



EMPLOYMENT TRIBUNALS

Claimant: **Mr Benjamin Lowe**

Respondent: **Openreach Ltd**

RECORD OF A PRELIMINARY HEARING

Heard at: **Bodmin Employment Tribunal (hybrid hearing)**

On: **31 October 2025**

Before: **Employment Judge Volkmer**

Representation

Claimant: in person
accompanied by Mrs Lowe (his mother)

Respondent: Ms Jervis In House Advocate for the Respondent (not a
regulated legal professional)
Ms Millington Day (paralegal for the Respondent)

RESERVED JUDGMENT

The Claimant was disabled by reason of ADHD, PTSD and anxiety at the relevant time.

REASONS

Background

1. The Claimant was employed by the Respondent between 23 January 2012 and 29 March 2024 as a Customer Service Engineer. The Claimant commenced the Early

Conciliation process with ACAS on 17 May 2024. The Early Conciliation Certificate was issued on 25 June 2024. The claim form was presented on 25 July 2024.

2. A Preliminary Hearing took place on 22 April 2025 before Employment Judge Hastie. The Case Management Order from that hearing, dated 5 May 2025 and sent to the parties on 15 May 2025 (I will refer to this as the “CMO”), set out at paragraph 5 that this Public Preliminary Hearing was listed to consider:
 - a. whether the Claimant was a disabled person pursuant to section 6 of the Equality Act 2010 (EqA) at the material time;
 - b. to determine the Claimant’s amendment application;
 - c. to identify the claims to be determined at the final hearing; and
 - d. listing of and timetabling to the final hearing.
3. I was provided with an agreed preliminary hearing bundle of 137 pages, page references in this judgment are references to page numbers in that bundle. The Claimant gave a disability impact statement (page 61), in relation to which he was cross examined by the Respondent’s representative, Ms Jervis.

The Issues

4. The issues to be determined by the Tribunal in relation disability were as follows. The relevant time for determination of disability is from 13 January 2023 to the end of April 2024.

Disability

1 Did the Claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:

- 1.1 Whether the Claimant had a physical or mental impairment. The Claimant relies upon ADHD, PTSD and anxiety.*
- 1.2 Did it have a substantial adverse effect on the Claimant’s ability to carry out day-to-day activities?*
- 1.3 If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?*
- 1.4 Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?*
- 1.5 Were the effects of the impairment long-term? The Tribunal will decide:*
 - 1.5.1 did they last at least 12 months, or were they likely to last at least 12 months?*
 - 1.5.2 if not, were they likely to recur?*

Facts

5. The Claimant was diagnosed with ADHD in 1995 (when he was 12 or 13) (page 77). He was under Child and Adolescent Mental Health Services (CAMHS) for a number of years. He took Ritalin for his ADHD until around 1998 (page 77) until

his father became anxious about potential side effects which had been reported in the press and the Claimant stopped taking it.

6. On 13 May 2010 the Claimant was the victim of an unprovoked attack in broad daylight in which he was stabbed seven or eight times. The Claimant attributes his PTSD to this incident.
7. On 21 June 2021, the Claimant was diagnosed with mixed anxiety and depressive disorder (page 64). He was prescribed diazepam for this in July 2021.
8. The Claimant was referred to the Outlook South West Improving Access to Psychological Therapies service and received a confirmation letter on 1 September 2021 in relation to this (page 65). It was determined as a result of the referral that the Claimant would benefit from further assessment of his possible PTSD symptoms (page 71). He was also referred for High Intensity CBT (page 71) and put on the waiting list.
9. In an Occupational Health Report dated 26 January 2023 it is recorded the Claimant referred to his ADHD and struggling with computer training and retaining information. He also recounted a history of PTSD with symptoms of nightmares and flashbacks and that he did not usually go out to socialise. The Occupational Health doctor stated that the Claimant had suffered *"reactive symptoms of stress and anxiety due to work related issues"* (page 74).
10. The Claimant was referred to adult ADHD services by his GP in 2023, although the date of this referral is unclear (page 83).
11. In April 2023 he became homeless following a relationship breakdown and was, for part of the week, a carer for his three-year-old daughter. He was very concerned about the safety of his daughter when she was away from him. The Claimant was worried about ensuring his daughter continued to live with him for at least half of the time.
12. The Claimant was prescribed an anti-depressant in May 2023, with the dose being increased in July 2023.
13. After approaching the doctor feeling anxious and depressed in November 2023 (page 63), the Claimant was referred on 1 December 2023 for counselling with Pegasus Men's Wellbeing Centre CIC (page 81). Following an assessment, he undertook the counselling beginning in January 2024 (page 81).
14. The Tribunal does not have a full extract of the Claimant's GP record before it. However, in a letter from the Claimant's GP dated 3 October 2025, they state that having reviewed the Claimant's notes in relation to the period from 2021 to 2025 *"throughout this period there is mention of anxiety and low mood issues"*. The doctor goes on to say, *"Benjamin suffers from PTSD type symptoms following a stabbing as a youngster"* (page 137).

