EMPLOYMENT TRIBUNALS

Claimant: Mr Edwin Usiade

Respondent: Royal Borough of Greenwich

Heard at: London South **On: 16, 17, 18 March 2020 and in Chambers on 13 and 14 July 2020**

Before: Employment Judge Khalil (sitting with members)
Mrs Beeston
Mrs MacDonald

Appearances

For the claimant: in person
For the respondent: Mr Isaacs, Counsel

RESERVED JUDGMENT

Decision

The unanimous decision of the Tribunal is that the claimant's complaints of a failure to make reasonable adjustments and discrimination arising from disability, both under the Equality Act 2010 sections 20 and 15 respectively, are not well founded and are accordingly dismissed.

Reasons

The claim, appearances and documents

1. By a claim form presented on 22 October 2018, the claimant brought complaints of disability discrimination and race discrimination. This followed early conciliation between 8 August 2018 and 22 September 2018.

2. The claimant appeared in person and the respondent was represented by Mr Isaacs, Counsel.

3. The claimant gave evidence and had produced a witness statement. The respondent called two witnesses, Ms Stephanie Mills, Deputy Head of HR and Ms Victoria Geoghegan, Assistant Director for Planning and Building Control.

4. There was a main agreed bundle of documents (376 pages) and a small supplementary bundle produced by the claimant which the respondent did not object to.

5. The list of issues required amendment on the first day of the hearing as it became evident these were not agreed. The parties were given a lot of time to address this and ultimately an agreed list of issues was produced.

6. The claimant applied to amend his claim to include two allegations of race discrimination which appeared in the draft list of issues. These were in relation to events in January and February 2018 (1 (i) and 1 (ii)). These had appeared in the claimant's further and better particulars submitted on 17 April 2019. The respondent had resisted the inclusion of these additional allegations in its amended grounds of resistance served on 29 April 2019. The application to amend was opposed and Mr Isaacs provided submissions.

7. The claimant's application was refused. The Tribunal applying the ***Selkent Bus*** principles considered the application was part of the claimant's story and was not a substantial amendment. The allegations were of a comparable kind to other allegations of race discrimination already made. The additional allegations were out of time, the ET1 was presented on 22 October 2018 and the amended claim was presented at the earliest on 17 April 2019. Whilst the Tribunal would have been prepared to exercise its discretion to allow these claims out of time, the Tribunal, assessing the balance of prejudice, considered that this lay heavily against the respondent on a comparative basis as the respondent was evidentially prejudiced. The claimant's manager (Helen Marsh) who would need to give evidence to deal with the allegations, left the respondent's employment on 17 February 2019 and had not been called to give evidence. It is not the same as employer being able to adduce supplementary evidence overnight for example. The claimant was expressly cautioned against seeking to expand his claim in the case management hearing on 3 April 2019 which was recorded in the Order. The Tribunal noted that the claimant has surviving claims of race and disability discrimination.

8. The Tribunal discussed with the claimant what adjustments he may require during the hearing as a result of his dyslexia. Following discussion, the claimant was told he would be afforded breaks mid-morning and mid-afternoon and also upon request. He would also be provided additional time to respond to questions and to ask questions. He requested and was provided with a note pad to write things down.

The Agreed Issues

9. Direct discrimination, contrary to Section 13 of the Equality Act 2010 ("EqA") in relation to race;

10. Failure to make reasonable adjustments, contrary to Section 20 EqA; and

11. Discrimination arising in consequence of disability contrary to Section 15 EqA.

Race Discrimination

12. Did the following allegations take place:

a) In December 2017, providing the Claimant with false information in relation to the time that he was expected to be at work, leaving him open to criticism from others.

b) Repeatedly denying the Claimant training, even though the Claimant believes the requested training was available or delaying the approval of his requests for training (The Claimant contends that his white colleague, Glenis Doble, obtained approval for and attended training over the same period). The Claimant relies on the following incident:

   In February 2018, the Respondent failed to approve the Claimant's training requests for refresher training in the HR System 'ITrent', 'I-Trim Training and for a note-taking course scheduled for March 2018. However, Glenis Doble is alleged to have attended training during this period.

c) Failing to support the Claimant during and after his 1-2-1 meetings. The Claimant alleges that this was in contrast to the support and training afforded to Glenis Doble, who the Claimant alleges was also given management opportunities to line manage junior staff.

d) Whether the Respondent treated the Claimant less favourably on the basis of his race. (Black African) The Claimant relies upon Glenis Doble as a comparator.

Disability:

13. It is accepted by the respondent that the Claimant is disabled within the meaning of s6 EqA by reason of dyslexia.

14. Failure to make reasonable adjustments:

   Did the Respondent apply the following provision, criterion or practice ("PCP"):

a) The requirement that the Claimant perform his role without a "fully supported two-week induction to the post"

b) The requirement to take notes at meetings and/or hearings without a functional Dictaphone or Access to Work ("ATW") support tools or supporting note to allow the Claimant to record minutes of meetings without objections.

c) The requirement to use the HR system ("I-Trent") for work purposes without the provision of proper training support.

d) The requirement to manage eight cases or more without support.

e) The requirement to take on some of his colleagues' caseload in addition to his own caseload without support.

f) The requirement to complete work within a short deadline, namely requesting at 4pm on 6 March 2018, that the Claimant update all of his casework on the HR system by 10am the following day.

g) The requirement that the Claimant make his own arrangements to obtain Access to Work ("ATW") support despite his heavy workload 14 February 2018.

h) The requirement that the Claimant inform his representatives a day prior to the appeal hearing 12 September 2018, rather than the Respondent informing the Claimant's representative as previously agreed. Claimant email exchange with Stephanie Mills HR Manager – Social & Care 22 July 2018.

i) Only allowing the Claimant to take written notes of the appeal hearing rather than an electronic recording 12 September 2018.

15. Did the PCP's put the Claimant at a disadvantage within the meaning of section 20(3) EqA in comparison with persons who are not disabled?

16. Did the Respondent have knowledge of the extent of the Claimant's disability. (para 53 ET3)?

17. If so, whether the Respondent took such steps as is reasonable to have to take to avoid the disadvantage:

a) Given extra time on case loads
b) Functional Dictaphone to record
c) Increased time for the induction
d) Support by Access to Work
e) I-Trent/I-Trim training
f) Providing a note-taker to allow the Claimant to record during meetings where there was objection by employees.

Discrimination arising from Disability:

18. It is accepted that C is dyslexic and needs more time to process information.

19. Did the following alleged acts take place as described by the Claimant and is it unfavourable treatment:

a) Failing to provide the Claimant with a "structured induction programme" over two weeks, which contributed to him not fulfilling the expectations of his managers and ultimately being dismissed for failing the probation period

b) Failing to respond and approve the Claimant's request to attend a note-taking course in February 2018 (The Claimant alleges that he was struggling with taking minutes and coordinating meetings at the same time)

c) Failing to provide the Claimant with a Dictaphone that was fit for purpose, which, he alleged, contributed to him making mistakes and ultimately being dismissed

d) Failing to provide the Claimant with refresher training on the Respondent's HR System 'I'Trent'/Trim training leading to criticism of the Claimant by a senior manager.

e) Reluctantly agreeing to provide the Claimant with a note taker on one occasion in April 2018, but then preventing that note taker to provide proper support by ordering a handwritten rather than a typed up note to be handed to the Claimant contrary to the Respondent's usual process.

f) Failing to support the Claimant with the issues caused by the Claimant's dyslexia by denying the Claimant agreed time off to go to the Business Centre during the working day to prepare for his Final Probation Hearing in May 2018, when the director complained that the Claimant should return back to the office to work.

20. Was the treatment because of something arising in consequence of the Claimant's disabilities, namely the Claimant needing more time to process information.

