Case Number: 2204865/2019

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr M Barnett	**v**	**Maltwillow Limited**

Heard at: London Central

On: 5, 6, 7, 10, 11 and 12 May, 31 August, 1, 2 and 3 September and 21 October 2021

Before: Employment Judge A James
Mr J Carroll
Ms S Campbell

Representation

For the Claimant: Mr M Egan, counsel

For the Respondent: Ms Y Montaz, solicitor and Mr J Munro, solicitor

AMENDED JUDGMENT

(Employment Tribunal Rules of Procedure 2013, Rule 69)

(1) The claim for unfavourable treatment because of something arising from the claimant's disability (S.15 Equality Act 2010) is upheld in relation to the allegation that the dismissal of the claimant arose from something arising from his disability, namely his difficulty with mental processing, particularly in a stressful context.

(2) The claim for unfavourable treatment because of something arising from the claimant's disability (S.15 Equality Act 2010) is not upheld and is dismissed in relation to the allegation that in dismissing the Claimant, the Respondent disciplined the Claimant for not following reasonable management instructions.

(3) The following claims of victimisation (s.27 Equality Act 2010) are upheld.

a. Initiating and continuing with the first set of disciplinary proceedings against the Claimant, in July and August 2019.

b. Removal of clients from Claimant's workload from 1st August 2019 until dismissal.
c. On 26 September 2019, reneging on oral variation of contract of employment agreed in February 2019 and informing the Claimant that they would recover the sum of £2,274.72 by way of wage deductions from the Claimant.
d. Dismissing the Claimant on 16 October 2019.
e. Deducting the sum of £2,274.72 from the Claimant's final salary in October 2019.

(4) The following claims of victimisation (s.27 Equality Act 2010) are not upheld and are dismissed.

a. Initiating and continuing with the second set of disciplinary proceedings against the Claimant. Initiated on 26 September 2019, disciplinary investigation meeting and disciplinary hearing meeting on 10 October 2019.
b. Changing the Claimant's work location from Knightsbridge and Battersea to Battersea only on 27 September 2019.

(5) The following claims of failure to make reasonable adjustments (s.20 Equality Act 2010) are upheld.

a. Implementation of an effective worker buddy and/or mentor system from 10 July 2019.
b. Use of screen reading software within the salons by 31 August 2019
~~c. Effectively allowing the Claimant 90 minutes work time when allocated an Afro-Caribbean client. This should have been effectively implemented by the Respondent's management when requested on 10 July 2019.~~
d. The failure of Tito Nath to provide any notice or any information prior to the meeting that he held with the Claimant on 28 September 2019.
e. The failure of Yashar Rasekh to provide additional time for the Claimant to arrange union representation for the Disciplinary Investigation and Disciplinary Hearing meetings on 10 October 2019.
f. The failure by Philip Jukes to allow the Claimant to use Siri reading software to present his case at the hearings on 10 October 2019 and the rushed approach taken when questioning the Claimant in the meetings held on that date.

(6) The following claims of failure to make reasonable adjustments (s.20 Equality Act 2010) are not upheld and are dismissed.

a. adoption of an effective system whereby all written material that was being provided to employees (either generally or to the Claimant specifically) was either orally read to him or was sent to him by email.
b. Effectively allowing the Claimant 90 minutes work time when allocated an Afro-Caribbean client.

c. The alleged failure of Tito Nath to provide any notice or any information prior to the meeting that he held or attempted to hold with the Claimant on 22 August 2019.

(7) The claim for unauthorised deduction of wages (s.13 Employment Rights Act 1996) is upheld in relation to the deduction or part of the deduction from the claimant's final salary. The amount owed under that claim is to be determined in due course.

(8) The claim of failure to provide written statement of changes of salary (s.4 Employment Rights Act 1996) in or about February/March 2019 is upheld.

(9) The claim of wrongful dismissal (breach of contract) (Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994) is upheld.

(10) The claim of failure to allow the right to be accompanied (ss.11 and 12 Employment Relations Act 1999) is not upheld and is dismissed.

(11) The claim for holiday pay (s.23 Employment Rights Act 1996) is not upheld and is dismissed because it is included in the unauthorised deduction of wages claim.

REASONS

The issues

1 The issues for the tribunal to decide upon in this case are set out in Annex A. They were agreed by the parties prior to the hearing commencing.

The proceedings

2 The claim was issued on 1 November 2019. A preliminary hearing took place before Employment Judge Snelson on 16 March 2020. The claimant was ordered to provide further details about his claims.

3 A further preliminary hearing was conducted by Employment Judge Brown on 4 May 2020. At that hearing, the claims were further clarified, and the claimant was ordered to provide further information. Related directions were made.

