EMPLOYMENT TRIBUNALS

Claimant: **Mr Daniel Pearson**

Respondent: **West Midlands Trains Limited**

Heard at: **Midlands West (In Person)** **On: 26 June 2026**

Before: **Employment Judge Bansal**

Representation

Claimant: **Mr A MacMillan (Counsel)**
Respondent **Miss H Ifeka (Counsel)**

RESERVED PRELIMINARY JUDGMENT

At the relevant period the claimant was disabled with the impairment of depression & anxiety for the purposes of s6 of the Equality Act 2010.

REASONS

Introduction

1. This Public Preliminary Hearing was listed by Employment Judge Codd at a private preliminary hearing held on 19 September 2025 The issues to be determined were identified as follows;
   (i) whether the claimant had a disability at the relevant time;
   (ii) consideration of the claimant's application to amend to join in WM Trains Ltd as a named Respondent;
   (ii) finalisation of the list of issues; and
   (ii) further case management;

This Hearing

2. Both parties were represented by Counsel. Mr A MacMillan represented the claimant, and Miss H Ifeka represented the respondent.

3. The Tribunal was provided with an agreed bundle of documents of 240 pages, skeleton arguments from both Counsel, and 3 versions of the claimant's Impact Statement. The claimant's latest Impact Statement (version 3) was accepted as his evidence in chief upon which he was cross examined. At the end of the

evidence both Counsel supplemented their skeleton arguments with oral submissions.

Background

4. The claimant commenced employment with the respondent as a Train Driver on 29 November 2020 and continues in their employment. Following a period of early conciliation which began on 6 March 2025 and ended on 8 May 2025, the claimant presented a Claim Form (ET1) on 7 May 2025 pursuing complaints of disability discrimination, failure to make reasonable adjustments and harassment related to disability.

5. The claimant relies upon the impairments of Autism, Recurrent Depression, Anxiety, PTSD (with hypervigilance). The pleaded allegations of disability discrimination run from 20 February 2024 to present. That is the agreed relevant period to consider if the claimant was disabled within the meaning of the Equality Act 2010.

6. By correspondence dated 3 December 2025 the respondent confirmed their position on the claimant's disability status. The respondent conceded that at the relevant time the claimant was disabled with the impairment of Autism only but does not concede knowledge of his impairment. In relation to the impairments of PTSD, depression and anxiety these are not conceded.

7. At the start of the hearing, I invited the claimant to review his position concerning his claimed impairment of PTSD. In my preliminary reading of the Impact Statement and documentary evidence I considered the claimant was unlikely to establish this impairment as a disability for the purposes of this claim. Following a short adjournment to enable the claimant to consult with his Counsel, the claimant voluntarily withdrew his reliance on PTSD as a disability for the purposes of this claim. Therefore, the only live issue I was required to determine was the disability status relating to recurrent depression and anxiety. ("depression & anxiety").

The claimant's case

8. The claimant in his Impact Statement explained his history of depression and low mood. He confirmed that his depression has been recurring since 2005/2006 from the age of 18/19 to the present date. He has experienced episodes of depression, anxiety and low mood intermittently for weeks or months during which periods he has been prescribed medication namely Citalopram, Amitriptyline and Sertraline. Also during this period he has been referred to therapy assessments and counselling sessions to enable him to manage his symptoms.

9. The claimant's account about his periods of absence from work due to his depression and anxiety was as follows. During this period, the claimant had a mental breakdown in April 2029 and was signed off work for depression until March 2020. In this period he was sectioned at St George's Hospital. His next absence was from September 2023 to February 2024. In this period he was referred to Staffordshire Talking Therapies Service. At his appointment held on 2 January 2024, he was identified as experiencing from depression, anxiety

and anger. He was next signed off for mental health issues from April 2024 to July 2024, and then again from February 2025 until end of March 2025. His current absence started in June 2025 and is continuing.