Jurisdiction (Referred to at para 47 ET3)

21. Are any EqA claims out of time pursuant to s123(1)(a) EqA?

22. Should the Tribunal otherwise accept jurisdiction on the basis that there was a continuing act of discrimination pursuant to s123(3)(a) and/or discriminatory omission pursuant to s123(3)(b); and/or (b) the complaint(s) were presented within such other period as the employment tribunal thinks just and equitable - S.123(1)(b) EqA?

Relevant Findings of Fact

23. The following findings of fact were reached by the Tribunal, on a balance of probabilities, having considered all of the evidence given by witnesses during the hearing, including the documents referred to by them, and taking into account the Tribunal's assessment of the witness evidence.

24. Only relevant findings of fact relevant to the issues, and those necessary for the Tribunal to determine, have been referred to in this judgment. It has not been necessary, and neither would it be proportionate, to determine each and every fact in dispute. The Tribunal has not referred to every document it read and/or

was taken to in the findings below but that does not mean it was not considered if it was referenced to in the witness statements/evidence.

25. The claimant was employed by the respondent on 1 December 2017 as a Principal HR Adviser.

26. The claimant reported to Helen Marsh, Senior HR Manager.

27. A principal HR adviser is the most Senior of the HR Advisory roles. This was not disputed. As such, the role could include advising Managers on organisational change, and complex employee relations matters for example.

28. In his application form for employment with the respondent, the claimant stated he was a member of the Chartered Institute of Personnel & Development (CIPD) and he had up to date knowledge of employment law including Employment Tribunals (page 113).

29. The claimant's employment was subject to a 26 weeks probationary period (page 135).

30. The composition of the HR team was set out n paragraph 8 of the claimant's witness statement. This included two HR advisers who were black and two HR trainees who were black. This was amongst a team of nine. This was unchallenged by the respondent save that the claimant did not mention Stacy Bailey, Deputy Head of HR, who the claimant accepted under cross examination was also black. He agreed the respondent was culturally diverse. The claimant also agreed he was aware of no race discrimination complaints from any of his peers.

31. Early on in the claimant's employment, he was written to by Ms Marsh about the tone of his email. This was in response to an email from the claimant to a Manager who had sought his advice. In his email response he had asked the manager to "be patient" which was considered to be inappropriate language (page 143).

32. The claimant had an induction period for two weeks from 4 December to 15 December 2017. The claimant considered this to be a structured programme and did not expect to undertake any work during this period. He was however given work to do. The Tribunal was not provided with any completed documentary evidence in relation to the programme. The induction checklist was at pages 356-358. Under cross examination, the claimant agreed he had been inducted on all policies, had been set up on learning pool and had received I-Trent training.

33. The respondent accepts that the claimant was provided with casework during his induction period and gave evidence this was normal practice. The Tribunal finds that this would not have been unusual; it would be commonplace for a new employee to be introduced to the work for which he had been employed, especially at the claimant's level. The Tribunal finds the claimant's induction would not entail exclusive induction activities during this period.

34. The claimant had a one to one with Ms Marsh on 19 December 2017. This was recorded in writing and was at page 145 of the bundle. There was no dispute between the parties about the accuracy of what had been recorded. It was recorded that the claimant felt all was going well, that he was to let Ms Marsh know if he needed any support. It also recorded the ER casework the claimant had been assigned. There was no record of the claimant challenging either the fact of or volume of casework which he had already been assigned.

35. The claimant also claimed that Ms Marsh had informed him that after his two week induction period, he would be able to work flexibly – 8.00am to 4.00pm, 9.00am to 5.00pm or 10.00am to 6.00pm provided his contractual hours were completed. The claimant's contract was at page 124 of the bundle. At page 128 there was reference to a flexi time scheme but no corresponding attachment. The Tribunal was hampered in assessing the evidence by the absence of direct oral testimony from Ms Marsh. She had left the employment of the respondent and had not been called. The Tribunal noted the claimant's recollection of the arrangement was supported by a reasonably contemporaneous email sent by the claimant on 14 March 2018 when he was responding to a one to one and he cited his understanding of the flexibility then (page 175). The Tribunal finds that Ms Marsh did convey to the claimant the availability of a flexi scheme. The Tribunal further finds that there was a miscommunication about its application to the claimant or the date of it on part of the respondent.

36. The claimant was challenged about his timekeeping on 16 January 2018 and was instructed to work 9.00am to 5.00pm. He agreed to do so. The Tribunal had regard to the email dated 17 January 2018 at page 148 of the bundle. Within the same email, Ms Marsh commented on her discussion with the claimant about the taking of notes at meetings, having regard to the claimant's dyslexia and that ideally the claimant preferred to type straight on to a laptop.

37. The claimant was scheduled to attend a social media training session on 31 January 2018 but did not do so. Ms Marsh sent an email to the clamant asking why he had not joined at 10.18am (page 149). The claimant did not challenge this in evidence.

38. Ms Marsh wrote an email to the claimant on 6 February 2018 providing links for the claimant to access in relation to taking notes/writing minutes. He was asked to register himself and book on to a course via 'Learning pool'. The Tribunal finds that this followed a discussion Ms Marsh had with him. Her email which was at page 150 commenced "We discussed some training courses". In addition, the claimant had confirmed in paragraph 22 of his witness statement that such a discussion had taken place. He also referenced a discussion about I -Trent and Trim training but this was not referred to in Ms Marsh's contemporaneous email of 6 February 2018. The Tribunal finds that there would have been no reason why this would have been ignored if requested as Ms Marsh had responded to the claimant regarding the training on note taking. The Tribunal is fortified in its finding as the issue was also not mentioned/recorded in the meeting of 14 February either (i.e. about a week later) – see below.

39. On 6 February 2018, Ms Marsh also received an email from Stacy Bailey (Deputy Head of Human Resources) commenting on having observed the claimant asleep at his desk and that this was not the first time he had been observed doing so. The email enquired if the claimant needed support and for Ms Marsh to discuss the issue with him. Ms Marsh confirmed that she had spoken to him and had been informed that the claimant had a cold and thus had appeared sleepy. In paragraph 19 of the claimant's witness statement he had referred to taking medication which would have made him drowsy. He also stated that he was advised by Ms Marsh that in future he should call in sick. He claimant states this was raised by Ms Marsh repeatedly thereafter in his one to one meetings. The Tribunal will consider this below.

40. A three-month probationary review meeting took place on 14 February 2018. The minutes of that meeting were at page 152 of the bundle. At this meeting, the clamant shared that he had dyslexia and that he had tried to use a Dictaphone (to support him making notes) and that he would contact Access to Work about software to convert speech in to text. Besides 'attitudes and motivation', comments about the volume and nature of the claimant's casework were also recorded as well as reference to the claimant using the query log and casework log to record his advice for consistency. Besides 'conduct and attendance' reference was made to timekeeping and the incident regarding sleeping and that this should not be repeated.

41. On 19 February 2018, Ms Bailey wrote to the claimant, copying in Ms Marsh, following up on a conversation she had already had with him. She informed the claimant that a Manager had complained that he had been sent an 'HR action plan' for completion and that the claimant had not attended a formal stage 2 meeting. Also, a letter had been provided for the claimant to review in January which he had reviewed on 7 February and without sight of any relating documents. The email, at page 153, recorded the claimant's agreement to the events described. The claimant's witness statement did not address the incident at all. The Tribunal accepts the respondent's description as set out in the email sent at the time. Ms Bailey also followed up on her commitment to re-send the 'HR standards and behaviours' document to the claimant by her email of the following day (page 154).

42. A one to one meeting took place on 1 March 2018. Regarding adjustments, it was minuted that the claimant had contacted Access to Work who would be contacting Ms Marsh. The claimant was asked to update his logs and I-trent and Trim and was given until 7 March 2018 to do so. It was recorded that the claimant was managing 11 cases. There was no record of any concerns reported by the claimant regarding training, adjustments or otherwise. The claimant specifically agreed this under cross examination. The Tribunal accepts the minutes as being an accurate and contemporaneous summary of the meeting on page 168.