4 There was a further preliminary hearing before Employment Judge J Burns on 21 July 2020. The direct and indirect discrimination claims were noted as having been withdrawn. The claimant had still not provided sufficient particulars to enable his claim to be understood and was given a final opportunity to do so.

5 A further preliminary hearing was held on 27 July 2020, again before Employment Judge J Burns. Further directions were made at that hearing to ensure that the case would be ready for hearing. The issues were identified in a schedule appended to the order.

6 The hearing on liability took place over ten days. It had originally been listed for six days but it was not possible to conclude the hearing within that period, partly down to CVP connection problems, and partly due to the sheer volume of evidence. Re-listing of the case then proved difficult, and had to be rearranged twice, due to the unavailability of the respondent's representative. Evidence and submissions were dealt with during the first seven days. It was arranged that on the remaining three days, the tribunal would deliberate in private and the decision would be reserved.

7 The tribunal heard evidence from the claimant; and for the respondents from Yashar Rasekh, Managing Director, Tito Nath, HR Manager, Zoe Rodgers, Working Manager, Paul Edmonds (the founder of the business), Philip Jukes, HR Consultant at Jaluch Associates and Freddie Lawson, solicitor. There was an agreed trial bundle of 1599 pages by the close of the hearing, including a further three pages of an unredacted document, and a supplementary bundle of 39 pages.

8 Mrs Montaz applied to introduce a further document, referred to by one of the witnesses, Mr Lawson. The document was not disclosed until the day before the hearing was due to commence. One of the reasonable adjustments requested by the claimant was for a workplace buddy, and the document was said to provide evidence that the relationship between the claimant and his buddy broke down during a meeting, making that adjustment no longer possible.

9 Having considered the matter, the tribunal decided to refuse to allow the document to be submitted in evidence at such a late stage. The issue is not relied on by the respondent in its pleaded case or in the internal disciplinary proceedings. We have Mr Lawson's evidence in relation to that issue in any event. If it was a relevant issue, we would have assumed the matter would have been referred to in other contemporaneous documents and the pleadings. Had we allowed the document in, we would not have given it a lot of weight in those circumstances in any event, being hearsay evidence. Insofar as the issue is relevant, we have been able to make brief findings of fact on the basis of the information already before us.

10 In our findings of fact below, we have used initials for the names of the colleagues of the claimant. The judgment is no less understandable as a result and in our judgment, the right to privacy of those individuals demands more respect since they have not been involved in the hearing at all. We have used the names of the relevant managers who are implicated in the alleged discriminatory acts; and of the persons who were employed on a professional basis to advise the respondent and carry out the disciplinary and grievance procedures, including the appeals. Some appeared as witnesses and where they are engaged in a professional capacity, they also have, in our judgment, less expectation of privacy.

Reasonable adjustments

11 The following reasonable adjustments were agreed for the claimant at the commencement of the hearing. It was acknowledged that he may need more frequent breaks during cross-examination and the claimant was encouraged to request additional breaks if he needed them; similarly, Mr Egan was invited

to suggest a break, if he thought that was necessary; as would the tribunal. Where necessary, the Employment Judge agreed to intervene to simplify questions put to the claimant. The tribunal directed that compound questions should be avoided. The documents were read out to the claimant when necessary.

12 Adjustments were also made for Mr Nath, who was able to ask for more frequent breaks, when needed, in relation to a problem with his knees; and the questions were put in chronological order, to assist in relation to issues with memory. To the same end, Mr Nath was referred to the paragraph in his witness statement, and relevant pages in the bundle, when questions were being put in relation to him, and he was given time to find the relevant sections and read them.

Fact findings

Introductory remarks

13 General submissions were made on behalf of both parties, on the basis that their respective client's' witness evidence should be preferred in general. For the respondent, it was argued that the way that the claimant gave evidence at the hearing of this tribunal claim was in marked contrast to the way he presented himself during the disciplinary and grievance hearings and the appeal hearings. As will be clear from our findings below, we consider that any such differences were mainly down to the fact that this tribunal made appropriate reasonable adjustments for the claimant, when he was giving evidence. See also our findings of fact below in relation to the adjustments made at the first disciplinary hearing held on 2 August 2019.

14 In relation to all of the key disputed facts, we have considered it appropriate to deal with each of those matters on their merits, by reference to the evidence before us, including the witness and documentary evidence. We have not found it appropriate or necessary to make any general findings as to credibility.

15 Further, by way of general introductory comments, cross-examination was put to the claimant by the respondent's representative on the basis that he was overstating his needs in relation to his disability. However, the victimisation claims had not been defended in the pleadings or the agreed list of issues on the basis that they were made in bad faith.

Offer of employment

16 In September 2018 the claimant applied for employment as a Senior Stylist with the respondent. The claimant was interviewed firstly by Zoe Rodgers and subsequently by Yashar Rasekh on 17 September 2018. The claimant presented and interviewed well and was subsequently informed that he had been successful in his interview.

