



EMPLOYMENT TRIBUNAL

BETWEEN

CLAIMANT

AND

RESPONDENT

Mr S. Hobbs

Senator Security South Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Held at: SOUTHAMPTON

**On Tuesday, the 4th September 2018,
Wednesday, the 5th September 2018 and
Monday, the 11th February 2019**

Employment Judge: Mr D. Harris

**Members: Mr K.J. Sleeth
Mr R. Spry-Shute**

Representation:

**For the Claimant: Mr J. Nicholson (SARC)
For the Respondent: Ms K. Moss (counsel), on the 4th and 5th September
2018 and Mr H. Robson (solicitor) on the 11th February
2019**

JUDGMENT

1. The Claimant's claims of disability discrimination under sections 15, 20 and 21 of the Equality Act 2010 are dismissed.

REASONS

The background

1. By his Claim Form presented to the Tribunal on the 16th February 2017 [see page 17 in the hearing bundle], the Claimant brought claims of unfair dismissal and disability discrimination under sections 15, 20 and 21 of the Equality Act 2010 against his former employer, the Respondent.
2. The basis of the claim of disability discrimination was set out as follows in the Claim Form:

I was employed by Senator Security South between 31/10/2016 to 21/12/2016, I was dismissed on grounds of my disability. The letter they sent confirming my dismissal from the company was due to my disability, confirmed that those were the reasons why.

On 21/12/2016, I attended a disciplinary meeting at the company for alleged harassment against Emma King the HR Manager. I sent two emails to her, which she complained as harassment against her. There was no harassing content in the emails – and this was repeated behaviour over 26 years with five other HR Managers in four other companies I worked for. I explained in the disciplinary meeting I am severely disabled, I am unaware consciously over how my disability affects me, and repeated the same process with other HR Managers and this was completely innocent behaviour. I was dismissed on the grounds of my disability because Emma King stated she could not work with me.

In the letter from Senator Security South, I was informed I was dismissed on grounds of my disability and they did not believe the emails were innocent. Due to my disability and other health matters at the time, I was placed on the Vulnerable Adults' List by Hampshire Police, in 2009. I remain on this register. I am considered by the police and the court to have this childlike innocence. I did list my disability on my Job Application form. I sent a sworn affidavit responding to this discrimination to Senator Security South, categorically denying their allegations.

I received further discrimination from Senator Security South on 20/1/2017, which included three further complaints from different employees. The first complaint is discrimination against me, because the complaint cannot be verified it is my word against the complainant. The second and third complaints are discrimination against me because they allege I lied on my application form about qualifications I have. The job was advertised with no qualification

requirements, and I was not asked about my academic qualifications in my interview. These complaints were not included in the first disciplinary meeting and seem tenuous to the initial complaint. HM Courts and Tribunal's Service are best placed to deal with this matter, because they have better knowledge than I do about my disability. I reported the three further complaints to Hampshire Police, and this information was scanned from my statement. The information is within the public domain.

3. In 'Grounds of Resistance' attached to the Respondent's Notice of Response, the Respondent denied the Claimant's allegations of disability discrimination. The following reasons were given for the denial of the claim:
 - 3.1 the Respondent contended that the Claimant was dismissed from his role as a Security Officer on the 21st December 2016 for gross misconduct;
 - 3.2 the Respondent contended that the Claimant's gross misconduct was "*inappropriate and unprofessional behaviour resulting in a loss of trust and confidence by the Respondent*";
 - 3.3 the Respondent denied that the Claimant had a disability within the meaning of section 6 of the Equality Act 2010;
 - 3.4 the Respondent accepted that the Claimant had informed the Respondent at the outset of his employment, in an Equal Opportunities Form, that he had dyspraxia;
 - 3.5 the Claimant sent two emails to an HR Manager, Emma King, on the 12th December 2016 and the 18th December 2016, which resulted in Emma King making a complaint to the Respondent about the Claimant's behaviour towards her;
 - 3.6 the Claimant was dismissed on the 21st December 2016 following a disciplinary meeting that took place that day regarding the content of the two emails that the Claimant had sent to Emma King;
 - 3.7 at the request of the Claimant, the Respondent conducted an appeal against the decision to dismiss the Claimant, which was held on the 1st February 2017;
 - 3.8 the Claimant did not attend the appeal hearing against his dismissal;
 - 3.9 the decision to dismiss the Claimant was reviewed in his absence on the 1st February 2017 and the decision to dismiss was upheld;
 - 3.10 the Respondent disputed that the Claimant was dismissed in consequence of the alleged disability;

- 3.11 in the event of a finding that the Claimant was dismissed in consequence of the alleged disability, the Respondent contends that the dismissal was justified as a proportionate response to a legitimate aim (i.e. ensuring that all staff members behave appropriately towards each other).
4. At a Preliminary Hearing that took place on the 14th July 2017, the Claimant was directed to provide further and better particulars of his claim of disability discrimination and an impact statement in relation to his alleged disability.
5. The Claimant subsequently filed and served further and better particulars of his claim and an impact statement [to be found at pages 36d to 36g in the hearing bundle].
6. The Claimant's further and better particulars in relation to his claim under section 15 of the Equality Act 2010 provided the following clarification:

The claimant believes his dismissal amounted to discrimination arising in consequence of his disability contrary to s15 of the 2010 Act.

He will give evidence that, from his perspective, the emails he sent were entirely innocent, innocuous, and reasonable in the circumstances. He feels that if 'neurotypicals' view this differently this clearly means his manner of communication is being affected by his dyspraxia.

He vigorously disputes that dismissal on the basis of his communication in the emails he sent was a proportionate means of achieving any legitimate aim.

He asserts that the respondent was, throughout, aware of his disability.

7. The Claimant's further and better particulars in relation to his claim under sections 20 and 21 of the Equality Act 2010 provided the following clarification:

In the alternative, or as necessary, he claims that the respondent was in breach of its duty under s20 of the 2010 Act to make reasonable adjustments, and that he was discriminated against as a result.

In relation to this claim, the claimant argues that the relevant "PCP" in his case was the arrangements made by the respondent for communicating in writing with management and colleagues.

He argues that the effect of his dyspraxia, inter alia, places him at a substantial disadvantage compared to people without dyspraxia. This is because of the delays and difficulties in processing and responding in writing which he experiences as a result of his dyspraxia.

He believes it would have been a reasonable adjustment to the respondent's "standard" process and procedure to not have obliged

him to respond in writing, and not to have dismissed him over his written communication.