10. A review of the disclosed medical assessments confirm the prognosis of mild anxiety and depression was formally made By Dr RJ Southam at a consultation held on 10 October 2023. An assessment made by a Psychological Wellbeing Practitioner at Staffordshire & Stoke on Trent Talking Therapies on 2 January 2024, confirmed the claimant was experiencing anxiety and anger, and the clinical scores were recorded as, Depression – PHQ9 score -20; and Anxiety GAD7-score 12. On 22 July 2025 the claimant privately funded a Psychiatric Assessment, which was conducted online by a Consultant Psychiatrist. The Assessment Report concluded that *" Daniel has a long history of depression and is currently experiencing an episode of low mood and anxiety accompanied by other biological and cognitive features that are consistent with a depressive episode."… "Daniel has been prescribed sertraline by his GP few weeks ago, but has not been taking it.."*

11. A review of the claimant's GP notes disclosed from the period July 2011 to March 2025 record the claimant has suffered from back pain, low mood, depression, mental health issues during this period. The notes do not record any clinical assessment carried out or any medication prescribed by the GP during the period July 2019 to 30 May 2024. From February 2025, the claimant was continuously issued Fit Notes for depression and anxiety and prescribed Sertraline.

12. I noted two particular Occupational Health assessment reports dated 26 February 2024 & 16 July 2024, carried out by MediGold Health for the purposes of assessing his return to work. The former report stated, *"..He tells me he feels much better in himself since his last consultation and that his mood is more positive with no intrusive thoughts, flashbacks or nightmares. He tells me he is sleeping well and he is functioning adequately at home. He tells me his motivation is improving and while he continues to have some residual apprehension he denies having any panic attacks. He tells me that he does not feel particularly anxious now. Further to this he reports that his concentration has improved in comparison to the last consultation".* The recommendation was that the claimant was fit to continue his current role from a medical perspective. I understand the claimant returned to work following this recommendation and was put on training, following which he went absence from April 2024.

13. In the latter report dated 16 July 2024, the assessment confirmed the claimant was not on any medication for his mental health issues, and concluded that *"there were no signs of acute mental health disorder or any concentration or attention issues within the appointment time of around 45 minutes length".*

14. The claimant, in his live evidence and as confirmed in his witness statement identified the symptoms of this impairment to be low mood, lack of motivation and energy. In terms of the effect on his day to day activities, the claimant confirmed some of these to be;
(a) difficulty in sleeping and also getting out of bed;

(b) lack of engagement to do, for example, normal activities and everyday chores, gardening, watching sports, socialising and interacting with family;
(c) reduced appetite and not enjoying food;
(d) procrastinating in completing tasks;
(e) avoid leaving the house and staying within the house isolated;

15. In cross examination, the claimant's replies were as follows. He needs assistance to certain things. For example, leaving his house causes him anxiety, therefore he needs to go with someone he could trust. He is heavily reliant on his wife to do all of the household chores, cooking and cleaning and to assist him. Although, he can do some tasks like decorating and gardening which he enjoys, but this is dependent on his mood and state of mind, and therefore has to manage these tasks.

Claimant submissions

16. Mr MacMillan, articulated the claimant is a compelling and persuasive witness about his depression and anxiety, and their continuing effect on him. The claimant has an overwhelming history of mental impairments which include depression and anxiety as evidenced by the disclosed medical information and last assessment made in July 2025. On the evidence before the Tribunal, the claimant has satisfied the statutory test.

Respondent submissions

17. The thrust of Miss Ifeka's submissions is that the medical evidence is inconsistent to the claimant's evidence and that it does not support the claimant was suffering from depression and anxiety as of February 2024 and even if he did they were reactionary in nature to his back pain and work issues. Overall, the claimant has not established that at the relevant period the said impairment had a substantial effect on his day to day activities and that it had lasted for 12 months or was likely to last for 12 months or more.

The Legal Framework

18. Section 6 of the Equality Act 2010 ("the 2010 Act") provides that 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.