15. The Claimant's evidence regarding the effect on his day-to-day activities historically and in relation to the relevant time period, as well as the time following that until the present time was as follows.
 - 15.1 the Claimant has mood swings and erratic behaviour due to his anxiety, which has affected his personal and professional relationships;
 - 15.2 the Claimant's sleep is affected due to his anxiety and PTSD symptoms;
 - 15.3 the Claimant's ADHD means that he is very talkative and can say inappropriate things;
 - 15.4 the Claimant finds it difficult to deal with his own finances and remembering commitments due to his ADHD;
 - 15.5 the Claimant is disorganised and will lose important items or forget to take things he needs with him due to his ADHD; and
 - 15.6 the Claimant struggles with IT and concentration due to his ADHD.

Disability: the Law

16. Section 6 and schedule 1 of the Equality Act 2010 (the "EqA") provides that a person P has a disability if they have a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day to day activities. A substantial adverse effect is one that is "*more than minor or trivial*" (section 212 EqA), and a long-term effect is one that has lasted or is likely to last for at least 12 months or is likely to last the rest of the life of the person (Schedule 1 paragraph 2(1) EqA).
17. Schedule 1 par 2(2) EqA provides that "*if an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur*".
18. "*Likely*" should be interpreted as meaning "*it could well happen*" rather than it is more probable than not that it will happen (SCA Packaging Limited v Boyle (2009) ICR 1056).
19. The burden of proof is on the Claimant to show that he is a disabled person in accordance with that definition.
20. In Goodwin v The Patent Office [1999] IRLR 7, at paragraphs 26-29, it was held that there are four key questions that need to be asked:
 - 20.1 "*Does the applicant have an impairment which is either mental or physical?*
 - 20.2 *If so, does the impairment affect the applicant's ability to carry out normal day to day activities?*
 - 20.3 *If so, is the effect on the same substantial?*
 - 20.4 *If so, is the effect on the applicant's ability to carry out normal day to day activities long term?*"
21. J v DLA Piper [2010] IRLR 936, at paragraph 40 it was held:

"It remains good practice in every case for a tribunal to state conclusions separately on the questions of impairment and of adverse effect (and, in the case of adverse effect, the questions of substantiality and long-term effect arising under it) as recommended in Goodwin. However, in reaching those conclusions the tribunal should not proceed by rigid consecutive stages. Specifically, in cases where there may be a dispute about the existence of an impairment it will make sense, for the reasons given in paragraph 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."