8. At a further Preliminary Hearing on the 9th February 2018, it was held that the Claimant was, at the material time, disabled within the meaning of section 6 of the Equality Act 2010 by reason of suffering from dyspraxia. At the same hearing, the Claimant's claim of unfair dismissal was dismissed upon being withdrawn by the Claimant and case management directions were issued in preparation for the final hearing that was listed to be heard on the 4th and 5th September 2018.

9. On the 13th February 2018, the Respondent provided further and better particulars of its case on the issue of justification under section 15(1)(b) of the Equality Act 2010. The Respondent contended that the dismissal of the Claimant was a proportionate means of achieving a legitimate aim for the following reasons:
 - 9.1 the content of the Claimant's two emails to Emma King caused considerable anxiety and alarm to Emma King;
 - 9.2 the contents of the Claimant's emails did not, on their face, indicate any apparent difficulty on the part of the Claimant in communicating;
 - 9.3 if the content of the emails was related to an impairment, then it was proportionate and appropriate to dismiss the Claimant by virtue of the Claimant having demonstrated a tendency to engender anxiety, alarm and distress in the mind of a female colleague;
 - 9.4 the dismissal was proportionate because there was no role available for the Claimant without a requirement that he use appropriate language to communicate to colleagues;
 - 9.5 the Claimant's performance during his 6 weeks of employment had been poor and he faced a further investigation in relation to comments that he had allegedly made to female students in the course of his work at Solent University to the effect that the students were beautiful.

The evidence at the final hearing

10. The evidence heard and read by the Tribunal at the final hearing on the 4th and 5th September 2018 consisted of the following:
 - 10.1 oral evidence from the Claimant;
 - 10.2 oral evidence from Philippa Bowers (an Administration Manager employed by the Respondent);

- 10.3 oral evidence from Mellony Brown (the Respondent's Managing Director);
 - 10.4 an agreed 153-page hearing bundle;
 - 10.5 a 2-page printout from the website of the Dyspraxia Foundation setting out symptoms of dyspraxia;
 - 10.6 the Respondent's Employee Handbook.
11. The Tribunal also read and considered a chronology and suggested reading list and a skeleton argument from the Respondent.

The Claimant's evidence

12. The Claimant's undated impact statement and his witness statement dated the 24th August 2018 stood as his evidence-in-chief. He stated that he had informed the Respondent when he applied for the job of Security Officer that he had dyspraxia. He had done so by completing an Equal Opportunities Form. He stated that though he had said on the Equal Opportunities Form that he had high verbal communication skills, he had meant to say that he had high oral communication skills. He stated that he was not asked to give further details about his dyspraxia to the Respondent. He assumed that the Respondent would conduct its own research into the condition. He stated that it was difficult for him to express the impact that his dyspraxia has upon him because he has no experience to compare it to. He stated that he worked hard in his role as a Security Officer and that he had had a positive experience of communicating in writing with a fellow employee called Andi. In relation to the two emails that he had sent to Emma King that had resulted in his dismissal, the Claimant stated that he had written the emails at home using support software that helps him to communicate in writing. As to the content of the emails, he stated as follows:

This software helps phrase things for me, but potentially the way it works means that the software could pick out one meaning and emphasise that more than I really meant. With the emails to Emma King, what has been picked out might come across as involving a more personal aspect than I intended.

So the Tribunal can understand, it's a little bit like Google Translate or something like that. I try and put in what I want to say, and the software helps with 'translating' that into appropriate phrases. I think if the Tribunal reads the emails for themselves they can see that there is something slightly 'mechanical' about the phrasing.

However, regardless of how the emails were composed, due to my dyspraxia I didn't see anything 'wrong' with what I was saying. I was just trying to get to the same position I have with other previous employers – a good, professional, working relationship where everyone gets along.

13. The Claimant stated that he never intended to upset or worry Emma King with the emails that he sent to her.
14. The Claimant stated that he had wanted to appeal against the decision to dismiss him but he did not attend the appeal hearing because new allegations of misconduct had been raised against him, which he had no way of challenging.
15. The Claimant was cross-examined by Miss Moss for the Respondent. He accepted that he had been dismissed because of the two emails that had been sent to Emma King. He stated that one of the effects of his dyspraxia was that it was likely that he could communicate inappropriately with other people. He stated that he had good verbal communication skills. He stated that he used software to help him produce written documents and that the software can produce emails that appear unusual. He stated that he would be unable to see anything wrong with the emails produced by the software. He stated that he sees colours but not words. He stated that a symptom of his dyspraxia is synaesthesia. He stated that it had not dawned on him that the synaesthesia may be relevant to the case until reading the report from his General Practitioner dated the 25th August 2017 (to be found at page 120c in the hearing bundle). It was put to the Claimant that synaesthesia is not a symptom of dyspraxia to which the Claimant replied that his doctor had told him that it is a symptom of dyspraxia. The Claimant was asked about the relevance of synaesthesia to the emails that he had sent to Emma King to which he replied that the emails were produced by the software that he used. He stated that synaesthesia had an impact on the emails.
16. In relation to the two emails that had been sent to Emma King, the Claimant stated that he expresses things in a simple way. He stated he is a vulnerable adult and that there is a childlike innocence in the way that he expresses himself. He stated that he understood that the emails caused distress to Emma King. He denied that he was seeking a personal relationship with Emma King through the emails. He stated that he thinks that managers can be friends and that there can be banter with managers. He stated that he had had the best of intentions when sending the emails but the content was the product of the software. He was asked why he had not mentioned the software at the disciplinary meeting to which he replied that he had been extremely tired at the meeting. He had wanted to get the meeting over and done with. He said that he had felt that the questions he had been asked at the meeting were aggressive. He had thought the emails to Emma King were fine. Even now he cannot see anything wrong with the emails. He said that he does not have the ability to see what is wrong with the emails.
17. The Tribunal next heard oral evidence from Philippa Bowers. Her undated witness statement stood as her evidence-in-chief. She was the person who had dealt with the disciplinary hearing on the 21st December 2016. On the basis of the discussion that took place at the disciplinary hearing, the decision was taken to dismiss the Claimant. Ms Bowers took the view that there was nothing in the

information available to her to indicate that the Claimant's dyspraxia affected his ability to communicate or otherwise explained the content of the emails that had upset Ms King. Ms Bowers was also concerned that the Claimant appeared to show no remorse for having upset Ms King.

