



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Kalam

**Respondent:** Care and Repair (Leeds) Limited

**HELD AT:** Leeds

**ON:** 11, 12, 13, 16 and 17  
July 2018

**BEFORE:** Employment Judge Cox  
Mrs J Maughan  
Mr M Brewer

## REPRESENTATION:

**Claimant:** Mr J Boyd, counsel

**Respondent:** Mr M Islam-Choudhury, counsel

# JUDGMENT

1. The claims of direct discrimination against Mrs Cornelissen and Mrs Brooks are dismissed on withdrawal by the Claimant.
2. The claims of discrimination arising from disability are dismissed on withdrawal by the Claimant.
3. The claim of harassment against Mrs Brooks is dismissed on withdrawal by the Claimant.
4. All the remaining claims fail and are dismissed.

# REASONS

1. Mr Kalam brought a claim to the Tribunal alleging various acts of discrimination and harassment contrary to the Equality Act 2010 (EqA) relating to his employment by the Respondent ("the Company"). During the course of the Hearing, he withdrew several of these allegations and consented to them being dismissed on withdrawal. There remained: an allegation that the Company had

failed to meet its duty to make reasonable adjustments; 18 allegations that Mrs Ruth Cornelissen, the Company's Chief Executive, had harassed him by conduct related to his disability; and an allegation that Mr Stuart Marquis, a trustee of the Company who handled Mr Kalam's grievance, had harassed him or directly discriminated against him on the ground of disability in doing so.

2. At the Hearing, the Tribunal heard oral evidence from Mr Kalam. On behalf of the Company, evidence was given by Mrs Cornelissen; Mrs Sharon Brooks, Service Delivery Manager, who was Mr Kalam's line manager; and Mr Marquis. On the basis of that evidence and the documents to which the witnesses referred to, the Tribunal made the following findings in relation to Mr Kalam's claim.

### **Background**

3. The Company is a Registered Society with charitable status. Its primary function is as a Home Improvement Agency, assessing and implementing adjustments in disabled clients' homes. In the period relevant to Mr Kalam's claim, the Company employed 20 staff, nine of whom identified themselves as disabled within the EqA definition.
4. Mr Kalam has worked for the Company since June 1994 and at the time of his claim was employed as a support worker. His job involves visiting clients in their homes to assess their needs and implement adjustments for them.
5. The Company operates from a four-storey semi-detached house that has been converted into office space.

### **Reasonable adjustments**

6. At a previous Preliminary Hearing the Tribunal decided that Mr Kalam is a disabled person by reason of post-polio syndrome. Contact with cold air can exacerbate the effects of his condition and cause him pain. In summary, his complaint was that the desks at which he was asked to sit were not suitable for him, because they exposed him to cold air.
7. During the course of the Hearing, the Tribunal discussed with the parties' representatives the most straightforward way of framing this complaint, and it was agreed that it was best dealt with under section 20(4) EqA. That provides that where a physical feature of an employer's premises puts a disabled person at a substantial disadvantage in comparison with persons who are not disabled, the employer is under a duty to take such steps as it is reasonable to have to take to avoid the disadvantage. The physical feature at issue here was the presence of cold air in some of the rooms in the Company's premises. Mr Kalam alleged that this feature put him at a substantial disadvantage in comparison with persons who are not disabled because of the effect cold air has on him, and that the Company should have taken reasonable steps to avoid that disadvantage.
8. The issues for the Tribunal in relation to this aspect of Mr Kalam's complaint were:
  - 8.1 Was he in fact put at a disadvantage by cold air during the periods that he alleged?

