



# THE EMPLOYMENT TRIBUNALS

**Claimant:** Mr Nicholas Hughes

**Respondent:** Funeral Services Limited  
t/a: Co-Op Funeralcare

**On:** 18 November 2025

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

**Before:** Employment Judge M Warren

**Representation**

**For the Claimant:** Mrs Almazedi, Solicitor

**For the Respondent:** Mr Mahmood, Solicitor

## CASE MANAGEMENT PUBLIC PRELIMINARY HEARING SUMMARY

## JUDGMENT

The Claimant was not at the material time a disabled person and therefore his complaint of disability discrimination fails and is dismissed.

## REASONS

### Background

1. Mr Hughes was employed by the Respondent between 1 May 2009 and 8 February 2024, when he resigned his employment. He claims unfair dismissal and disability discrimination. For disability, he relies upon the mental impairments of depression and anxiety. The case has been listed for a Final Main Hearing over four days on 24 – 27 March 2026.
2. The case was listed before Employment Judge Laidler on 25 February 2025 for a Case Management Preliminary Hearing. She ordered an Impact Statement and Medical Evidence. Mr Hughes has complied.

Subsequent to that, the Respondents wrote to the Tribunal to say that they did not accept that he met the definition of a disabled person and therefore the case was listed for this Public Preliminary Hearing, initially on 10 June 2025. For reasons that I do not know, it did not go ahead then and was postponed to today.

### **Papers before me today**

3. For today's hearing, I did not have the Employment Tribunal's paper file; I am sitting in Norwich and the file is in Watford, where the case had originally been listed for a hearing in person. It has been converted to the Cloud Video Platform, (CVP) presumably because of lack of judicial or establishment resources at Watford.
4. What I do have is a bundle prepared for me by the Respondent's Solicitors containing all the documents the parties assured me I would need. There is just one further document that the Respondent wanted me to have, which is an email from Mr Hughes of 22 June 2023, complaining of what he calls 'burn out' due to events at work at the time.
5. Included within the Bundle was Mr Hughes' Impact Statement and his Medical Evidence in the form of GP Records. I also heard evidence under oath from Mr Hughes.

### **The Law**

6. For the purposes of the Equality Act 2010 (EqA) a person is said, at section 6, to have a disability if they meet the following definition:

*"A person (P) has a disability if –*

- (a) P has a physical or mental impairment, and*
- (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.*

7. The burden of proof lies with the Claimant to prove that he is a disabled person in accordance with that definition.
8. The expression 'substantial' is defined at Section 212 as, '*more than minor or trivial*'.
9. Further assistance is provided at Schedule 1, which explains at paragraph 2:

*"(1) The effect of an impairment is long-term if –*

- (a) it has lasted for at least 12 months,*
- (b) it is likely to last for least 12 months, or*
- (c) it is likely to last for the rest of the life of the person affected.*

- (2) *If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur*".
10. As to the effect of medical treatment, paragraph 5 provides:
- "(1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if –*
- (a) measures are being taken to treat or correct it, and*  
*(b) but for that, it would be likely to have that effect.*
- (2) *'Measures' includes, in particular medical treatment ..."*
11. Paragraph 12 of Schedule 1 provides that a Tribunal must take into account such guidance as it thinks is relevant in determining whether a person is disabled. Such guidance which is relevant is that which is produced by the government's office for disability issues entitled, 'Guidance on Matters to be Taken into Account in Determining Questions Relating to the Definition of Disability'. The guidance is not to be taken too literally and used as a check list, (Leonard v Southern Derbyshire Chamber of Commerce [2001] IRLR 19) much of what is there is reflected in the authorities, (or vice versa). It is also becoming out of date.
12. As to the meaning of 'substantial adverse effects', paragraph B1 assists as follows:
- "The requirement that an adverse effect on normal day-to-day activities should be a substantial one reflects the general understanding of disability as a limitation going beyond the normal differences and ability which may exist amongst people. A substantial effect is one that is more than a minor or trivial effect"*.
13. Also relevant in assessing substantial effect is for example the time taken to carry out normal day to day activities and the way such an activity is carried out compared to a none disabled person, (the Guidance B2 and B3).
14. Paragraph B12 explains that where the impairment is subject to treatment, the impairment is to be treated as having a substantial adverse effect if, but for the treatment or the correction, the impairment is likely to have this effect. The word 'likely' should be interpreted as meaning, 'could well happen', (see SCA Packaging below). In other words, one looks at the effect of the impairment as if there was no treatment. A tribunal needs reliable evidence as to what the effect of an impairment would be but for the treatment, see Woodrup v London Borough of Soutwark [2003] IRLR 111 CA.

