



EMPLOYMENT TRIBUNALS

Claimant:
Mr J Roads

v

Respondent:
Buckinghamshire & Milton
Keynes Fire Authority

Heard at: Reading

On: 30 & 31 August 2016
and
9 & 10 March 2017

Before: Employment Judge J Hill
Members: Mr JF Cameron and Mrs M Moore

Appearances

For the Claimant: Ms R Barrett (Counsel)

For the Respondent: Mr M Pilgerstorfer (Counsel)

RESERVED JUDGMENT

1. The claim that the respondent failed to make reasonable adjustments in respect of him, a disabled person, fails and is dismissed.
2. The claim that the respondent discriminated against him in relation to a matter arising from his disability (section 15 Equality Act 2010) fails and is dismissed.

REASONS

1. By a claim presented on 11 December 2015, the claimant pursued claims under the Equality Act 2010, paragraphs 20 and 15. The parties agreed a list of issues. These state:

“Liability

It having been accepted by the respondent that the claimant is a disabled person for the purposes of section 6 Equality Act 2010 (“EqA”) and was disabled at the material time, the following issues arise:

Failure to make reasonable adjustments: Section 20 and section 21 EqA Paragraphs 25-28 of the claimant’s ET1 (paragraphs 26-29 of the claimant’s amended ET1)

Merits

1. *Does the respondent operate a provision, criterion and/or practice ("PCP") of requiring successful completion of a written exam testing knowledge of written study materials (Part 1 of the Watch Commander Development Process) as a condition of promotion to Watch Commander level/being placed in a Watch Commander role?*

If so:

2. *Did the PCP put the claimant to a substantial disadvantage in relation to a relevant matter (namely promotion to Watch Commander) in comparison with persons who are not disabled? The claimant alleges he was substantially disadvantaged by being unable to study successfully for or complete the said written examinations due to his difficulties with reading and writing and his reliance on visual learning for optimal performance.*

If so:

3. *Would the following steps (contended for by the claimant at paragraph 27 of the claimant's ET1, paragraph 28 of the amended ET1) have been reasonable steps for the respondent to have taken to avoid the disadvantage?*

- (a) *Providing the study material for Part 1 of the Watch Commander Development Process in a form which was suitable for visual learning/did not place the claimant at a disadvantage due to his dyslexia, or alternatively procuring that the IFE did so;*
- (b) *Ensuring that the assessment method for part 1 did not disadvantage the claimant because of his dyslexia and modifying it if required (for example by assessing his performance via role play exercises or interview rather than by way of a written exam), or alternatively procuring that the IFE did so;*
- (c) *(In the absence of the adjustments at (a) and (b)) allowing the claimant to omit Part 1 and move straight to Part 2 (with any reasonable adjustments required to Part 2 being made); such an adjustment would have been reasonable in light of his proven track record of successfully working at Watch Commander level;*
- (d) *Allowing the claimant to perform the Fire Safety (or other) Watch Commander role on an acting-up basis, pending the claimant having an opportunity to undertake the Development Process after implementation of reasonable adjustments; again such an adjustment would have been reasonable in light of the claimant's previous performance operating at Watch Commander level.*

If so:

4. *Did the respondent fail to take any of the steps set out at paragraph 3(a) to (d) above that are found reasonable?*

Jurisdiction

5. In respect of each alleged failure to make reasonable adjustments, when was that failure done for the purposes of section 123 EqA?
- (a) When did the respondent decide not to make that adjustment (section 123(3)(b) EqA)?
 - (b) Alternatively, when did the respondent do an act inconsistent with making the adjustment?
 - (c) Alternatively, when might the respondent have reasonably have been expected to make that adjustment?
6. Are the claimant's claims out of time?
- (a) Do the matters complained of amount to conduct extending over a period for the purposes of section 123(3)(a) EqA?
 - (b) Would it be just and equitable to extend time under section 123(1)(b) EqA?

Discrimination Arising from Disability: Section 15 EqA

Paragraph 32 of the claimant's ET1 (paragraph 31 of the claimant's amended ET1)

Merits

7. Did the respondent treat the claimant unfavourably by refusing to permit him to apply for or undertake the Fire Safety Watch Commander role?

If so:

8. Was the said unfavourable treatment because of something arising in consequence of the claimant's disability? The claimant contends the treatment was because he had not completed the Watch Commander Development Process and this arose in consequence of his dyslexia). .