- 8.2 If he was, did the Company know, or could it reasonably have been expected to know, that he was under that disadvantage?
- 8.3 If so, did the Company take reasonable steps to avoid the disadvantage?
9. There were three different periods that the Tribunal was asked to examine. The first ran from 7 to 23 September 2016. This was a period during which Mr Kalam was asked to work from a desk in a ground floor office that was adjacent to a window. Although Mr Kalam had worked from another desk adjacent to a window on the first floor for some time without complaining that it caused him discomfort, the Tribunal accepted that this desk was different because there was no sunlight coming into the room through this window, at least during some of Mr Kalam's working hours, and that Mr Kalam was cold as a result. The desk was also not adjacent to a radiator. The Tribunal was prepared to accept that for this first period Mr Kalam was put at a substantial disadvantage by contact with cold air.
10. The Tribunal did not accept that the Company knew or could reasonably have been expected to know that Mr Kalam was at a substantial disadvantage when he first started working from this desk on 7 September. His previous desk had also been by a window and the Company had no reason to believe that this new desk would cause him problems. In an email he sent to Mrs Cornelissen at the end of the day on Friday 16 September, however, he identified that he had issues with this desk, including an implication that he was being caused pain by cold air near the window. Mrs Cornelissen noted Mr Kalam's concerns and had intended to meet with him to discuss them but on Friday 23 September Mr Kalam began a period of sick leave. In an email dated 23 September Mrs Cornelissen offered Mr Kalam a meeting the following week to discuss his concerns but this did not take place because Mr Kalam was still off work. Although Mr Kalam's job involves him in spending a significant part of his working day out of the office visiting clients and at this time he was working only three days a week, the Tribunal accepted that there were two days in the week beginning 19 September when, to the Company's knowledge, Mr Kalam was working from a desk that put him at a disadvantage. The Tribunal was also satisfied, however, that the Company took reasonable steps to avoid that disadvantage by planning to meet with Mr Kalam to discuss his concerns and how they could be addressed. The meeting did not take place because Mr Kalam went on sick leave.
11. The second period that the Tribunal examined was from 11 January 2017, when Mr Kalam returned to work after his sick leave, to 13 February 2017. During this time Mr Kalam was sharing another ground floor office with a colleague, X. X has a physical condition that is exacerbated by being hot, leading to severe irritation to her skin and potentially ulceration of her eyes. The door and window of the office were left open and the radiator was turned off to accommodate her condition. The Tribunal accepted that Mr Kalam was put at a disadvantage by the cold air in this office and that the Company was aware of this. The question was whether the Company had failed to take steps it was reasonable for it to take to avoid the disadvantage.
12. Significantly, Mr Kalam had himself asked to sit in this office knowing of X's need for a cool environment. The Company allowed him to sit in this office only because that was his expressed wish. Mrs Cornelissen expressed her concerns

about him sitting in the office, because of X's need to have the room at a cool temperature, and made clear that she was agreeing to the arrangement on a trial basis. Initially, Mr Kalam did not raise any complaint about the office. It was not until a meeting on 6 February 2017 between Mr Kalam, Mrs Cornelissen and Mrs Brooks that he said he was finding it difficult to use the office because of the cold. X had also said that she was finding it difficult to share an office with Mr Kalam because she felt that her health needs and Mr Kalam's could not both be met in the same office.

13. At that point, Mrs Cornelissen considered the alternatives: Mr Kalam could not be asked to sit at the desk he was using before September 2017 because that desk was on the first floor and the medical evidence, with which Mr Kalam agreed, was that he could not now manage the stairs because of his disability. The desk he had been using before he went on sick leave was not suitable because of the cold. The Tribunal accepted that it would not have been practical for Mr Kalam and X to carry on using the same office by arranging their client appointments so that neither was in the office at the same time. His colleague worked with clients with dementia and it was already a challenging task for her to set up appointments for a time when her clients, carers or other significant support person and herself were all available. The Tribunal also accepted that it was not feasible for X to be moved into another office. Because of her condition, she could not manage the stairs and so needed to be on the ground floor but the other office on the ground floor was too warm for her.
14. In all the circumstances, the Tribunal accepted that it was reasonable for the Company to avoid the disadvantage by moving Mr Kalam back to the other ground floor office. Mr Kalam said the Company should have tried changing the orientation of his desk rather than moving him to the other office, but the Tribunal accepted that this would not have addressed the fundamental problem that this room was too cold for him. Likewise, Mr Kalam's suggestion that he could remain in the office with the door and the window open and the radiator off was not consistent with what his GP was saying he needed, or indeed his own previous position in relation to what he needed, to look after his health, which was to avoid exposure to cold air.
15. The third period that the Tribunal examined ran from 13 February 2017, when Mr Kalam moved back to the other ground floor office, this time to what the parties referred to as the volunteers' desk. In his evidence to the Tribunal Mr Kalam said he was cold at this desk. The Tribunal was not convinced by this evidence. It accepted Mrs Cornelissen's evidence that the overall temperature in the office was warm. It noted from the office plan that the volunteers' desk was away from the cold window that Mr Kalam had previously complained about and was right next to a double radiator. Further, by this time Mr Kalam had the use of a heat pad built into his office chair. Although he said that the door into the office, located behind him when he was sitting at the desk, was bringing in draughts of cold air, this door opened onto the same area as the door from the office next door, to which he was saying he wanted to return. As the Tribunal did not accept that Mr Kalam was exposed to cold air when sitting at the volunteers' desk, it concluded that Mr Kalam was not at a substantial disadvantage at this time and the Company was not under a duty to make reasonable adjustments.

