EMPLOYMENT TRIBUNALS

Claimant: **Mr N Rimell**

Respondent: **Royal Bank of Scotland**

Heard at: **Bristol** **On:** **11, 12 & 13 July 2018**

Before: Employment Judge Mulvaney
Mr H Launder
Ms S Maidment

Representation
Claimant: In person
Respondent: Mr D Leach, Counsel

JUDGMENT

The claimant's claim for disability discrimination based on a failure by the respondent to make reasonable adjustments, specifically by the provision of a word processor, is well founded

REASONS

1. By a claim form presented on the 30 November 2017, the claimant brought a complaint of disability discrimination, based on a failure to make reasonable adjustments, relating to an application for employment with the respondent.

2. The respondent is an organization engaged in the provision of financial services throughout the United Kingdom and abroad. The post that the claimant applied for was that of Resolutions Manager based at the respondent's Bristol office.

3. The Tribunal heard evidence from the claimant and for the respondent from Mark Brown, Operations Manager and Mark Bayliss, Manager.

4. It was not disputed that the claimant's condition of dyslexia amounted to a disability as defined in s6 Equality Act 2010 (EqA).

5. The issues that the Tribunal had to determine were agreed by the parties to be as follows:

Reasonable adjustments

6. It is not in dispute that the respondent applied the following provisions, criteria

or practices:

6.1. Asking the claimant competency based questions during interview;

6.2. Requiring the claimant to hold and process information in a way which tests short term memory;

6.3. Requiring the claimant to process information and respond within a set time;

6.4. Requiring the claimant to consider case studies during assessment;

6.5. Requiring the claimant to prepare for assessment or be assessed without using computer of similar word processing equipment;

6.6. Offering employment based on assessment using these criteria.

7. Did the application of any such provision, criterion or practice specified above put the claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, in that:

7.1. He had difficulty articulating his responses to assessment questions;

7.2. He could not hold information or process what was being asked of him during interview;

7.3. He had insufficient time to process information and respond;

7.4. He had difficulty reading written information;

7.5. He had difficulty producing written materials;

7.6. He was not successful/offered employment?

8. In the absence of an auxiliary aid (computer/word processor) was the claimant placed at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled?

9. Did the respondent take such steps as were reasonable to avoid the disadvantage?

10. The claimant asserts that the following adjustments as being reasonably required:

10.1. Asking questions in interview based on individual success/competency i.e. looking for examples where the claimant has demonstrated achievement;

10.2. Adjusting the style of interview so as not to place such demands on short term memory;

10.3. Allowing more time during assessment;

10.4. Providing case studies in advance;

10.5. Providing a computer or similar word processing equipment.

11. Did the respondent know, or could the respondent be reasonably expected to know that the claimant had a disability or was likely to be placed at the disadvantage set out above?

Additional issue

12. If the respondent failed in any duty to make reasonable adjustments according to the matters covered at 6 above, what is the likelihood that the claimant would have been offered the Resolution Manager role he applied for in the event that any reasonable adjustments not made had in fact been made?

Findings of fact

13. The claimant's condition of dyslexia was diagnosed when he was in his 20's. The medical evidence provided by the claimant in the form of a report produced by Dyslexia Action in Bristol on the 30 July 2008 (p45 – 60) summarised its findings as follows:

"Abilities
Nigel's verbal and non-verbal reasoning abilities were assessed to be within the Average range.

Pattern of relative strengths and weaknesses
Nigel shows strength in his verbal and non-verbal reasoning skills. He shows significant relative weakness in auditory working memory and processing speed, which both fall within the Low range. This is a pattern frequently associated with dyslexia

Attainments
In relation to age and assessed ability, Nigel's reading accuracy and efficiency and his spelling skills are significantly below expected levels. Reading, writing and copying speeds are slow." (p46)

14. The claimant's own evidence was that his reading is slow, his short-term memory is poor and his spelling and writing is that of a twelve or thirteen year old. These problems cause him to be embarrassed, experience panic and feel nauseous when in situations which might require him to make use of the areas in which he has a weakness. His evidence was that he has nevertheless achieved qualifications in the financial services sector through adjustments having been made to the time allowed in examinations and in past employment in that sector has worked successfully using a mixture of coping strategies and adjustments.

15. The claimant as a litigant in person showed considerable confidence and skill in conducting his Tribunal case, both as an advocate and when giving evidence. Although the claimant referred in his submissions to having performed poorly under cross examination, we did not find this to have been the case. We found him to have been a credible and reliable witness.