22. I am also mindful of the "*Disability: Equality Act 2010 - Guidance on matters to be taken into account in determining questions relating to the definition of disability*" (the "Guidance") and the Equality and Human Rights Commission (EHRC) Employment Statutory Code of Practice (the "Code") and specifically Appendix 1. The meaning of "*normal Day-to-day activities*" is not set out in statute, but helpful guidance is included in both the Guidance and the Code.
23. Paragraph D3 of the Guidance states that: "*In general, day-to-day activities are things people do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities. Normal day-to-day activities can include general work-related activities, and study and education-related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or a shift pattern.*"
24. The Code states that day to day activities include – but are not limited to – activities such as walking, driving, using public transport, cooking, eating, lifting and carrying everyday objects, typing, writing (and taking exams), going to the toilet, talking, listening to conversations or music, reading, taking part in normal social interaction or forming social relationships, nourishing and caring for one's self. Normal day-to-day activities also encompass the activities which are relevant to working life.
25. The Code states at Appendix 1 that "*There is no need for a person to establish a medically diagnosed cause for their impairment. What it is important to consider is the effect of the impairment, not the cause.*". This is also confirmed in Ms A Robinson v Nottingham Healthcare NHS Foundation Trust: [2025] EAT 39. In the same case HHJ Tayler also made clear that in relation to proving disability "*there is no requirement for evidence to be corroborated for it to be accepted*" [29].
26. In the case of Mr Harry Stedman v Haven Leisure Ltd: [2025] EAT 82 Judge Stout reminded Tribunals considering substantial adverse effect on day-to-day activities to keep in mind:
 - "(i) that the comparison required by the statute is between the claimant's abilities as they are with the impairment and as they would hypothetically be without the impairment; (ii) that it suffices if the claimant experiences a substantial adverse*

effect on ability to carry out just one day-to-day activity; and (iii) it is not permissible to weigh up a claimant's ability to carry out one day-to-day activity against another day-to-day activity in order to arrive at some overall assessment of ability to carry out day-to-day activities generally.” [67]

27. Further, in the same case of *Stedman v Haven Leisure*, Judge Stout addressed diagnoses of autism and ADHD specifically as follows.

“59. While I do not expect all judges to be familiar with the international diagnostic criteria for autism and ADHD, all judges should be familiar with the Equal Treatment Benchbook, and also with the principle that a diagnosis (in broad terms) reflects a clinical judgment that someone is significantly different from the norm as regards the area of functioning covered by the diagnosis. The Disability glossary to the Equal Treatment Benchbook provides a lot of information about autism, including explaining that “To have a diagnosis of autism a person will have difficulties with social communication and integration, and will often demonstrate restricted, repetitive patterns of behaviour, interests or activities.” Equivalent information is included in relation to ADHD.

60. Where a Tribunal has before it evidence of a clinical diagnosis of autism or ADHD, accordingly, then (unless there is some reason to doubt the reliability of that clinical judgment), the Tribunal must take that diagnosis into account not just as evidence that someone has a condition or impairment, but as evidence as to the impact of that impairment. The diagnosis means they have been judged by a clinician to have significant (i.e. clinically ‘more than minor or trivial’) difficulties with the areas of functioning covered by the diagnosis.”

28. I note that the information contained in the Equal Treatment Benchbook in relation to ADHD is as follows.

“Some experts believe the following symptoms are typical of ADHD in adults:

- Carelessness and lack of attention to detail.*
- Continually starting new tasks before completing old ones.*
- Poor organisational skills.*
- Inability to focus or prioritise.*
- Forgetfulness.*
- Continually misplacing things.*
- Restlessness and edginess.*
- Difficulty keeping quiet and speaking out of turn. Blurt out responses and often interrupting others.*
- Mood swings, irritability and quick temper.*
- Extreme impatience.*
- Inability to deal with stress.”*

29. The material time for considering whether the impairment had (or was likely to have) a long term effect is the date of the alleged discriminatory act (*All Answers Ltd v W [2021] EWCA Civ 606, CA*) and events occurring after the date of the alleged discriminatory act should not be taken into account in considering if the effect of the impairment was long term. Whether an impairment is ‘long term’ is directed to the effect of the impairment, rather than the underlying impairment itself: *Seccombe v Reed in Partnership Ltd, EA-2019-000478-00*, at paragraph 29.

Disability: Discussion and Conclusions

30. The Respondent's submissions were, in summary, that there was not sufficient evidence of substantial adverse effect on day-to-day at the relevant time. It submitted that there was a lack of contemporaneous documents in relation to this in the relevant period, between 13 January 2023 and April 2024. There was significant focus in cross examination in relation to the fact that the Claimant had not taken ADHD medication for a significant period and that there was sporadic anti-depressant medication usage. The Respondent sought to argue that there was insufficient evidence to show PTSD as an impairment and that the anxiety relied on appeared to be reactive rather than an underlying condition.
31. The Claimant, when asked about the lack of a PTSD assessment in cross examination stated that he had been through a period of living at multiple addresses and had missed numerous letters in relation to medical appointments because they had gone through to the wrong addresses, and stated that he was back on the waiting list for an assessment and therapy. The Claimant referred to significant NHS waiting lists.