## Harassment

16. Mr Kalam alleged that he had been harassed by Mrs Cornelissen and Mr Marquis.
17. The success of this aspect of his claim depended upon whether the Tribunal was satisfied that these individuals had engaged in unwanted conduct related to Mr Kalam's disability that had had the purpose or effect of violating his dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him (Section 26 EqA). In deciding whether their conduct had that effect, the Tribunal had to take into account Mr Kalam's perception but also all the other circumstances of the case and whether it was reasonable for the conduct at issue to have that effect (Section 26(4) EqA). There was no evidence before the Tribunal that Mrs Cornelissen or Mr Marquis had the purpose of creating such an environment. The question was therefore whether their conduct had that effect.
18. For the purposes of its findings in relation to these allegations, the Tribunal was prepared to accept that the conduct at issue was unwanted and that Mr Kalam perceived it as having the effect of creating a hostile environment for him. The question was whether it in fact had that effect, taking into account not just Mr Kalam's perception but also the other circumstances of the case and whether it was reasonable for the conduct to have that effect.
19. Mr Kalam's allegations of harassment were set out in a table of allegations that the Tribunal gave Mr Kalam leave to amend during the course of the Hearing. The allegations remained, however, in some respects unclear and repetitive. The Tribunal sets out its findings in relation to them by reference to their number in the table.
20. Mr Kalam's first allegation of harassment related to a meeting he had with Mrs Cornelissen on 4 November 2015 at which they discussed a report from his GP on his disability. Mr Kalam alleges that at this meeting Mrs Cornelissen questioned and doubted his disability and his need for reasonable adjustments and said she wanted to instruct her own expert to obtain a report on him.
21. Mr Kalam provided no evidence in support of this allegation. The Tribunal accepted Mrs Cornelissen's evidence, which was supported by the notes of the meeting, that she discussed Mr Kalam's workload with him and the possibility of him reducing his working week. Taking into account all the circumstances and whether it was reasonable for Mrs Cornelissen's conduct to have the effect of creating a hostile environment, the Tribunal concluded that nothing was said or done at that meeting that had the effect of creating a hostile environment for Mr Kalam.
22. Mr Kalam's next allegation was that in the period from 21 December 2015 he was one of the last employees to be shown a floor plan of how desks were to be reallocated on a reorganisation, despite the fact that he had informed Mrs Cornelissen of the importance of his desk location. When he queried this, he said, he was ignored, because Mrs Cornelissen did not believe his desk location was important to him because of his disability.
23. The Tribunal accepted Mrs Brooks's evidence that she spoke to employees to canvas their preferences in relation to desk location and she then pencilled their preferences in on the floor plan she was holding. She canvassed Mr Kalam after speaking to most of the others but not because she had made a

conscious decision to come to him last. She was pencilling preferences in but she was not allocating desks: that was to be Mrs Cornelissen's decision, taking into account not only employees' preferences but also their needs. Mr Kalam and his needs were not ignored in this process. In fact, Mrs Cornelissen had to chase him up to ask him for his desk preferences. During the course of the Hearing Mr Kalam himself acknowledged that Mrs Cornelissen made the decision on which desks to allocate only when she had received everybody's preferences. The Tribunal did not accept that Mrs Cornelissen's conduct related in any way to Mr Kalam's disability, nor did it accept that in all the circumstances her conduct had the effect of creating a hostile environment for Mr Kalam.