16. The claimant sought to discredit the evidence of Mr Brown, cross examining him on information given in Mr Brown's statement about his career history that differed from details that the claimant had obtained from Mr Brown's Linked In profile. He also indicated that Mr Brown's credibility was in issue because Mr Brown had prepared a letter in response to the claimant's internal complaint prior to these proceedings but had sent the letter out under another manager's name so that the claimant would not think that he *'was investigating himself'*. Whilst understanding the claimant's desire to highlight these points, we did not find that they damaged Mr Brown's credibility in relation to the substantive issues in the case. We found Mr Brown to have been a credible witness. He was honest under cross examination, accepting that mistakes had been made and did not seek to evade questions that were put to him. As regards the response to the claimant's letter of complaint, he admitted that he had been the author of it and that although the investigation of the claimant's complaint had largely been carried out by him, he had discussed it with his line manager and an HR representative.

17. Prior to applying for employment with the respondent the claimant had been a driving instructor for about nine years. He had had a road traffic accident in 1997 which affected him with PTSD, depression and litigation stress. By 2003 he had recovered sufficiently to retrain in the financial services industry in which he worked until 2013 when he suffered a second road traffic accident. The claimant not been employed since 2013 and his application to the respondent in September 2017 for the role of Resolution Manager was the first that he had made since 2013.

18. In September 2017, the respondent advertised externally for applications for the position of Resolution Manager (p 64). The post involved the investigation, consideration and determination of customer complaints. The claimant applied for the post using an online form. The claimant did not inform the respondent of his disability in his application for the post in September 2017. It was the claimant's evidence that he had previously submitted an online application for a position with the respondent in June 2017 and had completed a form online which provided information relating to his dyslexia and had subsequently spoken to someone from the respondent's HR Department. He had subsequently withdrawn his June application, but he believed that the disability information that he provided in June 2017 should have been retained by the respondent and available for future applications. The respondent's witnesses said that they had no knowledge of the claimant's June application and had found no record of it. The claimant had no record of the information provided in June 2017 and we found as a fact that the disability information provided by the claimant in connection with his June application was not known to the respondent's witnesses and did not establish that the respondent knew or could reasonably be expected to have known of the claimant's disability at the time of the second online application submitted in September 2017.

19. At the time of his September application, the claimant provided his CV to the respondent which did not include any reference to the claimant's disability. Mr Brown reviewed the claimant's CV and on the basis of the claimant's experience and qualifications concluded that he met the job requirements. Mr Brown invited him for interview by email dated 15 September 2017 (p66).

20. The email invited the claimant to an initial interview with Mark Brown,

Operations Manager and Mark Bayliss, Manager. The invitation stated that the interview would be competency based, based on the respondent's standards document, a copy of which was included and that the interview would last between 60 – 90 minutes. The email contained the following wording:

> "*If there is anything we need to do at interview to meet any special requirements you have, let me know or get in touch if you've got any questions before the interview".*

21. The interview pack sent to the claimant outlined the format of the interview, gave examples of the types of question that might be asked and indicated what preparation could be done for it. The claimant did not contact the respondent to ask for any adjustments to be made to the format of the interview.

22. The claimant prepared for the interview by writing notes with examples relating to the areas on which he anticipated the respondent would ask questions. It was the claimant's evidence that he felt well prepared for the interview and therefore did not feel the need to request adjustments.

23. The interview took place on the 26 September 2017. It was conducted by Mr Brown and Mr Bayliss. The claimant's evidence was that at the start of the interview he handed his notes to the interviewers and informed them that he had dyslexia and would struggle. Mr Brown and Mr Bayliss' evidence was that they recalled that the claimant referred to being dyslexic three times during the interview, Mr Bayliss recalled that the claimant mentioned it once in the context of having been the youngest individual to achieve his driving instructor qualification and Mr Brown said that the claimant mentioned it in the introductory stage and also at the end when, during questions from the claimant about training, the claimant said that he had been allowed extra time when sitting external exams.