Did the Claimant have a physical or mental impairment? The Claimant relies upon ADHD, PTSD and anxiety.

32. The Claimant has a medical diagnosis of ADHD, and one of generalised anxiety and depression disorder. These two impairments are clearly made out.
33. In relation to the pleaded PTSD, I am mindful that there is no need for a person to establish a medically diagnosed cause for their impairment. What it is important to consider is the effect of the impairment, not the cause. The Claimant's own evidence is clear, and there are a number of documents which refer to the Claimant having PTSD symptoms (see above at paragraphs 8, 914). Taking the evidence into account, I find that the Claimant has made out the mental impairment of PTSD.

Did it have a substantial adverse effect on the Claimant's ability to carry out day-to-day activities?

34. I find, based on the Claimant's evidence, that the three pleaded disabilities did adversely affect the Claimant's day-to-day activities in the following ways:
 - 34.1 the Claimant has mood swings and erratic behaviour due to his anxiety which has affected his personal and professional relationships;
 - 34.2 the Claimant's sleep is affected due to his anxiety and PTSD symptoms;
 - 34.3 the Claimant's ADHD means that he is very talkative and can say inappropriate things;
 - 34.4 the Claimant finds it difficult to deal with his own finances and remembering commitments due to his ADHD;
 - 34.5 the Claimant is disorganised and will lose important items or forget to take things he needs with him due to his ADHD; and
 - 34.6 the Claimant struggles with IT and concentration due to his ADHD.
35. The Claimant's evidence was that these effects have been significant. His evidence was clear and credible. It was consistent with the extensive medical

documentation he produced to the Tribunal. In relation to ADHD, as per the Stedman v Haven Leisure guidance, the diagnosis in itself can be taken into account when considering the question of substantial adverse effect. The Tribunal does not have before it the Claimant's own diagnosis of ADHD (due to the Claimant's own difficulties obtaining this as it is a historic document). However, the fact of the diagnosis and the information set out in the Equal Treatment Bench Book regarding ADHD can be taken into account alongside the evidence before the Tribunal.

36. I note also that in relation to the anxiety and PTSD, the Claimant has sought help in the form of counselling and medication at various times, including before the relevant period. Taking into the account the case of All Answers, I disregard the events occurring after the beginning of the relevant period in reaching my conclusions.
37. Based on the above, I find that all of the above listed effects were substantial.

Were the effects of the impairment long-term?

38. In relation to the Claimant's ADHD, I accept the Claimant's evidence that this has been a lifelong impairment and that the effects of the ADHD have also been lifelong. This is consistent with the medical documentation.
39. The Claimant's anxiety was diagnosed in 2021; he sought out medication and therapy in 2021 in relation to the anxiety and PTSD. I find that the effects of this and his PTSD symptoms were ongoing between 2021 and 2025, and this is consistent with the clear evidence from the Claimant's GP that he had sought support from his GP in relation to anxiety symptoms throughout this period.
40. The Claimant's position is that there was a worsening of effects during 2023 due to the extreme stress of his personal situation, because of a relationship breakdown, homelessness and significant worry about his daughter's wellbeing. This significant "reactive" worsening of the effects, which is understandable in the circumstances, does not undermine the long-term or substantial nature during other periods, as the Respondent seeks to argue.
41. It is clear in relation to all of the pleaded disabilities that the effects of them continued throughout the period from a year before the start of the relevant period (i.e. January 2022, and in fact well before that) and throughout the relevant period from 13 January 2023 to April 2024. They still continue to-date.
42. The substantial adverse effects were long term, as assessed during the relevant period from 13 January 2023 to April 2024.

43. Taking into account all of the above, I find that the Claimant was therefore disabled by reason of ADHD, PTSD and anxiety at the relevant time from 13 January 2023 to April 2024.

**Approved by Employment Judge Volkmer
9 November 2025**

Sent to the parties on
12 January 2026