43. Ms Marsh followed up her instruction to the claimant to have his casework log records up to date by 7 March 2018 by a reminder email of 6 March 2018. Ms Marsh referred back to the one to one meeting on 14 February 2018 and mentioned that non-completion could lead to him failing his probation. This

email was at page 170. The email was forwarded to Ms Bailey which the Tribunal finds was indicative of the importance of the issue.

44. On the same day (6 March) a manager (Veronica Johnson), emailed Penny Gifford to complain that the claimant had failed to attend a meeting with her and had further stated upon being asked about his non-attendance, that he was too busy but would try to see her in the afternoon. Ms Johnson praised the claimant regarding other assistance she had received previously, but felt the claimant was not giving this matter the importance it required. She was under pressure at Director level to resolve the matter. The email from Ms Johnson was at page 171.

45. In paragraph 28 of the claimant's witness statement, he stated that Ms Marsh had said to him that she was certain he had done it before. The Tribunal accepts, in the absence of any testimony from Ms Marsh, that she said that. However, the Tribunal has found in paragraph 39 above that the claimant had not attended an earlier meeting which Ms Marsh had been made aware of. The Tribunal accepts that upon investigation, this incident was considered to be a misunderstanding because the appointment was not in the claimant's diary. The Tribunal accepted the claimant's explanation in paragraph 28 of his witness statement and noted the email sent by the claimant on 7 March 2018 to Ms Bailey and Ms Marsh at page 172 of the bundle.

46. A one to one meeting took place with the claimant on 14 March 2018. In relation to Access to Work, it was noted that the claimant was to be visited and he would provide the respondent with an update. Regarding use of a Dictaphone, he found the one provided was not suitable so he had purchased his own. He was using this to take notes and was reminded by Ms Marsh that at gross misconduct hearings, a notetaker could be provided. It was also noted that the claimant had requested I-Trent and Trim training and Ms Marsh was to arrange a refresher. The claimant said he was ready for more cases. The minutes were at page 173. The Tribunal finds these to be contemporaneous and an accurate record. The claimant's email of the same day at page 175 of the bundle did not appear to correspond to the one to one held on that day. This email challenged two entries relating to comments about timekeeping and sleeping at work. This appeared to relate to the meeting on 14 February 2018 at page 152. The Tribunal finds that the email could not have corresponded to the one to one meeting on 14 March 2018 as both items do not appear in those notes.

47. The claimant was included in an email dated 23 March from Ms Bailey to the HR team setting out the number of cases per adviser. An assistant HR Manager was expected to support up to 15 cases, a Principal Adviser was expected to support up to 20 cases and HR advisers between 25 to 30. The claimant was on 8 at the time. The Tribunal finds that at this time none of the advisers were supporting the levels expected. The range was between 3 and 10. This was at page 182.

48. The claimant emailed Ms Marsh on 12 April 2018, following a one to one meeting providing evidence that on the previous day he had registered for a minutes/note taking course. He opened his email by saying 'thanks a million' for

the one to one. The registration date for the course was 11 April but that email stated the course required Manager approval. The email from the Learning Partnership services desk advised prompting the manager for approval. The emails were at page 183 of the bundle. The Tribunal finds that this was the first occasion the claimant had booked on to the course, there was no evidence of any earlier attempt as referred to in paragraph 22 and 25 of the claimant's witness statement.

49. On 8 May 2018, the claimant was criticised for going beyond his role in HR and exposing the respondent to HR having assumed decision making power. This was in relation to 'Jasmine's' case. The claimant was also criticised for advising the employee in question to raise a grievance, of a right of appeal where no formal sanction had been imposed and had also advised to halt a capability meeting which had undermined the manager. This was handled by Ms Bailey who expressed her view of the claimant's draft letters to be 'alarming'. The email exchange at the time was at pages 185 to 193. There was no challenge to the aforementioned issues by the claimant. The claimant in fact thanked Ms Bailey for her support and also stated he had learnt from the experience. The claimant gave no evidence on this matter. The Tribunal finds the events as described by the respondent were accurate. Under cross examination the claimant accepted he made a mistake. The draft letter had been sent to the employee in question. The Tribunal considers that the mistake was a serious one as the claimant, who had drafted the letter, was seen as the decision maker, in addition it had been sent in error to the employee.

50. A one to one meeting took place on 8 May 2018. It was noted that whilst the claimant had improved in some areas, some things needed to be done differently. It was stated that a probationary review meeting would be set up in 2 weeks to consider the possibility of dismissal, or an extension to the probation period. Confirming (passing) the probation was not stated as a possibility at this stage. It was also noted that the claimant's note taking was of a good standard through the use of a Dictaphone. Some examples of good feedback were also noted. The claimant was reminded not to appear as a decision maker. The claimant was asked if he needed any training to help him. He stated he was booked on 'Taking Effective Notes' on 24 May 2018 and apart from that he had no other training needs. There was no challenge to these minutes at the time and the claimant did not give evidence about this meeting. The Tribunal accepts the notes at pages 194-195 were an accurate summary.

51. On 11 May, Ms Coveney emailed Ms Bailey about some issues concerning the claimant. First the nature of his support of employees who were in a process; second, about raised voices between the claimant and a union representative; third that the claimant had withheld details of an employee complaint from an enquiring Manager; fourth, that the claimant's intervention at a disciplinary hearing had 'inflamed' the situation. This email was at page 196.

52. The claimant responded to the issues raised. By way of summary, he acknowledged two employees had approached him about a disciplinary process, he informed them both about the right to be accompanied, but both employees had told the claimant they did not trust the union and would rather

speak to the claimant. Regarding raised voices in a meeting with the union, the claimant did not directly reject that had happened, instead he described what the meeting was about and described another separate meeting he had had involving the same representative subsequently and that his working relationship was good. The claimant acknowledged he had not informed Ms Coveney about an employee complaint and stated the employee in question did not trust the union or anybody in management. Finally, the claimant accepted that a planned disciplinary meeting had not gone well as he felt the manager was asking too many questions going beyond allegations, so he interjected which caused opposition from the manager. The claimant's email of 15 May 2018 was at page 198-200 of the bundle.

53. The Tribunal finds that the claimant's reference to a separate meeting with the union representative in this email (above), was different to the meeting described in paragraph 44 of his witness statement. The date of that meeting was January 2018. In both, the claimant described the union declining the claimant's request to record the meeting because of his disability. However, in relation to the meeting in May (above), the claimant stated in his email that Ms Coveney had agreed at that point to take notes to help out.

54. There was also an occasion in April 2018 when this had happened. This was addressed in paragraph 58 of the claimant's witness statement. At a meeting at which dismissal was a possibility, the claimant was entitled to have a note taker. The note taker was sick on the day of the meeting. The claimant was denied a replacement note taker because of the late notice/request but an HR Assistant volunteered to help and provided 'rough/draft' meeting notes to the claimant (paragraph 59 of the claimant's witness statement).

55. A final report was prepared by Ms Marsh dated 23 May 2018 in relation to the claimant's 6-month probationary period. The report summarised the claimant's performance as unsatisfactory. The claimant's delay in keeping his casework log updated was referred to. Ms Marsh recorded that the claimant's note taking had improved, that he had been provided with a Dictaphone and then obtained his own. Further, that he had been instructed to book on to a note taking course on 6 February 2018 which was taking place on 24 May 2018. In addition, the claimant had been asked to contact Access to Work to assess further support needs. The report appeared to have a missing page or pages. Page 203 was page 1 of the report and page 204 did not appear to continue from page 1. There was reference at the end to appendices including all emails, probation documents and one to one notes referred to. The Tribunal finds having regard to the probation review meeting which followed, that all relevant issues which were discussed would have been referenced in this report.

56. The claimant was invited to a final probation meeting by a letter dated 23 May 2018. The letter identified the claimant's unsatisfactory performance as falling short of requirements by reference to: adherence to HR standards and behaviours; ensuring the appropriate roles and boundaries are adhered to; managing professional relationships; providing the appropriate level of service without supervision and complaints. The letter was at page 205 of the bundle.

57. The claimant was given a day to prepare for this meeting. He had chosen to sit in the business suite away from the HR team but an email was received from Ms Bailey stating that the HR team should not be working in other areas so the claimant returned to prepare in the HR area (paragraphs 60 and 61 of his witness statement). The Tribunal finds that, other than that change, there was no other impact on his preparation. He was not required to undertake any work.

58. The minutes of the final probation review meeting on 30 May 2018 were at page 206 -214 of the bundle. There was no dispute raised about the accuracy of the minutes; the Tribunal finds the minutes to be an accurate record of the meeting.

59. The claimant was accompanied at the meeting. Ms Marsh was also present. The meeting was chaired by Ms Mills. Ms Marsh was invited to summarise her recommendation. The Tribunal does not seek to replicate her reasons from the minutes but summarises these to be as follows: not keeping the casework log of advice up to date; the claimant had not contacted access to work; various complaints received; tone of some emails; sleeping at work (because he had been unwell); non-attendance at a meeting.

60. Ms Marsh noted that the claimant was very popular and a pleasure to work with. She also remarked his attitude was positive.

61. Ms Marsh stated the claimant was operating at a PO1 level not a PO3 level (Principal Adviser). He was not being given complex cases. The claimant stated he had dealt with a realignment case and had received good feedback from the legal team regarding support. The Tribunal finds this was not disputed by the respondent, Ms Mills under cross examination was transparent in her acknowledgement of this. The claimant made reference to his dyslexia but added "*I have not shown this report to HM…I have never accepted the reality of this report".*

62. In response to the case against him, the claimant accepted there were some valid points, he had struggled with the cultural change/public sector. The claimant accepted he had made a mistake by not checking a meeting in his calendar. Also, in sending a draft letter he was reviewing for a manager direct to the employee. He also accepted there was an issue with some of his case logging. The claimant stated he kept a second log as it helped with his dyslexia.

63. Ms Mills explored the claimant's dyslexia with the claimant. In response the claimant stated he didn't want to admit he had it. He said he didn't go into detail with Ms Marsh about it. He acknowledged he was told to contact Access to Work which he needed to follow up. He acknowledged the Dictaphone had helped him do his notes. He provided a copy of his dyslexia report at this meeting. The Tribunal finds this was the first occasion he had presented his report since commencing employment. The claimant was asked if he was requesting an adjournment for Ms Mills to consider the report, but he said he wished for Ms Mills to consider this after the meeting.

64. The claimant said he expected to do things differently, he accepted he had not raised a concern about his induction but had stated he would benefit from more

I-trent training. The claimant also accepted some of the complaints and believed he would be able to operate at a PO3 level. He said he had never previously worked in the public sector.

65. Ms Marsh also asked the claimant about his dyslexia and further support. The claimant responded that he dissociated himself from his condition. He also stated he had faced bigger challenges in his life. The claimant considered he would be able to operate at a PO3 level in three months' time.

66. A decision was reserved following the meeting. Ms Mills sent a decision to the claimant which was to terminate his employment. This was at page 215-218. The Tribunal accepts that Ms Mills considered the claimant's dyslexia report before reaching her decision. Ms Mills noted the use of a dictaphone and that the claimant did not indicate any further adjustments required or that his dyslexia would prevent him from operating as a Principal Adviser. Although reference was made to timekeeping and the sleeping incident, both issues were no longer considered to be current.

67. Ms Mills considered there was an ongoing failure by the claimant to log all his casework, that the level of casework he was working on was closer to a PO1 role and there had been a number of serious complaints from managers who he had supported. She concluded that rather than seeing an improvement in relation to complaints since the 3-month review meeting, two further complaints had been received in May 2018. Ms Mills considered the claimant had not met the HR standards required. She noted that the probation review was completed at three months and there had been regular one to ones. Ms Mills said she considered alternatives to dismissal e.g. demotion but was not satisfied that the problems would not persist. The Tribunal accepted her evidence about this. Further, she did not believe there to be a vacancy. Her evidence was unchallenged in this regard and was accepted by the Tribunal.

68. The claimant was given a right of appeal which he exercised. His appeal grounds were at pages 226 to 236. The claimant believed timekeeping should never have been a relevant factor; he was not given an adequate induction; he was given a complicated dictaphone to use; he had to purchase his own dictaphone; he did not receive I-Trent refresher and note taking training; he disputed the assertion that his disability did not impact his ability to operate as a Principal Adviser and that further adjustments were not needed. In this regard the claimant made an allegation of race discrimination too (which the Tribunal finds had not previously been asserted); although he accepted two recent cases had not been updated on the casework log , he had updated the manager responsible on one and on the other he had been informed by Ms Marsh the case was closed but he had not been told to update the log; he felt he had only crossed the boundary in one case (The Tribunal finds that this was 'Jasmine's' case); in relation to one of the complaints in May 2018, the claimant said he had withheld information from a Director on the advice of Ms Marsh; he disputed he was operating at a PO1 level.

69. The claimant also referred to other mitigating factors: that his workload was too high; regarding the occasion when an HR volunteer stepped in to be a note

taker, Ms Marsh instructed that person to provide the draft notes only for the claimant to develop (the claimant referred to this as intentional sabotage); he was given time to prepare for his final probation review meeting but then asked to go back to work. The Tribunal finds the claimant was instructed to return to work in the HR area (from another business area) but to continue to work on his probation review meeting preparation. It was not alleged by the claimant that he was in fact denied the time (paragraph 61 of the claimant's witness statement). (See paragraph 61 above too).

70. The claimant discussed with Ms Mills the possibility of access to a PC of the respondent for information prior to the claimant's appeal. This was declined but the claimant was invited to list the information he was seeking and this would be provided. At the same time the claimant was also permitted, in principle, for the claimant's chosen ex-employee to accompany him (page 237).

71. A management response document was provided in relation to the claimant's appeal from Ms Mills which was at pages 239 to 246 of the bundle.

72. An appeal hearing took place on 5 September. The Tribunal noted a sick certificate signing the claimant as unfit for work until 1 September (page 238) and a further note certifying him as unfit to work until 14 September 2018 (page 249).

73. The appeal minutes were at pages 253 to 262 of the bundle. The appeal was chaired by Ms Geoghegan. The claimant thanked the respondent for extending the date of the appeal hearing; he expressed his concern about being denied email access; he was aware of his right to be accompanied but stated he had only been informed one day previous that it was for him to call any witnesses. The Tribunal finds having regard to the appeal form at pages 224-225 of the bundle that it was for the claimant to arrange both his accompanying companion and any witnesses he wished to attend. He also wished to record the meeting which was declined as a note taker was present, whose notes would be circulated for comments.

74. The claimant stated dyslexia software takes time to obtain; he stated that he could not use the dictaphone provided so he purchased his own; he stated he was from the private sector; he stated his probationary period should have started after his induction but he was given a case in his first week.

75. The claimant stated he had access to an HR Advisor ('Deng') but not throughout for six months. He said the support was stopped. When asked if he had made Ms Marsh aware of his dyslexia report, he stated he had told her he had dyslexia. The claimant stated he did not receive refresher training on I-trent

76. The claimant believed that a lack of support was a breach of the probation procedure; he stated he had to buy a Dictaphone because the one provided was not 'working'; he also agreed that he had received additional I-Trent training in March; the claimant stated he had created a template (tool) for notetaking; he stated he was not permitted email access after his employment had ended.

77. Ms Mills, who was present at the appeal hearing, was asked to respond to the points raised by the claimant. She said timekeeping was not part of her decision; the sleeping at work issue was not raised in the final probation meeting; the claimant had not raised the software issue previously, but Access to work had been discussed. She also stated that the claimant's use of I-trent was not raised as a concern. The claimant challenged this, Ms Mills said the issue was about case logging on the excel spreadsheet; Ms Mills stated that the claimant did get the refresher training he had asked for. The claimant commented that in the past he had needed to re-do exams 2 or 3 times and his masters twice. He also stated the majority of his workload was PO2 level, though some was PO3. Ms Mills confirmed that to be the case; she also stated that the claimant was given time off to prepare for his final probation meeting as additional support.

78. The appeal outcome was sent to the claimant on 2 October 2018. This was at pages 264 to 268. Ms Geoghegan stated it was the claimant's responsibility to arrange for his representative to be present; further that denial of email access was denied for security reasons and the claimant did not take up the offer of alternative assistance.

79. Ms Geoghegan rejected the relevance of time keeping or the sleeping incident to the decision to dismiss.

80. Ms Geoghegan rejected the allegation of any discriminatory treatment. She concluded that a Dictaphone had been provided, a note taker where resources allowed and further training had been organised (for the claimant to book on to) and no further adjustments were requested.

81. Ms Geoghegan referred to several advice-related complaints, which she believed would not have been avoided or overcome by any further adjustments.

82. Ms Geoghegan concluded that the claimant's workload was a lot less than what a Principal adviser could expect to carry and he had also failed to complete all record keeping.

83. Ms Geoghegan concluded that the quality of advice and recording issues would not have been affected by adjustments, including I-Trent training, note taking or a Dictaphone. Ms Geoghegan also noted discussions about Access to Work.

84. Ms Geoghegan concluded a lot of the tasks were of PO1 level.

85. Regarding the probation policy, Ms Geoghegan concluded the claimant had been provided with appropriate training/support, reasonable adjustments were made and regular one to ones had taken place as well as three and six-month review meetings.

86. Ms Geoghegan found no flaw in the assessment of the claimant's (lack of) capability. She also concluded there was no intentional sabotage/setting up of the claimant to fail.

87. The appeal was rejected.

88. The claimant did not at the time or in his evidence challenge the accuracy of the minutes. In evidence, he only drew attention to the respondent's refusal for the meeting to be recorded and he cross examined Ms Geoghegan that the appeal minutes did not record discussion around the alleged curtailment of his induction. The Tribunal finds that the notes were contemporaneous and detailed and an accurate summary. The claimant did challenge the appeal outcome by his subsequent 19-page letter at pages 270- 288. That was not, obviously, considered before the appeal decision was made. The claimant did not give any evidence about those points specifically. The Tribunal finds that the letter conflated all aspects of his challenge to the respondent's decision to terminate his employment.

89. The Tribunal has chosen to set out and refer to relevant extracts from the appeal process as the issues raised and discussed were comprehensive.

90. From the foregoing detail of events, the Tribunal makes further findings as below.

91. The Tribunal finds the claimant's time-keeping and sleeping at work incident was not factored in to the decision to dismiss the claimant. This was made clear by Ms Mills in her outcome letter. She also repeated this at the appeal hearing. Her evidence in paragraph 17 and 18 of her witness statement was consistent in this regard. The Tribunal has already made a finding above in relation to the flexi-time arrangement.

92. The Tribunal finds that the claimant did not follow up/pursue Access to work, which the Tribunal finds it was for him to do before the respondent could consider further support. The Tribunal noted that this might have included speech to text software (page 152, one to one meeting on 14 February 2018). It was discussed with the claimant on 1 March too (page 168) and on 14 March 2018 (page 173). The Tribunal noted the claimant accepted he had not followed up at his probation meeting on 30 May 2018 (page 210).

93. The Tribunal finds the respondent did provide the claimant with a working/functioning dictaphone. The claimant did not, at the time, say it was not working or faulty. At his one to one on 14 February 2018, he said he had tried to use it. At his one to one on 1 March 2018, no reference was made to it and on 14 March 2018 he said he found it not suitable. At his appeal hearing, he said it was complicated to use. In his evidence to the Tribunal the claimant said it was faulty. Under cross examination the claimant conflated complicated with faulty. The Tribunal found the claimant's evidence to be inconsistent. He purchased his own machine, which the Tribunal finds was a voluntary act. The claimant also agreed under cross examination that when a note taker was required at a disciplinary hearing because dismissal was proposed, this was provided most of the time.

94. The claimant was given I-Trent training during his induction period. He requested refresher training. This was recorded in the one to one meeting on 14 March 2018 page 173. The Tribunal finds this was not provided. The evidence was confusing as the claimant appeared to confirm at the appeal hearing that he had received this (page 259). Ms Mills stated he had received this too (at the appeal hearing) page 260. The claimant, the Tribunal finds however, was responding to more than one question and thus concludes the refresher training was not given. Ms Mills also confirmed this in re-examination.

95. The claimant was also inputting into a casework log. The Tribunal finds this to be additional to I-Trent. There was a delay in doing this which Ms Marsh addressed in the one to one on 1 March. At the three-month review meeting on 14 February 2018, the claimant was asked to use the query log and the casework log. The Tribunal finds that the claimant was able to use the casework log (Excel spreadsheet) and the case action plan recording advice (on Word) for day to day advice. The Tribunal finds these documents were on a shared drive outside of I-Trent. The claimant accepted there were two systems and the case action plan was a Word document. I-Trent was an HR Management System for pay, holidays etc. The Tribunal also drew on the exchange at the appeal hearing (page 260) in reaching these findings and under cross examination, the claimant agreed the Excel spreadsheet (on shared drive) was a read only document if someone else was on the system. Although the claimant stated that the case action plan was on I-Trent, the Tribunal finds the claimant could instead or in addition populate the Word document. Under cross examination, the claimant said from 6 March onwards he could update the I-Trent and I -Trim too without any issues and that he had been given help by colleagues with this. He also said that he did not require any training other than for note taking at his one to one meeting on 8 May 2018. The Tribunal finds however, having regard to Ms Marsh's summary at the probation review meeting on 30 May 2018 (pages 206 – 207) that there remained issues with this.

96. The Tribunal finds the claimant's workload was comparable to his peers. The list on page 182 dated 23 March 2018 included Glenis Doble, another Principal Adviser, who had 7 cases compared to the claimant's 8. The email also laid out expectations of a Principal Adviser to have up to a 20-case workload. The corresponding case load of the other HR Advisers was significantly lower than their expected levels too. The number on 14 February 2018 was 14; on 14 March 2018 the claimant had stated he was ready for more cases. Under cross examination, the claimant said he had raised his case load, but in his witness statement he did not address this in paragraph 18. The Tribunal finds this was not raised. Additionally, under cross examination, the claimant said he did not have a problem with the number of cases, but with the support.

97. Ms Marsh and Ms Mills both considered the nature of his cases too and considered the claimant to be performing at a lower level than a PO3 Principal adviser level. Ms Mills reviewed this herself too (paragraph 43). This was accepted by the claimant. He agreed most of his work was PO2 level and he *could get* to PO3 level. But he was not at that level at any time during his employment. Under cross examination, Ms Mills reaffirmed her view that most

of the claimant's advice was at Adviser level. The Tribunal finds this to be the case.

98. The Tribunal finds the clamant did make mistakes He agreed with many of these, others, the Tribunal finds, were reasonably held concerns of the respondent. He used an inappropriate tone in an email; he had not attended a social media training course; he had not completed an HR action plan (accepted under cross examination as an error); he had missed a formal stage 2 meeting; he had missed another meeting with a manager (which the Tribunal accepts was a misunderstanding as the claimant did not have it in his calendar) he had made a serious mistake in Jasmine's case (which error was accepted by the claimant) (Ms Bailey's email at page 192 – 193 contained wider concerns); he had some boundary issues with employees approaching him rather than the union and separately, he had interjected inappropriately in a meeting which potentially undermined the Manager. He had argued/shouted at a Union representative (which he denied under cross examination but not at the time). There was an additional concern raised about a Manager and Union representative challenging the claimant's decision to impose a more severe penalty (from a verbal warning) (page 314 of the Claimant's bundle, page 207 of the respondent's bundle). Also, the claimant had been challenged about differentiating between an investigation and disciplinary hearing (paragraph 11 of Ms Mills' witness statement and page 230 of the bundle). The Tribunal finds the claimant was not culpable of withholding information from Ms Coveney which the Tribunal finds was at Ms Marsh's suggestion, alternatively with her knowledge. The Tribunal did not hear from Ms Marsh.

Applicable Law

99. The claimant's claims are for race discrimination (direct) contrary to S. 13 of the Equality Act 2010 ('EqA'), a failure to make reasonable adjustments and discrimination arising from disability contrary to sections 20 and 15 of the EqA respectively.

100. The *general* burden of proof is set out in S.136 EqA. This provides:

"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.

101. S 136 (3) provides that S. 136 (2) does not apply if A shows that A did not contravene the provision.

102. The guidance in ***Igen Ltd v Wong 2005 ICR 931 and Barton v Investec Henderson Crosthwaite Securities Ltd 2003 ICR 1205 EAT*** provides guidance on a 2-stage approach for the Tribunal to adopt. The Tribunal does not consider it necessary to set out the full guidance. However, in summary, at stage one the claimant is required to prove facts from which the Tribunal could conclude, in the absence of an adequate explanation, (now any other explanation) that the respondent has committed an act of discrimination. The focus at stage one is on the facts, the employer's explanation is a matter for

stage two which explanation must be in no sense whatsoever on the protected ground and the evidence for which is required to be cogent. The Tribunal notes the guidance is no more than that and not a substitute for the Statutory language in S.136.

103. In ***Laing v Manchester City Council 2006 ICR 1519 EAT***, the EAT stated that its interpretation of Igen was that a Tribunal can at stage one have regard to facts adduced by the employer.

104. In ***Madarassy v Nomura International PLC 2007 ICR 867 CA***, the Court of Appeal stated:

"The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a Tribunal "could conclude" that, on a balance of probabilities, the respondent had committed an unlawful act of discrimination"

105. More specifically, in relation to reasonable adjustments, a claimant must establish he is disabled and that there is a provision, criterion or practice which has caused the claimant his substantial disadvantage (in comparison to a non-disabled person) and that there is apparently a reasonable adjustment which could be made. The burden then shifts to the respondent to prove that it did not fail in its duty to make reasonable adjustments ***Project Management Institute v Latif 2007 IRLR 579***. The respondent may advance a defence based on a lack of actual or constructive knowledge of the disability and of the likely substantial disadvantage and the nature and extent of that S.20, Part 3, Schedule 8 EqA & ***Newham Sixth Form College v Sanders 2014 EWCA Civ 734.***

106. In relation to discrimination arising from disability, once a claimant has established he is a disabled person, he must show that 'something' arose in consequence of his disability and that there are facts from which the Tribunal could conclude that this something was the reason for the unfavourable treatment. The burden then shifts to the employer to show it did not discriminate. Under S.15 (2) EqA, lack of knowledge of the disability is a defence but it does not matter whether the employer knew the 'something' arose in consequence of the disability. Further an employer may show that the reason for the unfavourable treatment was not the 'something' alleged by the claimant. Finally, an employer may show the treatment was a proportionate means of achieving a legitimate aim.

107. Pursuant to S. 212 EqA,'substantial' means more than minor or trivial.

Conclusions and Analysis

108. The following conclusions and analysis are based on the findings which have been reached above by the Tribunal. Those findings will not in every

conclusion below be cross-referenced unless the Tribunal considered it necessary to do so for emphasis or otherwise.

Race Discrimination

109. The Tribunal concludes in relation to being provided with 'false information in December 2017 regarding flexitime, the complaint was as a stand-alone allegation out of time. However, having regard to the just and equitable provision in S. 123 of the Equality Act 2010, the Tribunal exercised its discretion to hear the claim out of time as the respondent was not prejudiced to deal with the allegation. No argument on prejudice was advanced. The Tribunal reaches the same conclusion for the allegation of race discrimination in February 2018. Alternatively, the Tribunal concludes that the allegations are in time, being part of conduct extending over a period ending with the last of the one to one meetings 30 May 2018.

110. The Tribunal concludes that information was given to the claimant which was either confusing or miscommunicated having regard to the finding in paragraph 35 above. However, it was not false, rather premature and there was no subsequent acknowledgment of this by Ms Marsh. There was no evidence produced however, in relation to what, if any, flexi-time provision had been made for or communicated to Glenis Doble. The claimant did not prove facts from which a Tribunal could conclude in the absence of any other explanation that the claimant was subject to less favourable treatment than Glenis Doble. Alternatively, as early as 16 January the issue was addressed and again on 14 February 2018 in a one to one. The issue ceased to be an issue thereafter and did not form any part of the decision to dismiss the claimant or not to uphold the appeal. The evidence in this regard was clear and cogent. The allegation of race discrimination was made for the first time when the claimant submitted his grounds of appeal. The Tribunal noted that the claimant was part of a culturally diverse organisation, which had four other black HR staff in the team and a Deputy Head of HR who was also black. There was no evidence of any discrimination complaints during the claimant's period of employment and the claimant did not call any corroborating testimony. The Tribunal was satisfied that the respondent's treatment of the claimant was not motivated by his race at all and was satisfied that the evidence was cogent.

111. In relation to training and specifically the note-taking training, the Tribunal concludes this was requested and agreed in principle on 6 February 2018. The claimant was sent the link to three courses to book on. There was no evidence he did so at that time for a course in March which was then rejected by Ms Marsh. He did not book until 11 April 2018 after which he received an acknowledging email. The claimant did not produce any earlier acknowledging email. (The claimant did not request of the respondent if there was any evidence about a March booking; neither was an application made for disclosure). The claimant's request was approved and he was booked to attend on 24 May 2018. There was no evidence produced about the detail on when Glenis Doble, the claimant's comparator requested training or when this was approved or when Glenis Doble received it. Having regard to some of the generality of the conclusion in paragraph 110 too, the Tribunal concludes that

the claimant has not discharged the stage one burden. If the Tribunal is wrong in reaching this conclusion it would have readily concluded that the respondent's explanation was cogent and not rooted in race discrimination whatsoever.

112. With regard to the I-Trent/I-Trim training, the Tribunal has found the evidence about it to be inconsistent and lacking in clarity. Ultimately, the Tribunal is satisfied that the claimant did request refresher training and did not receive it. However, the claimant's evidence to the Tribunal was that his struggles with I-Trent/I-Trim ceased to be an issue after 6 March 2018. Further, as with the note taking issue, the Tribunal was provided with no evidence of whether and if so when Glenis Doble received this refresher training. The Tribunal also noted that the claimant was permitted to use an Excel spreadsheet and a Word document for case logging and recording purposes outside of the I-Trent system which had been, temporarily, satisfactory to the respondent. Having regard to some of the generality of the conclusion in paragraph 110 too, the Tribunal concludes that the claimant has not discharged the stage one burden. If the Tribunal is wrong in reaching his conclusion it would conclude that this was an oversight or no longer considered as required, which was an explanation not rooted in race discrimination whatsoever.

113. With regard to the alleged failure to support during and after the claimant's one to one meetings, the Tribunal concludes that the support which the claimant received was considerable. Again however, the Tribunal was hampered in its ability to properly undertake a comparative exercise with the support provided to Glenis Doble because the clamant produced no evidence. This was for the clamant to do, he needed to establish the prima facie facts from which he was asking the Tribunal to look to the respondent for an explanation. The claimant went further in this allegation as he alleged Glenis Doble was also given management opportunities to line manage junior staff. The claimant had not previously raised this either. There is little the Tribunal can do with an allegation without more. There was no information about the occasions or frequency or circumstances of this. Based on the evidence before the Tribunal and having regard to its findings above, the Tribunal concludes that the claimant had not demonstrated the necessary competence or trust to supervise or manage others. In fact, the respondent needed to supervise the claimant who was operating below PO3 level. There had also been errors and complaints about his work. The support as evidenced by the content of the one to one meetings, the three month review meeting and other email exchanges with Ms Marsh did not paint a picture of an unsupported employee at all. There was early attention to the need for a Dictaphone and note-taking training, reference to Access to Work and early intervention in behaviours (which will be analysed below as part of the claimant's disability discrimination claim). Having regard to some of the generality of the conclusion in paragraph 108 too, the Tribunal concludes that the claimant has not discharged the stage one burden. If the Tribunal is wrong in reaching his conclusion it would have readily concluded that the respondent's explanation was cogent and not rooted in race discrimination whatsoever.

Disability Discrimination – Reasonable Adjustments; paragraphs 14 (a) to (i) 15,16 and 17 above

114. The respondent accepted the clamant was a disabled person within the EqA at the material time (s) and had knowledge of it (but not of alleged substantial disadvantage or the nature/extent of it).

115. The Tribunal considers that the reasonable adjustments complaints (subject to what is stated below in this paragraph) are in time. This is on the basis that by the date of the decision to dismiss the claimant on 7 June 2018, pursuant to S.123 (4) Equality Act 2010, the respondent's act was inconsistent with the making of the adjustments sought *if they were to be done* or by which date it might reasonably have been expected to have made the adjustments sought, *if they were to be done.* The claimant's dyslexia report was not disclosed until the final probation review meeting on 30 May 2018 following which a decision was reserved and the issues of alleged disadvantage/support required were raised then too and were also contained in his appeal submitted on 22 June 2018. To the extent that the adjustments in relation to the induction period and 6 March 2018 (or otherwise) are out of time being adjustments which might reasonably have been expected to be made earlier, the Tribunal exercised its discretion to hear the claim as it was just and equitable to do so with little or no prejudice to the respondent. The Adjustments sought in relation to the appeal hearing on 12 September 2018 are in time as they relate to that date.

116. **14 (a) & 15:** the Tribunal concludes that the respondent did not apply a PCP that the claimant perform his role without a fully supported two-week induction to the post. This is because the Tribunal was satisfied that the claimant was provided with a proper induction. The claimant was inducted into all of the respondent's policies including I-Trent/I-Trim. He was given work to do early on but the Tribunal draws on its experience and concludes this is not an uncommon occurrence and in fact it can be an aid to induction to learn 'house style', culture and/or is otherwise considered on-the-job training. The Tribunal had regard to the level of post the claimant had been recruited in to and his considerable HR experience and background. To expect a work-free induction period was not realistic. Alternatively, the Tribunal concludes the induction process, which included doing work, did substantially disadvantage the claimant because of his dyslexia on a comparative basis. However, the Tribunal concludes that the claimant did not raise this at the time; there was no reference to this at the meeting on 19 December 2017 in particular. There was thus, in the further alternative, a lack of knowledge that the claimant was likely to be placed at a substantial disadvantage contrary to S.20, Part 3 of Schedule 8 Equality Act 2010.

117. **14 (b) & (g) & 15** The Tribunal concludes that the claimant was not required to take notes at meetings without a functional Dictaphone or Access to Work support. He was provided with a Dictaphone he was unable to use (which was not the fault of the respondent). Rather than ask for assistance with its use, he elected to purchase his own. He was also not disadvantaged. The claimant

said in evidence that he had received help and support from his colleagues (paragraph 48). He repeated this more than once under cross examination and in submissions. He could have asked a colleague for assistance. The Tribunal notes the examples of Ms Coveney offering to (and taking) take minutes and Deng Majuk taking notes when a note taker had fallen sick. The Tribunal does not consider an example of a Union declining to allow a meeting to be recorded to amount to substantial disadvantage. Alternatively, if the claimant was relying on a PCP whereby the respondent would only provide a designated note taker for 'dismissal' meetings, this did cause the claimant substantial disadvantage as there was only example given where the claimant had struggled because of the absence of a note taker – when the Union did not agree to the meeting being recorded and no-one else took the notes. In relation to Access to Work, (which included speech to text software), in so far as this was a PCP applied, the failure to pursue this was the claimant's and any disadvantage was caused by that. It was discussed at each of his one to ones on 14 February 2018, 1 March 2018 and 14 March 2018. It was for the claimant to follow up and required employee liaison first. It is notable that he did not do so. Under cross examination, the claimant said "if the manager calls, it works faster" but he never made the respondent aware of that. In addition, there was no substantial disadvantage in asking the claimant to make the arrangements for assistance from a disability supporting forum which would have helped him. He had used them before in previous employment. If there was any substantial disadvantage based on the claimant's evidence about his workload, the respondent had a lack of knowledge that the claimant was likely to be placed at a substantial disadvantage contrary to S.20, Part 3 of Schedule 8 Equality Act 2010.

118. **14 (c) & (f) & 15:** The Tribunal concludes that the claimant was not expected to use the HR I-Trent system without support. That PCP was not applied as asserted by the claimant because the claimant was inducted in I-Trent and was permitted to utilise the additional Excel spreadsheet and Word documents to keep his casework log and record of advice up to date and his use of I-Trent ceased to be an issue after 6 March 2018. The Tribunal concludes that the claimant was asked to update the casework logs and I-Trent (this was mentioned in the one to one on 1 March 2018). There was no express reference to I-Trent in the subsequent email of 6 March 2018. The claimant did do it and got assistance from his colleagues (paragraph 50 of the claimant's witness statement), which the Tribunal concludes served as the best form of practical support, even if not designated. After 6 March 2018, the claimant's own case was he had no further issues and the Tribunal concludes that Ms Marsh's resurrection of this issue was not about the history but more about outstanding updates. Thus, in any case, any disadvantage the Claimant had in the past was not substantial. Moreover, it was no longer prevalent after 6 March 2018. The instruction to update on 6 March was not a short deadline as this followed a reminder to do so on 1 March (page 168) when the claimant had said he would spend time that week doing so. Although the respondent applied a PCP (to use I-Trent) after 6 March, the non-provision of refresher training after it was raised on 14 March 2018 did not, in the light of the claimant's own evidence about his competence on I-Trent from 6 March onwards, mean that the PCP (to use I-Trent) caused substantial disadvantage to the claimant.

119. **14 (d) & 15:** The Tribunal concludes that the claimant did manage eight cases or more during his period of employment, but this was not without support. The claimant did not specify the nature of the lack of support in this regard. To the extent this was about volume, the range was between 8 up to 14 cases. Whilst the Tribunal noted that Principal HR Advisers were expected to manage up to 20 cases, this did not, in reality, happen with the claimant or another Principal Adviser. The snapshot taken on 23 March showed that none of the other ranks of advisers had a caseload volume near or at their expected level either. The claimant's caseload was not adjusted to reflect his comparative reduced speed to process information. The Tribunal was not satisfied that numerically the volume was adjusted. This may have its roots in the claimant not being forthcoming about the impact of his dyslexia. He only disclosed his report at the last review meeting. He downplayed it at that review meeting too, saying he didn't want to admit he had it, he didn't consider it to be a disability holding him back and he also said he had faced bigger challenges. He didn't follow up with Access to Work. He also said on 14 March that he was ready for more cases. The Tribunal was satisfied however that the nature of the work given to the claimant was mainly of a PO1 or PO2 level and that had a mitigating impact. His caseload did not in those circumstances cause a substantial disadvantage having regard to the other measures in place with the Dictaphone, the note taking training and support from his colleagues (including note-taking) and he had regular one to ones. He would also have benefitted from Access to Work input.