Mental impairment

19. There is no definition of 'mental impairment' in the 2010 Act, but Appendix 1 to the EHRC Code states: *"The term 'mental impairment is intended to cover a wider range of impairments relating to mental functioning, including what are often known as learning disabilities".*

20. In *Morgan v Staffordshire University 2002 [ICR] 475*, the EAT noted that Tribunals are unlikely to be satisfied of the existence of a mental impairment in the absence of suitable expert evidence, although in many cases evidence from the claimant's GP may be sufficient. However, there is of course no longer a requirement that a mental illness be a clinically well-recognised

illness in order to amount to a mental impairment.

21. It is usually not necessary to consider the "impairment" condition in detail *(J v DLA Piper UK LLP (2010) ICR 1052*. Depression is capable of being a mental impairment and so potentially capable of constituting a disability. In *DLA Piper,* the EAT said that, when considering the question of impairment in cases of alleged depression, Tribunals should be aware of the distinction between clinical depression and a reaction to adverse circumstances.

22. The EAT reiterated this distinction in the case of *Herry v Dudley Metropolitan Council* (2017) ICR 610 drawing the distinction between depression of a kind amounting to a disability under the Equality Act 2010 and an adverse reaction to life events, such as stress brought on by allegations of misconduct. In that case, it found that particular care needs to be paid to medical evidence and that where a person suffers an adverse reaction to workplace circumstances that becomes entrenched so that they will not return to work, but in other respects suffers no or little apparent adverse effect on normal day-to-day activities, this does not necessitate a finding of mental impairment

Substantial Effect

23. An effect is "substantial" if it is *"more than minor or trivial"* (section 212 of the 2010 Act).

24. Paragraph 5 of Schedule 1 provides as follows:
"(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 correct it, and
(b) but for that, it would be likely to have that effect.

(2) 'Measures' includes, in particular, medical treatment and the use of a prosthesis or other aid."

25. In considering whether an impairment has a substantial adverse effect on the ability to carry out normal day-to-day activities, it is necessary to take account not only evidence that person is performing a particular activity less well, but also of evidence that a person avoids doing things which, for example, cause pain, fatigue or substantial social embarrassment; or because of a loss of energy and motivation (Appendix 1 to the Code).

Long-term effects

26. Schedule 1, para. 2 of the EqA 2010 defines "long-term" as follows:

(1) The effect of an impairment is long-term if—
(a) it has lasted for at least 12 months,
(b) it is likely to last for at least 12 months, or
(c) it is likely to last for the rest of the life of the person affected.

(2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.

27. The meaning of *"likely to"* in these circumstances is *"could well happen"* *(SCA Packaging Ltd v Boyle [2009] UKHL 37)*. The question of how long the effect is likely to last should be determined at the date of the alleged discriminatory act, not at the date of the Tribunal hearing (*McDougall v Richmond Adult Community College [2008] ICR 431)*.

Effect of medical treatment

28. (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.

29. Guidance on matters to be taken into account in determining questions relating to the definition of disability ("the Guidance") was issued by the Secretary of State pursuant to section 6(5) of the 2010 Act. The Guidance does not impose any legal obligations in itself and is not an authoritative statement of the law. However, the Tribunal must take into account any aspect of the Guidance which appears to it to be relevant.

Burden of proof

30. The burden is on the claimant to show that he had a disability at the relevant time. The relevant time is the date of the alleged discriminatory act(s). *(Cruickshank v VAW Motorcast Ltd [2002] ICR 729*). Further, this is the material time for establishing whether the impairment had a long-term effect.

31. The question of whether the claimant had a disability at the material time is a matter for the Tribunal rather than for any medical expert. In *Sullivan v Bury Street Capital Limited [2021] EWCA Civ 1694* the Court of Appeal approved the-four stage approach set out in *Goodwin v Patent Office [1999] I.C.R. 302:*

(i) The impairment:
Does the claimant have an impairment which is either mental or physical?

(ii) The adverse effect:
Does the impairment affect the claimant's ability to carry out normal day-to-day activities …, and does it have an adverse effect?

(iii) The substantial condition:
Is the adverse effect (upon the claimant's ability) substantial?

(iv) The long-term:
Is the adverse effect (upon the claimant's ability) long-term?