18. Ms Bowers was cross-examined by Mr Nicholson for the Claimant. She stated that she had had no experience of working with someone with dyspraxia before. She had heard of dyspraxia and she had done some research on the internet, which had indicated that there were a broad range of symptoms, including clumsiness. She stated that she had taken the view that the emails sent to Ms King amounted to gross misconduct. She denied being aggressive to the Claimant during the disciplinary hearing. She stated that the Claimant had been asked whether he wanted to reconvene the meeting at a later date but he had said that he wanted the meeting to continue on the 21st December 2016. She stated that the Claimant's position about the emails was to say that it was something that he had always done with HR Managers. She stated that the Claimant did not apologise for the emails and he said that he could not see anything wrong with them. She stated that the Claimant, when applying for the job, had said that his dyspraxia affected his memory and that he would be assisted if he were to be provided with a notepad. Ms Bowers said that she treated the Claimant's account of his dyspraxia on the Equal Opportunities Form as a reliable account as to how the Claimant was affected by his dyspraxia.

19. Mellony Brown was the next person to give oral evidence. Her undated witness statement stood as her evidence-in-chief. Ms Brown gave background evidence about the Respondent's organisation and the Claimant's application for the job of Security Officer. She stated that her initial reaction to the two emails that had been sent by the Claimant to Ms King was that they were entirely inappropriate and very odd. She stated that Ms King had been very upset by the emails. She had broken down in tears and had refused to leave work in the dark. She was advised by Ms Brown to contact the police regarding the emails. Ms Brown decided that a disciplinary hearing was necessary in respect of the emails and that Ms Bowers should conduct the disciplinary hearing. Following the decision to dismiss the Claimant, a further complaint was received about him regarding inappropriate behaviour towards female students and there was an allegation that he had lied in his interview for the job about his educational qualifications. Ms Brown received an affidavit from the Claimant dated the 10th January 2017 [to be found at page 101 in the hearing bundle], which she did not know what to make of. Ms Brown dealt with the Claimant's appeal against the decision to dismiss him. The Claimant did not attend the appeal though he provided Ms Brown with a number of documents in support of his appeal, which were summarised by Ms Brown in her witness statement. At the hearing of the appeal, Ms Brown's decision was to uphold the decision to dismiss the Claimant. By that stage, Ms Brown had a number of concerns about the Claimant. She had concerns about his honesty and about his conduct towards Ms King.

20. Ms Brown was cross-examined by Mr Nicholson for the Claimant. She stated that she had previously known nothing about dyspraxia. She stated that she had looked it up on the internet when considering the Claimant's appeal against his dismissal. She stated that it was her view that the emails that the Claimant had sent to Ms King were out of order. She stated that she had offered the Claimant a fair appeal process but he had declined to attend the appeal. She stated that she had reviewed all the available documents during the appeal and had had a discussion with Ms King about the emails. She said that the second email had had a devastating effect upon Ms King. Ms Brown stated that the Claimant appeared to be a clear communicator at work. Everything appeared fine in his written communications, apart from the two emails that he had sent to Ms King. On the basis of the information before her at the appeal, she was unable to see a link between dyspraxia and the content of the emails that the Claimant had sent to Ms King. She felt that the Claimant was not being honest in linking the dyspraxia to the content of the emails. Of all the emails that had been sent by the Claimant to the Respondent, it was only the two emails to Ms King that were out of place.
21. The hearing bundle contained the following evidence concerning the Claimant's state of health:
- 21.1 extracts from a diagnostic report by David Grant, Chartered Psychologist, dated the 16th June 2010;
- 21.2 a psychiatric report by Dr Lachlan B. Campbell, Consultant Forensic Neuropsychiatrist, dated the 16th June 2017;
- 21.3 a short report by the Claimant's General Practitioner dated the 25th August 2017.
22. The diagnostic report by David Grant gave the following summary of his findings based upon his assessment dated the 16th June 2017:

[The Claimant] is just over half way through the part-time Open University Level 1 unit, AA100 Arts Past and Present. On completing this in September [the Claimant] will proceed to a part-time Open University BA (Hons) in English Language and Literature. [The Claimant] was first diagnosed as being dyspraxic when he was seven. He has been treated for mental health issues since 2003 and suffered from depression for most of his life. There is a history of both clumsiness and attentional difficulties.

During the current diagnosis [the Claimant] was assessed using 12 subtests from the Wechsler Adult Intelligence Scales – Third Edition. As there is significant variation between the twelve subtest figures, the three global measures of IQ (Fullscale, Verbal and Performance IQ) were not calculated. A comparison of the four Index scores of Verbal Comprehension, Working Memory, Perceptual Organisation

and Processing Speed revealed a significantly higher figure for Verbal Comprehension than the other three Indexes.

Whereas [the Claimant's] Index figure for Verbal Comprehension places him within the top 3% of the UK population, his figures for Working Memory, Perceptual Organisation and Processing Speed put him in the bottom 37%, top 42% and bottom 14% respectively. [The Claimant's] implicit memory processing capacity is weak (10th percentile), as is his short-term visual memory (5th percentile).

[The Claimant's] level of reading accuracy (58th percentile), but not his Spelling (79th percentile), is a little lower than expected. His speed of reading-for-comprehension, even when his visual stress is controlled for, is still quite slow (20th percentile). [The Claimant's] grapho-motor speed is very slow (5th percentile).

[The Claimant] identified 6 of the 9 Inattention DSM-IV AD(H)D checklist statements as applying fully to him, with another 2 applying 'sometimes'. However, he said just 1 of the 6 Hyperactivity/3 Impulsivity items applied fully.

The evidence is consistent with that required for a diagnosis of Specific Learning Difficulties (Dyspraxia and ADHD – primarily of the inattentive kind). There are also signs of dyslexia. The degree of the associated neurocognitive weaknesses is moderate to severe. A strong visualisation ability is present as well as synaesthesia, which, at times, gives rise to sensory overload.

23. From the face of his report, it appears that Dr Campbell's psychiatric report had been prepared for the purposes of a claim for compensation by the Claimant to the Criminal Injuries Compensation Authority. The purpose of the report was to consider whether the Claimant had sustained a brain injury and/or psychiatric injury as a result of an assault that had occurred on the 24th October 2015 whilst the Claimant was working as a Security Guard at the Royal Bournemouth Hospital.

24. Dr Campbell reported that the Claimant had been punched to the left side of his temple. Some two days later, he consulted his General Practitioner who diagnosed concussion. He was referred for a neurological opinion on the 4th March 2016 and he was seen by a Specialist Registrar in Neurology on the 12th July 2016. The Registrar recorded that following the assault, the Claimant had experienced no loss of consciousness but had experienced a persistent headache, blurred vision, nausea, a patchy memory loss and right-sided weakness with an ipsilateral pins and needles sensation. CT brain imaging was normal and MRI brain imaging in October 2016 revealed no abnormalities. Dr Campbell reported that since the assault, the Claimant had experienced a persistent headache, dizziness, a memory impairment, difficulty in concentrating, a right-sided weakness and altered sensation.

