



EMPLOYMENT TRIBUNALS

Claimant: Mr G Scaife

Respondent: EUI Ltd

Heard at: Cardiff, by video

On: 3 June 2026

Before: Employment Judge Harfield

REPRESENTATION:

Claimant: Mr R Johns (Counsel)

Respondent: Mr D Stewart (Counsel)

WRITTEN REASONS

1. I gave an oral judgment with oral reasons that the Claimant was not a disabled person because of or akin to a mental impairment of ASD or neurodiversity at the material time. Written reasons were requested. I apologise for the delay in providing these written reasons which was caused by other judicial work commitments and my then being absent for a period.

Introduction

2. The Claimant's ET1 was presented on 26 September 2025 with part of his complaints including complaints of discrimination arising from disability, failure to make reasonable adjustments and harassment related to disability. The ET1 Claim Form identifies ulcerative colitis, anxiety and traits consistent with Autism Spectrum Disorder. However, the most recent version of the particulars of claim actually link the alleged discrimination only to Autistic Spectrum Disorder traits. It is said the Respondent's alleged PCPs placed the Claimant at a substantial disadvantage because his ASD traits impair real time verbal processing and executive functioning. It is said that he was treated unfavourably because of an adverse perception of him arising from poor interpersonal skills which it is said

arose in consequence of his ASD disorder. It is said that remarks said to be harassment related to disability were related to behaviours arising from ASD traits, namely communication style and risk escalation approach.

3. We therefore had a discussion at the start of the preliminary hearing about whether I needed only to determine whether the Claimant was a disabled person at the material time by reason of traits consistent with Autism Spectrum Disorder or whether I need consider all 3 conditions identified. As I explained at the hearing, I had no objection in itself to looking at all the conditions, but given the very specific way in which the case was pleaded, I wanted to be convinced it was necessary and a sensible use of tribunal time. The Claimant's representative submitted that I should look at all 3 conditions; the Respondent's representative said it was not necessary. The basis of the Claimant's representative's submission was that I could conduct the hearing and decide the issue looking just at the question of whether traits consistent with ASD constituted a disability; it would not be wrong to do so. He said if ultimately the Claimant was disabled by ulcerative colitis and anxiety but not disabled by ASD then he accepted, on the pleadings, the disability discrimination claims could not proceed. But it was said it was preferable to look at all the conditions because they were all part and parcel of the factual enquiries that would be made at the final hearing and part of the factual narrative. It was said there was otherwise a risk other conditions would be lost from the narrative at the final hearing.
4. I declined to proceed on that basis because there is nothing stopping the Claimant putting relevant evidence (including about medical conditions) before the Tribunal at the final hearing which covers many matters other than alleged disability discrimination. But that did not require me to consider then at this preliminary hearing. Other medical conditions would not just be forgotten about; the Claimant can put whatever evidence he wished forward at the final hearing that was relevant to the complaints. I therefore declined to consider, for the purposes of the hearing before me the other two conditions. To be clear the case was not argued before me on the basis of cumulative impairments (nor indeed was it a case argued on the basis of coping strategies). I also clarified at the start the material period I was being asked to consider and was told it was September 2023 until the date the Claimant resigned, albeit both counsel acknowledged during the course of the hearing that given the nature of the claimed disability in reality it would have been likely to have affected the Claimant, in some measure, through his life.
5. I was therefore ultimately assessing the question of whether the Claimant was a disabled person by reason of a mental impairment by way of traits associated with neurodiversity or more specifically Autism Spectrum Disorder – ASD. I

heard oral evidence from the Claimant and closing submissions from both representatives. I had a preliminary hearing bundle extending to 159 pages

The legal framework

6. Section 6 of the EA 2010 provides:

6 Disability

(1) A person (P) has a disability if—

(a) P has a physical or mental impairment, and

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

7. Section 212(1) of the EA 2010 defines "substantial" as "more than minor or trivial".
8. By paragraph 2(1) of Schedule 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.
9. The Government has issued "Guidance on matters to be taken into account in determining questions relating to the definition of disability" (2011) under section 6(5) of EA 2010 (the "Guidance"). Provisions in the Guidance must be taken into account by tribunals insofar as they are or appear to be relevant to any questions arising in proceedings: see paragraph 12 of Schedule 1 to EA 2010. There is also the Equality and Human Rights Commission's Employment Statutory Code of Practice ("the Code") in the exercise of its powers under section 14(1) of the Equality Act 2006, which likewise Tribunals must take into account in any case in which it appears to be relevant (section 15(4)). Although ultimately statute prevails. The Appendix to the Guidance which contains an illustrative and non-exhaustive list of factors which, if they are experienced by a person, it would be reasonable to regard as having a substantial adverse effect on normal day-to-day activities. These include: ""Persistently wanting to avoid people or significant difficulty taking part in normal social interaction or forming social relationships"; and "Persistent distractibility or difficulty concentrating". The claimant also points to what the Guidance says about adverse effects on a person's "ability to understand human non-factual information and non-verbal communication such as body language and facial expressions" (D17).

