made by the Tribunal strictly for the purposes of determining the Disability Issue. As stated above the relevant time for determining whether the claimant was a disabled person by reason of all or any of the contended impairments is from 13 February 2023 to 3 June 2024 (defined above as the "Relevant Time").

## **BACKGROUND**

17. The claimant (dob 3 August 1989) was employed by the respondent as a store assistant at its Newquay store from on or around 13 February 2023 until his dismissal, following a period of sickness absence, on 3 June 2024.

18. At the commencement of his employment the claimant was required to complete a health and wellbeing at work declaration detailing any medical conditions of which the respondent should be aware for the stated purpose of enabling the respondent to meet their legal obligations for health and safety and to assess the need to make reasonable adjustments. The claimant completed this declaration on 15 February 2023 – this document is at page 149 of the bundle. The only medical condition disclosed by the claimant in that document was "back issues".

### **The claimant's medical records**

19. The claimant's medical records, which are at pages 100 – 139 of the bundle, contain entries relating to a wide range of medical/ related conditions/ issues between 2003 and September 2024. These records are referred to further below.

### **The claimant's Universal credit - work capability assessment decision dated 22 July 2020**

20. The claimant underwent a telephone Work Capability Assessment for the purposes of a claim for Universal Credit on 22 July 2020 (page 90 of the bundle together with the subsequently admitted pages as referred to above) ("the WCA"). The WCA, which it was stated was undertaken by an approved disability analyst (a registered nurse) did not include a physical examination. In brief summary, the WCA concluded that the claimant had a number of medical conditions at that time namely, a respiratory problem, a back problem, a hearing problem, a hernia, blackouts and anxiety and depression (including that the claimant had reported a serious deterioration in his mental health during the previous 3 months). Further details of the conclusions of the WCA relating to the medical conditions which are relevant to the determination of the Disability Issue are referred to in the relevant findings below. The assessor concluded that on the basis of the available information, the claimant was found to meet the criteria for limited capability for work- and work-related activity as there would be a substantial risk of a deterioration in his mental health in the absence of such a finding. The assessor advised that in the light of the available evidence there was unlikely to be any improvement in the claimant's level of function in the short term and recommended that the claimant should be re-referred in 12 months. The claimant informed the Tribunal that no such review has yet taken place.

### **The conditions/impairments upon which the claimant seeks to rely for the purposes of the Disability Issue**

#### **The claimant's back pain / back injury**

21. The claimant states in his Disability Statement / email dated 18 September 2024 that he has experienced back problems since March 2017 when he was hit at work on site by a rotating digger arm and bucket (page 94 of the bundle). The claimant also states that he received physiotherapy in March 2017 together with advice on the day-to-day management of the condition namely stretches, exercise and dietary information. The claimant further states in his Disability Statement (pages 97 and 98 of the bundle) that his back can be extremely problematic, that it is sometimes a struggle to turn his head without hurting his neck and back and that walking around for extended periods of time could be an issue every now and again but he just tried to get on with it. The

claimant further stated that he often uses over the counter painkillers to help manage the pain which continues to be a daily issue.

22. The Tribunal has been unable to identify any reference in the claimant's medical records to any reported injury to the claimant's back in or around March 2017 or to any associated treatment (the medical records at pages 100 – 139 of the bundle) at that time.
23. The only entries which the Tribunal has been able to identify in the claimant's medical records relating to the claimant's back are :- (a) an entry in the claimant's medical records dated 20 March 2018 to "low back pain" and (b) in a letter and associated physiotherapy referral at pages 139- 138 of the bundle. This letter, which is dated 28 November 2019, is from a consultant rheumatologist to the claimant's GP in which the consultant gives the claimant a diagnosis of benign hypermobility and recommends the use of ibuprofen as and when required. The letter records that the claimant, whom it is stated had been working long hours as a chef/ kitchen porter, was experiencing joint pain in his hands, knees and spine and that the spinal pain could be worse in the lumbar spine on the flexion of the cervical spine. The Consultant advised that on clinical examination cervical rotation was normal and lumbar spine movement was satisfactory with the claimant just being able to touch the floor with the tips of his fingers. There is no reference in the letter to the claimant having sustained any injury to his back in 2017. The Consultant further advised that the management plan was for specialist physiotherapy and for the claimant to avoid high impact sports with symptomatic treatment in primary care. The consultant made an associated referral for the claimant to receive physiotherapy for hypermobility for, in particular, pain in the lumbar spine, knees and hands and requested that the claimant be educated with regard to hypermobility and have muscle strengthening exercises particularly with regard to his back. The consultant did not make any arrangements for any further review. The Tribunal has been unable to identify any subsequent entries in the claimant's medical or associated records to any ongoing problems or treatment with regard to the claimant's back.
24. The claimant's WCA records (at page 3 of the additional documents) that the claimant reported in summary, that he had experienced back pain for a number of years which had worsened when he had injured his back 2 years ago, The WCA also recorded, in summary, that the claimant had reported that he had had episodes when his neck had seized and he could not get out of bed but that this had not happened for several months, that he had seen a physiotherapist and did daily exercises which helped, that the pain was worst during cold wet weather and that the claimant used a back support brace when his back was bad. The WCA also recorded (at pages 19-20 of the additional documentation) that



the claimant reported that his lower back pain had been worse over the last 2 years, that he did not use any aids or adaptations and that his reported typical day showed that he could use stairs and walk for 60 minutes at a normal pace without stopping.

25. Having given careful consideration to all of the evidence referred to above, the Tribunal is satisfied, on the balance of probabilities, that the claimant sustained an injury to his back in or around March 2017. The Tribunal is not however satisfied, in the absence of any supporting documentary evidence in the claimant's medical or associated records, that the claimant sought or received any medical advice or treatment in connection with any injury in 2017 at that time and/or that any such injury had any lasting adverse effect on the claimant's back. When reaching this conclusion, the Tribunal has taken into account in particular that there no reference in the claimant's medical records to the claimant experiencing any back pain until March 2018 and further that there is no mention of the claimant sustaining any back injury in March 2017 in the letter from the consultant rheumatologist dated 29 November 2019 (paragraph 23 above).
26. The Tribunal is however satisfied, on the balance of probabilities and having regard to the available evidence, that the claimant has experienced lower back pain from time to time from March 2018 until at least 15 February 2023 (when the claimant reported to the respondent that he was experiencing back issues) in relation to which the claimant had been diagnosed with hypermobility in 2019, that the claimant was referred for / received physiotherapy in 2019 (including in respect of such back pain) and continues to take over the counter painkillers/ undertake stretching exercises as and when required. The Tribunal has also taken into account the back related issues which are reported in the WCA referred to above.
27. The Tribunal is not however satisfied on the available evidence, that the claimant's lower back pain had more than a minor adverse effect on the claimant's ability to undertake his day to day activities during the Relevant Time. When reaching this conclusion the Tribunal has taken into account in particular, that notwithstanding the claimant's history of back pain, the back related issues reported in the WCA in July 2020, and that the claimant referred to "back issues" in his joiners declaration with the respondent dated 15 February 2023, there is no reference to any such back pain/ any adverse effect thereof on the claimant's day to day activities in the claimant's medical records for the Relevant Time including any suggestion that the claimant had received any further physiotherapy/ required any treatment. Further it is reported in the WCA (in 2020) that notwithstanding the claimant's back pain the claimant

