Case No: 2300630/2016

THE EMPLOYMENT TRIBUNAL

<u>SITTING AT:</u>	**LONDON SOUTH**
<u>BEFORE</u>:	**EMPLOYMENT JUDGE K ANDREWS**
<u>MEMBERS</u>:	**Mrs R Bailey** **Ms C Oldfield**

<u>BETWEEN:</u>

Mr T McGuire

Claimant

and

London Ambulance Service NHS Trust

Respondent

<u>ON:</u>	**16 & 17 January 2017** **7-10 March 2017** **20 March 2017 in chambers**

Appearances:

For the Claimant:	**In person**
For the Respondent:	**Mr C Milsom, Counsel**

<u>JUDGMENT</u>

The respondent did not breach its duty to make reasonable adjustments for the claimant. The claim fails and is dismissed.

REASONS

1. In this matter the claimant complains that the respondent acted in breach of its duty to him to make reasonable adjustments pursuant to section 20 of the Equality Act 2010 (“the 2010 Act”).

2. The issues arising in that claim were clarified and recorded at a preliminary hearing on 9 December 2016.

3. The preliminary issue of whether the claimant was disabled at the relevant times was dealt with by this Tribunal at the commencement of the Hearing. We concluded that the claimant was so disabled and oral reasons for that decision were given to the parties on the first day.

4. After discussion with the parties and at the conclusion of the claimant's evidence we decided not to determine the further preliminary issue of whether the claim had been submitted in time at that stage as invited to by Mr Milsom. In all the circumstances, and in particular as the claimant was acting in person (even though he had indicated that he could see the logic in doing so), we concluded that it would be in the interests of justice to hear the respondent's evidence before making that decision.

Evidence & Submissions

5. We heard evidence from the claimant and also on his behalf Mr G Edwards, union representative. For the respondent we heard from:
   a. Mr P Cook, General Manager Central Operations;
   b. Ms K Baldeo, HR Manager;
   c. Ms J Gray, HR Manager;
   d. Mrs S Thompson, Programme Manager;
   e. MR J Knott, Sector Delivery Manager;
   f. Mr S Kime, Head of Operational Change & Business Innovation;
   g. Mr S Crichton, Director of Operations Services Improvement; and
   h. Ms K Millard, Deputy Director of Operations.

6. We had an agreed bundle of documents before us and both parties made helpful submissions at the conclusion of the Hearing.

Relevant Law

7. Section 20 and schedule 8(20) of the 2010 Act make provisions with regard to the duty to make adjustments. If an employer applies a provision, criterion or practice which puts a disabled person at a substantial disadvantage in comparison with persons who are not disabled, that employer has a duty to take such steps as it is reasonable to have to take to avoid the disadvantage. The duty does not arise if the Respondent did not know, and could not reasonably be expected to know, that the claimant was disabled and was likely to be placed at that disadvantage.

8. In the case of Environment Agency v Rowan ([2008] IRLR 20), the Employment Appeal Tribunal held that in determining such a claim the Tribunal must identify:

   a. the provision, criterion or practice applied by the employer;

   b. the identity of the non-disabled comparators where appropriate; and

   c. the nature and extent of the substantial disadvantage suffered by the Claimant.

9. Any complaint of discrimination may not be brought after the end of the period of three months, adjusted in accordance with the early conciliation provisions, starting with the date of the act complained of or such other period as the Tribunal thinks just and equitable (section 123 of the 2010 Act).

10. There is guidance from the Court of Appeal for Tribunals in exercising that discretion in Robertson v Bexley Community Centre (2003 IRLR 434). The Tribunal has a very wide discretion in determining whether or not it is just and equitable to extend time. It is entitled to consider anything that it considers relevant subject however to the principle that time limits are exercised strictly in employment cases. When Tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. On the contrary the Tribunal cannot hear a complaint unless the Claimant persuades it that it is just and equitable to extend time. The exercise of discretion is the exception, say the Court of Appeal, rather than the rule.