If so:

9. Can the respondent show that the said treatment was a proportionate means of achieving a legitimate aim?

Jurisdiction

10. Is the claim out of time?

11. If so, would it be just and equitable to extend time under section 123(1)(b) EqA?"

2. The tribunal had before it an agreed bundle, witness statements for the following:

The claimant.

For the respondent:-

*Ms Anna Collett, Learning and Development Manager);
Mr K McCafferty, who dealt with the grievance. Ultimately, the
respondent decided not to call him;
Mr Wells, Group Commander and Head of Training, Learning and
Development; and
Mr Paul Casey, Watch Commander, White Watch, Beaconsfield
Fire Station.*

3. The tribunal heard evidence in August 2016 from all the witnesses apart from Mr Casey. Unfortunately, the employment judge was taken ill and the tribunal was therefore unable to finish the case in the original time allocation. It is for this reason there is a seven month gap between the two hearings.
4. The tribunal would like to express its gratitude to both Counsel for preparing such extensive written submissions in closing as they greatly assisted in pulling all the various threads of the case together after such a long gap.

What is this case about?

5. The claimant works for the respondent as a Crew Commander. He is dyslexic. His dyslexia was fully appreciated in 2009. At that time, the respondent arranged for an assessment to be carried out. A copy of the report is contained within the bundle.
6. The claimant wished to advance his career to become a Watch Commander. In order to become a Watch Commander, it was necessary for him to undertake an exam, attend a development centre and ultimately attend an interview. The claim before us relates to the difficulties that the claimant encountered in tackling the exam process.

Some background about the claim

7. In 2011, the claimant raised a grievance about his disability and he also issued an employment tribunal claim. The outcome of the grievance was a series of recommendations as to how to address his dyslexia. The respondent sought advice from the Adult Dyslexia Centre. Their report at page 259 of the bundle dated 12 May 2009 identifies the purpose for the report and makes recommendations.
8. The purpose of the report is recorded as being

“He has found that moving from this more practical job to a ‘desk job’ involving use of the computer and report writing has not been too difficult but he is having some problems; to progress in his role, he has been required to sit a number of examination papers and finds it hard to complete these in the time allowed. He feels he needs longer to process and absorb text than his peers and finds revision difficult. Mr Roads has had a screen test for dyslexia at work and this indicated he was likely to be dyslexic. This full assessment is to confirm whether this is the

case and if so, to make recommendations for reasonable adjustments at work that will help him become more effective.”

9. The conclusions set out on page 265 identified the following:

“Mr Roads gained an average score for Visual Ability and also for single word reading. Where he was successful in the testing, he appeared to use a visual approach indicating that he is a visual learner. However, his scores for single word spelling, reading comprehension and phonological processing (the ability to manipulate and store the sounds in words) were below average scores. These difficulties will prevent him being able to decode unfamiliar words when reading and affect his spelling accuracy. Mr Roads had no problem with the speed he processed symbols but found it harder to differentiate between words at speed and this will affect the rate at which he can process text. These findings are sufficient to confirm that Mr Roads is dyslexic.

Mr Roads experiences a degree of Visual Stress, difficulty reading black print on white paper, and this will also make it hard for him to read quickly and fluently. He is managing his work tasks and positively enjoys communicating with others. However, some adjustments could be made for him at work so that he could perform more effectively.”

10. The report then sets out practical implications for work, noting that working for long periods at the computer will become difficult, that he would require to print off documents rather than read them on the computer, that he would take longer to read and understand text, especially if it was black print on white paper, that he would find it difficult acquiring new spoken and printer vocabulary, that he would make spelling mistakes in his written work, and note-taking at speed could be difficult because of difficulties finding the word the word he wanted to write.

11. The report set out the practical implications for study and examinations:

“As in the Workplace Mr Roads will find any new vocabulary difficult to absorb and take longer to read text for revision and study purposes. He will need to find a way of remembering what he has read that does not involve just reading. For example, he might find it helpful to order his thoughts using a mind map. His spelling errors will be mainly recognisable although he should focus on learning specialist vocabulary where accuracy may be more important. His writing is legible and fast enough for examination purposes but if he is taking notes in training lectures is likely to find it hard to keep up effectively.”