25. Dr Campbell gave a brief summary of the Claimant's relevant pre-assault medical conditions. He stated that the Claimant had developed a mild ataxia in 1981 and clumsiness in April 1987. In May 1992 the Claimant had sustained a dislocated right patella, which subsequently impaired his mobility. In October 2009, the possibility of an underlying neurological problem was raised. In July 2016 a diagnosis of a functional neurological disorder was made, which was attributed to the assault in October 2015 and which persisted for some 18 months.
26. On the basis of his assessment of the Claimant and his review of the relevant medical records, it was Dr Campbell's opinion that the assault in October 2015 resulted in a minor head injury, which caused a concussion, headaches and an impairment of balance that persisted for more than 28 weeks but not permanent symptoms.
27. In relation to psychological trauma resulting from the assault, Dr Campbell reported that the Claimant had developed a heightened state of anxiety, particularly when out of doors, a fear of further attack and emotionally distressing flashbacks. The Tribunal was surprised to note that the Claimant's treating therapist had advised the Claimant to expose himself to anxiety provoking triggers, which was why he had applied for the job with the Respondent.
28. Dr Campbell noted that the Claimant had a significant history of adverse psychological symptoms that had emerged from adolescence. He reported that the medical records showed that the Claimant had suffered from post-traumatic stress disorder both before and after the index assault. The symptoms of the post-assault post-traumatic stress disorder persisted for some 12 months in the opinion of Dr Campbell. It follows that the symptoms of the post-traumatic stress disorder had receded, or had substantially receded, by the time that the Claimant took up his employment with the Respondent.
29. In the concluding passages of his report, Dr Campbell made the following assessment of the Claimant's mental capacity (as of June 2017):

Management of financial affairs

At the present time, [the Claimant] manages his own day-to-day financial transactions and as far as is known, this has not resulted in indebtedness. In his present mental condition, he would not be at substantial risk of personal financial mismanagement. Consequently, at present [the Claimant] possesses the necessary mental capacity to manage his own personal financial affairs.

Capacity to accept or reject a compensation offer from the CICA

[The Claimant's] likely level of compensation is not known. In his present mental condition, [the Claimant] would remain capable of absorbing and retaining relevant financial information, remain capable of weighing his options in the balance (ideally with assistance

from an independent advisor) and capable of expressing his decision in the English language. Consequently, he would be capable of understanding and then accepting or rejecting any offer of compensation, although out of an excess of caution it would be desirable for him to receive independent advice.

30. The report from the Claimant's General Practitioner, Dr Rosalind Simpson, dated the 25th August 2017 was obtained by the Claimant for the purposes of these proceedings. Dr Simpson stated:

This is a letter reporting on the medical and mental health of [the Claimant] as an extraction from notes and my personal experience of the patient.

- 1. Does the patient have any physical or psychological impairment?**

[The Claimant] has a number of impairments:-

- (i) He has a very long history of depression, anxiety and attempts at self-harm in the past. He has been diagnosed as "depression and borderline personality disorder" and this is an ongoing problem that needs to be controlled with medication.**

Diagnosis in record: 15.11.2005

- (ii) [The Claimant] had always been a clumsy child with difficulty learning at school and college and has had a full dyslexia and ADHD assessment done on the 16.06.2010 when he was taking part in an Open University course. The result of this assessment suggested that he has a diagnosis of specific learning difficulties, dyspraxia and ADHD of the inattentive kind with some signs of dyslexia. The report goes on to say that the degree of the associated neurocognitive weaknesses is moderate to severe, a strong visualisation ability is present as well as synaesthesia which at times gives rise to sensory overload.**

As you can see from this, this is a lifelong psychological difficulty that has made coping with new situations and challenging situations quite difficult and should be born in mind.

- (iii) [The Claimant] had a cholecystectomy in 2011.**

- (iv) He had a head injury in November 2016 and the scan done at that time did show some possible prior damage which wasn't in any way explained but was thought to be longstanding. I don't know the implications of this but he has since that time had which was not explained at the time of the injury as the CT scan was normal and was thought to be functional. The head injury had caused some degree of concussion. Weakness on the right side and some sensory problems.**

- 2. Is the impairment long-term?**

Yes. The impairment seems to be long-term.

3. **Does the impairment have a substantial effect on the patient's ability to do ordinary day to day activities which someone without the impairment would be able to do without the need for such help?**

Yes. This is of variable degree depending on the sensory overload at that time but I have observed that these cognitive problems do affect his ability to communicate reason and respond. The overall impairment of mental and physical health problems do have a substantial effect on his ability to do ordinary day to day activities mainly in the ability to communicate reason and make decisions that run normal relationships.

The Respondent's submissions

31. Miss Moss began her submissions by reminding the Tribunal about the burden of proof in the light of the Court of Appeal's decision in the case of *Ayodele v. Citylink Limited* [2017] EWCA Civ 1913. The proposition that Miss Moss derived from the case is that it is for the Claimant to prove a prima facie objective link between the "something" (namely, the reason for the dismissal, which was the tone and content of the Claimant's two emails to Ms King and his lack of acknowledgment of their inappropriate nature) and his dyspraxia (being the disability relied upon by the Claimant in his claim of disability discrimination).
32. Miss Moss submitted that none of the medical evidence in the case established, or was capable of establishing, a link of any kind between the inappropriate emails that the Claimant had sent to Ms King and his dyspraxia.
33. Miss Moss submitted that the Claimant's evidence regarding synaesthesia did not provide the link between the emails and the disability relied upon. He had stated in his evidence that the synaesthesia was a symptom of his dyspraxia but there was no medical evidence to that effect. The case that the Respondent was responding to was based on the Claimant's disability of dyspraxia, not synaesthesia or the other medical issues mentioned in the medical evidence in the hearing bundle. The Claimant has only ever pursued the claim as a case based on dyspraxia.
34. On the issue of the Respondent's knowledge of the Claimant's disability, Miss Moss submitted that the Respondent was fixed with knowledge of the Claimant's dyspraxia but not knowledge of synaesthesia or any of the other medical issues mentioned in the medical evidence in the hearing bundle. It is not open to the Tribunal, Miss Moss submitted, to find that the Respondent had constructive knowledge of other disabilities now being mentioned by Claimant. Though fixed with knowledge of the Claimant's dyspraxia, there is no evidence before the Tribunal to support a case that the Respondent ought reasonably to have known

that the Claimant's dyspraxia might cause him to communicate in an inappropriate manner. On the evidence before the Tribunal, dyspraxia does not make it more likely that a person might send inappropriate emails or result in an inability to understand the content of emails. There is no evidence to support the Claimant's case that his dyspraxia caused the lack of understanding on his part about the inappropriateness of the emails. There is nothing beyond bare assertion by the Claimant to support his case that there is a link between the sending of the inappropriate emails and his dyspraxia.

