EMPLOYMENT TRIBUNALS

Claimant: **Mr N Bray**

Respondent: **Angard Staffing Solutions Limited**

Heard at: **Bristol** **On: 28, 29 and 30 August 2019**

Before: **Employment Judge R Harper MBE**
Members Mrs G A Meehan
Ms S Maidment

Representation
Claimant: **In Person**
Respondent: **Mr Foster**

JUDGMENT having been sent to the parties and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

JUDGMENT

The claims of disability discrimination are dismissed.

REASONS

1. The Tribunal was required to deal with two claims of disability discrimination under Section 15 and Section 20 of the Equality Act being respectively discrimination arising from disability and reasonable adjustments. We have had careful regard to those statutory provisions and also paragraph 6.33 of the EHRC Code. We have also had regard to Section 136 of the Equality Act - the burden of proof provision and considered and applied that in accordance with the case law guidance to be found in the cases of Igen v Wong and Madarassy v Nomura International. We have also considered the case of RBS v Ashton [2011] ICR 632 and also Rowan v Environment Agency. We have considered that last case in relation to the requirement to identify the provision, criterion or practice (PCP).

2. Although a Scott Schedule had been produced this included a claim for direct discrimination but the Case Management Order of Employment Judge Christensen said in paragraph 11:

"It was agreed the issues would be agreed at the CMPH now listed on 15 March 2019".

3. Those issues were indeed agreed and clarified at that hearing on 15 March before Employment Judge O'Rourke. The important point to bear in mind is that there was then no claim for direct discrimination. As was made clear, in two emails from the Tribunal dated 8 and 21 August 2019, only the issues in the Case Management Order of 15 March would be considered at the final hearing. The fact that there was no direct discrimination being dealt with today was pointed out by the Judge during the final hearing on two occasions and no issue was raised on that.

4. At the commencement of the hearing the Tribunal itself made reasonable adjustments to accommodate the claimant including the dimming of the lights in the courtroom, providing a chair with arms for the claimant's companion Mrs Sweeney, and the offer of regular breaks which would be requested by the claimant when he needed them. In fact, there was one request during the hearing and one request to have a slightly longer lunch break on the second day which, of course, the Tribunal accommodated.

5. As a further adjustment, the Tribunal allowed the claimant, when he was giving his evidence, to use his own bundle of documents rather than the bundle on the witness stand as the Tribunal understood that his own bundle was in a rather more readable format. That was an unusual departure from the norm.

6. We required the parties in their closing submissions not to exceed twenty minutes. Mr Foster for the respondent in fact was very short and therefore we allowed the claimant slightly longer - twenty-five minutes - for him to present his closing submissions. We were pleased to note that the claimant said in his closing submissions that *"what happened here is a good example of what should have happened"*. At the end of the hearing Mrs. Sweeney thanked the panel for making arrangements

7. At the commencement of the hearing, the Judge raised with the claimant exactly what disabilities he was relying upon. It was clarified that it was migraine and deafness. He also referred to the possibility of RSI and also borderline hypothyroidism but did not rely on them.

8. The initial difficulty appeared to the Tribunal to be that the respondent, at an earlier hearing, had accepted that the claimant was disabled with migraine but migraine only, and therefore not on the face of it anything to do with deafness. However, having explored the issue with the parties, it appears that the concession was made by the respondent in the full knowledge of the medical evidence presented and the detailed *"medical type"* of document produced by the claimant which clearly indicated that deafness and tinnitus were related to the migraines. The Tribunal took the view that, as the respondent is represented, and made the disability concession in the light of all the documents presented, the case should proceed and that the claimant could rely on migraine and related deafness as his disabilities for the purpose of this claim.

9. During the hearing the Judge gave the claimant advice on how to cross examine witnesses namely that he should ask questions and the witness should answer them and that it was not an opportunity to tell us more or again about his case. The Judge explained that if any of the respondent's witness statements said anything with which the claimant disagreed or if the witnesses gave oral evidence with which he disagreed, he was under an obligation to ask questions about that area. Otherwise the evidence would be regarded as unchallenged and therefore much more likely to be accepted as the correct version.

10. The Tribunal heard evidence on oath or affirmation from the claimant, from Mr Slatter and Ms Clover. The Tribunal considered all the evidence both oral and written but it makes the point that if it's attention was not drawn to a document then it has not considered it. The Tribunal carefully considered the statutory provisions, the burden of proof, the code of practice and the written and oral submissions.