24. We found as a fact that the claimant mentioned early on in the interview that he was dyslexic and mentioned it again subsequently in the interview. We found that the claimant did not inform Mr Brown and Mr Bayliss that his dyslexia would cause him difficulties in the interview. We concluded that, because the claimant had said he felt well prepared for the interview and did not need to ask for adjustments, it was unlikely that he would have opened the interview in the way that he had stated. We considered that it would have been good practice for the interviewers, having been informed by the claimant of his dyslexia, to have checked with the claimant as to whether any adjustments were needed to the interview format. They did not ask any question as to the impact of his dyslexia and the claimant did not expand with any additional information. However, as the claimant had been given the opportunity to request adjustments to the interview in the invitation letter, we concluded that the claimant had not identified that any adjustments were needed at this stage and there was nothing that occurred during the meeting to alert the interviewers to any potential difficulty for him in the interview itself.

25. Mr Brown's evidence was that at the start of the interview there was an introductory period designed to put the claimant at ease and in which the interview process was explained. Mr Brown said that he explained to the claimant that he was free to refer to his notes and that there would be no time pressure put on him. He could come back to questions if he wished. The

competency based questions asked by the interviewers did not exactly replicate the areas for which the claimant had prepared, although covered the standards that had been referred to in the information given in the invitation letter. The claimant's evidence was that he struggled to think of examples for the questions asked cocnerning areas for which he had not prepared and to explain the examples given due to his poor short-term memory. He felt that he floundered.

26. Mr Brown's evidence of the claimant's interview performance was that the claimant did not show signs unease or difficulty. The claimant did not succeed at the interview as the examples that he gave in response to the questions asked were not sufficiently detailed in two of the areas covered. He passed in two out of the four areas but not in two others. The respondent interviewed three other candidates for the same role but none of the candidates succeeded at the interview. Mr Brown's evidence was that the other candidates performed less well than the claimant. Despite the claimant not having achieved an overall pass at the interview, the interviewers warmed to the claimant and considered that it was possible that the length of time he had been out employment may have led to him not being able to give complete answers.

27. Following the interviews, the respondent still had a requirement to fill Resolution Manager roles, so Mr Brown and Mr Bayliss reviewed the interview results and decided that the claimant should be offered another opportunity to succeed in the recruitment exercise by undertaking a case study assessment. This opportunity was not offered to any of the other candidates. It was not part of the respondent's normal recruitment process and Mr Brown had not used the method before but he knew of others at the respondent who had used it.

28. Mr Brown wrote to the claimant on the 10 October 2017 asking the claimant to sit a technical test in the form of a case study, the results of which would then be reviewed with the claimant's interview result to reach a final decision on his application (p92). The claimant responded on the 10 October 2017 and his email included the following:

> *"I would like to undertake your technical assessment, thank you for the opportunity. I would also like to place myself in the best possible position in order to excel at the case study. To help me prepare for the case study, would it be possible to have some examples of the type of case study's you use?*
>
> *During my interview I told you that I am dyslexic, please can I type my assessment in Microsoft Word?"*

29. Mr Brown replied the same day stating that he was happy to accommodate the claimant's needs and would give him an extra 30 minutes to complete the exercise. He said that he was unable to give the claimant example case studies but told him that it would be a real complaint case and the claimant would need to *"determine the outcome uphold/defend with rationale as to why"*.

30. The respondent's interview guidance document (p44) refers to what should be done where reasonable adjustments have to be made for a disabled candidate and states that in these circumstances:

"You'll need to ask all candidates if there are any adjustments they need for the interview. You've a duty under the Equality Act to make these reasonable adjustments, helping make the recruitment process as comfortable as possible."

31. The document goes on to suggest that HR is contacted if help is needed making the adjustment.

32. Mr Brown's evidence was that he did not consider contacting HR as he considered the claimant's request for a word-processor to be straightforward and one that could be accommodated. He recalled the claimant saying at interview that he had been provided with additional time in examinations and he decided that it would be appropriate to increase the time allowed for the assessment from 60 to 90 minutes, although no request for more time had been made by the claimant.

33. Mr Brown's evidence was that he did not understand that the claimant's request for example case studies to have been a request for a reasonable adjustment because of his dyslexia. The claimant had not linked the request for case studies with a reference to his disability, in contrast to the request for a word processor which the claimant had related directly to his disability.

34. Mr Brown's evidence was that the reason that the claimant's request for sample case studies was refused was because he did not have a bank of sample case studies for use in recruitment exercises. He would have had to spend time searching for suitable cases, making sure that they were appropriate samples and then redacting them before providing them to the claimant. Furthermore, as the case study used in the technical exercise would be an actual case, he did not consider that providing other cases by way of example would assist the claimant with the analysis he would have to carry out on the specific case he was given.