12. The report made recommendations for assistive technology to help him. This included a digital Dictaphone which was provided. Mr Roads had suggested when revising he found it helpful to have someone else ask him questions so he could respond orally with the answers; the recordings of the Dictaphone would enable him to listen to the study notes as many times as he wished. There were suggestions of Word Bar, software for a Mind-Mapping tool, the use of background colour and font size and style on a computer to assist in his reading, a screen ruler. In relation to examinations, a specific suggestion was made that he should have 25%

extra time in written examinations and the papers should be printed on coloured paper of his choice or with a colour overlay.

13. Between 2011 and 2014, after some of the recommendations were put in place, the respondent received no expressions of concern about his dyslexia from the claimant.
14. In 2014, the respondent decided to outsource the examination process for progression to Watch Commander to IFE. Hitherto the respondent had used the syllabus of IFE but conducted the exam process in house. The first time that the exams were to be conducted by IFE was in March 2015.
15. IFE had a website on which was set out the syllabus, the recommended reading list, and how to apply for adjustments for the exams if the candidate had special needs. At the commencement of the recommended reading list, it says:

“Candidates should be aware that this reading list is advisory rather than definitive and they will need to consider the items it contains selectively. Candidates should use the published syllabus for the examination as their guide in deciding what reading materials they need to help prepare them for the examination. The IFE recommends that all candidates should read widely in order to extend the depth and breadth of their knowledge and understanding.

The institution does not recommend that candidates should buy every resource listed for each exam they take. In addition it should not be inferred that other resources are unsuitable because they are omitted from the reading list. Candidates are also advised to review past examination papers and sample questions. Past papers, together with the associated examiner reports on the papers can be downloaded free of charge from the IFE website.”

16. The website also identified how a person who had a disability, in particular, dyslexia, could apply for reasonable adjustments.
17. In November 2014, the claimant decided he wished to apply for these exams. He paid for the course up front. If he successfully passed the course, he would be reimbursed by his employer.
18. Of the modules that the claimant sought to take initially, the first module had a reading list containing 13 items. The first item of those was a book which, according to Mr McShane, the claimant's Station Commander, was compulsory reading. The tribunal notes that Mr McShane's view contrasts with the information contained on the IFE website.
19. The claimant found it easier to assimilate information if it was spoken rather than if it was read. He had software which converted text to spoken word.
20. A large part of the proposed syllabus (75% according to the respondents) recommended reading for the modules the claimant was to take were available as downloads. The claimant made enquiries as to whether the

book said by his Station Commander to be compulsory was downloadable. If it were, he could put it into a spoken format. It was not available as a download.

21. The claimant was unhappy about this and contacted Ms Collett.
22. Ms Collett contacted the Adult Dyslexia Centre who suggested the use of a Dictaphone. Ms Collett identified that there would be group study sessions in the new year.
23. The claimant wished to convert all the learning material syllabus from word-based documents into audio. The advice from the Adult Dyslexia Centre was that he should use a reading pen and/or manually scan pages he wanted to be on the computer such that they could then be converted into speech. This advice was passed on to the claimant.
24. As Ms Collett did not hear again from the claimant, the respondents were unaware of which, if any, of the recommendations the claimant would require. It appeared that he did not use either method of the proposed assistance.
25. The respondents say that the claimant, as Crew Commander, had access to the scanner within the fire station. Either he or one of his staff could have scanned the book in order to put it into the computer and then be able to convert it to audio. The claimant says this is an action that the respondents should take.
26. The claimant did not attend the group study session as he felt that as he been unable to study properly, being unable to read the large non-downloadable book, he would feel inadequate and embarrassed.
27. In late 2014/early 2015, he was assisted in some form of monitoring and mentoring by Mr Casey. When Mr Casey suggested that, as their exam venue for was the same, he could take the claimant the claimant told him he would not attend the exam. He did not tell Ms Collett or his Station Commander.
28. Later in the year, Ms Collett drew up the potential attendees for the development centre. In order to go to the development centre, it was necessary to have sat the exam. Much to the tribunal's astonishment, we were advised it was not necessary for a person to have passed the exam, merely to have attended and sat the exam. The claimant was unaware of this.
29. When drawing up the list of people eligible to attend, Ms Collett noticed that a number of people due to attend the exam had not done so. Enquiries were made as to why not. As the claimant had not attended the exam and failed to explain promptly why not as requested, he was eliminated from the list of people to attend the development centre.