15. A substantial effect is treated as continuing, if it is likely to recur, this is explained at paragraphs C5 and C6 by cross reference to Schedule 1, paragraph 2(2) quoted above. However, it is the substantial adverse effect on the ability to carry out day to day activities that must recur, not merely a re-manifestation of the impairment after a period of remission, but to a lesser degree, (Swift v Chief Constable of Wiltshire Constabulary [2004] ICR 909 EAT).
16. Similarly, on the question of whether an impairment has lasted or is likely to last more than 12 months, it is the substantial adverse effect which must have so lasted.
17. Amongst the examples given at C6 are certain types of depression.
18. A useful example is given at C6:

*“A woman has two discreet episodes of depression within a ten month period. In month 1 she loses her job and has a period of depression lasting six weeks. In month 9 she experiences bereavement and has a further episode of depression lasting eight weeks. Even though she has experienced two episodes of depression she will not be covered by the Act. This is because, as at this stage, the effects of her impairment have not yet lasted more than twelve months after the first occurrence, and there is no evidence that these episodes are part of an underlying condition of depression which is likely to recur beyond the twelve month period.*

*However, if there was evidence to show that the two episodes did arise from an underlying condition of depression, the effects of which are likely to recur beyond a twelve month period, she would satisfy the long term requirement”.*

19. As for what amounts to normal day-to-day activities, the guidance explains that these are the sort of things that people do on a regular or daily basis including, for example, things like shopping, reading, writing, holding conversations, 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, taking part in social activities, (paragraph D3). The expression should be given its ordinary and natural meaning, (paragraph D4).
20. As to what amounts to a ‘substantial effect’, the guidance is careful not to give prescriptive examples but sets out in the Appendix a list of examples that might be regarded as a substantial affect on day-to-day activities as compared to what might not be regarded as such. For example, *‘difficulty going out of doors unaccompanied...’* or *“difficulty waiting or queuing, for example, because of a lack of understanding of the concept...”* or *“difficulty entering or staying in environments that the person perceives as strange or frightening, because the person has a phobia..”* which would be regarded as substantial effects, as compared to, *‘inability to speak in front*

*of an audience simply as a result of nervousness;” or “some shyness and timidity...”* which would not be so regarded.

21. When considering substantial effect, we should focus on what the claimant cannot do, (guidance B9). It would be wrong to weigh what a claimant can do with what a claimant cannot do and decide on balance, thereby, whether they are disabled. However, findings of fact about what the claimant can do may throw light on the question of what they cannot do, especially where there is a factual dispute about the extent of the adverse effect, see Ahmed v Metroline Travel Ltd UKEAT/0400/10.
22. The word, “likely” in the context of the definition of disability in the Equality Act 2010, means, “could well happen”, or something that is a real possibility. See SCA Packaging Ltd v Boyle [2009] ICR 1056 HL and the Guidance at paragraph C3. This is because we are not concerned here with weighing conflicting evidence and making findings of fact, but are in the realm of medical opinion and assessing risk or likelihood in that sense.
23. A claimant must meet the definition of disability as at the date of the alleged discrimination. That means for example, if the impairment has not lasted 12 months as at the date of the alleged discrimination, it must be expected to last 12 months as at that time, (not the date of the hearing). The same applies in assessing the likelihood of reoccurrence. (See Richmond Adult Community College v McDougall [2008] ICR 431 CA, Tesco Stores Ltd v Tennant UKEAT0167/19 and All Answers Ltd v W [2021] EWCA Civ 606).
24. In Goodwin v Patent Office [1999] ICR 302 the EAT identified that there were four questions to ask in determining whether a person was disabled:
  1. Did the Claimant have a mental and/or physical impairment?
  2. Did the impairment effect the Claimant’s ability to carry out normal day-to-day activities?
  3. Was the adverse condition substantial? and
  4. Was the adverse condition long term?
25. In J v DLA Piper UK LLP [2010] IRLR 936 Mr Justice Underhill, President of the EAT at time, observed that it is good practice to state conclusions separately on the one hand on questions of impairment and adverse effect and on the other hand on findings on substantiality and long term effect. However, Tribunals should not feel compelled to proceed by rigid consecutive stages; in cases where the existence of an impairment is disputed, it makes sense to start by making findings about whether the Claimant’s ability to carry out normal day-to-day activities is adversely effected on a long term basis and then consider the question of impairment in light of those findings. It is not always essential for a Tribunal to identify a specific ‘impairment’ if the existence of one can be established from the evidence of an adverse effect on the Claimant’s abilities. That is not to say that impairments should be ignored, the

question of impairment can be considered in light of findings on day-to-day activities.