10. In Goodwin v Patent Office [1999] ICR 302, the Employment Appeal Tribunal identified four components it may be helpful to address (although they do not have to be taken in this order):

(1) The impairment condition: Does the applicant have an impairment which is either mental or physical?

(2) The adverse effect condition: Does the impairment affect the applicant's ability to carry out normal day-to-day activities ..., and does it have an adverse effect?

(3) The substantial condition Is the adverse effect (upon the applicant's ability) substantial?

(4) The long-term condition Is the adverse effect (upon the applicant's ability) long-term?

11. There is no requirement that a mental impairment must be clinically well recognised nor is it a requirement that a claimant can only meet the burden of proving disability by means of medical or expert evidence. Nevertheless it is possible that in the absence of medical evidence a tribunal may not be satisfied that a claimant in fact has an impairment, or that the relevant adverse effects result from it or that it is long term; see Royal Bank of Scotland Plc v Morris [2012].

12. In J v DLA Piper [2010] ICR 1052 the EAT stated it may be legitimate to ask first whether the claimant's ability to carry out normal day to day activities has been substantially adversely affected on a long term basis. If it has, in many cases it might follow as a matter of common sense inference that the claimant is suffering from a condition which has produced that adverse effect i.e. an impairment. But the EAT also stated that the impairment issue cannot simply be ignored because the distinction between impairment and effect is built into the structure of the legislation.

13. J v DLA Piper also addressed the question of what is the line between a mental condition such as clinical depression, which it was said unquestionably was an impairment within the meaning of the legislation, and a second state of affairs which is not characterised as a mental condition but simply a reaction to adverse life events such as problems at work. The EAT said that if 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 (by way of example) 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 reason to adverse circumstances

14. The EAT in Herry v Dudley Metropolitan Borough Council [2017] ICR 610 added the following comment:-

“56. Although reactions to adverse circumstances are indeed not normally long-lived, experience shows that there is a class of case where a reaction to circumstances perceived as adverse can become entrenched; where the person concerned will not give way or compromise over an issue at work, and refuses to return to work, yet in other respects suffers no or little apparent adverse effect on normal day-to-day activities.

An Employment Tribunal is not bound to find that there is a mental impairment in such a case. Unhappiness with a decision or a colleague, a tendency to nurse grievances, or a refusal to compromise (if these or similar findings are made by an Employment Tribunal) are not of themselves mental impairments; they may simply reflect a person’s character or personality. Any medical evidence in support of a diagnosis of mental impairment must of course be considered by an Employment Tribunal with great care; so must any evidenced of adverse effect over and above an unwillingness to return to work until an issue is resolved to the employee’s satisfaction; but in the end the question whether there is a mental impairment is one for the Employment Tribunal to assess.”

15. It is well established that normal day-to-day activities includes normal workplace activities; Elliott v Dorset County Council [2021] IRLR 80.
16. I also remind myself that the focus should be on what an individual cannot do, or can do only with difficulty, rather than on the things that he can do. It will be impermissible for a Tribunal to seek to weigh what a claimant can do against what he cannot do, and then determine whether he has a disability by weighing those matters in the balance. Although such evidence is not necessarily of no evidential significant because sometimes findings of fact as to what a claimant actually can do may throw significant light on the disputed question of what he cannot do; Ahmed v Metroline Travel Limited [2011] EqLR 464.
17. I also remind myself that a claimant can potentially satisfy the definition of disability even if only one activity of day-to-day living were affected; Aderemi v London and South Eastern Railway Ltd [2013] ICR 591. Further, 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; Steadman v Haven Leisure Ltd [2025] EAT 82.

Discussion, Analysis and Conclusion

18. There has been no official diagnosis of ASD the Claimant. That is not, and I very much acknowledge this point, a requirement of the test legislative test. But such things can certainly be a very helpful piece of evidence. At the time of the hearing the Claimant had been assessed and was awaiting a report due, as I understood it, the following week. In those circumstances I carefully checked

with the Claimant's representative that there was no application being made for a postponement to await that report. I was told there was not. As I also said at the hearing, the Claimant has professional representation and it was for not appropriate for me to enter the arena to insist that the report is awaited. I could therefore only assess the case on what was before me at the hearing and at the time of the hearing.