30. Another employee, Mr Danbury, had also failed to attend the exam. The claimant relies on him as a comparator. He was permitted by Mr Wells to attend the development centre. The reason given for this is that although Mr Danbury had not attended the IFE exam, he had pursued a different academic approach - a degree - and had written a thesis. Mr Wells was of the view that Mr Danbury had demonstrated his academic ability and that he would permit him to proceed to the development centre but only on the basis that he sat at least one module of the IFE Level 3 course as soon as practicable. When he failed to do so, he reverted to being a Crew Commander.
31. Mr Wells' explanation to the tribunal as to why he did not allow the claimant to proceed was as follows:
- “In relation to specifically the role of Watch Commander, Mr Roads had not only failed to turn up to the examination, he had failed to obtain any qualification knowledge, failed to take responsibility for or demonstrate any commitment to his own development, failed to take advantage of repeated offers of support and reasonable adjustments from the Authority, failed to display and initiative and failed to communicate effectively with the Authority until questioned by his Station Commander. The purpose of the examination is not just to acquire and demonstrate technical understanding but also to display behaviour we would want and expect from an aspiring manager.”
32. It also emerged in Mr Wells' oral evidence that in contrast to Mr Danbury there had been no request made that the claimant should be allowed to attend the development centre.
33. We did not consider that Mr Danbury's position helped the claimant's case. He had demonstrated academic ability, albeit not the respondents' prescribed route; he was allowed to progress only while he was given the opportunity to follow the prescribed route; and when he failed to do as instructed, i.e. take the IFE exam, he was, like the claimant, not allowed to move into a Watch Commander role, even on an acting up basis. How does that demonstrate a difference in treatment relating to disability?

The role of Watch Commander

34. The role the claimant wished to perform was that of Watch Commander. It would be a promotion from Crew Commander. Once the individual has been through the process of being nominated by their line manager for the development centre (this stage had been passed for the claimant as Mr Casey and his previous line manager had both recommended the claimant) and they had sat the technical exams, the individual would be required to pass both stages of the development centre and then perform satisfactorily at an interview. At that point they would be placed into a development pool from which, when vacancies at Watch Commander became available, a person could be either promoted to a substantive role or be placed in a temporary role in order to gain experience. Those people in temporary posts are rotated in order to give the maximum number of people experience.

35. In 2010-2011, the claimant had acted up as a Watch Commander in the Fire Safety Specialist role. This was an office-based role without any managerial responsibility. The claimant accepts that he was not operational at the time. He also accepted that he held this role some considerable time ago.
36. A job vacancy was advertised in August 2015. This stated that applications were invited from proactive and enthusiastic Watch Commanders to work in the Protection Department. It stated that expressions of interest would be accepted from current substantive and temporary Watch Commanders, and Crew Commanders who were successful in the recent Watch Commander development centre.
37. The claimant made enquiries of the delivery service manager concerned, Mr Brinklow, as to whether he could apply. He was advised that as this was for a substantive role, the requirements were that applicants must have completed the Watch Commander development process and been deemed competent in the role. As he had not completed the process, he was not eligible to apply.
38. The IFE exams were again held on 11 March 2016. The claimant still asserts he had been unable to access all the study material and he was unwell with stress. When he attended the assessment centre to sit the exam, he found that he would not be given the 25% extra time because there had been no advance notification of his dyslexia. He had not thought to make such an application.
39. During the period of 2015/16, the claimant pursued two grievances, neither of which we have referred to in these reasons as the views taken by the Authority as regards the grievance do not appear to us to be relevant to our decision-making.

What is the law that must guide our decision making?

40. The parties agree that the reasonable adjustments claim is pursued under section 20 Equality Act 2010. This requires us to consider what is the provision, criterion or practice ("PCP") that was imposed that placed a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled. There is a requirement on the employer to take such steps as are reasonable to avoid the disadvantage.
41. There is no dispute that the respondent was under the duty to take reasonable adjustments for the claimant as a person disabled within the meaning of the Equality Act 2010. In order to decide what those adjustments should be, we must identify the PCP; the identity of the non-disabled comparators; and the nature and extent of the substantial disadvantage suffered by the claimant.