24. Mr Kalam's third allegation of harassment relates to an email Mrs Cornelissen sent him on 5 January 2016. He had emailed Mrs Cornelissen the same day asking to meet her to discuss the desk preferences. He said: "as I've tried to explain in previous emails I've got health needs and it would have been nice to be involved in the decision making of desk allocation and given the opportunity I would have explained my reasoning for choosing a particular desk". Mrs Cornelissen's reply included these words:

I'm aware of the desk position that you have been allocated, and this was on my suggestion as it allows you to sit in a corner area and on the side of the office that you said you wanted to be in. So although I could not agree your preference to sit at the desk allocated to Mark or Hugh, I have allocated you the same end of the office to what you said you previously sat in.

I do not agree that this position is draughty; Lisa never complained of a draught, and you have been sitting next to an old unglazed window for some years, so this seems to be a weak argument. I am struggling to understand your argument on health grounds to be seated elsewhere but I am, of course, willing to listen to your explanation.

You do need to understand that the seating arrangements in the office is not my top most priority, and for Caseworkers who should be spending the majority of their time out visiting clients, it should not be presenting such a problem. My priority is to ensure that Care & Repair can secure contracts and funding over the coming months to be able to continue to provide the services for clients that we have done for many years. I'm sure you understand the disagreements over seating arrangements is not something that a CEO's time should be taken up with.

25. Mr Kalam said that this email indicated Mrs Cornelissen did not believe him and belittled his request for reasonable adjustments.
26. The Tribunal accepted that the tone of the email was a little terse but that was understandable in the light of the background to it. Mr Kalam had expressed two desk preferences in turn, on each occasion indicating he wanted to sit at a desk that he had been told was not available. The Tribunal did not accept, taking into account all the circumstances and the content of the email as a whole, that it had the effect of creating a hostile environment for Mr Kalam. Mrs Cornelissen was saying that she was going to meet with Mr Kalam to discuss desk allocation. Although she was unclear as to what his issues were with the desk he had now been allocated, she was approaching the issue with an open

mind. (Indeed, as a result of their discussion, she decided that Mr Kalam should remain at his current desk on the first floor.)

27. The Tribunal considered Mr Kalam's fourth and fifth allegations of harassment together. Mr Kalam alleged that the Company had agreed to move him to a desk occupied by a colleague Y. He alleged that this move had been agreed following a meeting he had had with Mrs Cornelissen on 4 May 2016 to discuss an occupational health report but that on 22 August 2016 Mrs Cornelissen said that it would not be implemented as the desk was now needed to accommodate other staff. The Tribunal accepts that the Company did not move Mr Kalam to Y's desk. There was no evidence before the Tribunal that this decision related in any way to Mr Kalam's disability. After the initial decision to move Mr Kalam to Y's desk there was a restructure involving the customer service team moving to the middle floor. As a consequence, Y's desk was no longer available to be re-allocated to Mr Kalam. Further, the Tribunal did not accept that, in all the circumstances, the Company's decision not to move Mr Kalam to Y's desk had the effect of creating a hostile environment for him.
28. Mr Kalam's sixth allegation of harassment was that Mrs Cornelissen ignored his email of 16 September 2016 informing her that he was struggling with his new desk on the ground floor as it was cold and the floor was uneven. The Tribunal accepted Mrs Cornelissen's evidence, which was supported by the documentation, that she in fact she responded to Mr Kalam's email, as set out in paragraph 10 above. The Tribunal did not accept that, in all the circumstances, her conduct had the effect of creating a hostile environment for Mr Kalam.
29. In his seventh allegation, Mr Kalam said that on 22 September 2016 he had left work without signing out. Mrs Cornelissen was aware he was upset (after an altercation he had had with Mrs Brooks) but had sent an email highlighting his oversight in not signing out. She was aware that due to his disability he could often get quite emotional and instead of sympathising with him, she had chosen to highlight his error by sending this email to all staff.
30. Mrs Cornelissen did send an email to all the staff. The Tribunal accepts Mrs Cornelissen's evidence, which was consistent with the content of the email, that it was not sent in order to highlight Mr Kalam's error. It was sent because four or five people, including Mr Kalam, had not signed out and Mrs Cornelissen knew that this was becoming a regular occurrence and she needed to bring it to everybody's attention that they needed to sign out. The email did not in any way relate to Mr Kalam's disability. The Tribunal did not accept that it had the effect of creating a hostile environment for Mr Kalam.
31. Mr Kalam's eighth allegation was that on 22 September 2016, Mrs Cornelissen ignored Mr Kalam's emails and did not allow him to be involved in the decision-making on his desk allocation. The Tribunal was not entirely clear what this allegation related to. Mr Kalam sent Mrs Cornelissen an email on 22 September 2016. This was not ignored: Mrs Cornelissen responded to it the next day. She planned to meet him to discuss the issues he raised but he went off on sick leave. There was no evidence to indicate that her conduct related to Mr Kalam's disability. The Tribunal did not accept that her conduct had the effect of creating a hostile environment for him.
32. The Tribunal considered Mr Kalam's ninth and eleventh allegations together. The Tribunal took these allegations to relate to correspondence that Mrs