Findings of Fact

11. The claimant signed a contract of employment to be found on pages 176 - 184. However, although he signed it, it is peppered with asterisks about matters with which he disagreed. More importantly, when one considers paragraphs 2.2 and 2.3, the Tribunal conclude that there was no engagement confirmation which is the phrase used in 2.3. It is important to recite the contents of paragraph 2.2 as follows:

> *"The details of any engagement under which you are seconded to the Royal Mail Companies will be communicated to you verbally at the start of any such engagement. In particular, you will be informed of 2.2.1 the place of work for the engagement, 2.2.2 the time you are expected to report for work on the engagement and 2.2.3 the start date and the end date of the engagement"*.

12. Unless those three factors were clear and set out, then there could not have been engagement. It was clear from a subsequent document to be found at page 190 of the bundle, which is an email from the claimant, that he was not aware of the end dates. This is partial confirmation that not everything had been agreed.

13. The claimant rather surprisingly asserted in cross examination of Ms Clover that because he was still getting emails in February 2018, he was still a worker. Also, rather curiously, the contract was expressed to be one of employment and yet the claimant asserts that although he says that the agreement was concluded, this made him a worker. However, we make a finding of fact that this was not a concluded agreement, despite the fact that he had signed it. There were outstanding matters asterisked and none of the details in paragraph 2.2 had been agreed and therefore it could not possibly be said that there was engagement confirmation.

14. The Tribunal, on the same point, also considers the document at page 187 which is an email from the claimant to the respondent dated 7 November 2017, which says *"I will be very happy to accept this shift"*.

15. Although this was put to Mr Slatter who did observe that he felt that it was a concluded agreement, with the greatest of respect to Mr Slatter the decision on that is not his. It is for us to decide that having heard all the evidence and we make a finding, for the above reasons, that it was not a concluded agreement. A consequence of this finding is that the ACAS Code upon which the claimant places a considerable reliance, does not apply in this case.

16. A further consequence, is that there was no contractual entitlement to a grievance procedure or how it was conducted or an appeal thereunder.

17. During the hearing, the claimant made a very complicated analysis of what amounted to a very simple relationship between the Royal Mail Group and the respondent. It is clear that the respondent is a company that is wholly owned by the Royal Mail Group which only provides Royal Mail with temporary staff. This is for temporary staff year round, but there is a particular need to recruit temporary staff dealing with the Christmas post.

18. It was well within the range of reasonable response for the respondent to second the hearing of the grievance appeal to Ms Clover who was technically employed by Royal Mail. The Tribunal were impressed with both the witnesses for the respondent and it was clear that she was very experienced in dealing with grievances and appeals.

19. The claimant worked initially with Reed Employment, and latterly the respondent, on MDEC, a temporary contract since 2005 – but not continuously. The work duration varied and some work was outside the Christmas period. In fact, one of his allocations was for working just over a year. He had considerable experience doing this temporary work. However, he last worked for the Royal Mail in 2015. He expected his experience to result in Royal Mail truncating any training offered for him in relation to his 2017 application. The Tribunal considers now at page 188 which is an email from the claimant dated 10 November 2017 which states in the final sentence *"someone of my experience does not need to undergo full training only more truncated returner training"*.

20. In the Tribunal's view, this approach has no basis in logic. Work places change, practices change, health and safety obligations change, procedures change. The former workplace had in fact closed where he had worked. The respondent could be criticised if it did not offer all new temporary recruits the appropriate level, and duration, of training without making any exceptions for people who had worked for the Royal Mail on earlier occasions. The theme running through the presentation of the claimant's case is that he finds it difficult to use a telephone. The Tribunal note that in 2013 he had been employed in a call centre.

21. On his application form for the 2017 Role, the Claimant ticked the box so that the respondent knew that he was disabled. On the registration form at page 173, he says, that it would have been made clear that he could not use the phone. In the Tribunal's view it is not made clear. What he says in handwritten addendum in the box at the bottom of page 173 is:

> *"will be using a gel wrist rest, cap to shield my eyes, glasses to fill forms and shield eyes. This is due to chronic migraine. I also have hearing disabilities"*.