42. The reasonable adjustment concerned is a view reached by the tribunal on an objective basis. It is irrelevant to consider the employer's thought processes or other processes leading to the making or failure to make a reasonable adjustment: Newham Sixth Form College v Sanders [2014] EWCA Civ 734. Both sides agree that the appropriate comparator would be other people seeking promotion to Watch Commander level.

What is the PCP?

43. Within their written submissions, the parties disagreed as to the interpretation we must place on the agreed PCP set out in the list of issues. This stated the PCP as: "requiring successful completion of a written exam testing knowledge of written study materials (Part 1 of the Watch Commander Development Process) as a condition of promotion to Watch Commander/being placed in a Watch Commander role?"
44. The respondent said the PCP related only to substantive roles. In support of that, they relied on the following line which says:

"Did the PCP put C at a substantial disadvantage in relation to the relevant matter, namely promotion to Watch Commander, in comparison with persons who are not disabled? C alleges he was substantially disadvantaged by being unable to study successfully or complete the said written examinations due to his difficulties with reading and writing and his reliance on visual learning for optimal performance."

45. The claimant says that the phraseology as a condition of promotion to Watch Commander level/being placed in a Watch Commander role covered an acting up role not just a substantive role.
46. In considering this matter insofar as it related to the reasonable adjustments claim, the tribunal looked at the claim form. At paragraph 8 of the claim form, it refers to the process of promotion from crew to Watch Commander. It states:

"The claimant wishes to progress substantively to Watch Commander level and has the skills and experience required. However, he is hampered in meeting the requirements for promotion by his dyslexia and Buckinghamshire's failure to adequately accommodate this."

Paragraph 9:

"Buckinghamshire currently requires candidates for substantive promotion from Crew Commander to Watch Commander to successfully complete a two stage Watch Commander Development Process of which the first part is a Level 3 diploma assessed by way of written examination (Part 1) Buckinghamshire has outsourced the administration of Part 1 to the Institute of Fire Engineers (IFE) which typically offers the exam once a year."

47. At paragraph 17 of the ET1, the claimant identifies in relation to the Watch Commander Fire Safety post advertised in August 2015:

“The claimant was not offered the opportunity to perform the role on an acting up basis, pending adjustments to make Part 1 accessible to him. This was despite the fact that he had previously successfully performed a Watch Manager role on an acting up basis. The claimant has therefore again lost out on the opportunity to advance to the next rank despite having the aptitude and skills to do so.”

48. The tribunal’s reading of the agreed PCP is that it relates solely to a substantive post. Paragraph 17 of the ET1 suggests it relates to the s.15 claim, not the reasonable adjustments claim. The basis of the PCP is the successful completion of a written test. The thrust of the claim is that he was unable to perform the written test because of his disability and it was to address that problem (written test) that would level the playing field. The claimant had previously acted up into a Watch Commander role without the need to do exams, and so why would an acting role now require the adjustment of accessibility to an exam. The agreed wording of the PCP is about the need to level the playing field about exams, a requirement only for a substantive role.

What is the disadvantage? Is it substantial?

49. We must be satisfied that any disadvantage suffered by the claimant is a substantial disadvantage. What is the disadvantage the claimant relies on? He says that because of his dyslexia he is unable to study text unless it has been converted into an audio format or he requires visual aids.
50. We heard the evidence of the claimant, who described his difficulties in working with text. We heard from Mr Casey who described how the claimant struggled with working his way round the IFE website and struggled with some text.
51. We also had before us the dyslexia report from 2009. This report was specifically geared towards how to assist the claimant to deal with exams. What we noticed was that it did not at any point say that the claimant could not read text. What it said was that he needed longer time to read and assimilate what was in text. It also said that the claimant required longer for both preparation for an exam and for taking the exam. That is a very different scenario from saying he could not read text.
52. We do not accept that the claimant was unable to read the lengthy text book that he was wrongly advised was compulsory reading. He may have been daunted by the prospect but the expert advice is he was capable of doing it: it would just take him a long time and he should use various coping mechanisms to assist him.
53. It is our view that the claimant has failed to use what are usual everyday coping mechanisms for a problem. For example, in the dyslexia report, it is suggested that he should use Mind Mapping to assist his learning. Software had been provided to him to assist. Once the claimant has the tools to assist him, it is for him to use them in order to allow him to assimilate information more effectively. This is in the same way as somebody who has a bad back, whether it be a disability or just a back

that “goes out” on occasions, would use their best endeavours to avoid lifting heavy objects or lifting and twisting at the same time; it is just common sense.