19. The Claimant in his impact statement gives a history of suffering with stress and anxiety whilst under the line management of Ms Wilcox in 2020 and 2021. He says in April 2021 he moved to the line management of Mr Quibell and that Mr Quibell made adaptations for him and that his anxiety levels then reduced significantly. He says (albeit the point is not accepted by the Respondent) that Mr Quibell has an autistic child and Mr Quibell raised with the Claimant he may have some traits. The Claimant says Mr Quibell provided clear written instructions, and time for the Claimant to absorb the information and to then ask follow up questions. The Claimant says that when Mr Quibell left in June 2023 his mental health rapidly declined when placed back under the line management of Ms Wilcox. He says he decided to seek some medical advice, via BUPA to see if he could get help managing his relationship with Ms Wilcox, and that he started receiving talking therapies from Dr Colter in September 2023 onwards.
20. There is one report available from Dr Colter found starting at [141]. Dr Colter is a consultant clinical psychologist and says he has been seeing the Claimant for help with the Claimant's anxiety and low moods since September 2023 and that they had utilised CBT, CAT, and DBT skills with the Claimant feeling less anxious as a result. Dr Colter says a repeated issue for the Claimant is the Claimant's apparently frequent experience of finding himself in conflict with others, which is very stressful and distressing to him. Dr Colter records being told that this has happened at work and in the Scout group the Claimant and his wife are involved in leading. Dr Colter reports engaging in some specific work on how to communicate to colleagues at work using DBT skills given that the Claimant was not on good terms with his most recent manager, to avoid any further conflict, whilst also expressing honest views. Dr Colter writes that the Claimant had not found this very easy and genuinely finds it difficult to put himself in the shoes of another person and appreciate how they might feel or react to him expressing his views bluntly, albeit honestly. Dr Colter writes that it would appear that senior colleagues were now holding the Claimant to account for how they experience this behaviour. Dr Colter writes that one alternative formulation of the Claimant's anxiety and low moods is that it is a product of the Claimant being on the ASD spectrum, which would include the Claimant's difficulty in empathising and appreciating how others will receive his communications, which in turn has resulted in stressful interpersonal conflict.

Dr Colter noted that the Claimant was facing having to decide whether to leave his present job and look for a new one or undergo a performance evaluation process with an uncertain outcome. He said: *"I have recently asked Gavin to complete the Ritvo autism aspergers diagnosis scale, revised and from his self report, his total score was 124, which puts him well over the ASD cut off point of 65 established during the construction of the questionnaire. His answers to the questionnaire, would strongly support the need for him to undergo a full assessment of ASD."* The Claimant accepted in evidence this was not a formal diagnosis but a recommendation for a full assessment and that Dr Colter was not himself qualified to give a formal diagnosis (again hence the need for a full assessment).

21. I also had in the bundle a summary GP letter at [147] and [148] which refers to, particularly on 3 September 2024, high stress, workplace conflict, difficulty switching off and fleeting suicidal thoughts with no intent and a fit note being issued for 1 month. On 17 September it was reported the Claimant had grogginess on mirtazapine, which I understand had recently been prescribed. There is a record of mood improved when off work, with ongoing psychological input, with the fit note then being extended in October 2024 by a month. There is an GP entry for 4 December 2024 referring to several months of significant work related stress, and in June 2025 low moods linked to work and legal issues. It refers to recorded symptoms of low mood, anxiety, sleep disturbances, fatigue, grogginess, difficulties switching off and probable concentration impairment. It records the Claimant trialling various antidepressant medication due to difficulties with side effects. It refers to daily functioning being significantly limited during periods of high work stress and marked improvement noted during time away from work, and also again when the Claimant left employment with the Respondent in July 2025. As Mr Stewart observes there is nothing in the GP records I have directly referring to ASD or neurodiversity traits or something akin to it in the GP records that I have.
22. The Claimant in his witness statement describes the impact in the workplace as difficulty with verbal instructions, interpreting unspoken social cues, communicating under pressure, and regulating emotional responses in conflict situations and he says that these difficulties were significantly exacerbated under the management of Ms Wilcox from June 2023 onwards. But there is nothing in the written witness statement about a longer period of time or the Claimant's lived experiences throughout his life. As Mr Stewart says, this is significant because the Claimant has had professional representation throughout this case including the drafting of his witness statement, which the Claimant confirmed in evidence. The witness statement was also the Claimant's clear opportunity to, in accordance with the tribunal orders, set out the evidence he wanted to give in support of establishing the question of disability. Doing so

is even more important in a context such as this where there is no formal medical diagnosis.