22. The claimant repeatedly stated that his request for the policies at the end of the agreement signed on 28 September 2017, have still not been sent to him two years later. He complains that he has not had the handbook either.

23. The Tribunal is satisfied that the handbook and policies were in fact easily available on the internet or intranet and were not routinely produced in hard copy to new recruits.

24. In paragraph 16 of the claimant's statement he states:

> *"I refer Tribunal to page 156 where I indicated my preference for email communication and my hearing disability on page 173".*
>
> Page 156 does refer to the stated preference to have email and a further request for that is found on page 185 which is an email dated 6 November 2017 There is reference on page 173 to the hearing disability.

25. The claimant applied for the L1 shift. This would have taken place between 15.30 and 21.30 Monday – Saturday and he also applied for the L2 shift which would have been between 15.30 and 21.30 on Saturdays and Sundays.

26. On 7 November 2017, the claimant received an email at page 186 offering him his requested L1 shift times to start on 22 November 2017.

27. On 5 November2017 , two days before, the claimant found a text on his phone which he wrongly thought was a marketing text from Reed Global. Such misunderstanding had nothing to do with his disability.

28. Having received the email of 7 November 2017, Mr Bray was told of the need to attend three days training in advance of the commencing of the shifts. That is to be found at page 186.

29. On the same date Mr Bray responded to the email saying that although he was happy to accept the shift he had another appointment, which has not been expressed to be in relation to any medical matters, on the second day of the training and therefore could not attend. Mr Bray stated that he had previously worked at MDEC and as earlier stated felt that there should be truncated training.

30. That time, the respondent was undertaking a large recruitment exercise for seasonable staff and across the country, was receiving about five hundred emails a day, dealing with the applications of a very large number of people for a very large number of posts.

31. On 10 November 2017, the claimant sent a further email chasing a response to his earlier email and again stated that he did not need to undertake the full training. This was sent to a generic email address and was not immediately

processed largely because of the volume of email traffic with the huge number of applications.

32. Because of the difficulty expressed by the claimant in attending the required training, the post was not made available to him. The respondent did not leave it at that because on 15 November 2017, the claimant was approached by Mr Harris and offered three alternative shifts. That email is to be found on page 189 of the bundle and it is worth highlighting that the shifts offered there were an E1, E2 and N1 and it concludes:

> "*if you are interested in any of the above shifts instead please let us know"*.

33. The claimant responded very promptly to that and said on page 190:

> *"I would now need end of contract dates as the lack of response from Angard staffing has given the impression I was no longer needed and that Angard staffing had failed to inform me of this. Once I have the end dates, then I will be in a position to consider when I will be available to work for Angard Staffing"*.

34. On 16 November 2017, there was a response from Mr Harris which explained the end date for those shifts would be 21 December 2017.

35. On 17 November 2017, at page 192, the claimant responded, raising various issues such as the need to have a locker to store various equipment including some of his cycle clothing and also asking for the provision of an accessible toilet as a changing room for him. He flagged up, in the third line of the email, *"it is imperative that reasonable adjustments that I have alluded to are accommodated by both Angard Staffing and Royal Mail"*.

36. As a result of receiving that email, the respondent decided to try and contact him and they decided to try to telephone him. That telephone call was received by the claimant whilst he was travelling on a train. He checked his phone to find that there had been a missed call but because of signal problems, he may not have heard and it was not easy for him to quickly respond although in fact he did. The respondent was trying to speed up the process to offer him employment by departing from the agreed process by using the telephone but were not able to get hold of him.

37. An email was subsequently sent by Mr Bray on the same date and he said that he was on a train with an intermittent signal and would then be in a meeting for the rest of the day. The email also suggested that the respondent's time might be better spent reading his previous email and responding to it and that email is at page 193. Because the final paragraph of that letter says *"therefore, I would suggest Angard Staffing Reed Global/Royal Mail's time might be better served reading my email, ensuring adjustments will be made and responding to this instead"*. A slightly unfortunate tone to the email.

38. By the 30 November 2017, the respondent believed that it had not been possible to contact the claimant to discuss his need for reasonable adjustments and all the shifts at the Plymouth MDEC had been filled.

39. An email was sent to the claimant, and this is to be found at page 194, making it clear that they were no longer accepting bookings for MDEC but asking him to keep an eye on the website so that he could view any vacancies that might come up in the future.