17 Following a successful skills test, an offer letter was sent to the claimant by Mr Nath on 26 September 2018 by email. This stated:

> *Your initial gross annual salary will be £21,000 you will also have the opportunity to increase your earnings through commission driven income.*

> *However for the first three months we will guarantee you a gross monthly basic salary of £2,333 (£28k p.a.). This will enable you the opportunity to establish a client base so that your basic salary plus commission in month 4 should exceed a gross monthly salary of £2,333.*

18 The claimant accepted the position on 1 October 2018. He was employed as a senior hair stylist for the respondent from 30 November 2018.

Contract of employment

19 The claimant signed a contract of employment on 30 November 2018.This confirmed that the claimant would work at either the Knightsbridge and/or the Battersea salon. It was specifically stated that:

> *… it is a condition of your employment that you comply with any reasonable request to change your place of work.*

Wherever possible however, changes were not to be introduced at short notice (Clause 6a).

20 Clause 17 refers to the disciplinary policy, which is in the Employee Handbook and is non-contractual.

21 Clause 21 entitled the claimant to contractual notice of one week, for service of over one month but less than two years.

Notification of dyslexia

22 In November 2018, the claimant sent an email to Mr Nath which reads:

> *Thank you very much for the rota much appreciated. Please can you email my employment contract through as its easier for me to read through as I'm dyslexic as mentioned.*

23 On 14 December 2018 in an email from the claimant to the respondent, the claimant stated:

> *You will be aware that I am very dyslexic which I have also made known to Yashar. I have also asked him to let those in need to know to also be made fully aware and to support me accordingly with this. I help me it would be great if my working rota is emailed in advance so that can plan myself properly for the coming weeks and also be aware of my days off. Indeed, it would also assist if all things important to the business that I should know could also be emailed so I can read it on my computer assisted software so that nothing is missed*. [Tribunal note - copied and pasted from original document – as with all of the quotes below. We have avoided using the expression 'sic' throughout these quotes, even where the original wording used does not make complete sense].

24 Mr Nath accepts that by this stage he was aware of the claimant's dyslexia. The main issue at that stage that Mr Nath was aware of was that the claimant wanted written documents to be emailed to him. Mr Nath had also told KD, the head of reception that the claimant was dyslexic so he could be supported with the names of clients being announced on arrival.

25 The signed contract and the Handbook were emailed to the claimant on 20 December 2018.

Payslips and wages – 2018/2019

26 The claimant wrote to the respondent on 30 January 2019 to report that he had not received his payslips for December 2018, and January 2019. They were subsequently supplied.

27 The claimant alleges that he spoke to Paul Edmonds and Mr Rasekh on two separate occasions towards the end of February 2019 to highlight his concerns about a possible salary reduction at the end of the month. The conversations were alleged to have taken place in the Knightsbridge salon. It is the claimant's case that the agreement was that his salary guarantee of £28,000 would remain indefinitely. Mr Rasekh and Mr Edmonds denied that any such conversation took place. There is a straight conflict in relation to the witness evidence on this point.

28 We have taken note of the following documents in resolving this evidential issue. First, we note that the claimant's pay slips show that up to May 2019, his basic salary was £1,750; from May 2019, it appears as £2,333. Second, we note the contents of the email from the claimant to Mr Raskeh of 28 April 2019 (see below) in which the claimant made express reference to a salary of £28,000 in relation to his pension. Following receipt of the email, Mr Nath increased the pension contributions for the claimant. Neither he nor Mr Rasekh questioned the £28,000 salary figure. Third, we refer to the email (again, see below for the full content of the email) between the claimant and Charlton Fox Associates, to the effect that Mr Rasekh was responsible for payroll.

29 On the basis of these documents, we find on the balance of probabilities that there was an agreement between the claimant and the respondent, that was reflected in the email sent by the claimant on 28 April 2019 to Mr Rasekh, that the claimant would continue to receive a minimum salary of £28,000 per annum (including commission and sale of products), from February 2019 onwards until further notice. We accept that when in May 2019 the salary was increased to £2333.33 that this was a mistake but it does beg the question as to why such a mistake would be made if there wasn't an agreement to continue to guarantee the claimant a salary of £28,000 including commission and product sales. Those arrangements were never questioned by the respondent until 26 September 2019, when they alleged for the first time that there had been an overpayment. We find on the balance of probabilities, that the absence of any questioning by Mr Nath or Mr Rasekh about the claimant's assertion in relation to the £28,000 salary, and that he continued to be paid on that basis, point towards there being an agreement to that effect.