35. The claimant attended for the assessment on the 24 October 2017 and was met by Mr Brown. Mr Brown told him that the outcome of whether to uphold or defend the complaint was not important; the rationale behind the outcome was important. Mr Brown informed the claimant that no word processor would be provided after all, but that he would not be marking the claimant against spelling, grammar or presentation. The claimant raised no objection at the time but in his evidence to the Tribunal he said that he was thrown by the fact that the respondent had not provided a word processor. He felt sick and humiliated. It affected his frame of mind. He could not write a robust rationale *"the part I had requested a computer for"*. The impact that the failure to provide a word processor had on the claimant was set out in the claimant's letter of complaint to the respondent dated 6 November 2017:

"I was given extra time to complete the assessment which I did not use because I was very embarrassed by the situation I had been placed in. To the point I felt sick, used the toilet and left before going into any extra time. I cut the assessment short because of the treatment I had received and my state of mind.

……

I panicked, rushed through the assessment. I rewrote the answers twice because of my poor spelling and handwriting. During the assessment I felt

embarrassed and just wanted to leave."

36. The claimant looked at the papers, considered the customer's complaint and the information relevant to his decision and made hand-written notes. His conclusion based on the documents provided was that the complaint should be defended. This was based on a rationale that included an interpretation that the customer was an experienced investor. This rationale was in direct opposition to the information contained in the case study complaint letter but the reason for his conclusion to the contrary was not explained by the claimant in his notes. The claimant used 50 minutes of the 90 minutes allowed.

37. Mr Brown marked the assessment and concluded that the claimant had not met the required standard because he had reached the wrong conclusion based on an incorrect rationale, namely that the customer was an experienced investor when it was Mr Brown's evidence that it was clear from the papers that she was not.

38. When the claimant was informed of the rejection of his application on the 3 November 2017, he wrote a letter on the 6 November 2017 complaining about the respondent's failure to make reasonable adjustments to the interview which he said had been too long and to the assessment for which no word processor had been provided. (p164)

39. Mr Brown considered the claimant's complaint and drafted a letter to the claimant, which was sent out on the 17 November 2017 under the name of Ms Thalia Batchen, Regulatory and Quality Support Manager. In it the reason for the claimant's assessment having been found not to meet the required standard was set out in the following terms:

> *"In terms of the assessment you have not been marked down for any spelling or grammatical errors. The purpose of the assessment was to assess your ability to review the information and come to an expected outcome with a robust rationale. The expected outcome was for the customer complaint to be upheld on the basis of the customer inexperience as an investor with the subsequent investment being too high in risk for someone with their lack of experience. Your conclusion was that the complaint should be defended as the customers were experienced based on existing investments. The key here is the date the existing investments were taken out. As this was less than a year before the investment the customer had complained about, this was insufficient time to deem these customers as experienced. Your outcome and rationale therefore did not meet the required standard."(p179 -180)*

40. The claimant, in correspondence with the respondent and at the hearing, defended the conclusion that he had reached on the assessment, claiming that there was no industry wide accepted definition for what might constitute an experienced investor and that the respondent's view on that would be something that the claimant would expect to be included in a suitability advice standards document to which he did not have access. He asserted that in the absence of any guidance on that point it was a matter of opinion and his opinion was one he would stand by. The claimant was clear in answer to questions put to him in cross examination that the view that he took about the client's investment experience was legitimate and that he would give the same answer

if he were to take the assessment again. He considered that the lack of a word processor meant that he could not provide a robust rationale for his conclusion having spent time writing and rewriting his notes before giving up, but not that his conclusion would have been different.

41. Mr Brown's evidence was that the case study was a simple one which required no additional materials to enable the claimant to analyse the situation and reach a decision. He gave evidence that no organization would have concluded that the customer was an experienced investor on the information provided and that having reached this conclusion the claimant's decision that the case should be defended was incorrect.

42. We accepted the respondent's evidence on this point. Mr Brown had several years' experience as manager of the respondent's Customer Complaints Unit (p220). Although the claimant had passed exams in complaints handling in 2015, he had only one year's experience as a complaints handler which was not recent (we did not have the benefit of seeing the claimant's CV but that experience must have been at least four years prior to his application to the respondent). We concluded that the decision that the claimant reached about the customer's investment experience, which led him to the conclusion that the claim should be defended was not impacted by the lack of a word processor. Our reasons for so concluding were that although his evidence was that the failure to provide a word processor did affect his state of mind, the claimant maintained at the hearing that the conclusion he reached was a valid conclusion which he would not change if he were to carry out the assessment again. He accepted in cross examination that access to a word processor would have made no difference to the decisions that he reached on the case study.