Cornelissen had with Mr Vincent, Mr Kalam's trade union representative, during Mr Kalam's sick leave. Mr Kalam alleged that on 4 and 27 October and 4 November 2016 Mrs Cornelissen put undue pressure on Mr Kalam to try to force him to attend a meeting with her, knowing that this was exacerbating his disability and causing him stress. Contrary to medical advice and despite receiving sick notes confirming he could not attend a meeting, she continued to press Mr Kalam and evaluated the sick notes to find loopholes to be obstructive towards him. She wrote to him again trying to force him to attend a welfare meeting in the knowledge that this was going to be detrimental to his health and she failed to refer him for an occupational health assessment despite numerous requests to do so. She was questioning, disbelieving and unnecessarily difficult towards Mr Kalam.

33. The background to these allegations was that on 23 September 2016 Mr Kalam went off work on sick leave with work-related stress. In a letter to Mrs Cornelissen on 30 September, Mr Vincent had alluded to "other concerns" that Mr Kalam had said he wanted to raise with him. Understandably, Mrs Cornelissen wanted to establish what these "other concerns" might be. She was aware that Mr Kalam had taken sick leave in 2014 for work-related stress and the Company had never managed to get to the bottom of what was causing him stress on that occasion. Mr Kalam did not make clear at this stage that the concerns he had arose from his relationship with Mrs Cornelissen herself. In her correspondence with Mr Vincent, Mrs Cornelissen was trying to find a way to discuss with Mr Kalam what his concerns were. She gave Mr Vincent the options of putting the issues in writing or for Mr Vincent to act as Mr Kalam's proxy in discussing his issues with her, but he did not take up those options.
34. Mrs Cornelissen was aware that Mr Kalam was feeling very stressed. As Mr Vincent explained in an email on 5 October 2016, Mr Kalam did not even feel well enough to speak to Mr Vincent at that stage. Mr Kalam's GP's fit note of 11 October said that Mr Kalam was "unable to go to workplace as this exacerbated stress symptoms" but did not make clear he should not have any form of contact with the Company. Mrs Cornelissen therefore proposed that Mr Kalam should come to a welfare meeting outside the workplace. A further fit note dated 11 November then made clear that Mr Kalam's health would be adversely affected by any contact at all with the Company.
35. Although the Tribunal accepted that there were good operational reasons for Mrs Cornelissen's wish to meet with Mr Kalam to discuss his concerns with him, she was aware of his mental state and the Tribunal accepted that in all the circumstances her continued attempts to meet with him created a hostile environment for him (although the Tribunal accepted that she had no intention of doing so).
36. The Tribunal then considered whether this conduct related to Mr Kalam's disability. The Tribunal asked the parties' representatives to assist with any appellate authority on how the Tribunal should assess whether conduct "relates to" disability. They suggested that, on the basis of Unite the Union v Nailard [2016] IRLR 906, conduct relates to disability if it is associated with disability. The Tribunal did not accept that Mrs Cornelissen's conduct was associated with Mr Kalam's disability. The conduct was associated with the Company's need to identify the "concerns" that might underlie his absence from work. Mr Kalam's sick leave was in turn associated with his disability, in that the stress he was experiencing arose at least in part from his perception that Mrs Cornelissen