Incident with colleague 'J'

30 Ms Rodgers was aware of the claimant's dyslexia at least from March 2019 after the incident with the claimant's colleague 'J'. That incident took place on 17 March 2019. Both 'J' and the claimant spoke to her Rodgers about the incident. Both appeared very upset to Ms Rodgers by what had occurred. She put the incident down to a clash of personalities. Since the matter appeared to have been resolved, she did not consider it necessary to escalate it any further.

Sending of reports to Mr Nath and Mr Rasekh - 25 April 2019

31 On 25 April 2019, the claimant sent four past diagnostic and workplace assessments to Mr Nath and Mr Rasekh by email. There is no dispute that the

respondent was fixed with knowledge of the claimant's disability from this date onwards. All of the alleged discriminatory acts occurred after that date. To the extent relevant, sections from the reports are set out below, or in the conclusions section.

32 In his covering email, the claimant stated that he was sending the reports:

> *to assist yourself and others whom I work with in the team to improve their understanding of its universal effects to me, as often it is viewed as an unseen disability*.

Emails about pension contributions

33 On 28 April 2019 the claimant emailed Mr Rasekh in relation to his pension and the possibility of salary sacrifice in relation to that. The email stated amongst other things that "*I am assuming [the contribution] should be based on £28,000 PA the benefit will of course be the reduction in employers NI contribution*". On the basis of that salary, the claimant stated that the 3% employer contribution was £70 (which is 3% of £28,000), and he asked to increase the employee contribution to £150. Further queries were raised by the claimant on 3 and 10 May to Mr Nath, copied to Mr Rasekh. On 3 May 2019 Mr Nath emailed the claimant to say:

> *Thank you for your email, the contents of which I note.*
>
> *I will take steps to ensure your contributions are increased to £150 p/m as requested and will investigate the reason why your contributions are not showing on Standard Life portal and get this rectified.*

34 The figures were not questioned by Mr Rasekh or Mr Nath and £150 pcm was deducted from the claimant's wage by way of pension contributions.

35 The claimant also raised queries with Charlton Fox Associates in relation to the pension scheme. The reply he received on 14 May 2019, which he forwarded to Mr Nath and Mr Rasekh on 18 May 2019 stated:

> *Further to your conversations with my colleague Iain, I can confirm that we set this pension scheme up in 2015, but do not run the scheme going forward.*
>
> *This is done by Yashar Rasekh within Paul Edmonds. Yashar operates the payroll software system, including paying the auto enrolment contributions for each scheme member to Standard Life.*
>
> *I would suggest that you talk to Yashar and he will be able to explain the situation to you.*

36 Since it appeared that the employer's pension contributions were not being made, the claimant made a complaint to the Pension Advisory Service on 16 May 2019.

Alleged poaching of clients

37 In April/May 2019 there were allegations made against the claimant that he was 'poaching' other team stylists' clients. We do not need to make any findings as to the veracity or otherwise of that assertion. It is sufficient to note that this perception would have and did lead to tension between the claimant and some of his colleagues.

First grievance – 17 May 2019

38 On 17 May 2019 the claimant raised his first grievance. The grievance complained of threatening behaviour by a colleague, 'J', on 17 March 2019 – see above. The claimant says that 'J' accused him of discrediting her work around the salon regarding a client that had been very unhappy with the haircut that she had provided. He said:

> *I'm led to believe today that there is a written protocol regarding this - given my dyslexia this is not been relayed to me. I am very unhappy with the disparaging way I was spoken to and wish this to be reported*.

The respondent accepts that this amounts to a protected act for the purposes of s.27 Equality Act 2010.

39 The claimant also referred further to his dyslexia, saying:

> *I have provided you with very comprehensive dyslexia reports regarding my disability some time ago yet I have heard nothing written from you since by way of support*.

40 The claimant also complained about:

> *a number of incidents where colleagues have been aggressive towards me in the salon*.

41 He also raised the issue of not being given sufficient time for Afro Hair clients; and about pension contributions not being made.

42 Mr Rasekh responded by email the same day, suggesting that the claimant had informed him verbally that he wanted to resign, and was awaiting his formal decision. In an emailed reply on the same day, the claimant stated that he had no intention of resigning his employment.

43 In his evidence before us, Mr Rasekh told us that it was a shock receiving the grievance. It felt 'heavy-handed', he told us.

<u>24 May 2019 – grievance meeting</u>

44 In a letter dated 2 May 2019, the claimant was invited by Mr Nath to a grievance meeting, to take place on 24 May 2019. On 23 May 2019 the claimant wrote to Mr Nath requesting that the process was not rushed as '*it does take me a lot longer to articulate and process things as I am cognitively impaired to this disability dyslexia*'.

45 The respondent attempted to record the grievance meeting on 24 May 2019, but due to technical difficulties, not all of the meeting was recorded.

46 There was an extensive and constructive discussion during the meeting about the adjustments that the claimant required. These included the following.