40. This had the immediate response of the claimant emailing on 30 November to be found at page 195 which states as follows:

> *"In the light of all the emails below and the contract I signed on 28 September 2017 I wish to raise a formal grievance about the failure of Angard Staffing's/Royal Mail/Reed Global to recruit me. Your organisations will please state why in the light of the content of the emails below and the contract I signed why Angard Staffing/Royal Mail/Reed Global did not recruit me and did not respond to my emails below despite being made fully aware of them"*.

41. There is therefore, the reference to a formal grievance. It does not make reference to a particular policy and does not set out really very clearly what he was grieving about.

42. As a result of receiving that, and bearing in mind the Tribunal's finding that the claimant was not an employee or a worker and therefore they could have ignored that grievance, the respondent did not ignore it and they took it very seriously.

43. The next relevant step was on 5 January 2018, the respondent wrote to the claimant and this is found at page 199 and it stated that *"the Royal Mail assigned a case manager to review your appeal and they will be in contact with you in the coming weeks"*.

44. What then happened, is that there was a grievance investigation and that was done by Mr Slatter. Mr Slatter impressed the Tribunal somebody who had a very good grasp of the respondent's procedures and we felt that his evidence was very clear and very openly and honestly presented to the Tribunal.

45. As a result of the claimant not being happy with Mr Slatter's investigation, he appealed the grievance. Again, there was no obligation on the respondent to undertake an appeal but the appeal is to be found on page 198. The appeal request has a slightly unfortunate final paragraph which states:

> *"Therefore, in accordance with the best practice laid out in ACAS guidelines, you will nominate a different officer to investigate this matter and consider all the evidence"*.

46. It was rather perfunctory in its tone because it was not up to the claimant to direct the respondent, but simply to make a request.

47. However, what happened is that the respondent took the point on board and although there was no further investigation as such, there was an appeal hearing which was conducted by Ms Clover.

48. On the 24 January 2018, Ms Clover wrote a letter sent surface mail to be found on pages 200 – 201, making it clear that the appeal hearing would be on 2 February 2018. This had a deadline to comply with. The claimant accepted in an email at page 204 that he received that letter of 24 January 2018 by surface mail but criticised the three working days deadline. In this document at page 204 made it clear that he would be available between *"Wednesday 7 February 2018 – Monday 12 February 2018 inclusive"*. There is absolutely no room for misinterpretation that this meant that he was available on 8 February 2018 and by a letter at 205 in the bundle on 30 January 2018, Ms Clover invited the claimant to a meeting on 8 February 2018, one of his convenient dates, and he was advised that he could be accompanied.

49. On page 206 which is the second page of that letter is a short but important paragraph which states as follows:

> *"In your email to me you advised that you will require adjustments for the meeting and I would be grateful if you would please advise of those adjustments when you respond"*

50. The claimant did not advise the respondent of any adjustments and the Tribunal notes that the effective reply to that letter is an email from the claimant on page 207 dated 30 January 2018 and he indicated that he would be sending a letter to confirm and also answer the questions you have posed in the email.

51. The meeting took place as arranged. The claimant arrived at the respondent's offices. Initially there seems to have been some confusion about whether or not there was a meeting arranged with Ms Clover but nothing really turns on that - it may just have been a communication breakdown between Ms Clover and the reception staff. The claimant arrived by bicycle and wanted somewhere to change. He was directed to an ordinary toilet and not an accessible toilet which he says was not an appropriate changing area for him. He accompanied Ms Clover into a room and did not make any adverse comments about any special arrangements. Indeed, he did not complain about the lighting in the room and at page 219 which are the minutes of the meeting it is specifically recorded in relation to the lighting issue, *"its ok actually but I might have needed a blind on that window"*. In fact, he did not ask for a blind on the window and therefore, there was no adjustment required by him about which the respondent were made aware.

52. The minutes of the meeting and the letter request asking to find out what the reasonable adjustments are make it clear that the respondent was anxious to address any reasonable adjustments if necessary.

53. The notes of the meeting were sent by tracked surface mail by post on 22 February 2018 and that is to be found at page 211 and it gave a deadline of three working days from the date of receipt. A late document was presented to the Tribunal at page 211a which confirms that the respondent also sent an electronic copy of the notes. That was sent before the expiry, or around the expiry, of the original deadline. Ms Clover had said at the meeting that she would send the notes in both a surface format and an email format and that is what ultimately happened.