was, on a typical day, able to use stairs and walk at a normal pace for 60 minutes. Moreover, although the claimant states in his Disability Statement that lower back pain continues to be a daily issue for which he often uses painkillers to manage the pain, the claimant has not provided the Tribunal with any particulars of any adverse impact of such condition on his ability to undertake his day to day activities during the Relevant Time including to suggest that he can no longer use stairs or walk at a normal pace for 60 minutes.

**Hearing issues (left ear).**

28. In summary, the claimant contends in the information provided in his email dated 18 September 2024 (page 94 of the bundle) that towards the end of 2017 he had an issue with his eustachian tube in his left ear which developed into Adult Glue ear and as a result of which he had a grommet inserted which had recently come out and in respect of which he had recently been referred back to ENT. As indicated above the claimant contended at the commencement of the hearing, when clarifying the issues, that he had been discriminated against by the respondent during the Relevant Time (discrimination arising from his disability) as the problems with his left ear meant that he was unable to hear people properly and therefore resulted in him asking people such as Mr Gibby to repeat themselves which made them irritated and frustrated with him and gave rise to the discriminatory treatment complained of.
29. There are a number of historical references in the claimant's medical records to difficulties which the claimant experienced with his left ear. The recorded medical history reports conductive hearing loss in the left ear (21 September 2017) and the insertion of a grommet (19 October 2017) (page 101 of the bundle).
30. The Tribunal has been unable to identify any further recorded issues in the claimant's medical records with regard to the claimant's left ear until 5 January 2024 (page 108 of the bundle) when the claimant is recorded as having reported (together with symptoms relating to other unrelated conditions) "Pretty consistant EAR SYMPTOMS(EARACHE): Left ear, feels like I have \*\*\*\*\* ear again/ Had it before a few years back ". The claimant is not however recorded as complaining of any hearing loss.
31. There is a further entry on the 9 May 2024 (page 104 ) . In summary, it is recorded that the claimant was reporting problems with his ear , that he had Adult \*\*\*\*\*Ear before which seemed to have returned / that he had been told that it might return and was requesting a referral to the ENT team for an audiology examination. The medical records further record that the ear felt blocked with a feeling of pressure in the ear and that the

claimant had tried unsuccessfully to address the symptoms with a nasal spray/ nasal steroids.

32. There is a further entry on 31 May 2024 (page 103 of the bundle) in which it is recorded a history of "Recurrent left \*\*\*\*\*- pain in trying to equalise reduced hearing. Right ear fine. Pt had grommet inserted left ear in 2017 which gave instant improved hearing. Grommet fell out and eventually Sx returned. Have been getting worse past few months , on and off a bit better this week." It is further recorded that on examination the left and right ear canals appeared to be clear. The entry concluded with a plan of a proposed referral to audiology and then ENT with ? New grommet.
33. There is further entry in the claimant's medical records dated 27 August 2024 in which it is recorded that the claimant was seen in clinic at the Royal Cornwall Hospitals and with what appears to be an open appointment for 6 months (page 102 of the bundle).
34. In the claimant's WCA it is recorded that the claimant reported that he had had hearing problems in his left ear for 10 years, that he had had glue ear, surgery in October 2017 which had solved the issue, but that muffled hearing was returning in his left ear. The WCA further recorded that the claimant did not use hearing aids, that his right sided hearing was not affected and that he was able to hear on the phone without issue (page 3 of the additional documents).
35. Having given the matter careful consideration the Tribunal is satisfied in the light of the available evidence that the claimant had historical issues with his left ear, including hearing loss in the left ear, resulting in the insertion of a grommet in 2017. The Tribunal is not however satisfied that the claimant experienced any further issues regarding his left ear until around the beginning of 2024. When reaching this conclusion the Tribunal has taken into account in particular, that although there is a reference to the return of muffled hearing in his left hear in the WCA (page 3 of the additional documents) there are no recorded concerns from the claimant in his medical records relating to his left ear until January 2024 and no direct reference to any hearing loss until 31 May 2024 (paragraph 32 above).
36. Further, the Tribunal is not, in any event, satisfied on the evidence that any recurring problems with the claimant's left ear from January 2024 onwards, including with regard to any reduced hearing in his left ear, had any significant (more than minor or trivial) adverse effect on the claimant's ability to undertake normal day to day activities between January 2024 ( when the problems were first reported) and 3 June 2024 (the end of the Relevant Time). When reaching this conclusion, the

Tribunal has taken into account in particular, that the claimant has not contended that he had reduced hearing in his right ear. Further, the only reported effect of any hearing loss in his left ear on the claimant's ability to undertake normal day to day activities during the Relevant Time is that he says that it was sometimes necessary for him to ask work colleagues to repeat work instructions from time to time.

### **The claimant's contended neurodiverse conditions and condition of depression**

#### **The neurodiverse conditions**

37. It is recorded at paragraph 69 of the Order (page 49 of the bundle), that the claimant's disability discrimination case principally relates to his contended neurodiverse conditions including that he says that as a result of such disabilities people can find him frustrating and when he is under stress, he can sometimes be less patient. The claimant further says that as a result his manager did not treat him fairly and colleagues complained about him and as a consequence of which he went off sick, felt unable to return to work and was dismissed after a period of absence. The alleged related discriminatory treatment upon which he relies is as identified in the List of Issues at paragraphs 2-4 of the Order dated 26 September 2024 (pages 50 – 53 of the bundle). The neurodiverse disabilities upon which the claimant relies for the purposes of his claim are as identified in the Order dated 26 September 2024 namely, ADHD, OCD and /or Aspergers/ Autism (paragraph 22).
38. The claimant further confirmed at the commencement of the Hearing that he also seeks to rely on the condition of Ehlers – Danlos Syndrome for the purposes of his contended neurodiverse disabilities. The claimant says that although he has had no formal diagnosis of the condition it is recognised as being hereditary and a sibling has been diagnosed with the condition. The claimant further says that Ehlers- Danlos Syndrome is closely associated with ADHD.
39. The claimant has not provided the Tribunal with any evidence that he has been diagnosed with any of the above conditions. In essence, the claimant contends that he has, over the years, been misdiagnosed with depression when it should have been recognised that he had ADHD or one or more of the other neurodiverse conditions referred to above. The claimant has included at page 145- 146 of the bundle an automatic reply (addressed to him) from ADULTADHD (CORNWALL PARTNERSHIP NHS FOUNDATION TRUST) dated 22 November 2024. The claimant has not however provided the Tribunal with a copy of any associated referral letter and there was no evidence before the Tribunal to indicate that any referral was made by his GP or similar medical professional.