35. In relation to the Claimant's evidence that the software was to blame for the content of the emails, Miss Moss submitted that there was no evidence, other than bald assertion by the Claimant, to that effect. There was no evidence about what type of software the Claimant used or how it might have produced the inappropriate emails that were sent to Ms King. It is not clear on the evidence, why a software programme, which translate words into over-familiar words, would help with dyspraxia. There is also no evidence as to what the Claimant inputted into the software programme that might have resulted in the content of the emails that were sent to Ms King. The Claimant has not said what he intended to say to Ms King. There has also been no explanation as to how the software might have changed the meaning intended by the Claimant. Evidence could have been produced by the Claimant about the software programme but he has not done so. It is also noteworthy, according to Miss Moss, that the Claimant did not mention his software programme when questioned about the emails at the disciplinary hearing. He did not even suggest it was a software problem in his further and better particulars. It is mentioned in the Claimant's witness statement for the first time but no explanation is given as to how the software works or how it could produce inappropriate content.
36. Miss Moss submitted that it is significant that even at this late stage, the Claimant continues to say that he does not understand that there is any problem with the emails. He does not say that the content of the emails is not what he intended to write.
37. Lastly, in relation to the claim under section 15 of the Equality Act 2010, Miss Moss submitted that the Respondent has a good defence under section 15(1)(b) of the Act. The Respondent's requirement that the communication skills of its Security Officers are good is a legitimate aim. Taking into account Ms King's reaction to the emails and the fact that the Claimant had not offered an apology and had maintained that he could see nothing wrong with the emails, his dismissal was a proportionate means of achieving a legitimate aim.
38. In relation to the claim under sections 20 and 21 of the Equality Act 2010, Miss Moss submitted that the Claimant was not put at a substantial disadvantage by the requirement that his communications were appropriate. It was further submitted that it was not reasonable for the Respondent to have taken the steps contended for by the Claimant (namely, not requiring him to communicate in

writing and not dismissing him) in his claim under sections 20 and 21 of the Act. It was also submitted that the Respondent had no knowledge, actual or constructive, that the requirement that the Claimant's written communications be appropriate would put the Claimant at a substantial disadvantage.

The Claimant's submissions

39. Mr Nicholson submitted that the label of the Claimant's condition should not be the focus of the claim. Section 6 of the Equality Act 2010 speaks of an impairment. The definition of an impairment is not fixed to a diagnosis of a particular condition. The Claimant's case is that he has global neurological problems, which are not easy to differentiate from dyspraxia. He has difficulty in processing sensory information, which is a classic symptom of dyspraxia. It is those processing difficulties that amount to the disabling impairment. This is a case of global neurological impairment. On the evidence, the Tribunal is entitled to find that there is a link between this impairment and the content of the emails that resulted in his dismissal. Relying on paragraph 47 in the judgment in the case of *City of York Council v. Grosset* [2018] EWCA Civ 1105, this was a case in which the Respondent should have looked into the Claimant's medical condition more carefully than it did before taking the action of dismissing him. There was no real attempt by the Respondent to investigate the effects of the disability about which the Respondent had knowledge. The Claimant's case is that his dismissal was grossly disproportionate. Other options such as training or mediation should have been considered by the Respondent.
40. Mr Nicholson submitted that the claim under section 15 of the Equality Act 2010 is the essence of the case. The disability relied upon is dyspraxia but Mr Nicholson urged the Tribunal not to get caught up in the medical language of the condition. Mr Nicholson submitted that the evidence of the Claimant's impairment enabled the Tribunal to conclude that there was a link between the sending of the emails and the Claimant's disability.
41. In relation to the claim under sections 20 and 21 of the Equality Act 2010, Mr Nicholson submitted that the Claimant, because of his dyspraxia, was placed at a substantial disadvantage by the requirement that he communicate in writing. A reasonable adjustment for the Claimant would have been face-to-face communication rather than requiring him to communicate in writing.

The Tribunal's findings of fact

42. The Tribunal made the following findings of fact:
 - 42.1 On the 20th October 2016, the Claimant applied to the Respondent for the job of Security Officer.

42.2 In an Equal Opportunities Monitoring Form submitted with his job application, the Claimant stated:

Do you consider yourself to have a disability: Yes
If yes, please state nature of disability:
Dyspraxia: cognitive impairment in terms of memory, but a verbal comprehension that puts me in top 2% of population.

In the same form, the Claimant stated that he had no health/medical problems or physical limitations that might affect his ability to undertake the job of Security Officer and that he did not need any special adjustments to be made to the job or any aids/adaptations to assist him at work.

43.3 It follows that the Claimant did not inform the Respondent, in his job application, of any of the medical issues mentioned in the reports by David Grant, Dr Campbell or his General Practitioner other than dyspraxia.

42.4 The Claimant was interviewed for the job by Ms Emma King. Her notes of the interview were to be found at page 43 in the hearing bundle. The Tribunal accepted the note as a reliable record of the interview. The Claimant informed Ms King that he had had cancer in 2009 and had had 2 years of chemotherapy. Ms King noted that the Claimant had a good understanding of security roles and appeared to have good communication skills. There was no discussion of the Claimant's dyspraxia at the interview. Further, the Claimant did not raise any of the health issues mentioned by David Grant, Dr Campbell and his General Practitioner in their respective reports.

42.5 The Claimant was successful in his application for the job of Security Officer with the Respondent and he commenced work on the 31st October 2016.

42.6 In the course of his work as a Security Officer, the Claimant regularly sent emails to the Respondent and completed written reports. The hearing bundle contained emails that the Claimant had sent to the Respondent on the 22nd November 2016 (4 emails sent that day), the 24th November 2016 (7 emails sent that day), the 25th November 2016 and the 26th November 2016. The Tribunal was also provided with a copy of a written report that the Claimant had submitted to the Respondent on the 24th November 2016. There was nothing unusual or inappropriate in those emails or that report.

42.7 On the 28th November 2016, Ms Emma King sent a letter to all of the Respondent's Security Officers, including the Claimant, to notify them that there had been three complaints about the Respondent's Security Officers (no names being mentioned) and reminding the Security

Officers of what was expected of them whilst working at the premises of Solent University.