was not taking his disability seriously in the way she was dealing with his desk location. As explained above, the Tribunal accepted that Mrs Cornelissen was in fact dealing with Mr Kalam's desk location in a reasonable and objective manner, and in a way that did not breach the Company's duty to make reasonable adjustments for Mr Kalam's disability. The Tribunal did not consider that the statutory definition of harassment is intended to cover any conduct that relates to something that in turns relates in some way to disability. The Tribunal considered that Mrs Cornelissen's conduct could best be described as happening in a context that included disability-related matters but did not itself relate to disability.

37. In any event, even if the Tribunal's interpretation and application of the statutory definition of harassment was wrong and Mrs Cornelissen's conduct did relate to disability, these allegations were presented several months outside the three-month time limit for presenting a claim to the Tribunal (Section 123 EqA). Mr Kalam's witness statement contained no evidence about the timing of his claim. The Tribunal invited him to give evidence on the issue. He provided no explanation as to why he did not bring his claim earlier. At the time of the relevant events, he was being robustly represented by his trade union. If he had wanted to bring a claim to the Tribunal about Mrs Cornelissen's actions at the time, there was nothing to prevent him doing so. The Tribunal could identify no grounds on which it would be just and equitable to allow a late claim.
38. Mr Kalam's tenth allegation related to an allegation that on 6 October 2016 Mrs Cornelissen was distrusting and dismissive and unnecessarily challenged Mr Kalam in relation to the draught he said he could feel at his desk and the uneven floor, by checking the floor with a spirit level and comparing Mr Kalam to non-disabled colleagues. Having heard Mrs Cornelissen's evidence, which it found credible, the Tribunal did not accept that Mrs Cornelissen was dismissive. She had a reasonable need to identify what the issues were with the desk that Mr Kalam had been allocated but he was saying was unsuitable. As she explained in a letter to Mr Vincent on 6 October 2016, although Mr Kalam had said he needed to avoid draughts from doors and windows, the desk he was saying he wanted was next to a door and close to a window that was often open. As Mr Kalam had said that the floor was uneven, Mrs Cornelissen checked the floor with a spirit level, aware as she was that the building had a history of subsidence. In all the circumstances, the Tribunal did not accept that any of this conduct had the effect of creating a hostile environment for Mr Kalam.
39. Allegation number 12 was that on 6 and 10 February 2017 Mrs Cornelissen unnecessarily criticised Mr Kalam for providing information to X about his disability. The Tribunal accepted that Mrs Cornelissen did criticise Mr Kalam for having provided so much information to X about his condition, but her criticism was justified and was not put in any way unreasonably. As Mr Kalam will have been aware, at his return to work meeting he had said that he did not want anybody to be told about his condition. He then proceeded to give X detailed information about his condition himself, when it would have been more appropriate for a manager to have managed the provision of that information. X felt guilty and awkward when Mr Kalam told her about his health needs, because they were so directly contrary to her own.
40. The Tribunal did not accept that Mrs Cornelissen's criticism of Mr Kalam related to his disability. It related to the fact that he was acting in a way that was

inconsistent with his own previous position that information about his condition should not be shared with anyone. It also related to Mrs Cornelissen's objectively justified belief that Mr Kalam was acting unfairly towards X in raising his needs in detail with her when she had her own health concerns to contend with. (Indeed, Mr Kalam's behaviour led to X feeling so embarrassed and guilty that she resigned from her job.)