40. The claimant contends in his Disability Statement that he has had the above-mentioned neurodiverse conditions all his life. . The claimant further contended in his Disability Statement (pages 93 – 94) that :- (a) he is often misunderstood causing problematic circumstances and that his enthusiasm/ curiosity is often mistaken as being questioning and distrustful on his part (b) although he loves a challenge he quickly becomes bored when he feels that he has learnt all that he can in a particular area (b) that his ADHD gives him impulsive spurs of energy as a result of which he attempts to take on five tasks at once but forgets to do something obvious (c) that he has a very high work ethic and would prefer to get on with work rather than engage with colleagues which made him feel different / did not socialise with co- workers after work and (d) his OCD means that he washes his hands 100 times a day /constantly goes through mental checklists to see if he has forgotten anything.
41. The claimant provided further information in his email dated 18 September 2024 concerning the difficulties which he contended he had experienced during childhood/ teenage years including that he would be quick to anger and because of his impulsive nature would end up saying horrible things and occasionally physically lash out at anyone who had hurt him and for which he had received decades of therapy and associated treatment (page 94 of the bundle). The claimant has not however provided any further details, including any documentary evidence of any such alleged conduct or therapy save in respect of the therapy/ medication which he received in the early 2000's for diagnosed depression as referred to below.
42. The claimant further contended in his oral evidence that he had had many jobs but had struggled to keep a job due to issues with management/ that because of his personality he disagreed with people.
43. Having considered the claimant's medical records the Tribunal has been unable to find any indication that the claimant has been diagnosed with any of the neurodiverse conditions relied upon by him / that there has been any discussion between the claimant and his medical advisers regarding the possibility that the claimant could have any of the above neurodiverse conditions. Further, the Tribunal has been unable to find in the claimant's medical records any reported concerns being raised by the claimant ( whether during the Relevant Time or otherwise) concerning any of the alleged effects of such neurodiverse conditions as identified at paragraphs 40-42 upon which he seeks to rely.
44. The Tribunal has noted that there is an entry in the claimant's GP records dated 14 November 2023 in which the claimant appears to report that a

sibling (page 147 of the bundle) has been diagnosed with Ehlers – Danlos Syndrome and had a lot of similar issues. It appears however that the reference to Ehlers- Danlos Syndrome is in the context of the claimant's physical problems relating to heartburn/ acid reflux (page 110 of the bundle).

### **Depression**

45. As indicated above, the claimant confirmed at the commencement of the hearing that , in addition to the contended neurodiverse conditions, he also relied for the purposes of his claim on the condition/ impairment of depression for the purposes of section 6 of the 2010 Act.
46. There are multiple references in the claimant's medical records to the claimant experiencing depression many of which are historical in nature / predate the Relevant Time. The Tribunal has noted in particular the following :-

### **Depression - 2003/ 2004**

- (1) There is a referral letter dated 16 September 2003 from the claimant's GP to the Child and Family Services requesting that the claimant be reviewed for problems with depression and difficult social circumstances which the GP indicated appeared to be a reaction to his recent relocation to Newquay and associated family disruption (page 131 of the bundle). The GP further advised that he had recently prescribed the claimant 50 mg a day of sertraline and sought advice regarding the claimant's ongoing management.
- (2) There is also a request (dated 11 September 2003 – at page 132 of the bundle) to provide the claimant, who is described as experiencing an episode of depression, with educational support. The letter describes a plan to meet with the claimant for a couple of individual therapy sessions to try to shift his mood using motivational and cognitive behavioural techniques.
- (3) There is a letter dated 22 April 2024 from the Child and Family Services to the claimant's GP (pages 135-134 of the bundle) attaching an extract from a summary of therapy sessions which had been provided to the claimant and an assessment of the nature of issues experienced by the claimant. In summary the art/ psycho-therapist advised that he felt that the claimant's depression was a reaction to his family circumstances and that the individual therapy provided to the claimant had not been successful as the main issue was a family one.

- (4) There are further letters in the claimant's medical records dated 6 November 2008 (page 117 of the bundle) and 17 September 2010 (page 130 of the bundle) from the claimant's GP seeking further advice concerning issues reported by the claimant. The Tribunal has not been provided with a copy of any response to the referrals. In the earlier letter the GP describes the claimant as a 19 year old who had experienced depression throughout his teenage years who was trying unsuccessfully to undertake a course from home. The claimant is described as feeling stuck in a rut, lacking in motivation and feeling low and frustrated. In the later letter the GP was seeking advice concerning the difficulties which the claimant was experiencing attempting to start college because of long term difficulties with his sleep pattern whereby he stayed awake during the night and slept more during the day.
- (5) The Tribunal has been unable to identify any further recorded references to depression /low mood in the claimant's medical records until March 2019 (page 101) when the claimant was described as having low mood and May/ September 2020 when the claimant is described as having "mixed \*\*\*\*\* and/ depressive disorder" (pages 100/ 101) .

**Depression – the Relevant Time**

- (6) The Tribunal has been unable to identify any recorded references to stress/ depression in the claimant's medical records during the Relevant Time ( from 13 February 2023 to 3 June 2024) until 18 July 2023 (page 112 of the bundle). In this entry it is recorded that the claimant was experiencing a range of physical symptoms including a dry cough, blocked ear and congested nose. It is further recorded that the claimant reported that his manager had singled him out all the time which made him feel like his effort was worthless and that his manager could not even be bothered to send the CCTV to (the police) which made the claimant feel pretty low.
- (7) In a subsequent entry in his medical records dated 14 November 2023 (page 110 of the bundle), the claimant is recorded as having reported that his heart burn/ reflux was affecting his day to day life in a massive way effecting his moods/ health and sleep.
- (8) In a further entries dated 29 November 2023 (page 109) and 5 January 2024 (page 108) whilst the focus in both entries was on other physical issues, the claimant was also recorded as reporting that he was experiencing some stress at work but was making steps to improve it (29 November 2023) / that he was stressed at work/ that his health issues were caused due to a grievance at work and that the needed a sick note (5 January 2024).