26. There is one further aspect to the case J v DLA Piper UK LLP, that is the passage at paragraph 42 which emphasises the importance of distinguishing between a reaction to adverse circumstances at work (which does not amount to a disability) and a 'mental illness' or 'mental condition' which is sufficient to amount to a disability. The difficulty with this distinction can, as the EAT recognise, be exacerbated by the "looseness with which some medical professionals and most lay people, use such terms as 'depression' ('clinical' or otherwise), 'anxiety' and 'stress'". Mr Justice Underhill continues:

*"Fortunately, however, we would not expect those difficulties often to create a real problem in the context of a claim under the Act. This is because of the long-term effect requirement. If, as we recommend at paragraphs 40(2) above, a Tribunal starts by considering the adverse effect issue and finds that the Claimant's ability to carry out normal day-to-day activities has been substantially impaired by symptoms characteristic of depression for twelve months or more, it would in most cases be likely to conclude that he or she was indeed suffering 'clinical depression' rather than simply a reaction to adverse circumstances: it is a common sense observation that such reactions are not normally long lived".*

### **The Facts**

27. The relevant time was between August 2023 and February 2024.
28. There is nothing in Mr Hughes' medical history of anxiety or depression before 2023. During 2023, Mr Hughes experienced a number of distressing life events. He was the person responsible for caring for his terminally ill mother. He had a breakdown in a personal relationship. He experienced upsetting events during a summer holiday in Spain. He was also at this time having issues at work, hence his email about burnout on 22 June 2023.
29. We have a Fit Note, (page 71 of the Bundle) which is dated 20 June 2023 and certifies Mr Hughes as unfit to work until 14 July 2023. It refers to stress related to work.
30. There are no other Fit Notes in the Bundle and none are referred to in the medical records. It strikes me as odd, but I accept on the evidence there were further periods of absence during the second half of 2023.
31. I have been referred to an Occupational Health Report that the Respondent obtained, dated 16 November 2023, (page 61 of the Bundle). It is from a Dr F MacLean. It refers to Mr Hughes as having had a difficult year, an ongoing difficult situation as the main carer for a close relative

with a serious illness, that he is suffering what is described as stressful workload and that he had an extremely unpleasant stressful holiday in Spain in July. It describes him suffering from poor quality sleep and having panic attacks, which are said to have at that time to have settled. Mr Hughes is reported as saying that his mood then, in November 2023, was good and he was feeling generally positive about things.

32. The OH Doctor expressed the view that he is fit for work with adjustments. The adjustments, I note, are in relation to his hours so as to accommodate his caring responsibilities.
33. Dr MacLean refers to Mr Hughes' problems as not amenable to a medical approach and that his return to work is not going to be dependent on medical factors.
34. The Medical Records begin at page 63 of the Bundle. There we see a reference to the first diagnosis of Mixed Anxiety and Depressive Disorder, on 6 October 2023, said to run until 30 December 2023. Mr Hughes confirmed in evidence that is what that line in the medical records meant.
35. I note Mr Hughes was diagnosed again with Mixed Anxiety and Depressive Disorder in December 2024. That, of course, was well after the relevant time. It does show that there was a further event or episode of Mixed Anxiety and Depressive Disorder, which I think must impact on how one reads his Impact Statement.
36. On the face of that Medical Record, it appears that the duration of Mixed Anxiety and Depressive Disorder relevant to the case, was for a period of three months.
37. I note that Citalopram is recorded as having been prescribed on 10 February 2025. It comes under the heading of 'Repeat Prescriptions'. I queried whether that meant Mr Hughes began his course of Citalopram in February 2025? He told me and I am prepared to accept, that he was prescribed Citalopram when he was diagnosed with Mixed Anxiety and Depressive Disorder in October 2023.
38. Mr Hughes also told me that he stopped taking Citalopram shortly after leaving the Respondent's employment in February 2024. Of course, we can see from the Records that by February 2025 he was taking it again.
39. Finally from the Medical Records I note, (at page 67) reference to a GAD-7 score of 19. That was on 31 August 2023. I take judicial notice that indicates that his Mixed Anxiety and Depressive Disorder at that time was at a high level, described as 'severe'.
40. I note that there are no referrals to Mental Health Services, no referrals to Counselling or to therapy. Mr Hughes tells me and I accept, that his GP forwarded to him by text message, links to Counselling Services, which he

did not follow up.