41. Mr Kalam's thirteenth allegation of harassment was that on 6 February 2017 Mrs Cornelissen dismissed his need to stay warm by suggesting he wear a jumper instead of a coat in the office. He alleged that her actions were dismissive and belittled his disability. The Tribunal accepted that Mrs Cornelissen did make a comment to Mr Kalam that he might want to wear a jumper rather than a coat in the office, but she said this in a light-hearted fashion and explained she was suggesting this to him so that X would not feel so guilty about the effect on him of her having the office at a temperature her health condition required. The Tribunal did not accept that in all the circumstances Mrs Cornelissen's comment had the effect of creating a hostile environment for Mr Kalam.
42. Mr Kalam's fourteenth allegation of harassment was that on 9 February 2017 Mrs Cornelissen gave X's disability preferential treatment over Mr Kalam's disability by asking Mr Kalam to move so that X could stay in the room they had been sharing. The Tribunal did not accept that in all the circumstances this decision had the effect of creating a hostile environment for Mr Kalam. The reasons why X had to stay put and he had to move (which are set out in paragraph 13 above) had been explained to him. Mrs Cornelissen's decision was based on the practicalities of the situation. She was in no sense discounting Mr Kalam's disability or disbelieving the effect he was saying it had upon him.
43. The fifteenth harassment allegation was that on 10 February 2017 Mrs Cornelissen questioned Mr Kalam's proposed reasonable adjustments and rejected his requests for no justified reason and used his comments in relation to his disability as an obstacle to block his request for an adjustment and was difficult and obstructive towards him. The Tribunal assumed that this allegation related to the suggestions Mr Kalam made to enable him to remain in the office he had been sharing with X. He suggested that he should move his desk and change its orientation. He did not make clear to Mrs Cornelissen (or indeed the Tribunal) how that would address the medical concerns he said he had with the temperature in the office. He suggested that he could have the door and the window open and the radiator turned off but that was directly contrary to what he had previously said his needs were and the medical advice. The Tribunal did not accept that in all the circumstances Mrs Cornelissen's refusal to allow Mr Kalam to remain in the office he had been sharing with X had the effect of creating a hostile environment for him.
44. Mr Kalam's sixteenth allegation was that on 14 March 2017 Mrs Cornelissen unnecessarily questioned his requests and the genuineness of his requests and put X's needs above his own. This appears to be a duplication of other allegations upon which the Tribunal has already set out its findings. In summary, the Tribunal did not accept that Mrs Cornelissen was questioning Mr Kalam's needs or putting X's needs above his. She made an assessment of how best to accommodate both individuals' needs. The Tribunal did not accept

that in all the circumstances her decisions had the effect of creating a hostile environment for Mr Kalam.

45. The seventeenth allegation was that in May 2017 Mrs Cornelissen did not properly consider Mr Kalam's request to be moved from his current desk to a different location and unreasonably rejected his request. This allegation appeared to relate to Mr Kalam's request to use X's office temporarily when she was not there. The Tribunal accepted Mrs Cornelissen's evidence that she did in fact consider Mr Kalam's request and the Tribunal also accepted that she did not unreasonably reject it. Mr Kalam could not use the computer in that room unless and until access to it could be arranged by the Company's information technology staff. If the allegation in fact related to Mr Kalam's long-term reallocation to this office, the Tribunal accepted that Mrs Cornelissen was not prepared to agree to that because the office was needed for the use of managers who currently had no office space in which they could conduct confidential conversations. The Tribunal did not accept that in all the circumstances Mrs Cornelissen's conduct had the effect of creating a hostile environment for Mr Kalam.
46. Mr Kalam's eighteenth allegation of harassment related to the questions that Mrs Cornelissen put in her letter of 5 July 2017 referring Mr Kalam for an assessment by an occupational health physician, which he said demonstrated her distrust and disbelief in his assertions regarding his disability. Mr Kalam said he saw this question because he was shown it by the occupational health practitioner on 24 July 2017 at his assessment.
47. The question reads: *"Do we/should we have to just take Abul's word that he feels draught where he is currently located?"* The Tribunal accepts that Mrs Cornelissen was in fact doubting whether Mr Kalam was telling the truth when he said he was feeling cold at the volunteers' desk. In the light of its findings above in relation to the reasonable adjustments allegation relating to the volunteers' desk, the Tribunal accepted that there were grounds for Mrs Cornelissen to doubt Mr Kalam's word. He was not put at a substantial disadvantage by cold at the desk at which he was sitting. He wanted to return to the office he had shared with X, but that was not required in relation to any reasonable adjustment for his disability. In all the circumstances, the Tribunal did not accept that Mrs Cornelissen's question 10 had the effect of creating a hostile environment for Mr Kalam.
48. Further, the Tribunal did not accept that this question related to Mr Kalam's disability. Rather, the question related to Mr Kalam's credibility, albeit his credibility in relation to a matter that he asserted related to his disability. He had been unclear and inconsistent about what the issues were for him in relation to the desks at which he had been sitting. Mrs Cornelissen was understandably struggling to identify where the cold air he was complaining about was coming from.