- (9) In subsequent entries on 16 January 2024 (page 107) 31 January 2024 (page 106 ), 22 February 2024 (page 106), 22 March 2024 (page 105), 18 April 2024 (page 105) and 21 May 2024 (page 103) the claimant reported that he was absent from work with stress because of ongoing difficulties at work. The claimant was issued with a series of not fit for work notes with a diagnosis of stress at work (save that the entry on 31 January 2024 is recorded as giving a diagnosis of depression on the sick note as well as stress at work).

### **The claimant's WCA**

47. It is recorded in the claimant's WCA (page 4 of the additional documents provided to the Tribunal) that the claimant reported that he had experienced anxiety and depression for around 20 years for which he had received counselling, cognitive behavioural therapy and psychoanalysis. It is further recorded that the claimant reported in summary, that his symptoms had got worse in the last 3 months , including low mood, loss of confidence and daily suicidal thoughts, that he had taken an overdose of paracetamol 10 days ago and was having regular thoughts of wanting to end his life. The claimant further reported that the trigger for his thoughts was a recent very bad relationship breakdown, that he was struggling to manage his mental health and was seeing his GP that day to discuss his mental health and medication options.
48. The WCA does not record that the claimant reported any symptoms of any neurodiverse conditions including any of the conditions/ contended symptoms identified above. Moreover, it is recorded in the additional documents in the sections entitled " Coping with social engagement due to cognitive impairment or mental disorder"/ "Appropriateness of behaviour with other people due to cognitive impairment of mental disorder", that none of the above applied and further recorded in respect of the claimant's description of a typical day that the claimant stated that he had not had any inappropriate behaviour.
49. The only (what is described as) abnormal findings in relation to the claimant's behaviour which are recorded in the WCA is that the claimant had moderate difficulty coping at interview/ appeared tense and that he had poor rapport which it was stated might indicate poor social function.

### **Cornwall Counselling Hub**

50. The claimant contended in his Disability Statement (page 94 of the bundle) that he was currently in therapy with a private therapist from Cornwall Counselling Hub. In response to further enquiries from the Tribunal regarding such therapy the claimant provided evidence of his multiple email contacts with a therapist from Cornwall Counselling Hub



between 21 December 2021 and 17 November 2024. The claimant did not however provide the Tribunal with any further information regarding any such therapy save that he stated in his oral evidence that the sessions had helped him to deal with depression from his relationship breakdown and to deal better with his emotions.

**The findings of the Tribunal regarding the claimant's contended neuro diverse conditions/ depression**

**The neurodiverse conditions**

51. Having given careful consideration to all of the above, the Tribunal is not satisfied that claimant has established on the evidence, that he had any of the neurodiverse conditions upon which he relies for the purposes of this claim namely, ADHD, OCD, Aspergers/ Autism or Ehlers- Danlos syndrome at the Relevant Time (13 February 2023 to 3 June 2024).
52. When reaching such conclusion the Tribunal has taken into account in particular, that not only has the claimant failed to provide any evidence of a diagnosis (whether prior to or during the Relevant Time) of any of the contended neurodiverse conditions upon which he seeks to rely but also that there is no suggestion in any of the claimant's extensive medical records which go back to 2003, and relate to a very wide range of symptoms/ conditions, that he was suspected of having any of the contended neuro diverse conditions referred to above/ was experiencing the symptoms upon which he now seeks to rely for the purposes of this claim.
53. Moreover, even if the Tribunal were to accept (which it does not on the basis of the available medical evidence) the claimant's contention that he was misdiagnosed with depression in his early years, it is clear from the WCA which dates from 2020 (which relied on the claimant's self reporting of his conditions) that the claimant did not question at that time his diagnosis of depression and/or report any of the alleged behaviours (which he contends were lifelong in nature) upon which he now seeks to rely in support of his contended neurodiverse conditions, to the WCA assessor.
54. The Tribunal has gone on to consider however whether, notwithstanding that the claimant has failed to establish that he had any of the neurodiverse conditions referred to above, he nevertheless had a potential mental impairment during the Relevant Time (13 February 2023 to 3 June 2024) by reason of the effects which he has reported to the Tribunal.
55. Having given careful consideration to all of the above, the Tribunal is satisfied, on the balance of probabilities, on the basis of the available evidence, that regardless of whether the claimant had any of the neuro diverse conditions referred to above, he experienced, both prior to and

during the Relevant Time, the following personality traits/ difficulties in his working life namely :-(a) that he had had a high turnover of jobs including because although he loved the initial challenge he lost interest / he became bored when he believed that he had learnt all that he could in a particular area (b) the claimant had disputes with colleagues including becoming less patient with them when stressed / had disputes with/ challenged management and (c) he had a high work ethic which meant that he preferred to concentrate on work rather than talk to colleagues / did not socialise with colleagues outside work which made him an outsider. The Tribunal is further satisfied, in the light of the claimant's own (candid) description of himself in his evidence to the Tribunal, that he is a marmite type of character and further, that people often found him abrasive.

56. When reaching such conclusion the Tribunal has accepted the claimant's evidence regarding such matters which is consistent with the reported entries in his medical notes regarding the reported difficulties which he was experiencing in his employment with the respondent. The Tribunal does not however accept the claimant's evidence regarding his contended washing of his hands over 100 times a day as there is no evidence of any such behaviour in his medical records / the WCA / any reported conflict with his managers/ colleagues concerning such contended behaviour.