43. The claimant raised a number of issues about data protection compliance and other matters which arose following the rejection of his application on which we have not made findings as they are not relevant for the purposes of the Employment Tribunal claim.

Conclusions

44. In reaching our conclusions we considered all the evidence that we heard and the documents to which we were referred and which we considered relevant and had regard to the submissions of the parties.

45. The law relating to the duty to make reasonable adjustments is set out at s20 EqA and provides:

> *(2) The duty comprises the following three requirements:*
> *(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.*
> *(4) ……...*
> *(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a disadvantage in relation*

to a matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

46. The law relating to knowledge of disability is contained in Schedule 8 Part 3 EqA and provides:

(1) A is not subject to a duty to make reasonable adjustments if A does not know and could not reasonably be expected to know –
(a) ……..;
(b)[….] that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second and third requirement.

The Interview

47. It was accepted by the respondent that it applied the following provisions criteria or practices at interview stage:

47.1. Asking the claimant competency based questions during interview;

47.2. Requiring the claimant to hold and process information in a way which tests short term memory;

47.3. Requiring the claimant to process information and respond within a set time;

47.4. Offering employment based on assessment using these criteria.

48. The disadvantages that the claimant asserts that he was caused by the application of these PCPs at interview were:

48.1. He had difficulty articulating his responses to assessment questions;

48.2. He could not hold information or process what was being asked of him during interview;

48.3. He had insufficient time to process information and respond;

The adjustments suggested by the claimant to avoid the disadvantage were:

48.4. Asking questions in interview based on individual success/competency i.e. looking for examples where the claimant has demonstrated achievement;

48.5. Adjusting the style of interview so as not to place such demands on short term memory;

49. It is for the claimant to show that the PCPs put him at a substantial disadvantage in comparison with persons who are not disabled.

50. We were not satisfied that the claimant had established that he was placed at a substantial disadvantage compared with people who were not disabled as he

asserted in relation to the first PCP, i.e. that he had difficulty articulating his responses to assessment questions.

51. The Dyslexia Action report concluded that the claimant's verbal and non-verbal reasoning skills were good and we observed that to be the case at the Tribunal hearing. The use of competency based questions in interview will test the verbal skills of a disabled and non-disabled person alike. This can be stressful for all applicants. We found no substantial disadvantage to the claimant by the application of this PCP.

52. Subject to our conclusions on the question of knowledge which are set out below, we considered the adjustment to this requirement suggested by the claimant, which was that the respondent ask questions in interview based on individual success/competency i.e. looking for examples where the claimant has demonstrated achievement. We concluded that such questions would still have tested the claimant's verbal reasoning skills, so concluded that this would not have avoided any disadvantage had we found any.

53. As regards the second PCP: requiring the claimant to hold and process information in a way which tests short term memory, we concluded that the claimant's weakness in working memory and processing speed would have placed him at a substantial disadvantage in comparison to non-disabled persons when he was asked to recall situations as examples of his ability to reflect a particular standard or approach, as he was in the interview.

54. Subject to our conclusions on the question of knowledge which are set out below, we concluded that the respondent's practice of providing a quantity of materials from which applicants were able to prepare for the interview alleviated this disadvantage to some extent. The evidence showed that the claimant had prepared for the interview by writing notes with examples of the areas on which he anticipated he might be asked questions, including examples specific to those areas. The system adopted by the respondent of encouraging preparation and of being relaxed about the length of time taken by the applicant to answer questions also addressed this difficulty to some extent. We concluded that in order to be a useful tool, an interview will inevitably require candidates to talk about their experience and approach and to supplement their answers with examples of real events. The adjustment suggested by the claimant of adjusting the style of the interview so as not to place demands on short term memory is not specific as to how else that might have been achieved, whilst still providing the employer with insight into the applicant's abilities. We concluded that additional adjustments made by the respondent in the course of the interview which were to allow the claimant time to consider his answers and to refer to his notes and also asking supplementary questions to encourage the claimant to give more detail would be reasonable adjustments in the circumstances.