54. By an email to be found on page 212, dated 26 February 2018 the claimant replied and confirmed that he had received the letter dated 24 February 2018 by surface mail and made a number of points about wanting to receive the notes in electronic format.

55. The claimant asked for an extension of time and the respondent was reasonable in granting that. The extension of time is to be found in an email from Ms Clover to the claimant dated 27 February 2018 to be found on page 214 and the deadline would expire on 5 March 2018. Therefore, even on a slightly generous interpretation of the dates, the claimant had from 27 February 2018 – 5 March 2018 to approve fairly short notes. They did not run to many pages and would not have taken very long to read.

56. As an aside, the claimant stated for many years he has had a scanner at home and is able to scan documents and then increase the percentage of the page that is visible which would have the effect of the type face being much larger than the original document. This was plenty of time for the respondent to give the claimant to provide his comments. Why it took until the last day to have completed it remains something of a mystery.

57. On 5 March 2018, the Tribunal has not checked it but are perfectly happy to accept, it was that date upon which a very serious snowfall hit the UK which was given the colloquial name of "the beast from the east." As the claimant had been told that he had to return any notifications by surface post rather than email, he decided to cycle in the snowy conditions to hand deliver his comments to the respondent. Ms Clover said, in answer to a Tribunal question, that given the very adverse weather conditions which had a serious impact on the country if she had received an email from the claimant asking if it would be ok in the circumstances to provide his comments by email rather than letter, she would have happily agreed to that. So there was no need for the claimant to have cycled over to the respondent's premises in those conditions.

58. It is not clear exactly why the respondent adopted the procedure of sending the notes initially by letter. In answer to one of the Tribunal questions Ms Clover was really unable to answer why a read receipt email could not have been sent because that would have the same and rather more immediate effect of the sender being aware of the safe receipt in the recipient's hands. Of course, to achieve a read receipt you have to get the consent of the recipient to receive it on that basis. However, the reality is that the respondent, as agreed at the meeting, sent the document by surface mail and by email, and the respondent therefore accommodated, in our judgement, the adjustment that the claimant sought and also were acting reasonably in granting a subsequent extension to the presentation of his comments.

59. We also note that it is to be found on page 216, that by the time that he had dropped off the documents at the respondent's headquarters, as will appear from the final paragraph of that email which is dated 5 March, he had taken legal advice. Therefore that further supports the Tribunal's view that given the beast from the east it would have been easy for him to have requested to send his comments in by email.

60. The ET1 in this case was filed on 29 April 2018. Notwithstanding that, the respondent emailed the claimant on 11 September 2018, this is to be found on page 230 of the document and asking the claimant if he would be interested to be considered for work as a Recruitment Auditor to which the claimant responded on page 231. For reasons which are not clear no reply was received to that email but that does not form part of the allegations for this Tribunal to resolve.

Application of the law to the facts and vice versa

61. We again remind ourselves that this is not a claim for direct discrimination. There is much force in Mr Foster's assertion in his short oral address to us in closing submissions that the claimant appears to think that when adverse things happen, it must be because of disability. This is particularly so when the claim under Section 15 is considered but it also applies to the reasonable adjustments claim. The reason that it is particularly appropriate in relation to the Section 15 one is that it is a claim "arising from disability" and therefore, it follows, that matters that he complains about must arise from disability and not just be a general gripe that he might have about the way in which the respondents conducted themselves.

62. In dealing with this claim we have had scrupulous regard to the issues to be dealt with that are set out in the Case Management Order of 15 March 2019.

63. We turn firstly, to the claim under Section 15 of the Equality Act 2010 which is discrimination arising from disability and there are five allegations that are set out in the Case Management Order. We work through them in the same order as set out in that Case Management Order. Firstly, communications by means other than email. It is clear to the Tribunal that the respondent and also the claimant were both happy to be fairly flexible with the use of communication, email, telephone and from the respondent's point of view also text. The respondent explained that with the use of text they found to be very effective because it is rather more immediate in the recipient's mobile phone in the recipient's hand and tended, in their experience, to get a quicker response.

64. In respect of text messages, the claimant says that he was not able to differentiate between messages relating to recruited and general marketing. However, as Mr Foster says in his written submissions there is no medical or other evidence that this was something arising from his migraine condition. With regard to the telephone calls the claimant was not able properly to communicate because he was on a train at the time with a signal that dropped in and out but that is not a disadvantage arising from the claimant's migraine but simply arises from the difficulty of using a mobile phone on a train.