### **The depression**

57. Having given careful consideration to the available evidence, the Tribunal is satisfied, on the balance of probabilities, that the claimant had an intermittent history of depression dating from 2003 including in 2003 to 2004, 2008, 2010, 2019 and 2020 (including that the claimant's mental health deteriorated significantly in 2020 following the breakdown of a personal relationship as documented in the WCA). When reaching such conclusions the Tribunal has had regard in particular to the findings at paragraphs 46(1) – (5) and 47-49 above. The Tribunal is not however satisfied on the available evidence that the claimant experienced depression again from November 2022 as the Tribunal has been unable to identify any references thereto in the claimant's medical records.
58. The Tribunal has therefore gone on to consider the position regarding depression during the Relevant Time ( 13 February 2023 to 3 June 2024). As stated above, the Tribunal has been unable to identify any references in the claimant's medical records to stress/ depression during the Relevant Time until 18 July 2023 (page 112 of the bundle and paragraph 46 (6) above).
59. The Tribunal is satisfied in the light of the findings at paragraph 46 (6) – 9 above that in July 2023, November 2023 and, on a continuous basis from 5 January 2024 and for the remainder of the Relevant Time ( until 3 June 2024), the claimant experienced work related stress which he

believed to be caused by unfair treatment by the respondent at work and, which adversely effected his mood. The Tribunal is not however satisfied on the available evidence that the claimant had depression as contended between 18 July 2023 to 3 June 2024. When reaching this conclusion, the Tribunal has taken into account in particular that as stated at paragraphs 46(6)- (9) above, the medical records record that the series of sick notes which were issued to the claimant for his absences from January 2024 to May 2024 were for work related stress rather than depression (other than the sick note dated 31 January 2024 which also refers to depression). Further the medical records show that during the period referred to above, that the claimant was reporting that he was experiencing stress as a result of what he described as on-going work-related difficulties.

60. Further, the claimant has not established on the available evidence, the nature/ extent of the effects of any work-related stress on his day to day activities between 18 July 2023 and 3 June 2024. When reaching such conclusion, the Tribunal has taken into account in particular that there is no indication in the claimant's medical notes that he was prescribed any medication for his mental health during the Relevant Time. Further, ( and notwithstanding that the Tribunal recognises that the claimant was absent and certified as not fit for work from January 2024/ there are references to the claimant experiencing low mood in the medical records), the claimant has not provided the Tribunal with any particulars of the contended effects of any work related stress/ low mood on his ability to carry out normal day to day activities from 18 July 2023 to 3 June 2024. Moreover, the claimant has not provided the Tribunal with details of any therapy provided by Cornwall Counselling Hob during the above period or any contended ameliorating effects of any such therapy.

## **SUBMISSIONS**

61. The Tribunal has had regard to the written skeleton arguments and oral submissions provided by the parties which are summarised in the context of the Tribunal's Conclusions below.

## **THE LAW**

62. The Tribunal has had regard in particular to the following statutory and associated provisions: -

- (1) Sections 6, 15, 20, 21, 26, 39 of and Schedules 1 and 8 to the 2010 Act.
- (2) Disability: Equality Act 2010 – Guidance on matters to be taken into account in determining questions relating to the definition of disability (March 2013) (“the Guidance”) (including in particular A3, A5, A7 and A8, B1, B6, B7, B12 – B14, C1- C7, D1-19 together with the Appendix listing an illustrative and non- exhaustive list of factors contained in the Guidance which it would be reasonable/ not reasonable to regard as having a substantial adverse effect on normal day to day activities).

(3) The following legal authorities: -

**Goodwin v the Patent Office [1999] IRLR 4 EAT.**  
**Rugamer v Sony Music Entertainment UK Ltd: McNicol v Balfour Beatty Rail Maintenance Ltd 2002 ICR381EAT.**  
**Hill v Clacton Family Trust limited [2005] EXCA Civ DLA 1456Piper UK LLP UKEAT/0263/09.**  
**Gordonstoun Schools Limited [2016]CSIH, 32**  
**(the last 3 authorities are relied upon by the respondent)**

63. In summary, the Tribunal has reminded itself in particular of the following:-

- (1) It is for an applicant/ employee to establish that they were at the relevant time, a disabled person for the purposes of section 6 of the 2010 Act. The relevant time is the date of the alleged act/s of disability discrimination (in this case the agreed “Relevant Time” is from 13 February 2023 and 3 June 2024).
- (2) Where disability is in dispute, the Tribunal should adopt a structured approach to the issue namely: - (a) did the claimant have a physical or mental impairment at the relevant time (b) did the impairment have an adverse effect on the claimant’s ability to carry out normal day to day activities (which may include the claimant’s activities at work) (c) is the adverse effect substantial. Substantial for such purposes means more than minor or trivial and (c) is the effect long term.
- (3) There is no statutory definition of an impairment. The term mental or physical impairment should be given its ordinary meaning. It is not necessary for the cause of the impairment to be established nor does it have to be as the result of an illness (A3 of the Guidance).
- (4) In **Rugamer** the EAT suggested that a physical or mental impairment was “some damage, defect, disorder or disease compared with a person having a full set of physical and mental equipment in normal condition”.
- (5) Whether a person is disabled for the purposes of the 2010 Act is generally determined by reference to the effects that that an impairment has on that person’s ability to carry out normal day to day activities (A4 of the Guidance). A disability can arise from a wide range of impairments which can include developmental conditions such as autistic spectrum disorders, mental health conditions with symptoms such as OCD and mental illness such as depression.

- (6) A person may have more than one impairment, any one of which alone would not have a substantial adverse effect . In such a case account should be taken of whether the impairments together have, overall, a substantial adverse effect on the ability to carry out normal day to day activities.

## **THE LEGAL CONCLUSIONS OF THE TRIBUNAL**

64. The Tribunal has considered whether, on the balance of probabilities, the claimant was a disabled person for the purposes of section 6 of the 2010 Act by reason of all or any of the contended impairments.

### **Was the claimant a disabled person at the Relevant Time for the purposes of section 6 of the 2010 Act by reason of a back injury/ back pain**

65. The Tribunal has considered first the contended impairment relating to the claimant's back injury / back pain. When considering whether the claimant has established that he was a disabled person for the purposes of section 6 of the 2010 Act by reason of a back injury or back pain the Tribunal has had regard in particular to the findings of fact and associated conclusions at paragraphs 21 to 27 above together with the relevant statutory provisions / relevant provisions of the Guidance.
66. In summary, the claimant contended in his skeleton argument that his back injury/ back pain is substantiated by the physiotherapy referral at page 138 of the bundle and further that it was one of the deciding factors which allowed him to acquire a limited capacity award in 2020. The claimant also contended in his Disability Statement/ oral evidence / submissions that his back continued to be very painful throughout the Relevant Time ( 13 February 2023 to 3 June 2024) for which he used painkillers and stretching exercises and that there were days when his back seized up / he had not been able to do much.
67. The respondent accepted the long-term nature of the claimant's lower back pain but otherwise denied that it met the requirements of section 6 of the 2010 Act. In summary, the respondent contended in its skeleton argument that there was no obvious mention in the claimant's medical notes of the claimant receiving any treatment in connection with any lower back injury and, in any event, any alleged impact had been managed by stretches/ exercise / over the counter pain killers. Further there is in any event, no medical evidence that any issues relating to the claimant's back had any / any substantial impact on the claimant's ability to undertake normal day to day activities during the Relevant Time.