- 42.8 On the 12th December 2016, at 3.17 in the morning, the Claimant sent the following email to Ms King:

Dear Emma,
thank you for the letter you sent everyone, and me seeing how happy you were with me when I offered to help you bring in the sandwiches and wraps during the First Aid Course. I wanted to say that the letter you wrote was very good, strong management. I would also like to maintain the happiness I saw, by offering to become a friend to you. It would be easier to maintain your happiness, that I saw, by showing that I will become a loyal committed worker, who will not add to your stress in a very stressful job.
I would like to keep this between us, Mel will give me work, and Pippa will roster me on duty, but I will keep my head down and work hard so when we do see each other in the Office, you will stay just as happy as the last time I saw you. I hope that makes sense, and simple and uncomplicated friendship is the best way I can maintain your happiness. This is the best I can do, to ensure that moment doesn't change. Please keep this to yourself, and always feel you have absolute autonomy to do what you have to do as my manager, with no hard feelings from me.
Kind regards,
Simon

- 42.9 On the 14th December 2016, the Claimant signed a training record form to confirm that he had received and understood a number of written documents provided by the Respondent as part of his induction training.

- 42.10 On the 18th December 2016, the Claimant sent the following email to Ms King at 8.03 in the morning:

Dear Emma,
so many more thank yous actually. Thank you allowing me to complete my induction paper work; thank you for the Data Protection – and going through the annual leave policy. I will be working very hard to maintain your happiness, but on occasion I will need time off work, I will give plenty of notice. This email is the last of this nature, but please keep it to yourself.
Thank you for sealing our friendship, giving me very clear objectives at the Halls and setting me simple and uncomplicated boundaries to respect with you. I did

previously sate I respected your very good, strong management, but know you can at least feel respected with me doing exactly what needs to be done; but I did tell Keith I would not mention the conversation we had again. Unless you or Mel mention it again: but there will be no need to mention it again, when I do exactly what you want me to do. New year new start ... at Halls.

I do have an enhanced disclosure from January 2016 you can have, and through committed, loyal, reliable and consistent hard work, these objectives and goals you want me to meet will be met. Over time you could trust me as much as I can clearly trust you now. But that is an undetermined timescale, for which you could have a clear idea now how long you think this will take. Simple and uncomplicated friendship is simply that, expectation free.

As most of the guards at NOC and Senator will tell you I am really easy to work with, and have a wicked sense of humour. So if you want to develop a rapport with me, expect lots of fun, happiness and laughter. By the way, just how you made me feel on Wednesday, when I worked out after a little while, talking to Keith, is enough for me, respected of course. I know we could have as strong a friendship as Keith and I share, just that knowledge is enough to keep my head down, and work really hard to maintain your happiness. This email is the last from of this nature, enjoy a good happy Christmas and New Year, and I will wait and see what happens when I show you I will do what you want me to.

Kind regards,
Simon

- 42.11 Though the Tribunal did not hear from Ms King, the Tribunal accepted the evidence from Ms Brown that Ms King had been made very upset and anxious to receive the two emails from the Claimant that are set out above. The Tribunal was also satisfied that the content of the emails that the Claimant had sent to Ms King was over-familiar and inappropriate.
- 42.12 On the 19th December 2016, Ms King made a formal complaint to the Respondent about the Claimant's emails to her.
- 42.13 Upon hearing about the emails that the Claimant had sent to Ms King, Ms Brown made arrangements for a disciplinary hearing. On the 20th December 2016, Ms Bowers sent the Claimant a request that he attend the disciplinary meeting on the 21st December 2016 at 10.30 in the morning. It was made clear to the Claimant that the purpose of the disciplinary hearing was to discuss the two emails that the Claimant had sent to Ms King.

42.14 The disciplinary hearing was held on the 21st December 2016. The Tribunal found that the note of the hearing at page 88 of the hearing bundle was accurate and reliable. The Tribunal did not accept the Claimant's assertion that he was questioned aggressively. The Claimant gave the following explanation for the emails:

[The Claimant] proceeded to say the nature of the complaint was something he had always done and did not understand why this was a complaint. I asked [the Claimant] what he meant by always done. He went on to say with every job he has had, he always approached his HR managers in this nature, and listed each company and the full names of the HR managers he's had in the last 26 years of working. 5 HR Managers in total. [The Claimant] went on to say friendship was a natural progression from the emails or in some cases letters in previous jobs after and initial conversation with the HR managers about this and no offence was taken to this.

Martin asked why he would request these emails to stay between himself and Emma, which [the Claimant] found difficult to answer.

[The Claimant] on a few occasions tried to digress onto other situations not related to this, I reminded [the Claimant] on these occasions of the complaint in hand and its nature. [The Claimant]s said it was not harassment and just wanted friendship and added his Dyspraxia could be the reason he acts like this, advising a childlike innocence is an affect of Dyspraxia. I referred to [the Claimant's] application form as he stated his dyspraxia caused him slight memory loss on occasions but no other affects were stated on his application form. [The Claimant] then proceeded to say there were elements of his dyspraxia he wasn't sure of and he said he was learning all the time about the way it affects him and receiving a head injuring may have exasperated his condition. Martin advised all medical conditions should be known to Management so we can help and support our staff as we do with Martin as he suffers from type 2 Diabetes and he keeps us updated of affects regularly. Martin expressed to [the Claimant] how important this is. [The Claimant] also added he was on the vulnerable adults list which was also new information to [the Respondent].

...

[The Claimant] then said he was tired. I offered to adjourn and reconvene a meeting at a later date. [The Claimant] declined this offer and was happy to proceed.

42.15 At the conclusion of the disciplinary meeting, the Claimant was dismissed for gross misconduct. A letter setting out the reason for the dismissal was subsequently sent to the Claimant (to be found at page 90 of the hearing bundle). The Respondent had taken the view that

the emails sent by the Claimant to Ms King amounted to gross misconduct.