47 <u>Emailing of documents</u> – the notes confirm that the claimant asked for documents to be sent to him by email. This had as noted above, been occurring on request. Mr Nath asked the claimant to let him know of any documents required in a digital form.

48 <u>Buddy/mentor</u> – the following exchange took place:

> *TN: Would it be helpful If we allocate someone … doing appointments to assist you with day to day areas where you may need support. Is that an area you are suggesting?*
>
> *EB: That would be good*

TN: Let me give that some consideration to see if this is something that could be put in place In practice. Kind of a buddy type situation

EB: Yes

TN: that same person or persons could assist with areas such as areas as updating client records. Do you update client records?

EB: I am meant to but I don't

49 Appointment column and assistive software – the following exchange took place:

TN: Is there anything else we can do to assist you with reading the clients names?

EB: Absolutely using assistive software

TN: Do you have access to that assistive software

EB: Personally yes I do.

TN: Is there any means of integrating that assistive software with software such as Shortcuts?

EB: Sorry that's something don't know how it, it's not an area within my expertise.

50 Support at team meetings – the claimant was asked about support at team meetings. It was agreed that the claimant would find it useful for team meeting notes to be sent to him digitally, together with any documents discussed at those meetings.

51 As for product training

TN: I am aware we have team training sessions with suppliers such as L'Oreal when someone attends the salon to offer updates and knowledge and wondering how we can influence that process to support you.

EB: to be honest I don't in my years of suffering with this condition in my years of being in this field that sector is very difficult to alter.

TN: What I thought may be helpful is if there is literature on such things as products if we sent you a PDF of the information would your assistive software work with PDF documents. if there is a PDF on that topic such as a brochure or information sheet I could request that information to be emailed and get the details over to you.

TN: The other thing I would ask of you that in this process is I need your input as well.

EB: 0K

52 The examples above demonstrate that this was a positive and constructive meeting. A number of areas were discussed where reasonable adjustments could be put in place for the claimant.

Alleged Peroxide Incident – 28 May 2019

53 On 28 May 2019 an incident occurred, during which the claimant was alleged to have deliberately mixed the wrong concentration of peroxide, resulting in the client complaining about her hair colour. This was later dealt with as one

of a number of disciplinary allegations against the claimant. The findings of Mr Hickman, who investigated those allegations, are set out below.

54 It appears from a draft letter dated 31 May 2019, which the tribunal weas shown but which was not subsequently sent to the claimant, that the respondent had intended to institute disciplinary proceedings against him around that time. However, one of the key witnesses to the incident, SK, withdrew his statement. Whilst it was not in Ms Rodger's witness statement, we accept her evidence that she had asked SK why he did not mention at the time of the incident that the claimant had told him he had increased the peroxide level. That apparent failure implicated him in the incident, yet no disciplinary action was ever taken against SK.

Grievance outcome – 31 May 2019

55 The grievance outcome was provided to the claimant in writing on 31 May 2019. Regarding dyslexia reports and lack of a written offer of support, Mr Nath stated:

> *Also your email attaching the reports did not make reference to any day to day difficulties you currently need support with nor did it suggest any specific areas requiring reasonable adjustments in your current role.*
>
> *It is not the obligation of an employer to extrapolate reasonable adjustment in the absence of a specific request for support.*
>
> *To gain an understanding as to how you feel with regards to carrying out the duties of your role it would be constructive and beneficial if you highlight precisely any concerns relating to your condition whilst accurately outlining the measure we could implement to support you. As discussed during the grievance hearing we are looking into appointing a buddy to assist you with areas such as updating client record cards following chemical services, verbally announcing client names on arrival. We will trial this proposal and measure its success over an agreed period of time.*
>
> *With regards to team meetings on limited occasions that written material may be used we will take steps to provide this information in a digital format before or after the meeting. As it is difficult to foresee every situation involving literacy which you may find challenging going forward I request that … you please email myself and also copy both Zoe and Yashar should any overlooked areas arise plus an indication of reasonable adjustments you may require. Working in the fashion sector, change takes place on a constant basis which may result in changes in the salon environment or variations in procedures or day to day operations so we will need your regular input if you are adversely affected due to your condition. (Our underlining)*

56 We note that the tone of this letter appears to be in marked contrast to the constructive discussion that took place at the grievance hearing itself. Mr Nath stated in cross examination that the respondent did not want to make adjustments if they did not accommodate the claimant's specific dyslexia issues. But issues specific to the claimant's disability had been raised at the grievance meeting and solutions discussed. Further, the onus is on an employer to identify and make adjustments, not on an employee.