Findings of fact

32. In deciding this preliminary issue, I have had regard to the claimant's evidence, the documentary evidence referred to in the bundle, the parties' submissions and the applicable law and guidelines. I set out my conclusion below.

The relevant period

33. For the purposes of this disability issue, the relevant period as identified is from February 2024 onwards.

Did the claimant have the impairments of depression and anxiety?

34. The claimant relies on the impairment of depression and anxiety. Anxiety can be a mental impairment as confirmed by the EAT in *J v DLA Piper UK LLP (2010) EqLR 936*. I recognise, as stated in Paragraph 21 above that there is no longer a requirement that a mental illness be a clinically well-recognised illness in order to amount to a mental impairment. It is therefore a question of fact for the Tribunal to determine, based on all evidence, not solely on a clinical or medical diagnosis.

35. I have noted the claimant's medical records and information clearly show that the claimant has a history of depression and low mood. The GP records confirm a diagnosis of *"depression"* from May 2018, and then *" mental health issues"* repeatedly from 25 September 2023 onwards up until 11 February 2025, after which the diagnosis is specific to "depression and anxiety".

36. The claimant's evidence was that he has been experiencing recurring episodes of depression and low moods since 2005/2006, and has struggled with his mental health since then. The mental health issues relate to his low mood, anger, anxiety, depression. I found the claimant to be consistent and a persuasive witness about his impairment. This is supported by the assessment at his appointment with Staffordshire Talking Therapies on 2 January 2024, at which the claimant is diagnosed with anxiety and depression, I am therefore satisfied the claimant did have the impairment of depression and anxiety at the relevant time.

37. I reject Miss Ifeka's submission that the claimant's impairments was a reaction to his back issue or work related issues. I am not persuaded by the two Medigold Health Reports assist as these were assessments specifically undertaken for return to work purposes.

What were its adverse effects on normal day to day activities?

38. In accordance with the Guidance I am required to focus on what an individual cannot do, or can only do with difficulty, rather than on the things the individual can do. I found the claimant to be a credible and persuasive witness. I find that sleeping, doing everyday household and personal chores, for example, gardening, decorating, watching TV, socialising and interacting with family; having a good appetite; leaving the house and being able to completing tasks without procrastinating are all day to day activities. Due to the impairments the claimant's ability to enjoy and undertake these tasks without difficulty or issues were adversely effected and appear to be continually effected. I therefore find the impairment did effect the claimant at the relevant time and appears to continue to have an adverse effect on him.

Was the impairments more than minor or trivial ?

39. I am satisfied the effect on the claimant is and was more than minor or trivial. The effect to his sleep; feeling in low mood; reduced appetite; the loss of interest and engagement in normal everyday activities are significant and have affected the claimant's ability to perform normal day to day activities and to socialise and interact with family members and others.

Was there a possibility that the symptoms would continue for more than 12 months?

40. I note the material date to assess whether the effect of the impairment has lasted or is likely to last at least 12 months is from the date of the discriminatory act. In accordance with the guidelines any improvement due to medication must be disregarded. "Likely" in this context is to be interpreted as "could well happen" (according to the 2011 Guidance on the definition of disability).

41. In my analysis, as of February 2024 the claimant was diagnosed with the said impairment which did have a substantial effect on his daily activities as described by the claimant. Considering the history of depression and anxiety suffered by the claimant over the last 14 years I find it was likely that the impairment would continue for a long term period of at least 12 months or beyond. The subsequent diagnosis made in July 2025 provides evidential basis for concluding that the effects were continuing even from September 2023. Schedule 1 Paragraph 2 expressly provides for recurring effects to be treated as continuing when recurrence is likely. The fact that there was a further diagnosis in July 25 is consistent with that recurring pattern. I therefore find the long-term condition is met.

Conclusion.

41. For the reasons stated above, I find the claimant was disabled for the purposes of the Equality Act 2010 at the relevant times by reason of depression and anxiety.

Approved By
Employment Judge Bansal
26 August 2026

Notes

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