54. The claimant is dyslexic. That clearly is a substantial disadvantage per se. Adjustments had either already been put in place following the guidance from the Adult Dyslexia Centre in 2009 or identified to the claimant following Ms Collett’s enquiries in 2014. The claimant now says he has a condition far worse than was diagnosed by experts such that the disadvantage suffered was an inability to study and assimilate the written word at all.
55. We do not accept that the disadvantage of being unable to study text unless it has been converted into an audio format or visual aids is an accurate reflection of the claimant’s dyslexia. He would have liked that facility, but that was more than the expert advice suggests he required to level the playing field to enable him to study for exams. The substantial disadvantage he suffered from was finding it difficult to assimilate information in text form; not that it was impossible for him to do so. The recommendation by the expert was to allow him more time.
56. The expert evidence is that he could assimilate written text, albeit slowly and help via Mind Mapping and coloured paper/overlays. The impression we had from the evidence was that the claimant was daunted by the prospect of reading a large text book – who would not be? – and failed then either to look at all the vast amount of learning material that was available in an accessible way to him that would allow him to perform the studies sufficiently to be able to take the exam; or apply the ways identified which would allow him to study text as recommended by the Adult Dyslexia Centre.
57. The tribunal notes that of the disadvantages that were identified by the Adult Dyslexia Centre in 2009, the equipment to address the identified disadvantage had either been made available or offered to the claimant if he would like it.
58. If we are wrong about the substantial disadvantage, are all or any of the proposed adjustments ones the respondents should have made? The purpose is to achieve a level playing field. The purpose must be to enable the claimant to access learning material required for the exam, sit the exam and progress through to the Development Centre.
59. Ms Collett ascertained from the experts in the field what tools might assist the claimant for the IFE exam. He did not follow up on the information provided or contact Ms Collett as to which of the suggestions might be of assistance to him. He appeared to be fixated on the book he was wrongly advised was compulsory reading.
60. For these exams which he needed to pass for the purposes of getting promotion, the claimant undertook the study in his own time and at his own expense. The claimant was directed to where to find out the information,

i.e. the IFE syllabus. The IFE syllabus together with the IFE recommended reading list gave a wide range of information for the claimant to access.

61. The information about the IFE exam describes the preparation for the exams as being self-directed reading. The implication of that is candidates must make their own arrangements about how to approach that learning process. Different people learn in different ways. Some people learn by rote, some people learn by experience, some people learn by writing out notes, some people learn by putting information on index cards. There is an expectation in this exam process that the claimant, as a candidate, took control of how he could learn the relevant information. He says he needed it converted to a speech based text book.
62. Has the claimant demonstrated that there was a requirement by the respondents to convert the non-downloadable information into a visual/oral learning format? (1st proposed adjustment) There was a limited amount of information that he could not access. It was a recommended reading list, not a compulsory reading list. The claimant, if he is right that he required speech or visual aids to learn, did suffer a disadvantage in being restricted in what he could study. That disadvantage, we do not consider, to be substantial.
63. Most of the information was available to him in a format he could convert into speech or visual learning. He could access the majority, but not the entirety, of the reading list; someone with limited finances who could not afford to buy the expensive books equally would be disadvantaged at not having access to the full reading list material. Candidates for exams often make decisions as to what of the material available they will use. Asking the respondents to amend all the non downloadable learning materials into an appropriate format suggests that candidates will read all the recommended reading list. That is a counsel of perfection; asking for a Rolls Royce service. The respondents would have assisted him if he had identified which of the recommended forms of assistance he required.
64. We therefore consider that the proposed adjustment is not reasonable. It goes beyond what is required to level the playing field.
65. The second and third proposed adjustments relate to altering the assessment method to be by role play or interview rather than written exam, or alternatively, that the claimant could miss entirely the exam process. We are satisfied they cannot fall to be reasonable adjustments.
66. This is a nationally recognised qualification. It is a qualification that requires for the safety of the public that those people in command are fully apprised of all the information. Neither of these proposed adjustments is going to meet the aim of the exams. They might assist the claimant in going through the part of the process, giving him some practical experience, but they would not equip him for the role. That is the purpose of the 3 stage promotion process.