68. Further, the respondent also contended (as a separate issue) that even if the Tribunal found the claimant to be a disabled person for the purposes of section 6 of the 2010 Act at the Relevant Time by reason of his back there was, in any event, no causative link between such impairment and the alleged acts of disability discrimination complained about by the claimant as identified in the Order dated 26 September 2024.
69. Having given careful consideration to all of the above (including in particular its findings at paragraph 23-26 above, the Tribunal is satisfied that the claimant has established, on the balance of probabilities, that at the Relevant Time (13 February 2023 to 3 June 2024), he had a long term physical impairment for the purposes of section 6 of the 2010 Act by reason of lower back pain which he had experienced since at least March 2018 and the associated diagnosis of hypermobility in 2019 (paragraph 23 above).
70. When reaching this conclusion, the Tribunal has taken into account paragraphs A3 and A4 of the Guidance including that the term impairment should be given its ordinary meaning and that whether a person is disabled for the purposes of the 2010 Act is normally determined by reference to the effect that an impairment has on the person's normal day to day activities. The Tribunal has also taken into account that in Rugamer v Sony referred to above the EAT suggested that a physical or mental impairment was "some damage, defect, disorder or disease compared with a person having a full set of physical and mental equipment in normal condition."
71. The Tribunal is not however satisfied that the claimant has established, on the balance of probabilities, that the impairment relating to the claimant's back had a substantial (namely, more than a minor or trivial) adverse effect on the claimant's normal day to day activities (as characterised in D3 of the Guidance) at the Relevant Time. When reaching this conclusion the Tribunal has taken into account its findings at paragraph 27 above including that notwithstanding the findings of the WCA in 2020 (paragraph 24 above), the claimant has not provided any supporting evidence (including any evidence in his medical records and/or of any ongoing physiotherapy or other treatment) that the back impairment had any substantial adverse effect (with or without pain killers) on any of the normal day to day activities such as described at paragraph D3 of the Guidance during the Relevant Time (13 February 2023 to 3 June 2024).
72. The claimant has therefore failed to establish, on the balance of probabilities, that he was a disabled person by reason of (lower) back

pain/ back injury at the Relevant Time for the purposes of section 6 of the 2010 Act.

**Was the claimant a disabled person at the Relevant Time for the purposes of section 6 of the 2010 Act by reason of the claimant's hearing issues ( hearing loss in the left ear).**

73. The Tribunal has gone on to consider whether the claimant was a disabled person for the purposes of section 6 of the 2010 Act by reason of hearing issues (hearing loss his left ear).

74. In summary, the claimant contended in his submissions to the Tribunal that he had longstanding issues with his left ear including in particular, hearing loss as a result of which it was necessary, during the Relevant Time (13 February 2023 to 3 June 2024), to ask work colleagues at the respondent to repeat work instructions from time to time. The claimant has not however provided any further particulars of such matters or contended that any hearing loss had any other adverse effects on his normal day to day activities during the Relevant Time.

75. In summary, the respondent accepted in its submissions that the claimant had a long-term hearing impairment in his left ear but disputed that it had a substantial adverse effect on the claimant's normal day to day activities during the Relevant Time. The respondent also contends, as a separate issue, that, as was the case with the claimant's back pain, there is, in any event, no causative link between the impairment in the claimant's left ear and the claimant's alleged complaints of disability discrimination as identified in the Order dated 26 September 2024.

76. The Tribunal is satisfied, having had regard to its findings at paragraphs 29 – 34 and in particular at 35 above, that the claimant has established that he has had long term issues with his left ear including hearing loss and the insertion of a grommet in 2017 (page 29 of the bundle). The Tribunal is also satisfied that the claimant had reported difficulties, as recorded in his medical notes, with his left ear during the Relevant Time on 5 January 2024, 9 May 2024 and 31 May 2024 including that on 31 May 2024 (page 103 of the bundle) the claimant reported that the grommet had fallen out and that he had experienced recurrent pain in his left ear which had been getting worse during the last few months in trying to equalise reduced hearing. The Tribunal is therefore satisfied that the claimant has established that he had a physical impairment by reason of issues with his left ear including hearing loss in that ear during the Relevant Time from January 2024.

77. The Tribunal has therefore gone on to consider whether such impairment had a substantial adverse effect on the claimant's normal day to day during the Relevant Time. The Tribunal has reminded itself in particular, for such purposes that a substantial effect is one that is more than minor

or trivial and that normal day to day activities can include general work related activities such as interacting with colleagues and following instructions (D3 of the Guidance).

78. Having given the matter careful consideration the Tribunal is not however satisfied that the claimant has established, on the balance of probabilities, for the reasons explained at paragraph 36 above that any hearing loss had a substantial adverse effect (more than minor or trivial) on his normal activities during the Relevant Time. When reaching this conclusion, the Tribunal has taken into account in particular that the only adverse effect relied upon by the claimant was that it was sometimes necessary to ask work colleagues to repeat work instructions from time to time which the Tribunal is not satisfied amounts to more than a minor or trivial effect on normal day to day activities.
79. The claimant has therefore failed to establish on the balance of probabilities that he was a disabled person by reason of hearing loss in his left ear at the for the purposes of section 6 of the 2010 Act.

**Was the claimant a disabled person at the Relevant Time for the purposes of section 6 of the 2010 Act by reason of neurodiverse conditions.**

80. The Tribunal has therefore gone on to consider whether the claimant was a disabled person at the Relevant Time (23 February 2023 – 3 June 2024) by reason of all or any of claimant's contended neurodiverse conditions (namely ADHD/ OCD/ Aspergers / autism and /or Ehlers – Danlos Syndrome) which are the principal impairments upon which the claimant relies for the purposes of his disability discrimination claims as identified in the Order dated 26 September 2024.
81. In summary, the claimant contends in his skeleton argument, that he was misdiagnosed in the early 2000s with depression rather than ADHD (which better fits his symptoms) because of overlapping symptoms, limited understanding of ADHD and evolving diagnostic practices. Further, although the claimant accepts that he has not received any formal diagnosis of any of the above named conditions he says that he exhibited the symptoms of such conditions during the Relevant Time which had a substantial adverse effect on his normal day to day activities.
82. In summary, the respondent denies that the claimant was a disabled person at the Relevant Time for the purposes of section 6 of the 2010 Act by reason of all or any of the abovementioned neurodiverse conditions. In brief summary, the respondent accepts that the claimant's medical records suggest that the claimant had recurring episodes of (reactive) depression during his early years following his relocation from Slough to Cornwall in 2003 for which he was prescribed Sertraline. The



respondent contends however that not only is there is no evidence that the claimant has ever been diagnosed with any neurodiverse conditions but also that the claimant's medical records dating back to 2003 make no mention whatsoever of the claimant struggling, either in his childhood years or thereafter, with the symptoms of any of the neurodiverse conditions upon which he seeks to rely. The respondent further contended, in reliance on authorities including Piper and Gordonstoun that having personality traits such as being sensitive, inquisitive / disliking socialising with work colleagues or feeling frustrated in the face of perceived unreasonable demands or behaviour do not meet the threshold of a medical impairment.