12 June 2019 ‘catch-up’ meeting

57 On 12 June 2019 there was a meeting between the claimant and Mr Rasekh. This was described as a ‘catch up’ meeting. At a number of points Mr Rasekh informed the claimant that it was not a formal meeting, it was informal. There was a discussion at the meeting about an allegation that the claimant was bringing his own products into the salon; and the MA hair extension issue which later formed one of the disciplinary allegations against the claimant. Notes of the meeting were subsequently sent by Mr Rasekh to Mr Nath on the following day, 13 June 2019. Those notes were not forwarded to the claimant.

58 On 17 June 2019, a letter was sent by Mr Rasekh to the claimant which confirmed the content of their ‘informal’ discussion, about stylists not bringing in their own products; how to deal with client’s who made their own request for certain products; and the limitation to the service offered by the Stylist team.

26 June 2019 – letter about reasonable adjustments – second protected act

59 On 26 June 2019 the claimant wrote to Mr Nath about the reasonable adjustments they had discussed on 24 May. This is relied on as the second protected act. The claimant specifically referred to clients with Afro hair not being booked in for 90 minutes, meaning he did not have sufficient time to deal with the appointment. He also referred to the commitment made by Mr Nath at the meeting to provide a buddy to verbally announce client names on arrival. His email continued:

> *I am concern that my requested reasonable accommodating adjustments are only being given lip service and nothing more. I see little demonstrated evidence yet of a sustained effort to help with my disability.*
>
> *I will as promised furnish you, Yashar and Zoe with areas where daily reasonable adjustments are requested, it is of course very detailed and can be extrapolated from all the diagnostic information pertaining specifically to me that I have already gone at considerable lengths to furnish you with, and have allowed you ample time to review. Given the difficulties I face with this disability I was rather surprised that there appears an apparent unwillingness from the contents of your outcome notes to do this by way of offer any assistance. Indeed, I was surprised that the outcome notes were sent even before I was given sufficient time to comment on the minutes of the meeting in term of there accuracy. The employer does have a duty of care here and that does need to be demonstrated.*
>
> *Nevertheless, I shall attempt to capture the detail of daily reasonable adjustments so that I can see more progress here in the future by way of supporting my protected characteristic properly.*

60 He also sent an email on 26 June in which he asked Mr Nath whether the ‘clarification letter’ of 17 June 2019 from Mr Rasekh had been sent only to him, since:

> *It would appear on the first instant that I have been singled out specifically because I had previously raised grievances against said individuals and company practises as it appears rather 'coincidental' so soon after my grievances were heard. I would of course be extremely disconcerted to*

think that it was either my race or my disability that were deciding factors here to treat me unfairly against my comparators.

61 Subsequently, at the team meeting on 28 June 2019, some of the issues discussed with the claimant early that month were discussed in a neutral way with all those present. Minutes were subsequently circulated, reflecting the discussion.

Response of Mr Nath 30 June 2019

62 Mr Nath sent a response to the claimant dated 30 June, but sent by email on 1 July, in which he again asked the claimant to set out the adjustments he required. He informed the claimant that they had been looking into the buddy issue; it had taken longer than expected. The adjustment offered was that KD provide the assistance he was asking for in the short term. The claimant was also informed that the business was recruiting additional personnel to join the reception department so that there would be a front of house team member to cover days when KD was not working.

63 During cross examination Mr Nath was asked why it had taken so long to put in place a buddy. He told us that it was a complicated exercise; it was not just about the provision of technology. The business took the view that the best support could be provided by the junior staff. It had initially been thought best to recruit a junior full-time and exclusive for the claimant – but when they thought of the cost of that and whether it was commercially viable, the respondent 'realised' that if they did that, then it would set a precedent. Mr Nath said words to the effect that: "*if we set a precedent, other staff will say that is unfair and it will come up, it will escalate. Other people will say they are not getting fair treatment. That is the way the workforce works in hairdressing*."

64 Mr Rasekh raised similar concerns at the 10 July 2019 meeting – see below. He told us: "*We can't set a precedent which we can't then reverse. We have got 5 or 6 people with dyslexia, if we set a precedent [for the claimant] we cannot go back*." The notes of the discussion also make reference to such assistance not being commercially viable – see below, in relation to that meeting.

65 On 8 July 2019 there was a complaint from a customer who had brought her daughter over from Finland to make a donation of hair to the Little Princess Trust. The email reads:

> *Why on earth your hairdresser just started to do braids and cut her hair just like that without washing and drying it properly? Luckily I stood right there and stopped him before doing it all wrong. I told him to wash my daughters hair properly and dry it carefully as described in the detailed instructions I showed him too. After that I was again reassured he has done it many times. How is that possible? That mistake he almost did for not washing the hair first (there was conditioner indeed in it!) would have ruined her incredibly valuable hair donation. That would have been devastating for my daughter and me. Also a big loss for Little Princess Trust for getting ruined hair donation!*

The email also complained about being kept waiting and about the cost of the cut, which was more than had been anticipated on the basis of the information on the respondent's webpage.

Further request for reasonable adjustments – 10 July 2019

66 The claimant made a further request for reasonable adjustments in a letter sent to Mr Nath on 10 July 2019. He suggested in that letter that the salon obtain their own diagnostic report, followed by a workplace assessment.

67 The claimant quoted extensively from the diagnostic reports that had already been provided. In relation to him not being provided with the 90 minutes he needed for clients with Afro hair, the claimant said he was upset because such clients were often just booked in for 60 minutes. It was suggested to the claimant in cross examination that this wasn't a reasonable adjustment issue, because it was not linked to his dyslexia. During re-examination, the claimant was taken to the 10 July 2019 letter in which he states:

> *May I draw your attention to the Diagnostic assessment document conducted in 30th April 2013, which you have in your procession, as it was provided by you by e-mail on the 25th of April 2019. Where it states: -*
>
> > *'Typically, adults with dyslexia can experience feelings of anxiety in relation to managing their workload and the time constraints pressures that Managers and colleagues may place upon them. It can be hard for managers and colleagues to understand and appreciate how time consuming, frustrating and at times exhausting it is for people with weaknesses in processing speeds and working memory to maintain consistency and accuracy in their work performance, when placed under unnecessary pressure to speed up'.*
>
> *For the avoidance of doubt it also states within this diagnostic assessment conducted on 30th April 2013 also;*
>
> > *Dyslexia, as defined by the British Dyslexia Association, 'affects the way information is processed, stored and retrieved, with problems of memory, speed of processing, time perception, organisation and sequencing'*
> >
> > *Tito, contrary to a popular misconception its not just the difficulty with reading and writing that is a symptomatic trait of dyslexia. Indeed the reference to others in the salon that have dyslexia is certainly not a broad-brush endorsement that you fully understand my individual needs.*
>
> *I trust that answers your question why I require more allocated time. Simply put, Afro hair requires more processes, more procedures hence more time, and therefore I am requesting reasonable time adjustments (i.e. more time allotted by the receptionists) to accommodate this on all occasions where I am concerned.*

68 The claimant listed a number of adjustments which could be made including giving verbal as well as written instructions; use of screen reading software within the salon where possible and ensuring it was accessible to him; scheduling Afro-Caribbean clients for 90 minutes; give instructions one at a time; communicate instructions slowly and clearly in a quiet location; assist him to create a daily, dated, to-do list; place him to work only at the Knightsbridge salon where assistive support can be more easily sought (which was more difficult at Battersea due to the lower staffing levels there); the provision of an iPad; and the allocation of a workplace mentor. He

concluded the letter with a list of 'Five simple things Paul Edmonds should do immediately to make the company more dyslexia friendly'.

> *1. Make all company reference documents available in a plain, sans-serif font such as Arial, in point size 13 (at least).*
>
> *2. Ensure all agendas, training notes, handouts, presentations, meeting minutes etc are circulated electronically two to three days prior to meetings, or shortly after the meeting has been held (if minuted).*
>
> *3. Provide all employees with dyslexia awareness training throughout the salon to make the environment more 'inclusive'.*
>
> *4. Provide and allow for quite time and space within my working day to process things.*
>
> *5. Find out about Access to Work and make sure that all informed about it. Set up a system to make applications easy and effective.*

69 In a response sent by email the same day, Mr Nath stated that it '*may take a significant amount of time*' to consider the reports that had been sent. By this stage the reports had been with Mr Nath for two and a half months.

'Informal catch up' meeting – 10 July 2019

70 A meeting was held on 10 July 2019 between the claimant, Mr Rasekh and Ms Rodgers. At this meeting the claimant was informed that the respondent had agreed to appoint KD as his workplace buddy. He was told that:

> *It was up to him to work with Kylie to identify further … administrative needs such as extending client appointment times going forward or anything else that would be helpful for him*.

KD worked three days a week and her time was split between Battersea and Knightsbridge. Therefore the claimant and her did not always work at the same place even three days a week. The only day they worked regularly together was on Wednesdays.

71 The notes record:

> *[Mr Rasekh] found him talking to Zoe about him getting stressed from pressure at appointments and wanting support from the team, again I said at Battersea that it was not be commercially viable to employ someone to help him solely, I explained that I had been on the desk from 8:30am to 8pm on reception in Battersea the day before that the role of reception covers all aspects and it was not always possible to be able to on top of all the roles to think about having to inform stylist of every client that walks in things get missed and currently it was not financially/commercially viable to employ part of or a new role to do so either in Battersea or Knightsbridge, Zoe then said do you get a day sheet, Emmanuel said I don't get one in Battersea, and I said would it help as you have said you can't read them without the aid of a machine? He didn't reply, Zoe said "ahh I see yes it wouldn't help" and again I said it's not commercially viable.*

72 There was then a discussion about various 'LEARN forms involving complaints from clients. The claimant was told that '*there were quite a few and that would help highlight the areas and also be able for us to resolve and notify the clients of important next steps*'.