- 42.16 On the 23rd December 2016, the Claimant sent an email to the Respondent stating that he did not intend to appeal the decision to dismiss him. He stated that it is clear that *“the head injury I sustained after being assaulted at work on 22/11/2015 with Allied Facilities has exacerbated how my dyspraxia affects me”*. Later on that day, the Claimant sent a further email to the Respondent, which was treated by the Respondent as notice of the Claimant’s intention to appeal the decision to dismiss him (to be found at page 99 in the hearing bundle).
- 42.17 On the 18th January 2017, Ms Brown sent notice of the appeal hearing to the Claimant. Ms Brown also informed the Claimant that further complaints about his conduct had been received by the Respondent. The Claimant sent correspondence to Ms Brown regarding his appeal but did not attend the appeal on the 1st February 2017. On the 2nd February 2017, Ms Brown wrote to the Claimant to say that she considered his appeal and that her decision was to uphold the decision to dismiss him.
43. The Tribunal’s findings in respect of the Claimant’s health were as follows:
- 43.1 On the 15th November 2005 the Claimant had been diagnosed with depression and borderline personality disorder.
- 43.2 The assessment undertaken by David Grant in 2010 led to diagnoses of specific learning difficulties, dyspraxia, ADHD of the inattentive kind with some signs of dyslexia, moderate to severe neurocognitive weaknesses and synaesthesia, which at times can give rise to sensory overload.
- 43.3 As a result of an assault that occurred on the 24th October 2015, the Claimant sustained a minor head injury that caused concussion, headaches and an impairment of balance (attributable to an acquired functional neurological disorder) for a period of approximately 12 months and he also developed symptoms of post-traumatic stress disorder that persisted for some 12 months.
- 43.4 In respect of the Claimant’s dyspraxia, the Tribunal found that the common symptoms of the condition were those identified by the Dyspraxia Foundation in the 2-page document produced by the Claimant at the final hearing. The symptoms are as follows:

Gross motor co-ordination skills (large movements):

- **Poor balance. Difficulty in riding a bicycle, going up and down hills.**
- **Poor posture and fatigue. Difficulty in standing for a long time as a result of weak muscle tone. Floppy,**

unstable round the joints. Some people with dyspraxia may have flat feet.

- Poor integration of the two sides of the body. Difficulty with some sports involving jumping and cycling.
- Poor hand-eye co-ordination. Difficulty with team sports especially those which involve catching a ball and batting. Difficulties with driving a car.
- Lack of rhythm when dancing, doing aerobics.
- Clumsy gait and movement. Difficulty changing direction, stopping and starting actions.
- Exaggerated 'accessory movements' such as flapping arms when running.
- Tendency to fall, trip, bump into things and people

Fine motor co-ordination skills (small movements):

- Lack of manual dexterity. Poor at two-handed tasks, causing problems with using cutlery, cleaning, cooking, ironing, craft work, playing musical instruments.
- Poor manipulative skills. Difficulty with typing, handwriting and drawing. May have a poor pen grip, press too hard when writing and have difficulty when writing along a line.
- Inadequate grasp. Difficulty using tools and domestic implements, locks and keys.
- Difficulty with dressing and grooming activities, such as putting on makeup, shaving, doing hair, fastening clothes and tying shoelaces.

Poorly established hand dominance:

- May use either hand for different tasks at different times.

Speech and language

- May talk continuously and repeat themselves. Some people with dyspraxia have difficulty with organising the content and sequence of their language.
- May have unclear speech and be unable to pronounce some words.
- Speech may have uncontrolled pitch, volume and rate.

Eye movements

- Tracking. Difficulty in following a moving object smoothly with eyes without moving head excessively. Tendency to lose the place while reading.
- Poor relocating. Cannot look quickly and effectively from one object to another (for example, looking from a TV to a magazine).

Perception (interpretation of the different senses):

- Poor visual perception.

- Over-sensitive to light.
- Difficulty in distinguishing sounds from background noise. Tendency to be over-sensitive to noise.
- Over- or under-sensitive to touch. Can result in dislike of being touched and/or aversion to over-loose or tight clothing – tactile defensiveness.
- Over- or under-sensitive to smell and taste, temperature and pain.
- Lack of awareness of body position in space and spatial relationships. Can result in bumping into and tripping over things and people, dropping and spilling things.
- Little sense of time, speed, distance or weight. Leading to difficulties driving, cooking.
- Inadequate sense of direction. Difficulty distinguishing right from left means map reading skills are poor.

Learning, thought and memory:

- Difficulty in planning and organising thought.
- Poor memory, especially short-term memory. May forget and lose things.
- Unfocused and erratic. Can be messy and cluttered.
- Poor sequencing causes problems with maths, reading and spelling and writing reports at work.
- Accuracy problems. Difficulty with copying sounds, writing, movements and proofreading.
- Difficulty in following instructions, especially more than one at a time.
- Difficulty with concentration. May be easily distracted.
- May do only one thing at a time properly, though may try to do many things at once.
- Slow to finish a task. May daydream and wander about aimlessly.

Emotion and behaviour

- Difficulty in listening to people, especially in large groups. Can be tactless, interrupt frequently. Problems with teamwork.
- Difficulty in picking up non-verbal signals or in judging tone or pitch of voice in themselves and or others. Tendency to take things literally. May listen but not understand.
- Slow to adapt to new or unpredictable situations. Sometimes avoids them altogether.
- Impulsive. Tendency to be easily frustrated, wanting immediate gratification.
- Tendency to be erratic and have 'good and bad days'.
- Tendency to opt out of things that are too difficult.

Emotions as a result of difficulties experienced:

- Tend to get stressed, depressed and anxious easily.
- May have difficulty sleeping.
- Prone to low self-esteem, emotional outbursts, phobias, fears, obsessions, compulsions and addictive behaviour.

43.5 Other than knowledge of his dyspraxia, the Respondent had no knowledge, actual or constructive, of the Claimant's other health issues mentioned in the reports produced by David Grant, Dr Campbell and the Claimant's General Practitioner.

The law

44. The Tribunal reminded itself of the provisions of sections 15, 20, 21 and 136 of the Equality Act 2010.

15 Discrimination arising from disability

- (1) **A person (A) discriminates against a disabled person (B) if-**
 - (a) **A treats B unfavourably because of something arising in consequence of B's disability, and**
 - (b) **A cannot show that the treatment is a proportionate means of achieving a legitimate aim.**
- (2) **Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.**

20 Duty to make adjustments

- (1) **Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.**
- (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.**

21 Failure to comply with duty

- (1) **A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.**
- (2) **A discriminates against a disabled person if A fails to comply with that duty in relation to that person.**

136 Burden of proof

- (1) **This section applies to any proceedings relating to a contravention of this Act.**

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

...

(6) A reference to the court includes a reference to-
(a) an employment tribunal;

...

45. The Tribunal also read and considered the following authorities:

45.1 *Tarbuck v. Sainsbury Supermarkets Ltd* (UKEAT/0136/06/LA);

45.2 *Wilcox v. Birmingham Cab Services Ltd* (UKEAT/0293/10/DM);

45.3 *Pnaiser v. NHS England, Coventry City Council* (UKEAT/0137/15/LA);

45.4 *Ayodele v. Citylink Limited* [2017] EWCA Civ 1913;

45.5 *Sheikholeslami v. University of Edinburgh* (UKEAT/0114/17);

45.6 *City of York Council v. Grosset* [2018] EWCA Civ 1105.