83. When considering the position with regard to the contended neurodiverse conditions the Tribunal has reminded itself of the guidance relating to impairments summarised at paragraph 70 above. The Tribunal has reminded itself particular, that a disability can arise from a wide range of impairments including development disorders such as autistic spectrum disorders, mental health conditions such as OCD and mental illness such as depression (A5 of the Guidance).
84. The Tribunal has considered first whether the claimant has established, on the balance of probabilities, that he had at the Relevant Time (13 February 2023 to 3 June 2024) all or any of the neurodiverse conditions/ impairments referred to above for the purposes of section 6 of the 2010 Act.
85. Having given the matter careful consideration, the Tribunal is not satisfied for the reasons explained in particular at paragraphs 39 and 48, 51 and 52 above, that the claimant has ever received a diagnosis of any of the above conditions. Further, the Tribunal is not satisfied in the light of the available medical evidence that there has ever been any recorded discussion between the claimant and his medical advisers regarding the possibility that the claimant could have any of the above-mentioned neurodiverse conditions or of any reported concerns been raised by the claimant (whether during the Relevant Time or otherwise) regarding such conditions / the effects thereof. Still further, the Tribunal has noted that at the time of the WCA in 2020 the claimant did not raise any concerns/ suggest the possibility that he might have any of the above-named neurodiverse conditions / was experiencing any associated symptoms (paragraph 47 above).
86. Further, the claimant has not provided the Tribunal with any medical evidence to support his contention, as referred to in his skeleton argument, that his ADHD, or any other contended neurodiverse conditions, were misdiagnosed as depression during his teenage or subsequent years.

87. Further, the Tribunal has gone on to consider whether (and notwithstanding that the claimant has failed to establish that he was a disabled person at the Relevant Time by reason of any of the alleged neurodiverse conditions referred to above), he was nevertheless a disabled person at the Relevant Time by reason of the alleged effects referred to in his Disability Statement (pages 93 -94 of the bundle)/ his email dated 18 September 2024 (page 94) as summarised at paragraphs 40 – 42 above. The Tribunal has gone on to consider this in the light of the wide definition of a mental impairment as referred to at paragraph 71 above, including the description contained in **Rugamer**.
88. Having had regard to the wide definition of a mental impairment, as referred to above, the Tribunal is satisfied that the claimant could, notwithstanding the absence of any formal diagnosis of any neurodiverse condition, be considered to have a mental impairment at the Relevant Time for the purposes of the 2010 Act by reason of the effects identified at paragraph 55 above. When reaching this conclusion, the Tribunal has taken into account that it has accepted the claimant's evidence regarding the difficulties which he says that he has experienced during his working life (both prior to and during the Relevant Time) with regard to his working relationships as identified at paragraph 55 above.
89. The Tribunal has therefore gone on to consider whether such identified effects had a substantial (more than minor or trivial) adverse effect on the claimant's normal day to day activities for the purposes of the 2010 Act. The Tribunal has again reminded itself of the wide range of activities which are considered to be normal day to day activities as described in D3 of the Guidance including that it can include general work-related activities such as interaction with colleagues. The Tribunal has also considered the guidance contained in the Appendix to the Guidance of the list of factors which it would be reasonable to regard as having a substantial adverse effect on normal day to day activities and authorities including **Piper and Gordonstoun**. The Tribunal has also considered whether the claimant has established that the therapy (which the claimant contends that he has received from the Cornwall Counselling Hub (at paragraph 50 above)) had any established ameliorating effects on his behaviour which the Tribunal would be required to discount for the purposes of determining whether any such effects were "substantial".
90. Having given the matter very careful consideration, the Tribunal is not however satisfied that the matters identified at paragraphs 55 above, either singularly or cumulatively, had a substantial adverse effect on the claimant's normal day to day activities during the Relevant Time (13 February 2023 to 3 June 2024) for the purposes of the 2010 Act.

91. When reaching such conclusion, the Tribunal has taken into account that the list of factors contained in the Appendix to the Guidance which it would be reasonable to regard as having a substantial adverse effect on normal day to day activities include “behaviour which challenges people around the person, making it difficult for the person to be accepted in public places” and “persistently wanting to avoid people or significant difficulty taking place in social interaction or forming social relationships”.
92. Having carefully considered all of the above, the Tribunal is not satisfied however, on the available evidence that, the matters identified at paragraph 55 above, which relate to the claimant’s personality/ social skills and the associated effects on the claimant’s ability to work in the respondent’s/other working environments, including such as becoming bored/ losing interest at work, being abrasive/ having disputes with colleagues/ management/ concentrating on work rather than talking to colleagues/ not socialising with colleagues outside work, either singularly or collectively, had a substantial (more than minor or trivial) effect on the claimant’s normal day to day activities for the purposes of section 6 of the 2010 Act at the Relevant Time (13 February 2023 to 3 June 2024).
93. When reaching this conclusion, and having regard to the guidance contained in the Guidance and also in the authorities such as **Piper and Gordonstoun**, the Tribunal is satisfied that whilst the matters identified at paragraph 55 indicate that the claimant’s personality / social skills gave rise to issues in the respondent’s working environment during the Relevant Time they are not, on the available evidence, sufficient to show that the claimant’s personality/ social skills were not within the normal range such as to constitute a disability for the purposes of the 2010 Act including that they do not meet the threshold of the examples contained in the Appendix to the Guidance regarding such matters. The issues identified at paragraph 55 above do not, on the available evidence indicate that the claimant exhibited behaviour which made it difficult for him to be accepted in public spaces. Moreover, the Tribunal is satisfied that the claimant’s preference to concentrate on work rather than talk to colleagues / of not socialising with colleagues outside of work does not meet the threshold of the example of the persistent avoidance of people or significant difficulty taking part in social interaction which are included in the Appendix to the Guidance as factors which it would be reasonable to regard as having a substantial adverse effect on normal day to day activities. Further, there was no evidence before the Tribunal to indicate that any therapy which the claimant may have received from Cornwall Counselling Hub had any relevant ameliorating effect on the claimant’s behaviour.
94. In all the circumstances, the Tribunal is not satisfied that the claimant has established, on the balance of probabilities, that he was at the Relevant

Time a disabled person for the purposes of section 6 of the 2010 Act by reason of any of the neurodiverse conditions or related matters referred to above.