11. Conduct extending over a period is to be treated as done at the end of that period (section 123(3)(a)). (This is distinct from an act with continuing consequences where time runs from the date of the act as above.) Where an employer operates a discriminatory regime, rule, practice or principle then that will amount to an act extending over a period (Barclays Bank plc v Kapur (1991 ICR 208 HL). When deciding if there is such conduct, however, Hendricks v Commissioner of Police for the Metropolis [2002] EWCA Civ 1686 confirms that the correct focus is on the substance of the complaint that the respondent is responsible for the state of affairs leading to the alleged discrimination rather than too literal approach in analysing whether a regime, rule, practice or principle exists on specific facts. This approach has been confirmed in the context of the 2010 Act in Rodrigues v Co-operative Group EAT July 12.

12. In O'Brien v Department for Constitutional Affairs [2009] IRLR 294 the Court of Appeal held that the burden of proof is on the claimant to convince the Tribunal that it is just and equitable to extend time. In most cases there are strong reasons for a strict approach to time limits.

13. When considering anything that it considers relevant a Tribunal will also look at the factors listed in section 33 of the Limitation Act 1980 which include a) length and reasons for delay, b) the likely effect of the delay on the evidence c) the promptness with which the claimant acted once they knew the facts d) their knowledge of the time limits and e) the steps they took to get professional advice (British Coal Corp v Keeble 1997 IRLR 336).

14. If a claimant offers no evidence to explain why he/she was late in making the claim, and the reason is not to be obviously inferred, there is no conclusion to which the Tribunal can come other than to dismiss the claim (Habinteng Housing Association Ltd v Holleron UKEAT/0274/14).

15. As far as the early conciliation provisions are concerned, a claimant is required to have completed that process prior to commencing proceedings. Compass Group UK & Ireland Ltd v Morgan, UKEAT/0060/16/RN, confirms that an early conciliation certificate obtained by a prospective claimant can cover future events if the proceedings relate to a sequence of events that were in issue between the relevant parties at the time of the early conciliation process.

Findings of Fact

16. Having assessed all the evidence, both oral and written, we find on the balance of probabilities the following to be the relevant facts.

17. The claimant commenced employment with the respondent in August 1988 as an ambulance person. He qualified as a paramedic in 1994 and commenced a degree in computer science in 1999. At that time he was first formally diagnosed as dyslexic and adjustments were put in place for his degree studies. A psychological report was prepared which noted that his then difficulties were with writing speed and legibility, taking notes, spelling, reading, organisational skills, revision, meeting deadlines and examinations. In conclusion the report stated that his difficulties were consistent with the profile of mild specific learning difficulties (dyslexia). The report then set out recommendations specifically in the context of a learning environment.

18. The claimant sent a copy of this report to the respondent and on 15 March 1999 they completed a learning support form in respect of him. This recorded a number of adjustments as a means of supporting effective learning and teaching including the use of a recorder in lectures and seminars to back up notetaking, presence of a notetaker during lectures and seminars/someone to read the questions to the student and 25% extra time in exams. It is apparent that this learning support form together with the psychological report, despite having been supplied to the respondent, were not in the claimant's HR file at the time of the first events that led to this claim.

19. The claimant returned to full-time work in the respondent's IT department in 2004/2005 and also carried out two or three shifts per month as a paramedic. By the time of this claim his role was information management and technical specialist.

20. In 2006 the claimant was appointed as a duty station officer (DSO). There followed a number of selection processes for roles that he applied for and on each occasion adjustments were made due to his dyslexia. Those adjustments comprised being given 25% extra time to complete any tests and during any interview being passed a written copy of questions as they were asked. At this time it was discovered that the psychological report and learning support form referred to above were not on his HR file and he provided further copies. Notwithstanding that it

remained the position as stated above that these documents were still not on his file in 2015/6.

21. The claimant continued to work as part of a DSO pool until 2015 providing occasional cover or sometimes for substantial blocks of time by way of secondment. His substantive role, however, remained in the IT department. Throughout this period he continued on occasion to apply for alternative roles and adjustments were made as described above. He was not successful in those applications. Prior to 2015, his most recent application in respect of which adjustments were made was circa 2011.

22. GSM/IRO application

23. In 2015 the respondent underwent a restructure and the DSO role was removed. It was replaced by two roles - incident reporting officer (IRO) and group station manager (GSM). As part of this restructure the claimant together with others was invited to express an interest in one or both of these new roles. No formal application form was completed and therefore the respondent's usual method of identifying any applicant who had a disability and required reasonable adjustments was not in place.