The Tribunal's decision

46. The Tribunal reminded itself that the disability relied upon by the Claimant in this case was dyspraxia. In his Claim Form, the Claimant had not identified the disability that he relied upon in his claim of disability discrimination. He had pleaded that he had been dismissed because of his 'disability'. Given the lack of particularity about his disability in the Claim Form, it was not surprising that the Claimant was asked at the Preliminary Hearing on the 14th July 2017 about his disability. He informed the Tribunal that he is disabled by reason of dyspraxia (see page 36a of the hearing bundle). In his further and better particulars provided after the Preliminary Hearing on the 14th July 2017 and in his impact statement, the Claimant repeated the assertion that he had made at the hearing on the 14th July 2017: namely, that the relevant disability in the case was his dyspraxia.

47. There was no doubt, following the Preliminary Hearing on the 14th July 2014 and the subsequent further and better particulars and the impact statement that the disability relied upon by the Claimant in this case was dyspraxia. The Claimant had made no assertion prior to the final hearing that the relevant disability included depression, borderline personality disorder, ADHD, learning difficulties, dyslexia, synaesthesia or the effects of the head injury sustained on the 24th October 2015. Furthermore, at the final hearing, though the Claimant had produced medical evidence from David Grant, Dr Campbell and his General

Practitioner that identified a number of different health issues, the Claimant, through his oral evidence to the Tribunal, made it clear that his claim of disability discrimination was founded upon the effects of his dyspraxia.

48. The Tribunal therefore approached the claim based on section 15 of the Equality Act 2010 on the basis that it was for the Claimant to demonstrate a prima facie objective link between the “something” in the case (which was the content of the emails sent by the Claimant to Ms King on the 12th and 18th December 2016 and the Claimant’s lack of acknowledgement of their inappropriate content) and his dyspraxia. There was no doubt that the Claimant had been treated unfavourably by the Respondent (by dismissing him) but the question for the Tribunal was whether that unfavourable treatment was because of something arising in consequence of the Claimant’s dyspraxia.
49. The Claimant’s case, in essence, was that he relied upon a software programme to compose the two emails to Ms King, that the software programme was responsible for the content of the emails and that he was unable, because of his dyspraxia, to see that there was anything wrong with the emails before he sent them to Ms King.
50. There were, however, a number of difficulties for the Claimant in respect of his case based on section 15 of the Equality Act 2010. Firstly, no evidence at all, other than the Claimant’s bare assertions, had been placed before the Tribunal regarding the software programme that the Claimant had used and how it was that the software programme could be responsible for producing the inappropriate content that was sent to Ms King. The Tribunal was left not knowing how the software programme worked and how it might have produced the emails complained of. There was no explanation as to how a software programme that was supposed to assist a person compose content for emails and other documents might be capable of producing inappropriate content.
51. Secondly, the Tribunal was concerned to note that the first occasion when the Claimant had stated that his software programme was responsible for the content of the emails sent to Ms King was in his witness statement dated the 24th August 2018. There had been no mention by the Claimant of the fact that his software programme was responsible for the content of the emails sent to Ms King at his disciplinary hearing, in his appeal documentation, in his Claim Form, in his further and better particulars or in his impact statement. If the software programme had really been responsible for the content of the emails, then it was surprising that the Claimant had not pointed that out before he made his witness statement on the 24th August 2018.
52. Thirdly, the Tribunal noted that the only inappropriate emails that had been sent by the Claimant were the two emails that had been sent to Ms King on the 12th and 18th December 2016. The Claimant’s other emails that were shown to the

Tribunal were entirely devoid of any inappropriate content as was the written report that the Claimant produced on the 24th November 2016. There was no obvious explanation as to how the Claimant, whether by means of his software programme or otherwise, was able to create appropriate content for his emails save for the two emails that were sent to Ms King on the 12th and 18th December 2016.

53. Fourthly, the Claimant was in difficulty with his assertion that he was unable to tell that the wording of the emails was inappropriate because of his dyspraxia. On the evidence before the Tribunal, the Claimant had not established a prima facie case that his inability to discern the inappropriate content of the offending emails was because of his dyspraxia.
54. Fifthly, the Tribunal noted that the Claimant was able to read and understand twelve induction documents on the 14th December 2016, some two days after the first inappropriate email had been sent to Ms King. There was no reason for the Tribunal to think that the Claimant had been dishonest when confirming that he had read and understood the induction documents on the 14th December 2016.
55. In conclusion the Claimant had not established a prima facie objective case that the content of the two emails sent to Ms King and his inability to recognise the inappropriateness of the content was due to his dyspraxia. The Tribunal could not be satisfied that a software programme had produced the content of the emails sent to Ms King as alleged by the Claimant and the evidence did not show that the Claimant's dyspraxia prevented him from understanding the content of the emails that were sent to Ms King and that it was inappropriate content for emails to an HR manager. The Claimant's claim under section 15 of the Equality Act 2010 was therefore dismissed. Given the reason for the dismissal of the claim, it was unnecessary for the Tribunal to go on and consider the justification defence raised by the Respondent.
56. Turning to the claim under sections 20 and 21 of the Equality Act 2010, the Tribunal approached the claim on the basis that the 'PCP' relied upon by the Claimant was the requirement that there be communication in writing with management and work colleagues. The evidence did not establish a prima facie case that the Claimant's dyspraxia placed him at a substantial disadvantage because of the requirement that he communicate in writing with management and work colleagues. Even if that had been established, there was no evidence which showed that the Respondent knew, or ought to have known, that the requirement put the Claimant at a substantial disadvantage. Save for the two offending emails, the Claimant had demonstrated that he was able to communicate with management and work colleagues in writing without any particular difficulty. There was no reason for the Respondent to think that the Claimant had difficulty in communicating in writing. The Respondent was aware that the Claimant's dyspraxia might cause him some memory problems, which

had been catered for by the provision of a notepad to the Claimant so that he could make notes in the course of his work, but there was nothing to put the Respondent on actual or constructive notice that the Claimant was at a substantial disadvantage, arising from his dyspraxia, because of the requirement that he communicate in writing with management and work colleagues. Even if that had been so, the steps that the Claimant contends should have been taken by the Respondent to avoid the disadvantage were not reasonable. In the judgment of the Tribunal, it would not have been reasonable for the Respondent to do away with the requirement that the Claimant communicate with management and colleagues in writing, particularly given that the Claimant had shown that he was able to communicate in writing, and the suggested step of not dismissing him for the inappropriate emails sent to Ms King was not a step that it was reasonable for the Respondent to take in the circumstances of the case. Accordingly, the claim under sections 20 and 21 of the Equality Act 2010 is dismissed.

Employment Judge David Harris

Dated: 18th May 2019

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