55. We were not satisfied that the claimant had established that the third PCP: requiring the claimant to process information and respond within a set time; had placed him at a substantial disadvantage. The claimant's initial complaint about the interview was that it was too long although it was within the time scale indicated in the invitation letter. The interview process is designed to discover whether a person has the necessary ability to carry out the role in question. If the candidate is provided with the questions in advance and given unlimited

time to answer this would be unlikely to give a true indication of the candidate's suitability or otherwise.

56. The only part of the interview in which we concluded that the claimant had been placed at a substantial disadvantage was in requiring the claimant to hold and process information in a way which tests short term memory.

57. We had to consider whether the respondent knew or could reasonably have been expected to know of the disadvantage to the claimant in relation to the requirements listed. The law that applies on this point has been set out above.

58. We concluded that Mr Brown and Mr Bayliss did not know that the claimant had a disability prior to the first interview. The claimant's evidence that he had completed an online form in relation to a previous application, which included notification of his disability; and spoken to someone from the respondent's HR following that application, did not, we found on the evidence, fix the respondent with knowledge of the claimant's disability prior to the interview. The respondent had no record of the first application; the claimant did not refer to it in his second application; did not include a reference to his disability on his CV; and did not ask for adjustments to be made when invited to do so in the letter inviting him for interview.

59. The claimant did refer to his dyslexia during the interview. We were satisfied that Mr Brown and Mr Bayliss therefore either knew or could reasonably have been expected to know that the claimant had a disability as the interview was proceeding. Knowledge of the disability is not however the same as knowledge of the disadvantage.

60. We had to determine that the respondent knew or could reasonably have been expected to know that the claimant would have been placed at a substantial disadvantage by the PCP identified. We concluded that it could not.

61. We accepted the submission on behalf of the respondent that the term 'dyslexia' describes a wide variety of differing effects from person to person. Simply indicating to a potential employer that an individual is dyslexic will not mean that the potential employer should reasonably be held to know that the individual will be at a substantial disadvantage during a face to face interview. The claimant had been told of the format of the interview, the type of questions he would be asked, the fact that examples of past experience would be expected to be given, suggestions as to how to prepare for the interview and the length of time the interview might take. The claimant had not himself foreseen difficulties with the format or considered that he needed to request reasonable adjustments, despite being prompted to do so. In those circumstances we concluded that the respondent could not reasonably have been expected to know that the claimant would be put at a disadvantage in relation to any of the PCPs applied at interview stage and particularly in relation to the one referred to at para 56 above, which is the only one that we found in fact to have placed the claimant at a disadvantage.

The case study/assessment

62. The PCPs relied on and accepted as having been applied by the respondent at case study/assessment stage were:

62.1. Requiring the claimant to process information and respond within a set time;

62.2. Requiring the claimant to consider case studies during assessment;

62.3. Requiring the claimant to prepare for assessment or be assessed without using computer of similar word processing equipment;

62.4. Offering employment based on assessment using these criteria.

63. The disadvantages that the claimant asserts he suffered as a consequence of the PCPs were:

63.1. He had insufficient time to process information and respond;

63.2. He had difficulty reading written information;

63.3. He had difficulty producing written materials;

63.4. He was not successful/offered employment.

64. The adjustments that the claimant suggested to avoid that disadvantage were:

64.1. Allowing more time during assessment;

64.2. Providing case studies in advance;

64.3. Providing a computer or similar word processing equipment.

65. We concluded that the claimant was not substantially disadvantaged by the time allowed for processing the case study information and responding. The respondent had adjusted the time for the assessment by increasing the time allowed from 60 minutes to 90 minutes without the claimant asking for such an adjustment. The claimant did not use the whole period allowed and although he did not produce a formal rationale for his conclusion, he had carried out the analysis required, as was clear from the notes that he had made. The claimant had finished after 50 minutes. Mr Brown encouraged him to use the additional time but the claimant did not do so.

66. The claimant asserted that the requirement that he consider case studies during the assessment put him at a substantial disadvantage because he had difficulty reading written materials.

67. The claimant's dyslexia report stated that the claimant's reading speed was slow, and the claimant's evidence was that he had difficulty reading written information. We concluded that the requirement that the claimant consider case studies during the assessment did place the claimant at a substantial disadvantage when compared to a person who was not disabled.