23. If I focus, as J v DLA Piper suggests I do, on the question of adverse effects I have no evidence in the Claimant's witness statement about difficulties in education, or in work or elsewhere other than when under the management of Ms Wilcox and I find that significant. A diagnosis or label is not needed to provide that evidence about day to day life. In neurodiversity cases, the absence of that evidence stands out, because often issues dog people's lives, including through education and the world of work.
24. The Claimant did say in oral evidence that he had always been aware of certain traits that he had that he would mask or would try to manage in relation to emotional awareness, and directness, and being in situations of conflict because of the way he communicated. He said he had symptoms since he was quite young in terms of struggling with verbal instructions but had been able to adapt in life, and also with social interactions and missing social cues. But that content is not in his written witness statement. He did also say in oral evidence he had spoken with Dr Colter about difficulties communicating with his wife at the time when he was having the difficulties with scouting; but again that is not in Dr Colter's report or the Claimant's witness statement. The Claimant also referred to a blip with another manager in 2019 /2020 which he says was conflict due to a lack of clear direction and instructions and he also referred to a need to put arrangements in place with his new current employment, which has been successful. But again, none of that features in the Claimant's written witness statement. There is also no evidence of the Claimant taking such difficulties to a medical expert and seeking advice, prior to the deterioration with Ms Wilcox from June 2023 onwards. The Claimant also said in 2023/2024 he became socially withdrawn from his family and they became quite concerned about him. Although again that is not in his witness statement. He also said that a family friend who is nurse had also at some point commented about traits; although again that is not recorded anywhere. Likewise I do not have good quality actual examples of the Claimant's social and family life being impacted throughout the Claimant's life (other than the particular scouting reference). The Claimant's representative said in submissions that the reality of the situation on the evidence was that people made allowances for the Claimant, like Mr Quibell did, and then the Claimant would not have difficulties for a period. But again I do not find I have sufficient evidence of that bearing in mind I have no written evidence telling me about such a longer term history or pattern in the Claimant's life, rather than what could in fact be the Claimant having a period of time under Mr Quibell's management without interpersonal conflict, sandwiched between two periods when he did have interpersonal conflict with Ms Willcox (and with a knock on impact on to other quarters of the Claimant's life at that particular difficult time, such as scouting).

25. The burden of proof is on the Claimant. On the limited evidence before me I do not consider that I have sufficiently reliable evidence of a substantial adverse impact on normal day to day activities such as difficulties with verbal instructions, interpreting unspoken social cues, communicating under pressure, and regulating emotional responses in conflict situations *outside* of the periods where the Claimant was being line managed by and in apparent conflict with Ms Wilcox. The evidence just has not been sufficiently put before me. I do not find what the Claimant said simply in answers in cross examination convincing applying the balance of probabilities. All I have in documentary form other than that relating to Ms Wilcox is Dr Colter's reference to difficulties within scouting but that, as best as I can understand it from the very limited evidence I have, all relates to the same period of time.
26. There does appear to be evidence of substantial adverse impact on normal day to day work activities at the time when the Claimant was being managed by Ms Wilcox. But the difficulty I then have is with concluding on the evidence before me that this is due to a mental impairment of ASD / neurodiversity traits rather than having another cause; such as to quote DLA Piper, a reaction to adverse life events or the Claimant having interpersonal difficulties with Ms Wilcox. On the face of the other evidence, in particular the Claimant's impact statement (which was the place to give this evidence), at other times he was not having difficulties in work. I could also see that when asked in re-examination to give more detail about ten things the Claimant had referred to in evidence, they all related in effect to those management interactions. The Claimant says this is because other managers were making adjustments for him. But I find that a really difficult point to simply accept on the evidence before me where I do not have this history of wider difficulties with interpersonal conflict or the like leading to adjustments being made set out to me in writing. I have not been given good quality written evidence about the Claimant's wider, longer lived experiences over his personal and professional and educational life. Medical evidence is certainly not a necessity. But it really would have helped show the long term picture to me. I am without it, and also without a detailed impact statement from the Claimant or indeed statements from other potential witnesses such as, for example, family members or work colleagues (such as for example Mr Quibell).
27. On what was before me and applying the balance of probabilities I therefore regrettably concluded (the regret being the fact it looked like there would soon be more medical evidence to come), I did not find it sufficiently established that the Claimant was a disabled person by mental impairment traits of or akin to ASD or neurodiversity at the material time.

Approved by:

Employment Judge Harfield

18 September 2026

Judgment sent to the parties on:

24 September 2026

For the Tribunal:

Kacey O'Brien

Notes

Reasons for the judgment were given orally at the hearing. Written summary reasons will not be provided unless a party asked for them at the hearing or a party makes a written request within 14 days of the sending of this written record of the decision. Once written summary reasons are provided a party may request written full reasons within a further 14 days thereafter. If a party requests written summary reasons the Judge may decide to issue written full reasons instead.

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