67. They are not reasonable adjustments to create a level playing field for his dyslexia as it would completely defeat the object of having this structured qualification.
68. The final issue relates to allowing the claimant to perform the fire safety or other Watch Commander role on an acting up basis pending the claimant having the opportunity to undertake the development centre after implementation of reasonable adjustments.
69. This adjustment relates to the role advertised in August 2015. That role was a substantive post; it required certain qualifications to hold a substantive post. It was not an advertisement for an acting up role. Acting up roles occur in most organisations when there is a sudden vacancy but there is an essential need for that role to be filled pending the appropriate recruitment process to go through. The respondent holds some posts as acting up to give people experience. Insofar as the adjustment relates to the role advertised in August 2015, it was not a reasonable adjustment to say the claimant could be put into that role as an acting up post as it simply was not that role. The adjustment sought insofar as it relates to that advertisement is misconceived.

Section 15 claim

70. This relates to the unfavourable treatment by the respondent of refusing to allow him to apply for the Fire Safety Watch Commander role. It is said the reason for this treatment is disability.
71. This claim fails. The reason for the claimant not being put forward for this role is that he did not meet the basic eligibility criteria. He had neither completed the exams, nor completed the development centre process. That is a statement of fact. He therefore did not meet those basic criteria.
72. Why could he not meet those criteria? He had chosen not to attend for the exam in March 2015; he had not explained why he had not attended the exam in a timely manner; he had not been put forward for the development centre in 2015; and he could not show that he had successfully completed that role. He simply was not eligible. That lack of eligibility was not for a reason related to his disability. He could not tick any of the boxes through his failure to take control of the exam process – a self directed process as described in the IFE syllabus.
73. If we are wrong in our analysis in para.72 above can the respondent show justification for their action in not allowing the claimant to be put forward? There is no guarantee he would have got the role. The legitimate aim of the respondent is to ensure the safety of the claimant, other firefighters and public at operational incidents. Safety clearly is a key priority for the respondent. They could not risk putting a person in post who had not demonstrated their managerial ability and their academic knowledge in any way. That is so basic and so obvious that it beggars belief that it is open to challenge.

74. If the failure to allow the claimant to apply for the substantive post of Watch Commander, or put him into an acting role as such, is unfavourable treatment arising from his disability, the respondents have shown it is a proportionate means to achieve a legitimate aim.

Jurisdiction issues

75. For completeness, we address the jurisdictional issues. We have dealt with the claims on their merits and find that the claims are not made out.
76. In relation to the March 2015 exams, it is clear that these matters fall to be outside the prescribed limits in section 123 Equality Act 2010 allowing for the early conciliation rules. The claimant argues that the failure by the respondent to make the adjustments on a continuing basis up to and including the March 2016 exams means that it is continuing and therefore it is not necessary for there to be an extension of time. In the alternative, he argues that it would be just and equitable to extend time.
77. The tribunal's view is that what happened for the March 2015 exams finished when those exams finished. The problems that occurred for that exam died when the exams concluded. It is out of time and the fact that the claimant then sought to raise the issues through a grievance does not keep them alive.
78. Would it be just and equitable to extend time? We did not consider it would be. The claimant pursued two grievances in detail and at length but did nothing about the exam process until he was refused the opportunity to apply for the substantive Watch Commander role in August 2015. Even then he waited until mid-October before he took advice and finally presented his claim in November 2015. We do not consider it is just and equitable to extend time. If we did extend time, we would dismiss the claim on its merits.
79. The claim in relation to the section 15 Equality Act 2010 matter is in time but we find in relation to that the claim fails on its facts.
80. We are satisfied that the evidence before us demonstrates that the claimant used his dyslexia as something to hide behind when he felt overwhelmed by the amount of work he was required to do for exams. All candidates for exams feel like that: overwhelmed and challenged. All candidates have to find ways to tackle those exams. The fact that the claimant appears to have done little or no work in relation to the exams for either March 2015 or 2016, did not attend the self help group with a group of other firefighters and did not actively pursue the suggestions made by Ms Collett following her getting advice from the Adult Dyslexia Centre, suggests that the claimant was looking for an excuse not to sit the exam and the excuse was his dyslexia. It was not any failure by the respondent to make reasonable adjustments that meant he was unable to study for or take the exam.

Employment Judge J Hill

Date: 28/03/2017

Sent to the parties on:

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For the Tribunals Office