65. In respect of the use of the surface mail, the evidence does not support the claimant's contention that he was put at a substantial disadvantage compared with others who suffer his condition. He was able to indicate to the respondent that he had received the surface mail and simply wanted a bit of further time to deal with it in relation to, for example, the mail which sent the notes of the appeal hearing.

66. The reality here is that the respondent did use email to communicate with the claimant and examples are to be found on pages 160 – 162 and 185 – 194.

67. The delay in the claimant being offered the L1 role arose not from disability but from his inability to attend a training day for a reason which is unrelated to his disability. The claimant, as earlier found by the Tribunal, stated that he did not need to attend the full training. The Tribunal agree with the respondent's assertion that no detriment can be said to arise from the claimant's disability. Even if the Tribunal were wrong in that, and as an alternative position, the Tribunal would agree with the assertions set out in paragraph 9 of Mr Foster's closing submissions without setting those out in full in this Judgment.

68. Secondly, the failure to properly consider the grievance. As earlier found by the Tribunal the claimant was not an employee or a worker so the ACAS Code was not engaged. As a result of the grievance process it could not be said that it was defective in any way because of his health condition. The respondent believed that the claimant was not entitled to the benefit of the ACAS Code and therefore nothing that they did arose from the claimant's disability.

69. The very fact that the respondent considered the grievance, and also considered the appeal, is an indication that they took the situation seriously and that this is further evidence that there was no unfavourable treatment.

70. Thirdly, the venue. The claimant had previously worked at a place called Pennycomequick which was stated by the respondent to be in Falmouth but the claimant tells us it is in the Plymouth area, but that is not really of much importance. What is of importance is that the Pennycomequick site was no longer used by the Royal Mail for seasonal work and therefore work at Plymouth was offered because that is where the workplace was. Therefore, the requirement for the claimant to work at Plymouth was not discrimination arising from the claimant's disability, it arose from the respondent's change of location.

71. The offer of work was, as the respondent states, objectively justifiable because it served a legitimate aim because that is where the operation was and it was proportionate because it was not feasible to offer work elsewhere. The claimant contends that he would have been required to work unsociable shifts but as is clear, in paragraph 76 of Mr Slatter's statement:

> *"If he had been able to attend that training he would have been able to commence work on his preferred late shift and therefore if he had been able to attend the training he would have got his first choice of shift which then would have avoided the necessity to consider other shifts".*

72. The next allegation under Section 15 is not confirming that the appeal hearing on 8 February 2018 would take place. Frankly, it is hard to see how the claimant really makes this as a claim at all. The claimant had advised the respondent that the 8 February 2018 was a convenient date. The respondent then advised that would be the date and the claimant had confirmed that he was able to attend on that date at the time in an email which made it very

clear that both sides knew where and when the meeting would take place. There was absolutely no need for any further confirmation. There was no room for any doubt about when the meeting was taking place and where the meeting was taking place. There was no unfavourable treatment at all of the claimant and in any event, even if there was, it did not arise from the claimant's disability

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73. Allegation requiring the claimant to submit paperwork by hand due to a tight timescale. The Tribunal have already made their findings of fact clear in relation to that. The respondent granted an extension. They sent the documents by email and also surface post. The claimant was grateful for the extension that had been given to be found at page 216. The claimant did not seek a further extension especially bearing in mind the beast from the east and there was no need for him to submit his comments by hand. There is no evidence at all that the claimant was treated unfavourably let alone unfavourably due to his disability.

74. It follows therefore, that in relation to the Section 15 claim, that claim does not succeed.

75. We now turn secondly, to the reasonable adjustments claim and following the guidance in Rowan v Environment Agency, the Provision Criterion or Practices (PCPs) were correctly identified at the Case Management hearing on 15 March and set out in that order.

76. The adjustments have to be work related. This is clear from paragraph 6.33 of the EHRC Code. As is set out in the respondent's submissions "factors to be taken into account in considering what is reasonable include:

    (1) Whether taking any particular steps will be effective in preventing the substantial disadvantage

    (2) The practicability of the step

    (3) The financial and other cost of making the adjustment and the extent of the disruption caused

    (4) The extent of the employer's financial and other resources

    (5) The availability to the employer of financial other assistance to help to make an adjustment

    (6) The type and size of the employer."