68. We considered whether the respondent knew or ought to have known that this requirement would place the claimant at the disadvantage found. We concluded that it did not know and could not reasonably have been expected

to know that it did so. The claimant had not objected to being asked to undertake a case study. He had asked for sample case studies to 'help him excel' but had not suggested that being asked to carry out a case study assessment would present difficulties for him because of his disability. We were not satisfied that this would have been obvious to the respondent or that it should have known that this was the case. The claimant had the opportunity to inform the respondent of the difficulties this might pose and he did not do so.

69. In any event, the claimant accepted at the hearing that this disadvantage could be addressed by allowing more time for reading the material and we concluded that the respondent, by providing the additional time that it did, had made a reasonable adjustment to prevent the disadvantage. The claimant also contended that the provision of sample case studies in advance of the assessment would have been a reasonable adjustment. We were not satisfied that the disadvantage would have been avoided to any significant extent by the claimant being provided with sample case studies in advance. The case study used was an actual case. It was fact specific and having sight of other different cases would not have reduced the reading time required for the case study used in the assessment. When considered against the substantial amount of time that would have had to have been spent by Mr Brown in providing such sample case studies, we concluded that it was not an adjustment that it was reasonable for the respondent to make.

70. The final PCP relied on by the claimant: requiring the claimant to prepare for assessment or to be assessed without using a computer of similar word processing equipment had, we concluded, placed the claimant at a substantial disadvantage due to the slowness of his writing and copying skills. The claimant, in the absence of an auxiliary aid (computer/word processor) was placed at a substantial disadvantage in relation to the case study/assessment in comparison with persons who were not disabled.

71. The respondent knew or ought reasonably to have known that the claimant would be disadvantaged by this as the claimant had informed the respondent that his request for a word processor related to his disability. We were surprised and concerned that experienced interviewers in an organization the size of the respondent with the HR resources available to it, took such a casual approach to the issue of a disabled candidate, simply informing the claimant on the day of the assessment that the word processor he had been told would be available was in fact not going to be available. Although we were satisfied that Mr Brown was not acting from any ill intent, (he had offered the claimant the additional and unique opportunity to be considered for the role by means of a second stage assessment, he had provided him with extra time for the assessment unprompted and had encouraged him to use it), he did not check with HR or with the claimant as to what the impact might be of not providing the adjustment requested by the claimant and how that might be alleviated.

72. The assessment required the claimant to write notes and a rationale for his decision on the case study. Although Mr Brown told the claimant that he was not being judged on his spelling, writing or presentation the claimant was affected by the absence of a word processor. He was concerned and anxious about his writing and spelling and that caused him anxiety in the assessment which he would not have suffered had he not had the disability.

73. The reasonable adjustment that should have been made by the respondent to address the disadvantage was the provision of a word processor. The respondent has conceded that it could have provided a word processor but failed to do so. We found that the respondent in not providing the claimant with a word processor failed in its duty under s20 EqA to make a reasonable adjustment and the claim succeeds on this point. The issue of remedy will need to be considered in relation to this part of the claim.

74. The final question that we had to address was: if the respondent failed in any duty to make reasonable adjustments according to the matters covered above, what is the likelihood that the claimant would have been offered the Resolution Manager role he applied for in the event that any reasonable adjustments not made had in fact been made? This question is relevant to remedy.

75. The respondent failed in its duty to make reasonable adjustments by failing to provide a word processor during the assessment. Had the adjustment been made and the claimant been provided with a word processor, we concluded that it would have made no difference to the outcome: the claimant would not have been offered employment by the respondent. Our reasons for so finding are set out below.

76. We concluded that the reason that the claimant's application for employment was not successful was because of the judgment he made on the information provided in the case study and the outcome that he decided was appropriate. The claimant was clear at the tribunal that he considered that his conclusions on the case study were sound and justifiable. He accepted in cross examination that having a word processor would not have altered the conclusions that he reached. Although we concluded that the lack of a word processor had an impact on the claimant's state of mind, we did not find, based on the claimant's evidence, that it clouded his judgment to the extent that he came to a conclusion that he would not otherwise have reached. In the light of that evidence we concluded that the claimant would not have succeeded in his application for employment even if a word processor had been provided.

77. In the light of that finding, the Tribunal will not award compensation for loss of earnings for the successful part of the claimant's claim, but will consider an award of compensation for injury to feelings.

78. The question of remedy will be dealt with at the hearing which was listed provisionally for the 14 November 2018, formal notice of which will be sent out under separate cover.

Employment Judge Mulvaney

Date

JUDGMENT & REASONS SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE