



EMPLOYMENT TRIBUNALS

Claimant: Ms F Hyland
Respondent: Aspiedent CIC
Heard at: Leeds Employment Tribunal
On: 23, 24, 25 November 2021, 15 December 2021.
Before: Employment Judge Davies
Mr T Downes
Mr L Priestley

Representation

Claimant: In person with Ms Heeley (Claimant's mother)
Respondent: Did not attend

RESERVED JUDGMENT

1. The following complaints are well-founded and succeed:
 - 1.1 The complaints of failure to make reasonable adjustments for disability relating to (1) the arrangements for the review meeting on 22 March 2017 and (2) the making of changes in working conditions;
 - 1.2 The complaint of unfavourable treatment because of something arising in consequence of disability relating to Ms Hyland's dismissal;
 - 1.3 The complaint of victimisation.
2. The following complaints are not well-founded and are dismissed:
 - 2.1 The complaints of failure to make reasonable adjustments for disability relating to (1) the use of Concrete 5 and (2) not using Adobe;
 - 2.2 The complaints of unfavourable treatment because of something arising in consequence of disability relating to (1) the three emails on 22 March 2017 and (2) the response to the 23 March 2017 email; and
 - 2.3 The breach of contract complaint.
3. There will be a separate remedy hearing. Case management orders will be made separately to prepare for it.

REASONS

Introduction

- 1.1 This was the hearing to determine Ms Hyland's complaints of disability discrimination, victimisation and breach of contract against her former employer, Aspiedent CIC.

- 1.2 Ms Hyland has autism (Asperger's Syndrome). After a preliminary hearing on 9 August 2019 EJ Davies decided that Ms Hyland was disabled as a result of Asperger's Syndrome. The Respondent is Aspiedent CIC. That is a company run by Dr Guest. Dr Guest also has autism. Dr Guest's autism has a very significant impact on her everyday life and work. Dr Guest has a support worker, Ms Blacow. Ms Blacow does not have autism, but she does have OCD, which affects her everyday life and work. Ms Hyland, Dr Guest and Ms Blacow have all experienced poor mental health at times.
- 1.3 These proceedings have been carefully case managed since 2017 because of those disabilities. Numerous adjustments have been made. It has been necessary to consider the needs of both Ms Hyland and Dr Guest, and the overriding objective. It is not proportionate to describe the adjustments and case management process in detail in this judgment. We note in particular:
- 1.3.1 The Tribunal tried to appoint an intermediary for Dr Guest at an early stage, but it was not possible for the intermediary to engage successfully with Dr Guest. The Tribunal also tried to obtain expert advice about adjustments for Dr Guest, but Dr Guest was eventually only willing to provide advice from her GP. Both these processes took some time and delayed the progress of the proceedings.
- 1.3.2 Concerns were identified about Dr Guest's capacity to litigate at one stage. This was at a time when she was also experiencing poor mental health. The Tribunal was told that expert evidence was being obtained in County Court proceedings brought by Ms Hyland against Dr Guest personally. The Tribunal proceedings were paused so that the Tribunal could also take that evidence into account. However, that evidence was not obtained quickly. The Tribunal had wrongly understood that Dr Guest was the sole Director of Aspiedent. When it became clear that Aspiedent had other Directors, the Tribunal proceedings were re-started. This was because the other Directors could make decisions about the conduct of the proceedings on Aspiedent's behalf. There was no concern about Dr Guest's capacity to give evidence. The other three Directors then all resigned in March 2021. The Tribunal took the view that the Respondent is Aspiedent, not Dr Guest, and that the proceedings should carry on. The Tribunal has noted Ms Blacow was appointed as a second company Director in August 2021.
- 1.3.3 The process for preparing for this hearing was the same as the process for preparing for the preliminary hearing about disability. It was broken down into steps and set out in a table for the parties to follow.
- 1.3.4 The parties had to disclose relevant documents and prepare a file for the hearing. There were some documents that Aspiedent was ordered to disclose that it did not disclose.
- 1.3.5 Anybody wishing to give evidence at the hearing had the chance to prepare a written statement. Dr Guest and Ms Blacow said that they were unable to prepare statements. However, they had produced detailed statements for the preliminary hearing. These set out their version of the events that give rise to most of these claims. It was agreed that they could rely on those statements. The process then allowed the parties to ask each other written questions. This was instead of cross-examining

- witnesses at the hearing. Both parties produced written questions. Both provided written answers to those questions.
- 1.3.6 The process then allowed the parties to provide written arguments. Both did so. Aspiedent's written arguments had been prepared some time before. The parties had the chance to respond in writing to each other's written arguments.
- 1.3.7 At the preliminary hearing, Dr Guest had joined by video-link from a separate room. Since then, CVP hearings have become available. Dr Guest and Ms Blacow had indicated some time ago that they were not going to participate any further in the proceedings because of their health. They have participated to a limited extent since. A CVP link was therefore provided for them to join the hearing if they chose to, but they did not.
- 1.4 The Tribunal panel read:
- 1.4.1 the documents in the preliminary hearing file;
- 1.4.2 the documents in the liability hearing file;
- 1.4.3 Dr Guest's witness statement dated 6 June 2019;
- 1.4.4 Ms Blacow's witness statement dated 28 May 2019;
- 1.4.5 Ms Hyland's witness statement dated 10 May 2021;
- 1.4.6 Aspiedent's written questions for Ms Hyland dated 9 June 2021 and her answers to those questions dated 6 July 2021;
- 1.4.7 Ms Hyland's written questions for Dr Guest and Ms Blacow dated 16 June 2021 and Dr Guest's answers to those questions with comments from Ms Blacow dated 30 September 2021;
- 1.4.8 Aspiedent's written arguments sent in an email dated 9 June 2021;
- 1.4.9 Ms Hyland's written arguments dated 24 August 2021.
- 1.5 Ms Hyland gave evidence at the hearing. The Tribunal took a break every thirty minutes. EJ Davies asked all the questions on behalf of the Tribunal. Some of them were based on what the Respondent said in its evidence and arguments.
- 1.6 After the hearing Ms Blacow and Dr Guest asked for a note of the questions asked at the hearing and Ms Hyland's answers. The Tribunal provided a summary note. The process allowed for the parties to make any corrections or additional comments in writing after the hearing. Both did so. The Tribunal took their comments into account.
- 1.7 We considered all the evidence and arguments carefully. This judgment does not deal with every single point made because that would not be proportionate. We took all the relevant points into account. Many of Aspiedent's points were really about whether or not Ms Hyland was disabled. We do not deal with those points in this judgment.

Issues to be decided: the Liability Questions

- 2.1 After considering the claim and response, submissions from Ms Hyland and Aspiedent, and the relevant legislation, EJ Davies identified the questions the Tribunal would have to answer to determine Ms Hyland's complaints. They were called the Liability Questions. They were set out in a case management order dated 13 February 2020. That case management order explained how the Liability

Questions had been identified and explained that these were the questions the Tribunal would decide at this hearing. The Liability Questions are:

Reasonable Adjustments

- 2.1.1 Did Aspiedent have the following practices:
 - 2.1.1.1 A requirement to use Concrete 5 to build its website rather than WordPress;
 - 2.1.1.2 A requirement to attend and participate in a review meeting on 22 March 2017 without being given an agenda or written details of what was to be discussed;
 - 2.1.1.3 A practice of repeatedly saying that Adobe was too expensive for the Respondent to use;
 - 2.1.1.4 A practice of making sudden and unexpected changes in working conditions, including by changing premises, changing staff and having surprise visitors to its offices?
- 2.1.2 If so, did those practices put Ms Hyland at a substantial disadvantage in relation to her employment in comparison with persons who are not disabled, i.e.
 - 2.1.2.1 Did a requirement to use Concrete 5 instead of WordPress put her at a substantial disadvantage because she had rigid thinking, was resistant to new ideas or change, and/or had difficulties relating to others;
 - 2.1.2.2 Did a requirement to attend and participate in the meeting on 22 March 2017 without written information put her at a substantial disadvantage because (1) she was not able to process what was to be discussed and prepare for the meeting and/or (2) she was unable to participate effectively in the meeting because she was overwhelmed;
 - 2.1.2.3 Did a practice of repeatedly saying that Adobe was too expensive put her at a substantial disadvantage because she understood literally that the sole reason for not using Adobe was its cost and was put at risk of dismissal when she brought an Adobe disk into the workplace;
 - 2.1.2.4 Did a practice of making sudden and unexpected changes in the workplace put her at a substantial disadvantage because she had rigid thinking, resistance to new ideas and resistance to change?
- 2.1.3 If Ms Hyland was put at any of those substantial disadvantages, did Aspiedent know that she was or could it reasonably have been expected to know that she was?
- 2.1.4 If so, what steps was it reasonable for Aspiedent to have to take to avoid the disadvantage(s)? In particular:
 - 2.1.4.1 Was it reasonable to expect Aspiedent to (1) allow Ms Hyland to continue to use WordPress; (2) provide her with training on Concrete 5; and/or (3) not treat her conduct in bringing the Adobe disk to work as a reason to dismiss her?
 - 2.1.4.2 Was it reasonable to expect Aspiedent to (1) postpone the meeting on 22 March 2017; (2) provide a written agenda in advance of the meeting; and/or (3) not require Ms Hyland to make decisions during the meeting itself?

- 2.1.4.3 Was it reasonable to expect Aspiedent not to treat Ms Hyland's conduct in bringing the Adobe disk into work as misconduct or a reason to dismiss her?
- 2.1.4.4 Was it reasonable to expect Aspiedent to give Ms Hyland notice in advance of any changes so that she had time to process and adapt to them?
- 2.1.5 If so, did Aspiedent fail to take those steps?
- 2.1.6 If Aspiedent had taken any or all of those steps, would Ms Hyland have been dismissed on 24 March 2017?

Discrimination arising from disability

- 2.1.7 Did Aspiedent treat Ms Hyland unfavourably by dismissing her on 24 March 2017?
- 2.1.8 If so, was it because of something arising in consequence of her disability, namely her conduct in bringing the Adobe disk into work and behaviour during 20-24 March 2017, which she says arose from her Asperger Syndrome?
- 2.1.9 Did Aspiedent treat Ms Hyland unfavourably by not addressing the concerns raised in her email of 23 March 2017 or by treating that email as showing no sign "of remorse" and being "very upsetting"?
- 2.1.10 If so, was it because of something arising in consequence of her disability, namely that she wrote the email as she did because of her Asperger Syndrome?
- 2.1.11 Did Aspiedent treat Ms Hyland unfavourably by sending her three emails on 22 March 2017?
- 2.1.12 If so, was it because of something arising in consequence of her disability, namely that she gave Dr Guest the wrong password?
- 2.1.13 If so, in any case, was Aspiedent's treatment of Ms Hyland a proportionate means of achieving a legitimate aim?

Breach of contract

- 2.1.14 Did the matter about which Ms Hyland provided information to ACAS include the breach of contract complaint?
- 2.1.15 If not, should she be allowed to amend her claim to include that complaint?
- 2.1.16 Did Ms Hyland have a contractual right to be paid for the one day per week that she worked for Aspiedent as a volunteer between 31 October 2016 and 31 January 2017?
- 2.1.17 If so, at what hourly rate of pay?

Victimisation

- 2.1.18 Did Aspiedent refuse to provide an agreed reference to Lloyds Banking Group in June or July 2018?
- 2.1.19 If so, was it because Ms Hyland had brought these Tribunal proceedings?

Disability judgment

- 3.1 The EAT dismissed Aspiedent's appeal against the reserved judgment and reasons from the preliminary hearing ("the Disability Judgment"). The Disability Judgment cannot be re-opened at this stage. The Tribunal read it. Dr Guest

employed Ms Hyland on the basis that she has autism (Asperger's Syndrome). That was accepted by Dr Guest and Ms Blacow throughout Ms Hyland's employment. It was also accepted in the original response to Ms Hyland's claim. However, Dr Guest and Ms Blacow have since come to believe that Ms Hyland does not have autism. They do not accept the findings in the Disability Judgment. All their evidence and arguments are now based on the premise that Ms Hyland does not have autism and that she is being dishonest about that. That premise was rejected at the preliminary hearing. The starting point is that Ms Hyland was and is disabled because of autism.

- 3.2 The Disability Judgment made general findings about the effects of autism on Ms Hyland. It did not decide whether that condition put her at the specific disadvantages alleged in the reasonable adjustments complaints. It did not decide whether that condition caused the specific things relied on as "something arising in consequence" of disability in the unfavourable treatment complaints. Those are matters for the Tribunal to decide at this hearing, as identified in the Liability Questions.
- 3.3 In its written arguments, Aspient wrote its own list of issues and presented argument about those. EJ Davies has made clear throughout that the issues to be decided are the Liability Questions.

Findings of fact

- 4.1 The statements from Dr Guest and Ms Blacow were written after they had come to the view that Ms Hyland does not have autism. It seemed to the Tribunal that this affected their perception of what happened at the time. They both say in their statements that they interpreted Ms Hyland's actions through the lens of autism at the time. That is not always evident. Their accounts of those events in their statements may have been influenced by their subsequent change of view. The Tribunal found that Ms Hyland was doing her best to give honest and accurate evidence. Inevitably more than four years after the events she did not always remember things clearly and some of her answers were inconsistent with other documents. Aspient repeatedly accuse Ms Hyland of perjury. The Tribunal had no doubt that she was not being dishonest. The fact that evidence is inconsistent or even incorrect does not inevitably mean it is dishonest. Some of the evidence given by Dr Guest and Ms Blacow was inconsistent too. Some specific examples are mentioned below. In all those circumstances, the Tribunal placed particular weight on the documents written at the time. Taking into account all the written evidence and the oral evidence, we made the following findings. In fact, there was not much dispute about most of what happened.

The parties

- 4.2 The Respondent is a Community Interest Company started by Dr Guest in 2014. It provides training and consultancy services for employers to enable them to get the best out of autistic employees. Its website at the time gave advice about making reasonable adjustments for autistic employees:

Reasonable adjustments

Although there are some common principles within the reasonable adjustment procedures that should be considered, we have to emphasise that each autistic person is different and

that the reasonable adjustments have to be tailored specifically to them. Below are some adjustments that may have to be made. These are for general guidance only.

- 1. Suitability of work environment in terms of sensory differences.*
- 2. Modified instructions to take into account differences in ways of thinking. For example, using diagrams wherever possible can be very helpful in some cases.*
- 3. Mentoring.*
- 4. Allowing more time for processing of information and not insisting on immediate decisions.*
- 5. Careful change management.*
- 6. Making sure work colleagues are aware of differences and take these into consideration.*

What reasonable adjustments should be considered for Autistic Employees?

The main requirement is acceptance of their autistic differences. The most important adjustments involve ensuring that their work environment is suited to their particular sensory issues and that you have made sure that they fully understand what is required. Their job may need to be modified so that they spend more time doing tasks at which they excel and less time doing tasks they struggle with. They may need support to handle social interaction within the workplace.

- 4.3 Dr Guest wrote an article about the reality of employing somebody with autism in 2016. She wrote, “It is generally the case that you will get an unpleasant reaction from your employees if you change something at short notice. However, if you plan, inform and manage the change correctly, they know what to expect and anxiety levels won’t rise too much. This approach will benefit all your employees; not just autistic employees.”
- 4.4 Dr Guest was in the business of providing expert advice about getting the best out of autistic employees and making appropriate adjustments for them. She clearly had expertise in that. However, as we have said above, Dr Guest is herself autistic. She says in her witness statement that it is quite severe and has a very significant impact on her everyday life and work. It clearly does. Having academic expertise in getting the best out of autistic employees and being able to advise other people about that, is not the same as managing your own autistic employees. In managing her own autistic employees, Dr Guest was doing so as a person with autism herself. As explained below, the Tribunal found that Dr Guest was not always able to put into practice herself the advice she gave to others. Dr Guest was supported by Ms Blacow. She is Dr Guest’s support worker, funded through Access to Work. She is also Aspident’s Operations Manager. Ms Blacow does not have autism. She does have OCD and this can make navigating day to day life complex, confusing and stressful for her.
- 4.5 Aspident is a very small company. In October 2016 it had three paid staff members. Some of them were autistic.
- 4.6 Fuller information about Ms Hyland’s autism is in the Disability Judgment. The Tribunal noted that:
- 4.6.1 She can have difficulty with change to her routine, established rules or the environment. She minimises the impact by planning for change where possible. Unexpected changes can make her feel very stressed, anxious and wound up. She may need to take time out to calm down. She may “freak out” for example flinging papers down and walking off. She may be able to

continue with the changed approach but that may be stressful and difficult for her.

- 4.6.2 She can have difficulty accepting new ideas or ways of doing things. This is more likely with something personal or in which she is personally invested. She may resist making a change. She may find the new approach “jolting” and may “freeze” and need to take time to calm down before she can deal with the issue.
- 4.6.3 She can have difficulty relating to others and communicating. She has learnt to interpret and understand body language and the meaning behind what people say to a significant extent. That takes effort. When she is stressed or anxious, she is less able to understand and interpret.
- 4.6.4 She has some sensory sensitivity. This is mainly to other people’s mouth and nose noises. She will go somewhere else to avoid them.
- 4.6.5 Ms Hyland has a range of strategies to assist with meeting the challenges posed by her autism. Sometimes she is able to function well, although that takes planning and effort. At other times, for example when she is more stressed or anxious, or when too many issues present themselves at the same time, she functions less well. At the extreme this can be overwhelming and lead to a shutdown.

- 4.7 There is a lot of disagreement about whether Ms Hyland experienced an autistic reaction to events or whether she simply had an angry or emotional outburst. Aspiement place emphasis on Ms Hyland’s use of different terminology such as meltdown, panic attack, anxiety attack. The Tribunal starts by saying that it is inappropriate to refer to Ms Hyland’s reaction under any circumstances as a “temper tantrum.” She is an adult and was an employee of Aspiement. Even if her behaviour was not an autistic response it is patronising and disrespectful to refer to it in that way. However, the Tribunal was satisfied that Ms Hyland’s behaviour was an autistic reaction to events. We explain that below when dealing with particular incidents. The Tribunal did not think that Ms Hyland’s use of different terminology meant that she was not experiencing an autistic reaction. In some situations her functioning was impaired. Those situations included times when she was more stressed or anxious, so panic or anxiety was likely to be a feature of them. Sometimes the impairment was overwhelming and might be described as a meltdown or shutdown.

Ms Hyland’s employment

- 4.8 Ms Hyland was introduced to Dr Guest by a mutual acquaintance in May 2016. They had a discussion about autism and employment. Ms Hyland told Dr Guest something about her own autism. They kept in touch. This led to Ms Hyland doing some voluntary work for Aspiement when she finished her degree. She started volunteering on 24 October 2016.
- 4.9 After a week, on 31 October 2016, Dr Guest offered Ms Hyland paid work for Aspiement. Aspiement could only pay Ms Hyland for two days’ work. Dr Guest wanted her to work two days per week paid and two days per week as a volunteer. Ms Hyland could not afford to do that. She was travelling a long way to volunteer and Aspiement were not paying her travel expenses or any other expenses. However, she offered to do one day per week volunteering. She was happy to do so. That was agreed. She therefore started working two days per week as a paid employee and volunteering one day per week. She did the same work on all three

days. She never expressed any concern about working one day per week as a volunteer. She never asked to be paid for that day. The Tribunal found that the contract between Ms Hyland and Aspiedent was a contract to work two days per week for the agreed rate of pay. They agreed separately that she would volunteer one day per week. She did not have any contractual or other entitlement to be paid for the day on which she volunteered.

- 4.10 Ms Hyland said that she became a paid employee on 31 October 2016. Dr Guest said that it was 1 November 2016. We do not need to decide who is right. It does not affect the things we have to decide.
- 4.11 When she started volunteering and then working at Aspiedent, Ms Hyland did not have a formal discussion with Dr Guest or Ms Blacow about her autism, how it affected her and what adjustments she would need. She did not ever have a formal discussion about those things. Aspiedent's approach seems to have been much more unplanned. Changes or adjustments were made in response to particular issues or events. That is how Ms Hyland described it and that fits with what Ms Blacow said in her witness statement and what Aspiedent said in its initial response to the claim:

Aspiedent is highly skilled at making reasonable adjustments for employees quickly as and when needed. They are usually put in place automatically once a person's different ways of thinking and sensory issues are identified. Reasonable adjustments are also made via specific requests from staff, an event occurring which highlights their difficulties, or in response to a member of staff describing their autistic issues.

Website

- 4.12 When the Claimant started volunteering, Dr Guest asked her to help with Aspiedent's website. In fact it had two websites at the time, one aimed at employers of autistic people and one aimed at autistic employees. They were written by Dr Guest in quite technical language. They were not user-friendly. Ms Hyland's degree is in Product Design. She told Dr Guest that she was not an expert in web design but she agreed to do some work on the websites.
- 4.13 The existing websites were created using Concrete 5 Content Management System software but they were not hosted on Concrete 5.
- 4.14 Ms Hyland was not familiar with Concrete 5. She was familiar with WordPress, a different Content Management System. Ms Hyland started work on the websites straightaway. She found Concrete 5 difficult to work with and slow. She could not get the results she wanted. She found guidance on YouTube, but that did not really help. She asked Dr Guest for help and Dr Guest spent an hour or two teaching her about Concrete 5. The next day Ms Hyland made a mistake and was worried she had permanently damaged the website. She asked Dr Guest to fix it. Dr Guest gave her some more help with Concrete 5.
- 4.15 Ms Hyland had lots of ideas for Aspiedent's website but felt that she could not learn the programme fast enough to get them down. She knew that WordPress was capable of achieving what she was thinking of. She wanted to use WordPress to work on Aspiedent's website and get all her ideas down. She explained this to Dr Guest. She said that she would carry on learning to use Concrete 5 as well. Ms

Hyland's evidence was that Dr Guest reluctantly agreed that she could use WordPress. She confirmed this in her oral evidence. Dr Guest's evidence in her witness statement is that she did not give Ms Hyland permission to use WordPress. She says that she told her she could use online tutorials, ask Dr Guest for help, or storyboard her design on paper, Word or a drawing package. We return to that conflict of evidence below.

- 4.16 There is no dispute that Ms Hyland did work on the Respondent's website using WordPress. Indeed, she started doing so while she was still only a volunteer. Ms Hyland had agreed with Dr Guest that she would use her own laptop for doing Aspient's work. She used her own laptop to work on the website. She realised that she was unable to use the full editing features of WordPress without paying. She paid £30 of her own money to access those features on 27 October 2016. A domain name came with the purchase, so Ms Hyland chose Aspient.net. The alternative was to have a random string of characters. Ms Hyland registered the domain/account to her own Aspient email address. She used Aspient's information and details wherever they were required by WordPress.
- 4.17 What this meant was that Ms Hyland was developing a "beta" website for Aspient, using WordPress to create the content, but also with WordPress hosting the website. The Tribunal accepted the Claimant's evidence that she was simply trying to help Aspient. She did not have any ulterior motive and she was not trying to damage or disadvantage Aspient in any way at all.
- 4.18 After that Ms Hyland worked on the website on WordPress and regularly showed Ms Blacow her progress. There is no dispute that she told Ms Blacow that Dr Guest had given her permission to use WordPress. Aspient pointed out that when there was a problem in March Ms Hyland did not say to Dr Guest that she had already given her permission to use WordPress.
- 4.19 The Tribunal considered these events when deciding whether or not Dr Guest gave Ms Hyland permission to use WordPress. We found on the balance of probabilities that she did. We placed particular weight on the fact that Ms Hyland was entirely open with Ms Blacow. She showed her the draft website regularly and she told her that Dr Guest had given her permission to use WordPress. Ms Blacow worked very closely with Dr Guest. She was her support worker. Anything Ms Hyland said to Ms Blacow was likely to be shared with Dr Guest. The Tribunal considered it highly unlikely in those circumstances that Ms Hyland would have shown Ms Blacow the website and told her Dr Guest had given her permission to use WordPress if she had not.
- 4.20 However, it seemed to the Tribunal that there was probably a miscommunication or misunderstanding. We found that Dr Guest was agreeing to the use of WordPress to develop and create content. She was not agreeing to the use of WordPress to host the website, and she was not agreeing to the registration of a domain name and the development of a beta website hosted by WordPress. But she did not say that explicitly and Ms Hyland did not draw that distinction. So, Dr Guest may well have thought she had agreed to one thing and Ms Hyland may have thought she had agreed to something else.

- 4.21 The Tribunal also thought that Ms Hyland might have paid for WordPress and registered the domain name before Dr Guest agreed to her using WordPress. Her original claim form said that Ms Hyland tried to use Concrete 5 for a few weeks but struggled with it. She explained her difficulties to Dr Guest and Dr Guest gave her permission to use WordPress. That implied that it was a few weeks before Dr Guest gave permission. Her witness statement and evidence at the hearing indicated that the conversation with Dr Guest was before she paid for WordPress. That would mean it had to be during her week as a volunteer. The Tribunal thought that was unlikely. We found that more likely than not Ms Hyland paid for WordPress and registered the domain name before Dr Guest agreed to her using WordPress. She was not trying to steal the website. She was trying to be helpful and make progress on the website in the way she knew. The Tribunal did not think that this discrepancy meant that none of Ms Hyland's evidence could be trusted. She wrote her statement four years after the events. Memories do fade over time. People can also come to believe that things happened differently from the way they actually happened. The Tribunal saw that in Dr Guest's and Ms Blacow's statements too.
- 4.22 Ms Hyland's evidence was that she thought WordPress was more user-friendly and more appropriate than Concrete 5. She thought Concrete 5 was outdated. She said that this was part of her autism. Her rigid thinking and resistance to new ideas resulting from her autism led her to conclude that WordPress was the "right" way to build the website. This made it difficult for her to consider and learn a different way of doing it. The Tribunal found that Ms Hyland's aversion to using Concrete 5 and her determination to use WordPress were connected to her disability. As set out in the Disability Judgment, her autism means that she can have difficulty accepting new ideas or ways of doing things and may resist making a change. Her approach to Concrete 5 and WordPress was exactly that. She was having difficulty accepting Concrete 5 instead of the software she was familiar with, and she resisted doing so.

Adobe

- 4.23 When Ms Hyland started working at Aspient she had a subscription to Adobe. This had been paid for by disability support services when she was a student. It was a twelve-month subscription, which expired some time in December 2016. Until the subscription expired, Ms Hyland used Adobe to produce flyers, business cards, social media images and other material for Aspient. Dr Guest knew she did. Ms Hyland said that she asked Dr Guest more than once about buying Adobe once her subscription expired. Dr Guest told her that Aspient could not afford to buy Adobe. In her witness statement Dr Guest agreed that Ms Hyland had asked her more than once to buy an Adobe subscription for her. She said that she had told Ms Hyland that they could not afford it and that there was alternative free software that was adequate for Aspient's needs. The Tribunal found that this is what happened. When Ms Hyland had her own subscription to Adobe, Dr Guest was happy for her to use it. When Ms Hyland asked Dr Guest to buy a subscription, Dr Guest told her that Aspient could not afford it. That was the reason Dr Guest did not want Ms Hyland to use Adobe.
- 4.24 In Aspient's written arguments, they said that Ms Hyland had asked that they buy Adobe for her on several occasions and that they refused, "normally giving

several reasons, of which the cost was one.” That was different from Dr Guest’s witness statement, and the Tribunal found that it was inaccurate.

- 4.25 There was an occasion in December 2016 after her Adobe subscription ran out, when Ms Hyland used Microsoft Publisher to produce a leaflet. She found it a challenge but succeeded. She was proud of the achievement.
- 4.26 The Tribunal had no doubt that Ms Hyland’s preference to use Adobe was again part of her resistance to change caused by her autism.

Working environment

- 4.27 Ms Hyland’s evidence was that the working environment at Aspiement was chaotic. Dr Guest’s evidence was that both she and Ms Blacow had poor organisational skills. In her witness statement Ms Blacow talked about people coming and going at different times and ad hoc team meetings being held. She described the environment at E-Spark as having a constant stream of different people inhabiting the office. The Tribunal found that the working environment reflected that. It was chaotic.
- 4.28 Ms Hyland suggested a whiteboard to tell everybody what was going on every two weeks. This was introduced and was quite successful. The whiteboard could only work if it was complete and up-to-date and that was not always the case. For example, it did not tell Ms Hyland about changes in the last week of her employment.
- 4.29 Dr Guest also introduced an online diary at a later stage. That was an adjustment for another autistic member of staff. It was not always complete and up-to-date. It did not refer to changes in the last week of Ms Hyland’s employment either.
- 4.30 When Ms Hyland first started working for Aspiement, its offices were at E-Spark in Leeds. This was a shared space start-up hub. In January 2017 they were told that they could not continue there. Dr Guest said that this resulted in a “frantic” hunt for suitable, affordable office space. It was a “very stressful” time for everyone. They kept people up-to-date with a list of the options being pursued on the whiteboard. In the end, Aspiement were offered two free spaces – an office at Leeds Trinity university and an open-plan space at Search Labs. They moved in on 15 February 2017. In the lead-up there was lots of upheaval and uncertainty. For example, on 31 January 2017 Ms Blacow texted Ms Hyland and suggested they met at a café to work because she was not sure if they were still allowed to work at E-Spark. On Sunday 5 February 2017 Ms Blacow texted Ms Hyland telling her to work at E-Spark the next day. On Sunday 12 February 2017 Ms Hyland texted Ms Blacow asking if she had any idea where she was coming to work the next day. Ms Blacow told her to come to E-Spark. She said that they had been allowed to stay until Monday. They might have to “camp in the library” Tuesday and Wednesday, and would be able to move into Leeds Trinity on Thursday. It was at that stage that the possibility of space at Search Labs was first mentioned to Ms Hyland. They did indeed work in the library for two days. The Tribunal found that the office move was the opposite of planned, managed change. Ms Hyland said that all this uncertainty was difficult to cope with and caused a great deal of anxiety. The

Tribunal accepted her evidence. This would be difficult for anybody to cope with, and more so for Ms Hyland because of her autism.

- 4.31 After the move, Ms Hyland worked at Search Labs. She was mainly the only person there. Dr Guest worked at Leeds Trinity.
- 4.32 Ms Hyland's case is that Aspiement had a practice of making unexpected changes to working conditions, including staffing changes and surprise visitors. Her evidence about staffing changes and visitors was mainly about the final week of her employment. She said that she arrived on Monday 20 March 2017 to find that CN had suddenly left employment and that KM had started. She was not told about this in advance. The other evidence supports that. The extract from the online diary made no mention of CN leaving. It mentioned KM starting on the Tuesday. In addition, Ms Hyland said that Ms Blacow and a number of other people were at the office on Monday 20 March 2017 for a meeting. Ms Hyland said that she was not told about that in advance. Again, the other evidence supports that. It was not in the online diary or on the whiteboard. More generally, there are a number of texts between Ms Hyland and Ms Blacow in which Ms Hyland asks where Ms Blacow is going to be working on a particular day or Ms Blacow apparently updates Ms Hyland last-minute about her whereabouts.
- 4.33 The Tribunal concluded that the working environment was disorganised and often changed at short notice. Staff were not clearly and carefully told in advance what was going to happen and when. Sometimes that happened but not always. Staff would not necessarily know on a day-to-day basis who was going to be in the office.

Ms Hyland's house move

- 4.34 Ms Hyland moved from Holmfirth to Leeds on 18 March 2017. Ms Blacow and Dr Guest knew about the move. Ms Hyland planned for it carefully in advance and coped well with it as a result. However, it added to the change that Ms Hyland was dealing with at around this time.

Dr Guest's change of approach

- 4.35 There was another change in Ms Hyland's working environment in February 2017. Dr Guest said in her witness statement that on 15 February 2017 marketing "finally clicked" in her head. This meant that she was now in a position to evaluate Ms Hyland's work and she evidently started to do so. She gave one example about a video. She had previously agreed Aspiement should buy the video to use on its website, but after she understood about marketing she changed her mind. She and Ms Hyland disagreed about that. She described Ms Hyland's response as a "temper tantrum". Ms Hyland sent an email about it, which said, "WELL I THINK YOU SHOULD THINK AGAIN ELIZABETH!". Dr Guest said this was offensive and disrespectful. This was an example of the difference between Dr Guest having academic expertise in how to manage autistic employees, and herself being able to manage an autistic employee in practice.

20-24 March 2017

- 4.36 That is the background to the events of 20-24 March 2017.
- 4.37 On Monday 20 March 2017 Ms Hyland arrived at work after moving house over the weekend. There were lots of people at the office for a meeting, which she had not been told about in advance. CN had left his job and KM had started. She had not been told about that either.
- 4.38 At one stage on Monday 20 March 2017 Ms Blacow told Ms Hyland that she had to attend a review meeting on Wednesday. She did not say what it was about. In her witness statement Dr Guest said that it was to address performance issues. This was because Ms Hyland was “refusing to listen to any instruction regarding marketing” and was treating Dr Guest with, “complete contempt and showing no respect for any of my knowledge or experience – not even IT knowledge and experience (I was a lecturer in computing for 14 years).” Dr Guest said that they were “about to start a capability procedure, which would have ultimately led to [Ms Hyland’s] dismissal if she did not respond appropriately to this.” The Tribunal noted that in her second witness statement answering Ms Hyland’s questions, Dr Guest said that the original intention of the meeting was “smoothing out misunderstandings” and that there were “no plans at all at that time to engage in more formal proceedings with [Ms Hyland]. Those two statements are inconsistent. Aspient say that Ms Hyland had never needed an agenda or written details of what was to be discussed and they did not see why this meeting was any different.
- 4.39 Ms Hyland took part in the Monday meeting with the other people who were at the office. There was discussion of marketing and Aspient’s website. Ms Hyland opened the website she had been working on on her laptop and showed everybody. They talked about what they liked and did not like about it. Ms Hyland explained that she accessed it using her Aspient email address. She said that Dr Guest, Ms Blacow and anybody else could be given administrator access using their Aspient email addresses. They would need a WordPress account to do that.
- 4.40 This was when Dr Guest realised that the Claimant had created a website using the domain name Aspient.net on her WordPress account. Later that day she emailed Ms Hyland:
- Please can you just give me loading details? I don’t want a WordPress account.
If you are using a password that is personal to you, change it so we can both use it.
- 4.41 Ms Hyland replied about an hour later:
- I am a little uncomfortable with this as it would give you access to my personal site and info as well, not because I think you would ever look at it deliberately but it would show you. I’m just trying to change a few settings to separate them and I’ll send it to you.
- 4.42 Aspient say that Ms Hyland did not show Dr Guest the website in front of everybody. They say that her original claim form says something different. The claim form says that there were several people in the office that day and it says that Ms Hyland showed Dr Guest the website. It does not specify whether the other people were there at the time. However, in her own witness statement Dr Guest

says that when she first discovered about the website she was furious but had to bottle it in because there were a lot of people in the office at the time. The Tribunal concluded that Ms Hyland did first show Dr Guest the website along with other people in the meeting.

- 4.43 On Tuesday 21 March 2017 Dr Guest was not in the office. Ms. Hyland was working in the morning. At about 1:30pm Dr Guest replied to Ms Hyland's email from the previous day:

This is one of the reasons why you should not have done what you have done. Work stuff should NEVER get mixed up with personal stuff.

We need to move your site to Aspiedent ASAP.

The other option is that I make you a WordPress site and you copy it over manually bit by bit. Your choice. Whichever needs to be done quickly.

Why not just give me access and then as soon as this is sorted out, you can change the password?

Would have been so much easier if you had been even prepared to try out Concrete 5 – but that is part of a wider issue we can discuss tomorrow.

- 4.44 Ms Hyland was having her lunch and did not see the email before Dr Guest sent another one just after 2pm. She wrote:

That is now a subdomain called fayewordpress.aspiedent.org which has WordPress ready installed. Please just transfer your site to here. You can use this site to try out ideas for the website in future.

...

The actual website will be Concrete 5. Perhaps harder to design, but I much prefer its editing capabilities to those of WordPress.

- 4.45 Dr Guest then sent another email 20 minutes later to say that there was now a Concrete 5 development site. She would load some themes into it. It was an updated version so it might be a bit more robust than it was. She did not mind doing the design once they had agreed what it should be, but she was not the best person to generate the content.

- 4.46 Ms Hyland replied at 2:30pm. She explained that she had used WordPress because it allowed someone to manage many different websites (work and personal) through their own account without mixing them up. Making a new WordPress site and having Ms Hyland copy the content over bit by bit would still mean that Ms Hyland had to access the current site, her personal site, and the new site through her WordPress account. Dr Guest would still need a WordPress account too. This would also not be a quick solution. Ms. Hyland said that she would like to remind Dr Guest that she spent the best part of a month trying to learn how to work Concrete and had a couple of discussions with her about how difficult she found it and that in her opinion it was not suitable for online marketing. She concluded:

Either way I removed the content from my website so you can now access it.

- 4.47 She provided her email address and a password. The password was a combination of words followed by "123". The password was incorrect. The correct password was the same combination of words without any numbers after it. Ms Hyland used the password with the numbers for something else. They were written next to each other in a list in her diary. The Tribunal accepted her evidence that she put the wrong password in her email by mistake. This may have been partly because she was stressed and anxious, but the Tribunal did not think that was because of Ms Hyland's autism. An employee without autism might well have been stressed and anxious too and might easily have made the same mistake as Ms Hyland.
- 4.48 Aspiement say that Ms Hyland gave the wrong password three times and that emails showing this are missing. They say that they deleted all the emails, so they do not have copies. Ms Hyland said that she only sent the password once. None of the emails or other documents that the Tribunal saw refer to three wrong passwords being given. If Ms Hyland had given the wrong password three times, we would have expected Dr Guest's email on Wednesday (see below) to say so. Nobody is suggesting that she gave two more incorrect passwords after that. The Tribunal found that she only gave the incorrect password once.
- 4.49 Dr Guest replied 10 minutes later to say that she did not much care for Ms Hyland's explanation. Aspiement stuff could not stay on her site and one way or another it had to move. She said:
- If you had only asked for a WordPress site to play with, I would have given you one – which would have saved both of the time we are BOTH now spending to sort this problem. I have just made you a WordPress site to play with. Please transfer it over.
- We will discuss more tomorrow (would help if you could brand it properly at the same time).
- 4.50 During the day on Tuesday Ms Hyland asked Ms Blacow what the meeting on Wednesday was about. Ms Blacow told her it was just a review and nothing serious. She did not say that it was the start of a capability procedure or that it was to talk about performance concerns. Ms Hyland was not given an agenda or any information about what was to be discussed at the meeting.
- 4.51 On Wednesday 22 March 2017 at 8am Dr Guest sent Ms Hyland three emails in quick succession. The first asked her to start transferring the .net site to the WordPress site Dr Guest had made and told her to make this "top priority." The second told Ms Hyland that the details she had given Dr Guest did not work. Dr Guest asked for the correct details and said, "Failure to comply in this matter will result in termination of employment." The third told her that all content she generated for Aspiement belonged to Aspiement and that by refusing to provide access she was in breach of her contract. It ended, "You are in serious trouble already, please don't make it worse."
- 4.52 Ms Hyland received all three emails on her phone as she arrived at work. Her evidence was that when she read them it immediately triggered a panic attack and a meltdown. She struggled to breathe. She fled to a quiet room and sat down in a corner to calm down. The only thing she could focus on was that if she did not give her passwords to Dr Guest immediately she might lose her job. She did not know

she had given her the wrong password. In her state she got her diary out of her bag, opened her note of all her passwords, and tossed it across the desk to Dr Guest before retreating back to the corner. She did not throw the diary at Dr Guest.

- 4.53 Dr Guest agreed in her statement that Ms Hyland got the emails on her phone when she arrived. She acknowledged that the emails upset Ms Hyland, but said that she was “furious” not anxious. Dr Guest said that Ms Hyland went into one of the side rooms and Dr Guest sent Ms Blacow in to calm her down. Dr Guest said that Ms Hyland, “threw her book with passwords in it at me so I could get the correct password.” Ms Blacow said in her witness statement that Ms Hyland was “angry” about having to give Dr Guest the site password. She said that she did not have a meltdown or a panic attack. She said that she banged around the office quite a bit that morning and eventually took herself off to the bathroom. Dr Guest and Ms Blacow waited for her to come back. She eventually entered the room again and “immediately launched her hardback book of passwords straight at [Dr Guest]. Luckily she missed.” Ms Blacow said that she was “shocked” and “couldn’t believe it.” Ms Hyland then went into the side room and Dr Guest told Ms Blacow to go and be with her. Ms Hyland calmed down after about twenty minutes.
- 4.54 The Tribunal found that when she saw the emails Ms Hyland had a panic attack and a meltdown. She struggled to manage her emotions and needed time to calm down. She reacted in this way because of her autism. She did not throw a hardback book at Dr Guest. She tossed her diary across the desk open at the page of passwords so that Dr Guest could get the correct password. She sat in the corner of the side room for twenty minutes or so before she was calm again.
- 4.55 We made that finding for the following reasons:
- 4.55.1 Ms Hyland has the disability of autism. It affects her in the ways set out in the Disability Judgment. As described above, there had been a build-up of stressful events and changes during the preceding weeks and during that week. Ms Hyland was already worried about the website. Then she got three emails, one of which told her she might lose her job and one of which told her she was in serious trouble. She thought she had already given Dr Guest the correct password. These events were likely to be difficult for Ms Hyland to deal with because of her autism.
- 4.55.2 Dr Guest and Ms Blacow no longer accept that Ms Hyland has autism and that affects their description of what happened. Even at the time, Dr Guest seems to have found it hard to identify challenging behaviour from Ms Hyland as something related to her autism, and to respond to it as such.
- 4.55.3 In her letter to Dr Guest on 27 March 2017, not long after the event, Ms Hyland said that she was having a meltdown, worsening over the week, and referred to having a panic attack. That is consistent with her evidence to the Tribunal.
- 4.55.4 Dr Guest’s witness statement acknowledges that Ms Hyland was upset by the emails and that she threw the book so that Dr Guest could get the passwords. Ms Blacow’s statement is inconsistent with Dr Guest’s. There are photographs of the book in the file of evidence. It is a small leather-bound diary not much longer than a biro and about twice as thick. It is not a “hardback book”. Nobody said at the time that Ms Hyland had thrown a hardback book at Dr Guest. That was not mentioned in the minutes of the

meeting that took place shortly afterwards (see below). If Dr Guest and Ms Blacow thought that Ms Hyland had thrown a hardback book at Dr Guest, rather than tossing it across the desk to her, the Tribunal would have expected that to be mentioned at the meeting.

4.55.5 It would not make sense for Ms Hyland to be angry about having to give the password to Dr Guest. She had already tried to give it to her. Ms Blacow's account seemed to be exaggerated with hindsight.

4.56 About 45 minutes later Ms Hyland had to attend the "review" meeting with Dr Guest and Ms Blacow. The Tribunal's view was that even if Ms Hyland had not been autistic at all, and this really had simply been an angry outburst, her employer should have considered whether this was appropriate. Dr Guest and Ms Blacow were going to have a capability meeting to address performance concerns. The employee needed to be in the right frame of mind to participate in such a discussion. Any employee who had been sitting in the corner trying to calm down less than an hour earlier was very unlikely to be in the right frame of mind; still less an autistic one.

4.57 The meeting lasted about an hour. Ms Hyland was not told in advance what it was about. She did not have anybody in the meeting to support her.

4.58 Brief minutes were written by Dr Guest and Ms Blacow. The Claimant saw them when she made a subject access request in 2017. She told the Tribunal that the minutes were accurate as far as they went, but she said that they did not record her responses. The minutes are one page long. They obviously do not record everything that was said in an hour-long meeting. However, it is clear that at the meeting:

4.58.1 Dr Guest and Ms Blacow told Ms Hyland that buying a domain name for Aspident without telling them was gross misconduct. They accepted that she did not do it with the intention of stealing but they told her she should not have done it. They said that if she did anything like that again she would be dismissed.

4.58.2 Dr Guest and Ms Blacow told Ms Hyland that it had caused Dr Guest major concern when she asked Ms Hyland for the password on Monday and Ms Hyland "withheld" it. They agreed that Ms Hyland would copy the contents of the website onto the Aspident WordPress site that Dr Guest had created "ASAP."

4.58.3 They agreed to draw a line under these events as long as the domain and website were transferred to Aspident and deleted from Ms Hyland's WordPress space.

4.58.4 There was a discussion about Ms Hyland's behaviour when changes were made to her work or when she did not get her own way about things. Dr Guest and Ms Blacow referred to this at the time as a "tantrum". Ms Hyland evidently referred to "meltdowns". The minutes say that further meetings would be required to discuss this.

4.58.5 There was a discussion about Adobe. The minutes say:

We talked about [Ms Hyland's] aversion to anything but Adobe and that she should try other programmes out. [Dr Guest] brought a list of alternatives that she had found and we agreed [Ms Hyland] would try these. [Ms Hyland] took a

photograph of the programmes. [Ms Hyland] agreed to work with these other programmes.

- 4.59 The Tribunal noted that in the review meeting Dr Guest accepted that Ms Hyland was not trying to steal from Aspient when she registered the domain name. She agreed to draw a line under it.
- 4.60 Ms Hyland told the Tribunal that she had not fully recovered from the panic attack and meltdown when the meeting took place. She was still overwhelmed because of her autism. She processed the bare minimum of what was said and was unable to participate effectively. She said anything she thought would bring the meeting to an end as quickly as possible. Dr Guest said in her witness statement that she was able to “sense emotion directly” and could tell that Ms Hyland was not anxious in the meeting but was “livid” because “despite all her scheming over months she was not getting her own way with WordPress.” The Tribunal thought that the minutes written at the time did not reflect that view and that Dr Guest’s perception has changed with hindsight. Dr Guest also described the meeting as “extremely difficult and stressful.” Ms Blacow said in her witness statement that it was only when Ms Hyland felt better and Dr Guest was able to cope with Ms Hyland’s emotions that they had the meeting. There was “no evidence” of Ms Hyland experiencing a shutdown.
- 4.61 The Tribunal accepted Ms Hyland’s evidence. She has autism and when she is stressed or anxious or has too many issues to deal with at once, this can be overwhelming and even lead to a shutdown. This was exactly that kind of situation. There is no dispute that Ms Hyland had needed to sit in the corner for some time less than an hour earlier to calm down. Dr Guest herself described the meeting itself as “extremely difficult and stressful”. Dr Guest and Ms Blacow could not know what was going on inside Ms Hyland’s head. They seem to have had difficulty even at the time identifying her reactions as those of an autistic employee and responding to them in that context.
- 4.62 As far as Adobe was concerned, Ms Hyland’s evidence was that she did not understand that she was forbidden from using Adobe. She thought that the other software was an alternative because Aspient could not afford Adobe. All the ones on Dr Guest’s list were free. She said that she was unable to process and keep up with what was being said at the meeting. She would have agreed to anything she was asked without challenge, including a request to trial other software. She could not recall Dr Guest forbidding her from using Adobe. Having now seen the minutes of the meeting, she did not think they mentioned any such prohibition either.
- 4.63 In her witness statement Dr Guest said that Ms Hyland was told that they were not going to buy Adobe for her, “because we could not afford it.” She was given a list of “free” alternative software to choose from. That is consistent with Ms Hyland’s understanding. She was not being “forbidden” from using Adobe. She was being told that Aspient could not afford to buy it. She was asked to try a free alternative in that context. We have already mentioned that Aspient’s written arguments say something different. The Tribunal found that that was inaccurate. We find that at the meeting Ms Hyland was not forbidden from using Adobe. She was told that Aspient could not afford to buy it and was asked to try a free alternative. She agreed to do so. That is consistent with the minutes written at the time and with Dr

Guest's own first witness statement. The only reason for asking Ms Hyland to try different software was the cost of Adobe.

- 4.64 That evening Ms Hyland found an old Adobe disk from 2012. It was from when she was at university. It was not time-limited because it was from before the time Adobe became subscription only. The disk said on its front cover, "Education Edition Academic ID required" and "Stop proof of eligibility must be provided prior to using the student and teacher edition." Ms Hyland acquired the disk when she was a student. She told the Tribunal that she did not think about whether those warnings had any implications when she found the disk in 2017. She just thought it would be useful.
- 4.65 On Thursday 23 March 2017 Ms Hyland came to work tired and in a heightened state of anxiety still. At one stage she apologised to Ms Blacow and KM for being irritable. She was excited to have found the Adobe disk and showed it to Ms Blacow and KM, saying something like, "You'll never guess what I found last night." Then she put the disk in her drawer. In her witness statement Ms Blacow agreed that Ms Hyland showed her the disk. She said that she was "very pleased with herself and put it in her drawer." However, earlier in her statement Ms Blacow said that after the WordPress issue, Ms Hyland "tried the same thing with Adobe ... the very next day." Ms Blacow said that this was "against the instructions" Ms Hyland was given. She said that Ms Hyland, "Showed her the disk briefly but had no intention of asking permission to use it." She said that it appeared that Ms Hyland, "Had no intentions of being open about this or even asking permission from me before installing it on her laptop to use for Aspient purposes." The Tribunal found that this could not be right. On Ms Blacow's own account, Ms Hyland happily showed her (and KM) the disk, before putting it in her drawer. She could not have been more open with Ms Blacow about it. Ms Blacow did not react negatively or report this to Dr Guest. That, too, suggests that Ms Hyland had not been forbidden from using Adobe the previous day. If she had been, Ms Blacow would have known about it and she would have responded accordingly. This is one example of Ms Blacow viewing events differently and with an inaccurate, negative perspective of Ms Hyland with hindsight. The Tribunal found that Ms Hyland brought the disk in because she still had a preference to use Adobe because of her resistance to change caused by her autism. She thought that this disk would enable her to carry on using Adobe.
- 4.66 At 10am that day, Ms Blacow forwarded an email from Dr Guest to Ms Hyland telling her what to do that day. She asked her to work on a marketing strategy for the website with Ms Blacow in the morning and to continue transferring the website in the afternoon. She set out a plan for Friday and Monday. That was a measured email, seeming to draw a line under the previous days' events as agreed.
- 4.67 Ms Blacow sent Ms Hyland her work in progress at lunchtime, before leaving to help deliver Social Skills Training. KM went too. Dr Guest was present at the training. KM said something to her along the lines that it was good news that Ms Hyland had found an Adobe disk. Dr Guest described her response in her witness statement. The Tribunal thought it was written with hindsight. She said that she was concerned about a licence breach, but she had not seen the disk and did not know whether it was a student copy. She said that Ms Hyland was going behind her back. She had only told Ms Blacow. Dr Guest would have expected her to ask

Dr Guest straight away. The Tribunal noted that all Ms Hyland had done was bring the disk in, show it to Ms Blacow and put it in her drawer. Dr Guest was not present in Ms Hyland's office that day.

4.68 During the afternoon Ms Hyland was not coping well. She began to have problems breathing and called NHS 111. An ambulance was sent. She had improved by the time they arrived and was told this was most likely a panic attack. Ms Hyland told Ms Blacow what had happened.

4.69 At about 4pm, Ms Hyland emailed Dr Guest and Ms Blacow. The email was titled "Sorry". Ms Hyland wrote:

I have not been coping very well this week at all, the sudden changes on Monday, all the strain of Tuesday, yesterday the strong wording, rapid and frequent emails received in the early morning really upset me to the point of having a panic attack. After not sleeping all night because of how upset I am (and my skin condition becoming really bad because of the stress) and other things, today I became so ill I had to be treated by an ambulance.

I didn't know what on earth was going on and frankly it was terrifying, it is very fortunate I have had enough training to be able to deal with medical situations that it didn't become too panicked. After talking with the paramedics they said that it was most likely an anxiety attack (not a reaction).

They also recommended that I make an appointment with a doctor to register and discuss the event and take a few days off. (I will work from home for my half day tomorrow and hope to be back by Monday!)

I feel I am really without any support, right now.

I haven't felt this low, emotionally fatigued and ill in a very long time especially since up until yesterday I have had only one incident like this in my life, I hope that I can recuperate over the weekend.

I'm really sorry about this.

4.70 Ms Hyland sent a separate email to Ms Blacow, attaching her work and apologising that it was not up to her usual standards.

4.71 Ms Hyland described her longer email as a "cry for help". It seemed to the Tribunal that it was partly that and partly an explanation of what was going on for Ms Hyland and how the events of the week had affected her. It was telling Aspiement that she might be off work.

4.72 Neither Dr Guest nor Ms Blacow replied directly to it. In her witness statement Dr Guest said that she and Ms Blacow were "most disappointed and upset" when they opened the email to find that Ms Hyland was only "blaming us for her problems." Dr Guest's reaction was that "they had no more support to give." In her second witness statement Dr Guest said that they were concerned about Ms Hyland having to call an ambulance but their concern "vanished" when they got the "sorry email" that was not sorry at all." Dr Guest said that all the email was doing was blaming them for Ms Hyland's problems, problems that were of her own making. Dr Guest said that Ms Hyland was "having a massive and worsening temper tantrum because we were not giving her what she wanted."

4.73 The Tribunal's view was that this was an unreasonable and unfair characterisation of Ms Hyland's email. It did not reflect an objective or appropriate response to such an email from an autistic employee. The Tribunal understood that Dr Guest viewed the email through her own autistic lens.

4.74 It seemed to the Tribunal that it was this "sorry" email that led Dr Guest to re-visit her earlier agreement to draw a line under the website events. On Friday 24 March 2017, she emailed Ms Hyland at 8am. She made no reference to Ms Hyland's email from the previous day, or to the difficulties Ms Hyland had described in that email. She simply asked her to work on transferring the website, and said that she was keen for it to be completed. Ms Hyland replied at about 10am. She said that she had spent time trying to find an efficient way to move everything across the previous day. She had emailed a technician for help who had shown her how to do it. Most of the content was now in the new space. She reassured Dr Guest that she was not ignoring her emails but explained that she did not check them until 10am.

4.75 At 3pm, Ms Blacow emailed Ms Hyland as follows:

We have been very concerned about your behaviour this week, especially your behaviour and attitude after our meeting on Wednesday. We have taken advice today and have had to come to the regrettable decision to end your contract with Aspiedent CIC on the grounds of gross insubordination.

In the meeting on Wednesday, we agreed that you would trial other software packages. Bringing in Adobe on a disk yesterday (regardless of whether it was for your own laptop or not) was in breach of what was agreed in the meeting on Wednesday and potentially put Aspiedent at risk.

Buying the Aspiedent domain name was gross insubordination regardless of your intentions behind doing so.

Your email yesterday afternoon showed no signs of remorse and it was actually very upsetting.

I have attached a copy of your dismissal in the post. ...

4.76 In their written arguments Aspiedent said that it was the "deceitful and manipulative" behaviour over WordPress and then the Adobe disk that triggered Ms Hyland's dismissal. This and other circumstances, such as treating Dr Guest with contempt and refusing to accept constructive criticism, meant that they could not trust her. In addition, they were concerned about her having "temper tantrums".

4.77 Ms Hyland replied to Ms Blacow's email to say that she was stunned and devastated. She wanted to appeal and asked to get together next week to discuss it. She sent a separate email asking for her contract of employment and repeated her request a couple of hours later.

Appeal against dismissal

4.78 On 27 March 2017 Ms Hyland wrote to Dr Guest asking for another chance. She said how much she had loved her job and wanted Aspiedent to succeed. She said that because of her autism she struggled with change. There had been a lot of that

lately. She thought it had been affecting her and was the cause of her behaviour over the last week. Another aspect of her autism was a strong resistance to new ways of doing things. She said that she should have followed Dr Guest's wishes and let go of WordPress and Adobe. She acknowledged that her behaviour had appeared bad and she apologised. She said that if anybody could understand a bad reaction to change it was hopefully Dr Guest. She explained that her "sorry" email was not to blame but to explain that she was not coping well and needed help. She was sorry it was upsetting. She confirmed that she had transferred most of the website content before Aspiedent blocked her access and she explained how the domain name could be transferred to Aspiedent.

- 4.79 Dr Guest replied by email. She said that Ms Hyland should send her appeal. She said they had arranged for an independent third party with extensive experience in autism to provide advice. She told Ms Hyland that if she wanted her contract she would have to come and collect it and should bring everything belonging to Aspiedent at the same time.
- 4.80 Ms Blacow and Ms Hyland exchanged emails and texts about Aspiedent providing Ms Hyland with a copy of her contract and Aspiedent's policies and about Ms Hyland returning Aspiedent's belongings such as keys.
- 4.81 Ms Hyland was eventually provided with an unsigned contract that had been dated 20 February 2017. She was also provided with a copy of a disciplinary process. That was a basic process but compliant with the minimum required by the ACAS Code of Practice on Disciplinary and Grievance procedures.
- 4.82 Ms Hyland appealed against her dismissal on 31 March 2017. She sent a detailed letter. She acknowledged that she had made mistakes and gave an assurance that she had learned from them. She explained the role her autism had played in events. She asked for her job back. Failing that she asked for a reference that focussed on the positives of her time at Aspiedent. She set out a chronology of events.
- 4.83 Dr Guest responded in writing on 10 April 2017. She said that they had taken advice. She said that Aspiedent could not provide training or supervision. If Ms Hyland could not work independently she was not suited to Aspiedent. In addition, they were not able to buy Adobe. If Ms Hyland really needed to use it and struggled with new software, then the job was not a good match for her. Further, if Ms Hyland struggled with the chaotic nature of Aspiedent she was very unlikely to enjoy working there in the long term. Therefore, her appeal was unsuccessful. Dr Guest said that Aspiedent would provide a reference that simply gave Ms Hyland's dates of employment and job title and would not say anything negative. She suggested that Ms Hyland could say in job applications that her reason for leaving Aspiedent was that the job turned out not to be a good fit.
- 4.84 Dr Guest told Ms Hyland that Aspiedent had taken advice, but Aspiedent has not disclosed any advice given by a third party or any correspondence about that in these proceedings.

Reference request

- 4.85 Ms Hyland applied for new jobs. She was offered a job as a Customer Adviser with Lloyds Banking Group on 16 May 2018. The vetting process was outsourced to a company called Security Watchdog. Ms Hyland supplied Ms Blacow's phone number and work email for them to obtain a reference. On 25 May 2018 Security Watchdog emailed Ms Blacow to say that they were trying to obtain an email address to send a reference request for a former employee and asked for the best address. It is not uncommon for reference requests to be made in that way. No doubt this is to maintain confidentiality until the new employer is certain they are communicating with the correct person. The heading of the Security Watchdog email was, "Service Team Lloyds." Security Watchdog did not receive any reply. Ms Hyland told the Tribunal that she spoke to Security Watchdog by phone. They told her that they had called Aspient more than once but had not received a reply. By 22 June 2018 Lloyds Banking Group asked Ms Hyland to provide her dismissal letter instead. She sent her dismissal letter, appeal letter and appeal outcome letter. On 6 July 2018 Lloyds Banking Group withdrew the job offer. They told her that dismissal for "gross insubordination" was outside of their risk tolerance.
- 4.86 Dr Guest and Ms Blacow did not deal with this in their witness statements. In their written arguments they said that they told Ms Hyland that they had not received a reference request when they responded to an email that had been sent to them by Ms Hyland by mistake. That was an email Ms Hyland sent on 12 June 2018. She meant to ask a different "Jen" for a reference but she mistakenly sent it to Ms Blacow. Aspient emailed the Tribunal about the mistaken email on 19 June 2018 because they thought it proved that Ms Hyland was lying about her ability to learn new software. They said that Ms Hyland had been offered a job by Lloyds Banking Group and was going through the pre-screening process. They said that they had not been asked for a reference. They knew about it because of the mistaken email.
- 4.87 Ms Hyland applied to add her complaint of victimisation to her claim on 20 July 2018. Aspient objected on 24 July 2018. They said that they had pointed out on 19 June 2018 that they had not been asked for a reference. They hoped that would alert Ms Hyland. They said that if the Claimant wanted a reference she should have made sure they received a request. They said that because of Ms Hyland's "complete lack of integrity and the fact that [she] is telling lies about her employment at Aspient on LinkedIn" they felt that providing a minimal reference compromised them and left them open to legal action. They needed to be free to "tell the truth" in a reference. That is obviously different from what they said in the outcome to Ms Hyland's appeal. They also said that they had received no request for a reference by email, phone or contact form.
- 4.88 In their written arguments Aspient said that their response to the Tribunal should have shown Ms Hyland that if she wanted a reference she needed to take action. They said that Ms Hyland did not actually want them to provide a reference because that meant her "wrongdoing" could be covered over. They said that if they had provided a reference Ms Hyland would have taken them to court because she did not like the contents.

- 4.89 In their further comments after the hearing, Aspident said that Ms Hyland had lied about giving Security Watchdog Ms Blacow's contact details. They said, "The email Jen received asked who to ask for a reference. Surely if [Ms Hyland] had really given this information, the email would have requested a reference for [Ms Hyland]. The evidence points to Aspident never being asked for a reference." They also said that they remembered getting the email and that it did not tell them it was Ms Hyland who was looking for a reference. They had other staff members. That is the first time Aspident said that Ms Blacow had received the email from Security Watchdog. It was not mentioned at all in the correspondence about the victimisation claim in 2018. That was only about four weeks after they got the email from Security Watchdog with the heading, "Service Team Lloyds". Aspident also said for the first time that Ms Blacow telephoned the number on the email and left a message but nobody ever called back.
- 4.90 It is now clear that Aspident did get the email from Security Watchdog on 25 May 2018. The Tribunal concluded that they must have realised that this was to do with Ms Hyland. Aspident is a very small company. The number of people who might be asking for references is very small. The email was headed "Service Team Lloyds" and Dr Guest and Ms Blacow knew from 12 June 2018 that Ms Hyland had been offered a job by Lloyds Banking Group and was asking someone else for a reference for that. In their letters to the Tribunal Aspident did not mention getting a request for a reference for an unnamed employee headed "Lloyds Service Team" at around this time. They said that they had not had a reference request for Ms Hyland. The Tribunal found that they must have realised the request was about Ms Hyland. Further, the Tribunal found that Aspident did not respond to the request. We accepted Ms Hyland's evidence that Security Watchdog told her they had tried to contact Ms Blacow by phone as well. Ms Hyland had obviously provided Ms Blacow's contact details to Security Watchdog because they emailed Ms Blacow. Their job was to obtain references. It is likely that they would have telephoned too. It is clear that Dr Guest and Ms Blacow did not want to provide a short, neutral reference for Ms Hyland. They said that on 24 July 2018. Taking all those things into account the Tribunal found that Dr Guest and Ms Blacow deliberately did not respond to the contact from Security Watchdog because they did not want to provide a reference for Ms Hyland and they realised this was about her.

Legal Principles

Discrimination and victimisation

- 5.1 Claims of discrimination are governed by the Equality Act 2010. Section 39 makes it unlawful for an employer to discriminate against or victimise an employee. If the employment has ended, victimisation that arises out of it and is closely connected to it is still unlawful: see section 108 and *Rowstock Ltd v Jessemy* [2014] ICR 550.
- 5.2 The burden of proving discrimination is governed by section 136 of the Equality Act 2010. Guidance about how section 136 operates was confirmed by the Court of Appeal in *Ayodele v Citylink Ltd* [2017] EWCA Civ 1913. There is a two-stage process. First, the Claimant must prove facts from which the Tribunal *could* conclude, in the absence of an adequate explanation, that the Respondent committed an unlawful act of discrimination. The second stage only applies after the first is satisfied. It requires the Respondent to prove that it did not commit the

unlawful act. However, if the Tribunal is able to make positive findings on the evidence one way or the other, the burden of proof provisions do not add anything: *Hewage v Grampian Health Board* [2012] ICR 1054.

- 5.3 Discrimination arising from disability is governed by s 15 of the Equality Act 2010. It says:

15 Discrimination arising from disability

(1) A person (A) discriminates against a disabled person (B) if –

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

- 5.4 The first element is 'unfavourable' treatment of the employee. Unfavourable treatment does not require comparison with the way somebody else was treated. The Tribunal compares what is objectively adverse with what is objectively beneficial: e.g. *Trustees of Swansea University Pension and Assurance Scheme v Williams* [2015] IRLR 885. The EHRC Employment Code advises that this means that the disabled person "must have been put at a disadvantage". The threshold is relatively low. It applies to any instance in which the individual reasonably feels that s/he has suffered a detriment.

- 5.5 If there is unfavourable treatment, it must have been done because of something arising in consequence of the person's disability. There are two parts to that. First, there must be something arising in consequence of the disability ("the thing"). Secondly, the unfavourable treatment must be done because of the thing. The unfavourable treatment will be done because of the thing, if the thing is a significant influence on the unfavourable treatment. The thing does not have to be the main or sole cause of the unfavourable treatment. It is enough if it is an effective cause of it: *Ishola v Transport for London* [2018] UKEAT 01814_18_1611.

- 5.6 It is a defence for the employer to show that the unfavourable treatment was a proportionate means of achieving a legitimate aim. The employer must show that it had a legitimate aim, and that the means of achieving it were appropriate and reasonably necessary. Consideration should be given to whether there was non-discriminatory alternative. A balance must be struck between the discriminatory effect and the need for the treatment: *Homer v Chief Constable of West Yorkshire Police* [2012] UKSC 15, SC. A legitimate aim is one that is legal, not itself discriminatory, and represents a real, objective consideration. It will be difficult for an employer to prove that its unfavourable treatment was justified if it has failed to make reasonable adjustments that would have prevented the disadvantage: *Griffiths v Secretary of State for Work and Pensions* [2017] ICR 160 CA.

- 5.7 Adjustments for disabled people are governed by sections 20-22 of the Equality Act 2010, and a number of the schedules. Sections 20 and 21 say, so far as material:

20 Duty to make adjustments

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this

section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

- (2) The duty comprises the following three requirements.
- (3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

...

21 Failure to comply with duty

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

...

- 5.8 Paragraph 20 of schedule 8 of the Equality Act 2010 says that the duty to make reasonable adjustments does not apply if the employer does not know and could not reasonably be expected to know that the employee has a disability and that the employee is likely to be placed at the relevant disadvantage.
- 5.9 The reference to a provision, criterion or practice is often referred to as a PCP. The expression is interpreted broadly. It includes any formal or informal policies, rules, practices, arrangements, criteria, conditions, prerequisites, qualifications or provisions. The words provision, criterion and practice all carry the connotation of a 'state of affairs', indicating how similar cases are generally treated or how a similar case would be treated if it occurred again. A one-off decision or act can still be a practice. For there to be a practice, there must be some element of repetition or evidence that this is how things were generally done or would be done in future: *Ishola v Transport for London* [2020] EWCA Civ 112, CA.
- 5.10 When deciding whether there was a failure to make reasonable adjustments, the Tribunal must consider the PCP, the identity of non-disabled comparators where appropriate, and the nature and extent of the substantial disadvantage suffered by the Claimant. It should analyse what steps would have been reasonable for the Respondent to have to take to avoid that disadvantage. The Claimant must identify in broad terms the nature of the adjustment. Then the Respondent must show that the disadvantage would not have been eliminated or reduced, or that the adjustment was not reasonable: see *Environment Agency v Rowan* [2008] ICR 128, EAT and *HM Prison Service v Johnson* [2007] IRLR 951, EAT.
- 5.11 The purpose of a comparison with people who are not disabled is simply to establish whether it is because of disability that the disabled person is disadvantaged by the PCP. There is no need to identify somebody who was treated differently in the same circumstances.
- 5.12 The Tribunal must decide objectively what adjustments were reasonable: see *Smith v Churchills Stairlifts plc* [2006] ICR 524, CA.
- 5.13 The factors that may be relevant to an assessment of reasonableness include: whether taking any particular steps would be effective in preventing the substantial disadvantage; practicability; financial and other costs and disruption; the

employer's financial and other resources; the availability of financial and other assistance and the type and size of the employer.

- 5.14 Victimization is dealt with by s 27 of the Equality Act 2010, which says, so far as material:

27 Victimization

(1) A person (A) victimises another person (B) if A subjects B to a detriment because –

(a) B does a protected act, or

...

(2) Each of the following is a protected act -

(a) bringing proceedings under this Act,

...

- 5.15 When deciding whether the detriment was done because the employee did a protected act, the Tribunal must consider what, consciously or subconsciously, motivated the employer to subject the employee to detriment.

Breach of contract

- 5.16 An employee can bring a complaint of breach of contract against an employer if the claim arises or is outstanding when their employment terminates: the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994. The Tribunal must decide what the terms of the contract were and whether they were breached. In order to decide what the terms of the contract were, the Tribunal must first decide as a matter of fact what the parties actually agreed.

Application of the law to the facts

- 6.1 Applying those principles to the findings of fact above, the Tribunal considered each issue in turn. The findings of fact are very detailed and that means the issues can be answered much more briefly.

Reasonable Adjustments

- 6.2 We deal with each reasonable adjustments claim in turn, looking at each practice, together with the relevant disadvantage, adjustments and knowledge.

Concrete 5

- 6.3 The Tribunal found that Aspient did not have a practice of requiring Ms Hyland to use Concrete 5 to build its website rather than WordPress. As explained above, we accepted Ms Hyland's evidence that Dr Guest gave her permission to develop the website using WordPress. That is inconsistent with a practice of requiring her to use Concrete 5. That means this complaint does not succeed.

Review meeting

- 6.4 The Tribunal found that Aspient did have a requirement to attend and participate in a review meeting on 22 March 2017 without being given an agenda or written details of what was to be discussed. This was not just a "one off" but was part of a

practice. Aspiedent said that the Claimant had never needed an agenda or written details in advance of a meeting before. They did not see why this one was any different. The Tribunal found that having to go to meetings without an agenda or written details of what was going to be discussed was clearly the way things generally were or would be done.

- 6.5 This practice put Ms Hyland at a substantial disadvantage compared with someone without autism. As explained in the findings of fact, she was unable or less able to process what was being discussed and unable to participate effectively because she was overwhelmed. The inability to prepare in advance made Ms Hyland's difficulties during the meeting worse. Someone without autism would have been better able to process what was being discussed and participate effectively without knowing the agenda in advance. The fact that Ms Hyland was able to confirm that the very brief minutes were accurate as far as they went does not mean that she was able to process what was being discussed during the hour long meeting or participate effectively at the time.
- 6.6 The Tribunal had no doubt that Aspiedent knew or could reasonably have been expected to know about the disadvantage. Dr Guest's job is as an expert in autism. She knew that Ms Hyland had autism. She could reasonably be expected to know that being asked to participate in a long and stressful meeting like this without being able to prepare in advance would be harder for Ms Hyland and that she might find it difficult to process what was being said or participate effectively. This was even more obvious because Ms Hyland had been in the corner of the room needing to calm down less than an hour earlier.
- 6.7 It was reasonable for Aspiedent to have to postpone the meeting to another day and to provide a written agenda in advance. These steps would both have helped to avoid or reduce the disadvantage. Ms Hyland would have been in a better state to take part in the meeting on another day. She would have been better able to process and participate if she had had a chance to prepare in advance. Aspiedent's main reasons for not doing these things seem to be that Ms Hyland had not needed a written agenda in advance of other meetings and that she had taken part in other meetings on days where she had needed to calm down earlier in the day. But this meeting was not the same as others. It was to address formally concerns that Aspiedent had about Ms Hyland's performance. Ms Hyland needed to be able to participate effectively in a meeting like that. These steps were practicable and inexpensive. The Tribunal took into account that Dr Guest has autism. But Aspiedent's business was advising employers how to manage autistic employees. The Operations Manager does not have autism. We were satisfied that these were reasonable steps and Aspiedent failed to take them. This complaint therefore succeeds.

Adobe

- 6.8 Aspiedent did have a practice of repeatedly saying that Adobe was too expensive for it to use. As explained above, Dr Guest accepted in her witness statement that she had told Ms Hyland more than once that Aspiedent could not afford Adobe and there was alternative free software that was adequate. The Tribunal found that that evidence was accurate and Aspiedent's written arguments about this were not. At the meeting on 22 March 2017 Dr Guest again said that Ms Hyland was told that

they were not going to buy Adobe for her, “because we could not afford it.” The Tribunal found that there was a clear practice of repeatedly saying that Adobe was too expensive for Aspiedent to use.

- 6.9 This practice did not put Ms Hyland at a substantial disadvantage. She did not misunderstand. She correctly understood that cost was the sole reason for not using Adobe. This complaint therefore does not succeed.

Changes to working environment

- 6.10 The Tribunal found that Aspiedent did have a practice of making sudden and unexpected changes in working conditions, including by changing premises, changing staff and having surprise visitors to its office. We have made detailed findings about those things above under the heading, “Working Environment.” The online diary and whiteboard did not deal with many things and were not up-to-date. The cumulative effect of all the different changes in working conditions amounted to a practice. It is the way things were on a day-to-day basis.
- 6.11 This put Ms Hyland at a substantial disadvantage compared with someone without autism. As explained in the Disability Judgment and summarised above, she can have difficulty with change to her routine, established rules or the environment. Unexpected changes can make her feel very stressed, anxious and wound up. She may need to take time out to calm down. She may “freak out” for example flinging papers down and walking off. She may be able to continue with the changed approach but that may be stressful and difficult for her. Working in Aspiedent’s disorganised and chaotic environment would have these effects on Ms Hyland.
- 6.12 The Tribunal had no doubt that Aspiedent knew or could reasonably be expected to know about this disadvantage. Dr Guest’s job is as an expert in autism. Providing advice about managing autistic employees was Aspiedent’s business. Aspiedent’s own website identifies “careful change management” as a key requirement for many autistic employees. Dr Guest’s blog deals with the same point.
- 6.13 It was reasonable to expect Aspiedent to give Ms Hyland advanced notice of changes or what was to happen each day as far as possible so that she had time to process and adapt to them. That would have helped to avoid or reduce the disadvantage. Knowing what was going to happen and being able to prepare for it would reduce her feelings of stress and anxiety and enable her to cope better with the change. Her careful preparations for her house move showed that she was able to cope better when she could plan for change. Many of the changes must have been known about at least some time in advance. For example, Aspiedent must have known before Monday 20 March 2017 that CN was leaving and KN was starting that day and they must have known that people were coming to the office for a meeting. Ms Hyland could have been told about those things in advance. The evidence about the office move set out above also show the opposite of a carefully planned change. Some parts of the move may have been fast-moving or unpredictable. Obviously Aspiedent could only provide information once it knew about things itself. But, for example, Ms Hyland had to text Ms Blacow on Sunday 12 February 2017 to ask where she should work the next day and Ms Blacow replied two minutes later to tell her. She must have known already that Aspiedent

had been told it could stay at E-Spark but nobody had told Ms Hyland. It is not enough for Dr Guest and Ms Blacow to say that they are disorganised. Aspiedent employed autistic members of staff. It knew the importance of careful change management. It needed to practise what it told others to do. If Dr Guest's own autism affected her ability to do so, she had a support worker who was also Aspiedent's Operations Manager to help her with it. These steps were practicable and inexpensive. Aspiedent did not always give Ms Hyland advanced notice of changes so that she had time to process or adapt to them. This complaint therefore succeeds.

- 6.14 The Tribunal did not deal with the hypothetical question whether Ms Hyland would have been dismissed on 24 March 2017 if the relevant steps had been taken. As we explain below, we found that her dismissal was discriminatory in any event for a different reason.

Discrimination arising from disability

Dismissal

- 6.15 Aspiedent treated Ms Hyland unfavourably by dismissing her on 24 March 2017. Dismissal is unfavourable treatment.
- 6.16 One of the reasons Aspiedent dismissed Ms Hyland was the fact that she brought the Adobe disk into work on 23 March 2017. Another was her behaviour during 20-24 March 2017. As set out in the findings of fact, the dismissal letter referred to the Adobe disk as one of the reasons and to Ms Hyland's behaviour as another. In its written arguments Aspiedent referred to "temper tantrums" as one of the aspects of Ms Hyland's behaviour that was a concern.
- 6.17 As set out in the findings of fact, the Tribunal found that Ms Hyland brought the disk in because she still had a preference to use Adobe. This was because of her resistance to change caused by her autism. She thought that this disk would enable her to carry on using Adobe. Bringing the disk in was "something arising in consequence of" her autism and it was one of the reasons she was dismissed.
- 6.18 The Tribunal also found that aspects of Ms Hyland's behaviour that week were caused by her autism. That included her reaction to the three emails on Wednesday 22 March 2017, including tossing her diary across the desk with the passwords for Dr Guest and her panic attack or meltdown that morning. That is one of the things Aspiedent is referring to when it talks about temper tantrums. Her behaviour was "something arising in consequence of" her autism and it was one of the reasons she was dismissed.
- 6.19 Dismissing Ms Hyland was not a proportionate means of achieving a legitimate aim. Aspiedent have not specifically identified a legitimate aim but they appear to argue that Ms Hyland's conduct justified dismissing her. Dealing with an employee's misconduct or ensuring proper standards of conduct might be a legitimate aim, but the Tribunal found that it was not proportionate to dismiss Ms Hyland for that reason in this case.

- 6.20 Ms Hyland's conduct did not make it appropriate or reasonably necessary to dismiss her.
- 6.20.1 She had permission to use WordPress to develop the website content. She showed the site regularly to the Operations Manager. She explained about buying the domain name at the meeting on 22 March 2017. Dr Guest accepted her explanation and agreed to draw a line under it. Ms Hyland had transferred almost all of the website across to Aspiedent before she was dismissed.
- 6.20.2 Ms Hyland's conduct relating to the Adobe disk did not justify her dismissal. She had been told Aspiedent would not buy her a copy because they could not afford it. She had not been forbidden from using it. She found a copy that she thought would solve the problem. All she did with that copy was bring it in, show the Operations Manager and put it in a drawer. She was entirely open. Dr Guest was at the other office that day.
- 6.20.3 Ms Hyland was not being dishonest or deceitful.
- 6.20.4 Much of Ms Hyland's behaviour that Aspiedent criticise was linked to her autism. The Tribunal's findings of fact about that behaviour are set out above. That must be weighed in the balance.
- 6.20.5 Aspiedent did not think they needed to dismiss Ms Hyland for the things that happened up to 22 March 2017 until she sent her "sorry" email. Bringing in the Adobe disk and sending the "sorry" email did not make it appropriate or reasonably necessary to dismiss her.
- 6.21 If there were concerns about Ms Hyland's conduct, Aspiedent could have taken other steps to deal with them that were less discriminatory than dismissal. Those included having a meeting with Ms Hyland to discuss the concerns, after giving Ms Hyland advanced notice of what they were and making sure that she was fit to attend the meeting. As explained above, we found that Aspiedent failed to make reasonable adjustments when it held a meeting without taking those steps. It is difficult for any employer to say that its unfavourable treatment was proportionate when it had failed to make reasonable adjustments that might have made a difference. The needs of Aspiedent also have to be weighed against the discriminatory effect on Ms Hyland. Losing her job caused a very significant discriminatory effect. Aspiedent's needs to address its concerns about her conduct did not outweigh that. For all these reasons, dismissing Ms Hyland was not a proportionate means of achieving a legitimate aim.

Response to the "sorry" email

- 6.22 Aspiedent did treat Ms Hyland unfavourably by not addressing the concerns in her email of 23 March 2017 and by treating the email as showing no sign "of remorse" and being "very upsetting." The email was not inappropriate. It was an explanation from Ms Hyland of how she was feeling at that time and why. It explained why she might be absent from work. The Tribunal compared that which is objectively adverse and that which is objectively beneficial. Applying that approach, it was unfavourable for Dr Guest and Ms Blacow simply to ignore the email until they dismissed Ms Hyland and then to refer to the email in the dismissal email as showing no sign "of remorse" and being "very upsetting." Ms Hyland reasonably felt that this was detrimental. She had been so unwell she needed to call an ambulance. Her employer ignored her email about her distress and possible

absence from work and then, while dismissing her, criticised her for explaining how she was feeling and why.

- 6.23 However, this was not because of something arising in consequence of Ms Hyland's disability. The Tribunal thought that an employee without autism might have written the email in much the same way. There was nothing in its tone or content that appeared to the Tribunal to arise in consequence of Ms Hyland's autism. Anyway, the Tribunal concluded that Dr Guest and Ms Blacow's response to the email was not because it was written in a particular way but because they wanted an apology from Ms Hyland and they did not think that they got one. That was more about their reaction than the way the email was written. This claim therefore does not succeed.

The three emails

- 6.24 Aspient did treat Ms Hyland unfavourably by sending her the three emails in rapid succession on 22 March 2017. Warning Ms Hyland that she might be dismissed and telling her she was in serious trouble was unfavourable treatment.
- 6.25 However, this was not because of something arising in consequence of Ms Hyland's autism. The Tribunal thought that an employee without autism might have given the wrong password in much the same way. It was a simple mistake caused by having two similar passwords written next to each other. It was not Ms Hyland's autism that made her read the wrong password. Anyway, the Tribunal concluded that the three emails were written in the way they were because of Dr Guest's autism. They were blunt and direct and sent as three emails in rapid succession because that is how Dr Guest communicates. That is more about Dr Guest's autism than Ms Hyland's. This claim therefore does not succeed.

Breach of contract

- 6.26 The Tribunal does not need to decide whether the ACAS Early Conciliation included the breach of contract complaint or whether to allow an amendment to the claim if not. That is because it is clear that the complaint will not succeed anyway. As explained in the findings of fact, Ms Hyland did not have a contractual right to be paid for the one day per week that she worked for Aspient as a volunteer between 31 October 2016 and 31 January 2017. The contract between Ms Hyland and Aspient was a contract to work two days per week for the agreed rate of pay. They agreed separately that she would volunteer one day per week. She did not have any contractual or other entitlement to be paid for the day on which she volunteered.

Victimisation

- 6.27 As explained in the findings of fact, the Tribunal concluded that Dr Guest and Ms Blacow did deliberately ignore the reference request and contact from Security Watchdog. That happened in May and June 2018. They did this because they realised the request was for Ms Hyland and they did not want to provide a reference for her.

6.28 Ms Hyland did a protected act when she brought these Tribunal proceedings. She has proved facts from which the Tribunal could infer, in the absence of an adequate explanation, that that is why Aspient did not provide a reference for her. Those facts are as follows. When Dr Guest wrote to Ms Hyland with the outcome of her appeal, she told her that if Aspient were asked for a reference, they would give Ms Hyland's dates of employment and job title. They would not say anything negative about her and she could say that she left because the job was not a good fit. By 24 July 2018 at the latest, Aspient was no longer prepared to provide such a reference. Aspient then said that they did not want to provide a neutral reference because of what they referred to as Ms Hyland's "lack of integrity" and the fact that she was telling "lies." That has been their position since. Ms Hyland brought her Tribunal claim after the appeal letter and before Aspient's change of position. There was no other significant change. These are facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the reason Aspient did not provide a reference is that Ms Hyland brought these proceedings. As explained in the findings of fact, Aspient have not provided any satisfactory explanation for not providing a reference. They have not proved that they did not victimise Ms Hyland. This complaint therefore succeeds.

Employment Judge Davies

15 December 2021

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