41. I refer to Mr Hughes' Impact Statement. I accept that Statement is honest. I also note that it is written in the present tense and it is signed on 25 March 2025, which is after the latest episode, as noted from the Medical Records. What is relevant to the Tribunal is the impact of the impairment at the relevant time in the Autumn of 2023 through to February 2024.
42. In the Impact Statement, Mr Hughes refers to his depression affecting him every day without medication. He says: he will stay in bed for long periods of time, he refers to it affecting his relationships, he avoids socialising, that his relationship with his daughter is difficult, he has feelings of isolation and vulnerability, he wants to avoid people, he has become introverted and disassociated, he says that he used to enjoy sports such as swimming but now has no motivation for this.
43. I note in passing in evidence, he told me that he goes to the gym and he uses that as a means of managing his mental health.
44. At paragraph 9 he refers to his mental health affecting all aspects of his life from self-care to socialising, that he is left fatigued, unable to eat, unable to concentrate, he has a loss of enjoyment in normal activities, he has negative cognition and thoughts of self-harm.
45. Against all of that, in cross examination Mr Hughes confirmed that at the relevant time he always turned up at work on time, that he was always well presented at work, that he performed his duties diligently and properly and that at that time he was doing everything involved in the care for his mother including shopping, housework, cooking, laundry and life administration. He confirmed he was doing all of that for himself as well.

### **Conclusions**

46. First of all I want to note and it is important, Mr Hughes is represented by Solicitors. I am therefore entitled to expect that the evidence one needs will be presented. The absence of a narrative of medical evidence, such as a report or a letter from the GP and/or from some other medical professional is notable. Particularly as the burden of proof is on Mr Hughes.
47. The lack of information in the GP Records that I have been provided with is surprising. Mr Hughes was diagnosed with his mental impairment in October 2023. That does not mean that because the condition has at that point been defined with that label, the actual affects of that condition have suddenly started at that point. There must have been symptoms of the impairment before October 2023.
48. There was likely some impact of this impairment with the events that occurred in June when he was signed off as unfit to work. I cannot say

that at that point the effect of the impairment was substantial on his day to day activities, because I do not have evidence about that, neither medical nor from Mr Hughes. At that time, it appears he was coping with his mother and himself without medication.

49. What I do know, is that by August his GAD-7 score was 19. With severe anxiety, I would say his impairment must by then have substantially adversely affected his day to day activities.
50. He had been taking medication from October 2023, therefore I assess his impairment from that point assuming that he was not taking medication. What I should have before me is medical evidence on how he would have been without that medication and I do not have it. The medical evidence is that his condition lasted until 30 December 2023 because that is what it says at page 63.
51. It looks as if the substantial adverse impact of the impairment lasted between August and December 2023, a period of five months.
52. Mr Hughes told me that he came off the Citalopram after he left the Respondent's employment in February 2024. At the material time, the substantial adverse impact had not lasted 12 months. Crucially, the question is, (and I have little to assist me with this) was it likely then to last 12 months or to reoccur? How do I know? I cannot just assume it must be so because if it was serious in August 2023, it must be that it is going to last more than 12 months or be likely to reoccur. I cannot just assume that, as Mrs Almazedi invites me to. Absent medical evidence, I cannot say as of October 2023, or at February 2024 when he resigned, that it was likely to last 12 months in total or that it was likely to reoccur.
53. It is for that reason I am bound to find that Mr Hughes, at the relevant time, did not meet the definition of a disabled person.
54. To Mr Hughes I said: I want to be quite clear, this is a legal test, did you at the time you are complaining of discrimination meet the definition of a disabled person, during that period of five or maybe seven months? On the evidence before me, you did not meet that definition then. I have no doubt that you were and you have been since, very poorly. However, you did not meet the definition of a disabled person for the purposes of the Equality Act 2010.
55. Therefore, Mr Hughes' disability discrimination complaint fails because he did not meet the definition of a disabled person.

#### **Further Conduct of the Case**

56. It was noted at the outset that the case is listed for four days in March 2026. I queried with the parties whether a four day listing would still be required. I noted that there was an unfair dismissal claim on the same

matrix of facts and indeed, there was a victimisation claim. The representatives wanted time to talk about this and we therefore agreed to allow a period of fourteen days for the parties to reflect and discuss before advising the Tribunal whether they thought that the current listing of four days should be reduced. I am content to leave it as it is in the meantime.

**Approved by:**

Employment Judge M Warren

Dated: 16 December 2025

SENT TO THE PARTIES ON

...29 December 2025.....

.....  
FOR THE TRIBUNAL OFFICE

**Recording and Transcription**

Please note that if a Tribunal Hearing has been recorded you may request a transcript of the recording, for which a charge is likely to be payable in most but not all circumstances. 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. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

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