#### **Allegations relating to the grievance**

49. Mr Kalam alleged that, in dealing with his grievance about the way in which he had been treated by Mrs Cornelissen, Mr Marquis had directly discriminated against him. That is, he alleged that, because of his disability, Mr Marquis had treated him less favourably than he would have treated others (Section 13

EqA). Mr Kalam also alleged that Mr Marquis's conduct amounted to harassment, that is, that it related to Mr Kalam's disability and had the purpose or effect of creating a hostile environment for him.

50. There were two aspects of Mr Marquis's handling of his grievance that were alleged to amount to one or other of these forms of discrimination. One was Mr Marquis's delay in providing the grievance outcome. During the course of the Hearing Mr Kalam clarified that this allegation related to the delay between the date of his grievance interview with Mr Marquis on 16 August 2017 and the date the outcome was given to him on 30 October 2017. The other allegation related to Mr Marquis's finding that there had been no bullying or discrimination by Mrs Cornelissen.
51. The uncontested facts were that Mr Marquis is a trustee of the Company, not an employee of it. The role is unpaid. He has a full-time job elsewhere. He interviewed Mr Kalam on 16 August 2017 and Mrs Cornelissen and Mrs Brooks on 23 August. From 24 August to 8 October ACAS was involved in the early conciliation process. Mr Marquis hoped that this might resolve the dispute between Mr Kalam and the Company, meaning that the grievance might be resolved also. In addition, Mr Marquis was on holiday for the first two weeks in September. When he came home, he found that his father was very seriously ill. He arranged for his father to move into his home so that he could be cared for. In the meantime, on 3 October Mr Vincent asked for the grievance outcome. On 4 October Mr Marquis told Mr Vincent that he thought he would be able to provide the outcome by the end of the month at the earliest but would keep him informed. Mr Marquis was under pressure at work. His father had become increasingly ill and on 21 October was admitted to hospital. Mr Marquis provided the grievance outcome on 30 October. On the following day his father died.
52. These facts give no indication that Mr Marquis's conduct in dealing with Mr Kalam's grievance related in any way to Mr Kalam's disability or that he treated Mr Kalam less favourably than he would have treated others because of his disability. In particular, there was no evidence to support Mr Kalam's assertion that Mr Marquis deliberately delayed providing the outcome because he knew this would exacerbate Mr Kalam's stress.
53. In his grievance outcome report Mr Marquis concluded that Mrs Cornelissen had not discriminated against or bullied Mr Kalam. This conclusion was based on his interpretation of the evidence. He believed that Mr Kalam had not been singled out by Mrs Cornelissen, he had not been treated differently to other people, there was no malice involved, and Mrs Cornelissen's actions were reasonable in trying to line manage Mr Kalam and his discontent with his desk. There was no evidence before the Tribunal that Mr Marquis reached this conclusion because of Mr Kalam's disability. The Tribunal did not accept that his conclusion related to Mr Kalam's disability, nor that in all the circumstances it had the effect of creating a hostile environment for Mr Kalam.
54. Far from Mr Marquis being dismissive of Mr Kalam's concerns, in the Tribunal's experience his recommendations were unusually strong. He recommended that the Chief Executive Officer (Mrs Cornelissen) should apologise to Mr Kalam for the tone of her correspondence with Mr Vincent and that Mr Kalam should be given the desk that he had been asking for (although in an addendum he noted

that Mr Kalam was now saying that this desk, which he had repeatedly asked for, might not be suitable for his needs).

**Conclusion**

55. For these reasons, Mr Kalam's allegations of harassment and direct discrimination by Mrs Cornelissen and Mr Marquis fail and are dismissed.

Employment Judge Cox

Dated: 20 August 2018

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