24. The claimant confirmed on 23 July 2015 that he was interested in both the roles. His written expression of interest set out in some detail his employment record and skill sets. He did not refer to his dyslexia or disability or state that he required any adjustment to the selection process.

25. The claimant was informed on 4 August 2015 that he had obtained an interview for the GSM/IRO pool and who would be on the panel - Mr Knott, Mr Cook and Ms Baldeo. He was asked to confirm that he was happy to be interviewed for both roles, any location preference and that the interview time was suitable. Although he was not expressly asked he clearly had this opportunity to reply and indicate any other requirement.

26. It is the claimant's case that he assumed at this point that HR would still have the relevant information regarding his dyslexia and therefore the panel would be advised of the adjustments that he required. In fact in addition Ms Baldeo personally knew that he was dyslexic due to a grievance he had previously raised.

27. The interview took place on 10 August 2015. It was due to commence at 9am but was delayed by approximately 40 minutes whilst the panel, who had not previously seen the thirteen prepared questions, discussed and allocated them between themselves. They also took advice as to which of the questions should be asked as they considered that to ask all the questions would be lengthy and a consistent approach had to be agreed with another panel that was running in parallel on the same exercise. It was agreed that they would ask candidates which role was their preference and ask questions accordingly.

28. Mr Knott spoke to the claimant during this period of delay to explain what was happening. There is a dispute between them as to what was said. The claimant says that Mr Knott said they were making 'adjustments' and therefore the claimant took this to mean that they were aware of his disability and were making adjustments accordingly. Mr Knott says that he did not use the word 'adjustments' and that he in fact said they were sorting "stuff out". On balance we find that whatever was said by Mr Knott to the claimant it led the claimant to believe, or confirmed his existing belief, that some sort of adjustments were being made to the questions due to his dyslexia. Given previous adjustments made for him this would have been a reasonable conclusions.

29. Eventually the interview got underway. The claimant indicated that he preferred the IRO role and was therefore asked those questions. He says that he was thrown by this and further - as he was expecting the questions to be written down and passed to him one by one as they were asked - he was surprised when this did not happen on the first question and that by the time of the third question he was extremely worried and felt that the interview was "going wrong". His evidence is that at that point he raised the question of his dyslexia and disability and that he asked the panel whether they knew he was disabled. He says Ms Baldeo said no, they looked at each other but carried on. He says that from that point onwards the interview went from bad to worse and that by the end of it he was completely "flummoxed", did not even know he was in an interview and accordingly performed badly.

30. The consistent evidence of the three members of the panel was that the claimant only raised the issue of his dyslexia whilst answering question eight and that he raised it in the context of that question as a way of showing how he had overcome an operational difficulty. The notes taken by members of the panel support this account. Mr Knott also recalled asking the claimant, when he stated during that answer that he had a disability, whether he was okay to continue and he confirmed that he was.

31. Our finding, supported by the contemporaneous notes, is that the claimant raised his dyslexia during his answer to question 8 using it as an example of how he had overcome operational difficulty and that Mr Knott asked him if he was ok to carry on with the interview and the claimant confirmed that he was.

32. The scoring matrix agreed upon by the three members of the panel shows that the claimant overall did not score highly enough to be appointed to either post. It showed a mixture of scores according to the question and that his highest performing answer (which was above average) was to question nine.

33. The claimant was advised that his application had been unsuccessful and was offered a feedback meeting with Mr Knott. The claimant emailed Mr Knott on 24 August 2015 expressing his considerable concern about the administration and conduct of the interview. He said

that as he was disabled the policies regarding disability had not been addressed and there had been a lack of reasonable adjustment and that he considered the interview process to be invalid.

34. The feedback meeting took place on 26 August. Mr Knott confirmed what had been said in that meeting in an email to the claimant on 3 September. He recorded that the claimant had told him that he had assumed the respondent would have made reasonable adjustments as they knew he was dyslexic. Mr Knott confirmed that he had personally been unaware of his dyslexia and that the panel were also unaware. (In fact that statement, unbeknownst to Mr Knott, was inaccurate as Ms Baldeo had known as stated above. Even though she was copied in on the email she did not correct that misunderstanding.) He recorded that the claimant had told the panel "some way into the interview" that he was dyslexic but had not pointed out that that was having any difficulty or effect on his ability to answer the questions. He recorded that the claimant had described the reasonable adjustments that he required, namely having the questions written down at the interview and that having the opportunity to see the questions before the interview would have assisted him. Mr Knott confirmed his offer to assist the claimant with preparation for any future interviews he may have and that they had discussed interview techniques and strategies.

35. On 4 September claimant emailed Mr Crichton, copying Mr Knott, stating that he wished to appeal the interview as invalid.

36. <u>CAD application</u>

37. In the meantime the claimant had applied for a second role as a CAD and Technical Lead. In his application form he identified that he considered himself to have a learning disability which he described as statemented dyslexic. This process was run by Mr Kime and Ms Thompson with HR support. Ms Thompson was advised by Mr Lesaldo of the recruitment team that the claimant had dyslexia and learning difficulties and she therefore emailed Ms Gray on 3 September 2015 asking for advice on how they might alter the test/interview for him.

38. On 7 September Mr Lesaldo confirmed to the claimant the date and time of the interview and that he would have an extra 15 minutes for the test and that documents would be produced in size 16 to 18 font. He also said that he would try and find out if it was possible to let him know what the test was about as well as to find out if the questions could be printed ahead of time to be read to him. The claimant replied on the same day confirming his attendance and stating that he had in the past been given all the questions within a pool, without knowledge of which ones would be asked, 24 to 48 hours beforehand together with the questions being printed out and handed to him as the question was asked to ensure he stayed focussed. He also confirmed that he did not "get to see the questions on tests/exams but usually know the subjects (whether it was psychometric, IT etc) but not the actual questions beforehand". Mr Lesaldo replied on 7 September confirming there would

not be a pool of questions from which questions would be asked but the questions would normally be based on the job specification and suggested that he study that specification.

39. On 9 September Mr Lesaldo emailed the claimant confirming their discussion as to the arrangements for the interview. It recorded that they had agreed 45 minutes for the test instead of 30, a font size of 16 to 18, and the interview questions provided to him just before the interview. He also stated that they were unable to provide the subject of the test but confirmed there would be 13 standard interview questions and the panel members, who were named, would take turns asking specific questions from those 13 questions. The claimant replied asking when he was likely to receive the questions as he was receiving them before the interview. Mr Lesaldo informed him he would receive the questions on the day prior to the interview. The claimant asked him whether that meant first thing in the morning and asked for confirmation that he would still be handed the question being asked in writing during the interview. Mr Lesaldo replied that he believed the intention was to provide the questions to him literally just before the interview but he would clarify and get back to him.

40. That exchange was then forwarded to Ms Thompson. She replied to Ms Gray expressing the view that providing the claimant with questions prior to the interview would not be appropriate, would be unfair on other candidates and that it would not be reasonable to provide questions individually as he requested. Ms Gray's reply was that she had not had these adjustments requested before and asked to see any documentation in relation to the claimant's dyslexia statement. Mr Lesaldo requested that from the claimant who supplied it although he was unhappy as he had provided the statement previously and, understandably, was concerned as to where this confidential report had gone. On 14 September Mr Lesaldo confirmed to Ms Gray and Ms Thompson that the claimant preferred the questions to be provided to him individually in writing during the interview. Ms Thompson replied on the same day confirming that she has spoken to Tracey Watts (her manager in HR) who had advised that the claimant be given the questions one at a time on individual sheets of paper but he would not receive questions prior to the interview. Ms Gray then later that day confirmed that she had spoken to the claimant and confirmed the adjustments which broadly speaking were additional time for the assessment and interview questions to be given one at a time on individual sheets of paper, to be printed in black ink on white paper, font size 14 or 16 in the Times Roman.

41. Mr Kime's persuasive evidence was that in addition he spoke to the claimant who had asked to know the subject of the assessment in advance. He said that he told the claimant what the assessment would <u>not</u> be and that he <u>would be</u> required to undertake a practical assessment at a workstation producing a document using standard

programs from a one-page brief. The claimant denied this conversation took place but we prefer Mr Kime's account and find that it did.

42. The assessment took place on 16 September in Mr Kime's usual office and the claimant was given the agreed extra time. It was invigilated by Ms Thompson. There was a Do Not Disturb notice on the door to the office which was kept closed. The claimant says that in addition to Ms Thompson who was present while he undertook the test, there was also at least one other person working at a computer in the office and that at the outset of the test there was one other person standing in the office but he/she left very shortly. The claimant's evidence was that the person working at the computer was not talking whilst he took the test.

43. Ms Thompson's evidence was that she believed there was nobody else working in the office but that even if she was wrong about that there was a maximum of one or two present. Mr Kime's evidence was that he and the other person who usually worked in that office were absent doing the interviews and no one else had booked the office as a hot desk space. He therefore believed that only the claimant and Ms Thompson would have been present. He had specifically checked diaries to confirm this.

44. We conclude that the claimant took the assessment in an entirely appropriate and quiet private area with only him and Ms Thompson present.

45. After completing the assessment the claimant moved to the interview during which he was presented with the questions in writing as they were asked in accordance with the adjustment agreed.

46. The claimant was unsuccessful in his application.

47. Mr Kime met the claimant on 24 September and gave him detailed feedback on his interview and assessment. Mr Kime's evidence was that at the very beginning of this meeting, because he was aware of the claimant's complaint although it is not reflected in the aide memoire he prepared for himself in advance, he specifically asked the claimant whether he felt the adjustments that had been put in place were satisfactory and he had confirmed that they were. The claimant denied that that was said. Mr Kime was persuasive and we accept his evidence and find that the claimant did say adjustments had been satisfactorily made on this occasion.

48. <u>Informal and formal grievances</u>

49. The claimant's complaints about the GSM/IRO process led to an informal meeting being held between the claimant and Mr Crichton on 28 September. Mr Crichton was accompanied by Ms Gray and the claimant by Mr Edwards. Neither the claimant nor Mr Edwards made any notes during the meeting. The outcome of that meeting, as recorded in the letter on 4 November to the claimant, was that the claimant would be allowed to re-enter the recruitment process for an IRO acting pool

position (by this time the GSM roles were filled). He was informed that the interviews were taking place on 18,19 and 20 November and that Ms Swan, recruitment manager, will be contacting him once he had been allocated an interview slot and that Ms Gray had informed Ms Swan of the adjustments that he required for the interview. Mr Crichton's evidence, which we accept, was that it was by then very clear what adjustments the claimant wanted, namely being given questions in writing as they were asked, as they had been discussed fully in the meeting. The letter also repeated the offer made by Mr Knott in relation to interview coaching and strongly suggested that he take this up.

50. The claimant made very detailed comments on this letter suggesting that he had no difficulty in recalling and commenting in detail on what was and was not said during the meeting. This is in keeping with the claimant's own evidence that he has an "amazing" memory.

51. On 9 November Ms Gray emailed Ms Swan advising her that the claimant should be added to the list of candidates and asking her to invite him for interview. On the following day Ms Gray also confirmed to Ms Swan the adjustment that was needed for the interview and said that she had advised the claimant that she had passed this information to her. Unfortunately when on 11 November the invitation to the interview was sent to the claimant a standard letter was used which asked the recipient to advise if any reasonable adjustments were required. It also requested confirmation of attendance by noon on Monday 16 November. The claimant's evidence was that this confused him as he believed that this had already been decided (which it had) and he discussed the position with his union representative. In light of this confusion he felt unable to attend the interview and emailed the recruitment team on 16 November at 11.17 saying that he was not in a position to confirm his attendance by the time he stipulated. It is correct therefore that he did not formally refuse to attend but he did not confirm he would attend as requested.

52. A second informal meeting was held between Mr Crichton and the claimant on 16 December 2015 again with Ms Gray and Mr Edwards attending. Mr Crichton confirmed the contents and outcome of that meeting in a letter dated 16 February 2016. He urged the claimant to seek an opportunity with his line manager to review the learning support form from 1999. He concluded by saying that he had tried to help as much as he could, that there was nothing more he could do in relation to the missing documents and that if he still wanted the matter investigated he should contact his line manager or HR. Again the claimant made a number of detailed comments on that letter reflecting his recollection of the meeting.

53. On 30 January 2016 the claimant raised a formal grievance.

54. On 3 February 2016 he lodged his early conciliation notification form with ACAS.

55. The claimant was invited to attend a formal grievance hearing on 31 March 2016 and he requested permission to audio record that hearing. Ms Watts confirmed on 2 March that a note taker would be present and, by implication, that the request was refused. On 29 March a more senior HR manager confirmed that there was no objection to him recording the hearing as long as a copy of the audio file was also made available to Ms Millard who would be chairing it.