77. The PCPs that are relied upon and set out in the Case Management Order can be summarised as follows:

    (a) The job applicants must be communicated by text, voicemails or post other than email.

    (b) That those employed aren't provided with lockers.

(c) That employees use standard toilets as those employed who work at Plymouth.

(d) That those attending meetings do so in some little brightly lit rooms.

(e) That those attending meetings be provided with printed notes.

78. We deal with each of those in turn and we turn firstly to the communication by means of other than email. There is an overlap here in the Tribunal's findings in relation to the Section 15 claim but we find, as earlier recorded, that the respondent was flexible in the way in which they communicated with the applicants and in their expectations of the way in which the applicants would communicate with them.

79. It is correct to assert that the claimant did not make clear the impact upon him of communication by means other than email and when he did raise his concerns the respondent went along with it to help him by communicating with email. Therefore, quite simply there has not been the application of a PCP as claimed and there is no evidence, in any event that the claimant suffered a disadvantage because, for example, there is no medical evidence to suggest that he found reading text messages difficult. He says that he could not differentiate between genuine recruitment text and marketing text but that is nothing to do with his disability.

80. The inconvenience of using the phones related to the poor telephone signal is not a health condition.

81. The second one is ready access to lockers. The claimant was not an employee or a worker and he never commenced employment or started work at all for the respondent. Therefore, there is no evidence that the respondent failed to provide him with ready access to lockers. If there is no evidence of that it cannot possibly have put the claimant to a disadvantage. There was no such PCP which had an impact upon the Claimant. If the claimant had commenced a role with the respondent there is no reason to suspect that they would not have had a discussion with him about the provision of lockers. In relation to that the claimant says that on each occasion he had worked for them he had not been provided with a locker. The last time he had worked for them was 2015. Life and practices had probably moved on and the Tribunal accepts the evidence of the two respondent's witnesses that if it had been raised it certainly would have been discussed. As the Tribunal were impressed in general terms with the respondent's approach to the situation we have no doubt that a locker would have been considered.

82. Rather importantly, in his own evidence to the Tribunal the claimant did not confirm that the respondent told him that he could not have access to a locker and therefore, quite simply there was no PCP here and obviously no breach of a PCP.

83. The use of standard toilets. Again, the claimant did not commence working for the respondent at any stage. At the stage of attending the appeal hearing he was not an employee or a worker and there can be no breach of the alleged PCP that employees use standard toilets because, as earlier found, he had to use a standard toilet to change out of his cycle gear.

84. To the extent that the respondent might be found to have required employees to use standard toilets this did not put the claimant at a substantial disadvantage. At the time he did not have a radar key but we note from his evidence that he now does. There was no application of a provision, criterion or practice and therefore no breach.

85. In relation to the work venue the "employment" in Plymouth did not start. As a result of our findings it is clear that the previous workplace in Pennycomequick had ceased and therefore, the work was available in Plymouth. That did not put the claimant at a substantial disadvantage. Where else were the workforce going to work apart from at this location ? It was not a reasonable adjustment for the respondent to consider the claimant working at another premises, it simply was unworkable.

86. The claimant has not demonstrated that in being required to work in Plymouth he was placed at a substantial disadvantage.

87. With regard to brightly lit rooms the respondent did not apply a PCP to the claimant. There was one meeting between the claimant and the respondent on 8 February. No concerns were expressed and he did not, as earlier stated, provide any details of adjustments that he required, and seemed happy at the meeting about the lighting and did not assert that he needed a blind. Therefore there has not been the application of a PCP and therefore no breach of it.

88. Lastly, providing printed notes. As we have already found the responded provided both printed i.e. typed notes and also electronic notes and therefore there was no application of a PCP to the claimant.

89. Although we repeat that we do not know why a read receipt email was not provided, the reality is that both surface mail and email were subsequently sent, no PCP has been applied, and the claimant has not demonstrated that he has suffered disadvantage as a result.

90. Having worked through the PCPs as stated out in the Case Management Order of 15 March the Tribunal find that the claim for reasonable adjustments does not succeed. It follows therefore that both types of disability discrimination claim are dismissed.

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Employment Judge R Harper MBE

Date: 28th October 2019
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