120. **14 (e) & 15:** The Tribunal was not satisfied that this was a material part of the claimant's case**.** The claimant did not raise this in any one to one meeting or his probation review meetings or at his appeal. He did mention this in his witness statement. Whilst the Tribunal does accept that the claimant assisted a colleague with his work, this was no different to the support which the claimant received or that which would be expected in general in an office environment. There was no barrier or obstacle, the Tribunal concludes, to the claimant's performance. The Tribunal has already noted above, that the claimant had said he was ready to take on more cases in March 2018. There was no PCP applied in this regard or if there was, one which caused the claimant a substantial disadvantage.

121. **14 (h) & 15:** The Tribunal was not satisfied that the respondent had agreed to inform the claimant's representative of the revised appeal hearing date. The appeal process requirements were very clear about responsibility for this (page 224). The Tribunal has regard to the claimant's position as Principal HR Adviser too. The claimant did not say at the appeal hearing that the respondent had agreed to inform his representative or witnesses or in paragraph 66 of his witness statement. He stated that he had been told that he was required to arrange this. In the appeal outcome, Ms Geoghegan had understood this to be an assumption on the claimant's part. In his email before the appeal hearing (page 237), there was an email exchange regarding the claimant's (choice of) companion but no reference to an arrangement for the respondent to contact the person. Indeed, it would be unusual for an employer to commit to this responsibility. There was no request at the appeal hearing to postpone the hearing either. In so far as there was a PCP which was the

respondent's appeal procedure requiring the claimant to inform his representative and witnesses of the hearing arrangements**,** this would not, in the above circumstances, have substantially disadvantaged the claimant. The Tribunal also noted that the note taker was one of the witnesses the claimant had asked to attend, but this did not form any part of the appeal discussion.

122. **14 (i) & 15** The Tribunal was not clear if the respondent's refusal to allow the claimant to record the appeal hearing was a one-off decision or rooted in a policy. In so far as it was the latter, the respondent also had a designated note taker from HR present. This would have been sufficient to ensure the detail was captured. That is, after all, the job of a note taker, especially in HR. The Tribunal concludes that not allowing the claimant to record the meeting would not have caused substantial disadvantage in the circumstances. In fact, the identity of the person was, as noted above, someone who the claimant had intended to call as a witness. Further, the Tribunal notes the minutes of meetings to date had been thorough/comprehensive, which should have reassured the claimant and reduced his concern, allowing him to focus on the hearing.

123. With regard to knowledge, particularly on the nature and extent of any substantial disadvantage referred to in paragraph 16 above, in light of the above conclusions, the Tribunal does not consider it necessary to reach further conclusions in this regard. Generally, it was not until on or after the final probationary review meeting on 30 May 2018, that the respondent became aware of the *nature and extent* of any substantial disadvantage. It was only at that meeting that the claimant provided a copy of his Dyslexia report obtained from a previous employment. It was never referred to by the claimant or raised as part of any one to one discussion or review meetings. In fact, the first recorded disclosure of his dyslexia (expressly) to his line manager was at his probation review meeting on 14 February 2018. In addition, the claimant had actively 'downplayed' or distanced himself from the alleged impact of his dyslexia on him at various points at the final probation review meeting. To the extent that the respondent had knowledge of the nature and extent thereafter only and where this has not been expressly cited above, the Tribunal notes that this could only, chronologically, have affected the allegations in relation to the appeal hearing on 12 September 2018. However, the Tribunal reaches the same conclusions in 122 and 123 above in relation to those.

124. **17:** In light of the findings and conclusions above on the alleged PCPs and substantial disadvantage, the Tribunal concludes that the respondent did not fail to discharge its duty to make reasonable adjustments. The burden of proof did not shift to respondent. Looking at the matter holistically, the Tribunal concludes the claimant was provided with Dictaphone support; he was informed of three note taking courses, when he booked the course it was approved. The claimant was permitted to maintain casework logs outside of I-Trent at least for just under the first three months. His work colleagues supported him even on the claimant's own evidence. He was given time to prepare for his six-month probation review meeting; he was given sub-PO3 level work. The claimant himself did not follow up with Access to Work, he didn't volunteer his dyslexia report until his six-month review. The Tribunal concludes that a lot of the

errors/mistakes made by the claimant, were not linked to the claimant's dyslexia. In particular, those where the clamant had boundary issues: where he had exposed HR to appearing to be decision makers and where the claimant appeared to be forging closer ties with employees at the expense of HR's business support for Managers. This was a cultural issue for the claimant. He was working for the first time in the public sector which the Tribunal concludes he never got to grips with. He said himself in response to Tribunal questioning, the environment was much more "pressurised" than what he was used to and the change was "significant".

125. The Tribunal has focused on the agreed list of issues. These proceedings were case managed and on day one of the hearing the parties were given time to agree a revised list of issues when it became apparent that these were not agreed. This was especially so in the interests of the claimant having regard to his dyslexia and because he was acting in person. With that in mind, the Tribunal did in fact re-visit the list of issues to ensure it represented the resolutions being sought. The Tribunal's conclusions on some of the alleged PCPs above include a degree of latitude in their interpretation. The Tribunal stopped short however of making findings or drawing conclusions on any PCP it thought the claimant might have been intending to advance but did not do so.

Discrimination arising from disability

126. In relation to the conclusions of unfavourable treatment below in paragraphs 127, 130 and 131, The Tribunal concludes that the claim is not out of time. The Tribunal concludes either there was a course of conduct ending with the day before the final probation review meeting (29 May 2018); alternatively, in so far as they were discrete acts which occurred before 9 May 2018, the Tribunal exercised its discretion to hear the claim(s) out of time being just and equitable to do so, as there was no prejudice to the respondent (and none was advanced) to its defence of the claim (s).

127. **19 (a):** The Tribunal struggled, conceptually, to understand the claimant's assertions in relation to this aspect of his claim. Dealing first with the induction period, the claimant was, instead of getting a work-free two week 'structured' induction period, introduced to and provided with casework. Put differently, his induction period beyond introduction to the policies and processes etc included on the job training with real work. The Tribunal was not satisfied this was unfavourable, but even if was, the treatment was because of the respondent's practice of giving work (during induction) which did not arise from the claimant's disability. This contrasts from other examples of this form of discrimination, for example dismissal for absence related to disability, or a non-promotion to a managerial position because of a claimant's lack of confidence/assertiveness which arises from anxiety or depression (for example).

128. **19 (b):** The Tribunal has found this did not happen. There was no unfavourable treatment. In this case, the Tribunal does not consider it

necessary to reach a conclusion on an alternative position. The Tribunal considered this to be a more binary conclusion.

129. **19 (c):** The Tribunal has found this did not happen. There was no unfavourable treatment. In this case, the Tribunal does not consider it necessary to reach a conclusion on an alternative position. The Tribunal considered this to be a more binary conclusion.

130. **19 (d):** The Tribunal has found this did happen. It was unfavourable treatment. However, this treatment was either because of the respondent's oversight or because it was no longer considered necessary. That was not something arising in consequence of the claimant's dyslexia**.** The Tribunal struggled again, conceptually, to understand the claimant's assertions in relation to this aspect of his claim.

131. **19 (e):** The Tribunal has found that this did happen. It was unfavourable to the claimant. The Tribunal concludes that the reason for the support level being sub-normal (the meeting notes were only provided to the claimant handwritten/in draft) was because the request for the note taker was a last minute request, not with the normal five days' notice required. That was not the claimant's fault, as the designated note taker had fallen sick. However, that was not something arising in consequence of the claimant's dyslexia.

132. **19 (f):** The Tribunal has found that this did not happen. The claimant was provided with time to prepare for his final probation review meeting and the instruction to work from the claimant's usual work area did not mean he could not continue to prepare. His own evidence did not allege this either as set out in paragraph 69 above. His concern, the Tribunal concludes, was hypothetical only. The instruction for HR staff to work within the HR area was generic. It was not the claimant's case that he returned to the HR work area (to work on his final probation review meeting) and ended up having to do HR Work**.**

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Employment Judge Khalil

28 July 2020