56. On 31 March at the commencement of the grievance hearing, or shortly after it commenced, the claimant - accompanied by Mr Edwards who again did not make any notes - was informed that in fact a decision had been made that he would not be allowed to make a recording. However a full handwritten note was made which was used to prepare a type written note subsequently sent to the claimant on 20 April. He returned that note annotated with very many amendments/comments some of which were particularly detailed.

57. On 4 April Ms Millard wrote to the claimant in response to his request for an explanation as to the decision not to allow him to record the hearing. In reply the claimant set out his comments on that letter in which he said:

> "part of my complaint is about the quality/absence of notes already taken at the informal meetings thus was to secondary to my disability ensure everyone has a full and accurate account".

58. Also on 4 April 2016 the claimant submitted his claim form to the Tribunal.

59. The claimant told us that he obtained advice in relation to Tribunal proceedings from a number of sources, having had some form of legal advice and assistance from his union as well as his general online research, and he knew from an early stage that there was a time limit with which he had to comply but that he was trying to resolve the matter as he remained in employment, as he still does, and did not want to take his employer to Tribunal.

Conclusions

60. On the issue of whether the claim was submitted in time, we have considered first the dates of the act complained of. In relation to issues 5.1 to 5.3, clearly the specific dates of the interviews/assessments involved were 10 August 2015 and 16 September 2015. We conclude, however, that there was conduct by the respondent extending over a period in that selection processes in general were overseen by HR, albeit that different individuals were involved from time to time, and that this amounts to a practice of how they conduct selection processes. Accordingly the events of 10 August and 16 September were linked. In considering when that continuing conduct came to an end, we conclude that this was at the latest on 4 November 2015. It was on this date that Mr Crichton wrote to the claimant confirming that the respondent knew

the adjustment that he needed for future interviews and the claimant was informed that the re-interview for the IRO role would be subject to that adjustment. Although the letter does not specifically state what the adjustment was, it is clear that that specificity had been discussed with the claimant at the meeting on 28 September and it had already been put in place in the meantime for the CAD role interview. Further, this is consistent with Ms Gray's email to Ms Swan informing her of the adjustment required. We have noted that in the claimant's detailed comments on the letter of 4 November he does not indicate any disagreement that the adjustment had been agreed. Therefore any practice of the respondent in the way it dealt with the claimant's requirements in respect of reasonable adjustments to their recruitment processes ended at the latest on 4 November.

61. Accordingly in respect of issues 5.1 - 5.3 time for submission of the claim ended on 3 February 2016. It was in fact submitted on 4 April 2016 and, even taking into account the early conciliation provisions, was therefore out of time. In deciding whether to extend time on the ground that in all the circumstances it is just and equitable to do so, we have considered the claimant's evidence that the reason he did not commence proceedings earlier was his desire to avoid litigation even though he was aware of the existence of time limits from an early stage. Given that evidence we reject Mr Milsom's submission that we must dismiss the claim as there is no basis upon which to extend time (the Holleran point).

62. In fact, to the contrary we conclude that it is just and equitable to extend time given that the claimant was seeking to avoid the need for litigation - in particular given the parties' continuing relationship and that it is reasonable for the claimant to want to avoid taking his employer to Tribunal.

63. As far as issue 5.4 is concerned, Mr Milsom has invited us to find that this claim was submitted prematurely on the basis that the disadvantage suffered by the claimant only took place when he was considering the notes of the first formal grievance meeting on or after 20 April 2016 as opposed to when he was denied the opportunity for the meeting to be audio recorded on 31 March 2016. The disadvantage recorded in the list of issues, however, and this was supported by the claimant's evidence, was that he was "not able to take substantial contemporaneous notes to be able to have a record of hearing". The claimant specifically confirmed in cross-examination that he needed the audio recording due to his inability to read, write, listen and have a "skeleton" of what was happening.

64. On the facts of this case the claimant's alleged disadvantage is that he was not able to make an accurate record at the time and therefore the disadvantage was suffered on 31 March. Accordingly, when the claim form was submitted on 4 April it was prima facie in time.

65. A further point arises which is that the early conciliation process started on 3 February and at that time the first refusal of an audio recording (which happened on 26 February) had not arisen. In accordance with the guidance referred to above in the Compass Group case, we find that the claim in respect of the refusal relates to a sequence of events that was in issue between the parties (the claimant submitting the formal grievance on 30 January) at the time of the early conciliation process and therefore that claim is not premature.