**Was the claimant a disabled person at the Relevant Time for the purposes of section 6 of the 2010 Act by reason of depression**

95. The Tribunal has therefore gone on to consider whether the claimant was a disabled person at the Relevant Time (13 February 2023 to 3 June 2024) for the purposes of section 6 of the 2010 Act by reason of the remaining contended impairment of depression.
96. In summary, the claimant contended in his skeleton argument / oral submissions that, as recorded in his medical records he had had recurring depression since he was a young child which persisted to the current day ( with a recent episode from the end of November 2022). The claimant further contended that he had originally developed depression as a result of moving house and school and that this was exacerbated by his parents' break up / his contended ADHD. The claimant further contended in his skeleton argument that he experienced stress and anxiety because of the constant interviews to which he was subject during his employment with the respondent culminating in his doctor certified absences from work due to "stress from work" (bundle pages 108 and 109 of the bundle).
97. In summary, the respondent contended that the claimant's medical records indicated that the claimant had an episode of depression going back to around April 2003 following a move to Cornwall with an associated relationship breakdown between his parents and that the depression appeared to be a reaction to such events. The respondent further accepted that the claimant's medical records indicated that the claimant had experienced further episodes of depression in 2004 and 2008 in what appeared to be a reaction to ongoing family relationship and associated issues and what appeared to be a further discrete issue in 2010 when the claimant was reported to have difficulty starting his college course because of a long established sleeping pattern. The respondent also contended that there were no further depression / depression related entries until 14 November 2023 when the claimant reported that his acid reflux was having a massive effect on his day to day life with entries on 29 November 2023 and 5 January 2024 when the claimant reported that he was experiencing stress at work.
98. Having given careful consideration to all of the above, although the Tribunal accepts that the claimant experienced work related stress as reported on 18 July 2023, 29 November 2023 and subsequently from 5 January 2024 for the remainder of the Relevant Time, the Tribunal is not however, satisfied on the evidence and, notwithstanding that it

recognises that the claimant had a long history of episodes of depression, that the claimant had depression during the Relevant Period. When reaching this conclusion, the Tribunal has taken into account in particular its findings at paragraph 59 above.

99. Further, and notwithstanding the above conclusion, The Tribunal has gone on to consider whether the effects of the work-related stress namely, the low mood reported by the claimant from 18 July 2023, had a substantial (more than minor or trivial) effect on the claimant's normal day to day activities during the Relevant Time for the purposes of section 6 of the 2010 Act. Having given the matter careful consideration, the Tribunal is not however satisfied, in the light of the findings at paragraph 60 above that the claimant has established, on the balance of probabilities, that it had a substantial (more than minor or trivial) effect on his normal day to day activities during the Relevant Time.

100. In all the circumstances, the claimant has therefore also failed to establish, on the balance of probabilities, that he was a disabled person during the Relevant Time (13 February 2023 to 3 June 2024) by reason of depression and/or the effects of work-related stress for the purposes of section 6 of the 2010 Act.

**Was the claimant a disabled person during the Relevant Time for the purposes of section 6 of the 2010 Act by reason of the cumulative effect of the above conditions.**

101. Finally, the Tribunal has gone on to consider whether the claimant was, in any event, a disabled person for the purposes of section 6 of the 2010 Act at the Relevant Time by reason of the cumulative effect of the above-named conditions.

102. Having given the matter careful consideration, the Tribunal is not however satisfied in the light of the findings above regarding the various conditions/ impairments ( and the effects thereof), that the claimant has established, on the balance of probabilities, that he was a disabled person by reason of a combination of such conditions during the Relevant Time.

103. When reaching this conclusion, the Tribunal has taken into account in particular that the conditions/ impairments relied upon fall into 2 discrete categories namely :-

- (1) the physical impairments relating to the claimant's back and left ear- neither of which were held to have a substantial adverse effect on the claimant's normal day to day activities.

- (2) The mental impairments –the claimant failed to establish, on the balance of probabilities, that he had any (diagnosed) neurodiverse condition. Moreover, the reported effects thereof related to the claimant's personality/ social skills in the workplace which the claimant failed to establish had a substantial adverse effect on the claimant's normal day to day activities. Further, the claimant failed to establish on the balance of probabilities, that he had depression during the Relevant Time and/or that the effects of any work-related stress had a substantial adverse effect on the claimant's normal day to day activities.

104 Having viewed all of the above “in the round” the Tribunal is not satisfied that the claimant has established, on the balance of probabilities, that he was a disabled person for the purposes of section 6 of the 2010 Act by reason of the cumulative effects of such impairments at the Relevant Time.

**The effect of such conclusions on the claimant's complaints of disability discrimination**

105 The claimant's complaints are limited to claims of disability discrimination. In order to pursue a complaint of disability discrimination it is necessary for the claimant to establish that he was, at the time of the alleged acts of disability discrimination, a disabled person by reason of section 6 of the 2010 Act. For the reasons explained above, the claimant has failed to do this. In the circumstances, the Tribunal is unable to consider the claimant's substantive claims of disability discrimination which are therefore dismissed and the final hearing listed for hearing for 5 days on 21- 25 July 2025 is therefore vacated.

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Employment Judge Goraj  
Date: 4 April 2025

JUDGMENT SENT TO THE PARTIES ON  
23 April 2025 By Mr J McCormick

FOR THE OFFICE OF THE TRIBUNALS

**Online publication of judgments and reasons**

The Employment Tribunal (ET) is required to maintain a register of judgments and written reasons. The register must be accessible to the public. It is online. Judgments and reasons since February 2017 are available at: <https://www.gov.uk/employment-tribunal-decisions>

The ET has no power to refuse to place a judgment or reasons on the online register, or to remove a judgment or reasons from the register once they have been placed there. If you consider that these documents should be anonymised in anyway prior to publication, you will need to apply to the ET for an order to that effect under Rule 50 of the ET's Rules of Procedure. Such an application would need to be copied to all other parties for comment and it would be carefully scrutinised by a judge (where appropriate, with panel members) before deciding whether (and to what extent) anonymity should be granted to a party or a witness

Transcripts

1. Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge.
2. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings. You can access the Direction and the accompanying Guidance here:

Practice Directions and Guidance for Employment Tribunals (England and Wales) - Courts and Tribunals Judiciary