66. On the question of knowledge, the respondent, at an organisational level, knew from 1999 that the claimant had dyslexia and required certain adjustments in respect of both his learning and any interviews/assessments that he was required to undertake. The relevant report and learning support form was in the respondent's possession from 1999. At some point subsequently it was wrongly separated from the claimant's HR file but he provided further copies on more than one later occasion. The fact that adjustments were made to his interviews on multiple occasions prior to approx 2011 supports that the respondent had corporate knowledge. In addition, Ms Baldeo had personal knowledge of his dyslexia prior to the August 2015 interview. Accordingly by August 2015, the respondent knew or could reasonably be expected to know that the claimant was disabled and was likely to be placed at a substantial disadvantage if reasonable adjustments of the type claimed were not put in place.

67. Turning to each of the adjustments sought by the claimant we find as follows.

68. <u>To provide the claimant with the questions in writing as they were asked</u>

69. The practice of asking interview questions orally only was applied to the claimant at the interview on 10 August 2015.

70. Due to failure in the respondent's systems (both general record-keeping and the type of application process ran on this occasion) the claimant attended an interview where the adjustment that should have been in place was not but he thought it would be. Undoubtedly this put extra pressure on him at the time of the interview. He did, however, also have a responsibility to raise the issue himself if it was causing difficulty. When he referred to his dyslexia during question 8 he did not say that he was in any difficulty and expressly confirmed that he was okay to carry on. The fact that the next question prompted his highest scoring answer (above-average) indicates that his performance did not - as he described it - go from bad to worse throughout the interview. Accordingly we do not conclude that the application of the PCP caused him substantial disadvantage.

71. Even if we are wrong about that, the claimant had the benefit of this adjustment on previous occasions and at the later CAD interview but was also unsuccessful on all those occasions. We conclude that this

indicates that the adjustment sought would not have avoided the disadvantage. We also note that the respondent subsequently offered the claimant a further opportunity to participate in an interview for an IRO role with all the adjustments in place that he was seeking but unfortunately he did not take up that offer.

72. <u>To give the claimant prior information of the type of testing at the interview</u>

73. We conclude that a PCP of not informing interview candidates in advance of the interview about the interview format and method of assessment was not applied to the claimant. He was told in detail the nature and method of assessment together with the interview format.

74. <u>To allow the claimant a quiet private area for the purpose of tests</u>

75. We conclude that a PCP of requiring candidates to complete the test in a room where others were working was not applied to the claimant. He took the assessment on 16 September 2015 in a quiet private area with only Ms Thompson, the invigilator, present.

76. <u>To allow the claimant to audio record grievance meetings</u>

77. A practice of not permitting audio recordings of grievance meetings was applied to the claimant in respect of the meeting on 31 March 2016.

78. We find however that this did not cause the claimant substantial disadvantage. He clearly had excellent powers of recall as evidenced by his very detailed amendments to the notes provided to him, he was accompanied by a union representative who could have taken a note but chose not to and a very detailed note was produced by the respondent's notetaker.

79. Accordingly all parts of the claim fail and it is dismissed.

80. After Judgment was given orally to the parties the respondent applied for costs on the basis that the claimant had unreasonably continued with his claim after 20 February 2017, the date of a costs warning letter to him. Having heard submissions from both parties we gave that application very careful consideration. We concluded on balance that although the claimant was wrong in his assessment of the strength of his claim, being wrong does not equate to being unreasonable and, as our reasons show, we do not consider the respondent to be entirely blameless in their handling of the claimant's situation.

81. We do urge the claimant however to consider very carefully the contents of this Judgment and to take on board our assessment of his situation and try to find a way forward with the respondent. We suggest that he takes up the offers of support and coaching that have been made. A number of the respondent's managers have, on an individual basis, made great efforts to assist the claimant and we commend them

for that. We also observe that it would be sensible for the respondent, if they have not already done so, to conduct a formal review with the claimant of his disability and the impact that it has on his continuing employment and any adjustments that need to be made going forward and to review what is now held on his HR file. These are observations only and do not form part of our formal decision.

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Employment Judge K Andrews
Date: 21 March 2017