73 The meeting was stated to be an 'Informal catch up meeting'. The claimant was not told his responses might subsequently be used in disciplinary proceedings against him. The meeting was later described by the respondent in the letter inviting the claimant to a disciplinary hearing that it had been an 'investigation meeting'. The claimant was not told he could bring a companion to the meeting.

74 There was a discussion about five of the six matters later pursued as disciplinary allegations. These were: the alleged failure to provide photos of a model the claimant had brought into the salon; keeping a client waiting for 25 minutes; the hair colouring issue previously discussed with Mr Rasekh - the MA hair extension issue; the 28 May 2019 'peroxide incident'; and the Little Princess hair donation issue. Mr Rasekh noted in relation to the MA hair extension issue, that it '*had already been discussed before and resolved*'.

75 During the discussion about the Little Princess hair donation issue, the claimant stated that this appointment should not have been booked in with him. In her witness statement, Ms Rodgers says that the claimant was happy to do it. Ms Rodgers did not however challenge the claimant when he said on 10 July that it should never have been booked with him because he did not know how to do it and had not had training. We therefore find that the claimant had not been trained. Further the notes record that Ms Rodgers confirmed in the meeting on 10 July that 'the client was particularly tricky'.

76 An email was sent by Mr Rasekh to Mr Nath on 15 July 2019, copying and pasting the notes of the 10 July meeting.

17 July 20129 grievance – third protected act

77 On 17 July 2019 the claimant submitted a further grievance which is said to be the third protected act. The claimant complained in the grievance about a lack of reasonable adjustments and the stress this was causing him. He also complained specifically about an issue with the rota and him being moved at short notice to the Battersea salon, without being told in advance. Finally, the claimant complained about a lack of support at Battersea.

78 In a further email sent to Mr Rasekh on the same day, the claimant requested, in relation to the meeting held on 10 July 2019, that in line with his requested daily adjustments, that the notes and minutes be sent to him by email; he also complained that it was clear that considerable thought had been given beforehand as to what he and Zoe wanted to say, but those questions had not been sent to him in advance. The claimant complained that he felt he had been 'ambushed' with a series of rapid questions, without any reasonable adjustments made to support his dyslexia. He complained that the meeting felt like an interrogation, rather than a positive motivational job performance chat.

19 July meeting and letter

79 On 19 July a meeting took place between the claimant, Mr Rasekh and KD to discuss reasonable adjustments. The notes record [270]:

> *Reception team to let the claimant know when his clients had arrived and tell him their names. Good practice for the claimant to go over and introduce himself and ask their name in any event. YR to purchase a digital clock to assist the claimant to work to allotted timings.*

Any changes to shift would be communicated verbally and then the claimant would be sent a text.

For Afro clients, 90 minutes, or 75 minutes for men. Agree the meeting was constructive, which was very much welcome. Client CM would be given appointment for 1 hour 45 minutes. The claimant accepts it was positive but there was always a mismatch, between what said and what was done.

80 Also on 19 July, a letter was sent to the claimant by Mr Nath setting out in summary form the elements of his grievance and informing him that Joe Thomas from Face2Face would investigate those matters in a meeting due to commence at 11am on 24 July 2019. Following representations from the claimant, the meeting was rearranged to 31 July 2019.

Invitation to disciplinary hearing – 21 July 2019

81 On 21 July 2019 the claimant was sent a letter informing him of a proposed disciplinary hearing on 24 July 2019 at 1pm. This set out six allegations – the five discussed on 10 July, plus an allegation that the claimant had charged a bridal client contrary to the pricing structure of the company. That had not previously been discussed with the claimant. The claimant links the 21 July letter with the above three protected acts.

82 On receipt, the claimant emailed Mr Nath and Mr Rasekh, to complain that what he was told was an 'informal catch up' meeting had turned out to be an investigatory meeting. He also asked the respondent to detail what reasonable adjustments were made by the company to accommodate his disability at that particular meeting, as he recalled that no adjustments were in fact made.

Request for adjustments – 21 July 2019 and response of 22 July

83 Also on 21 July 2019 the claimant emailed Mr Nath. He referred back to his letter and email of 8 July 2019 and again asked for an independent assessment to be carried out. In a separate email sent the same day, the claimant asked for the meeting of 24 July to be postponed as his USDAW rep was not available. He also complained about the short notice. And asked what reasonable adjustments were to be made in relation to the meeting to accommodate his dyslexia. He specifically requested that the questions which were to be asked were sent to him in advance of the meeting, as a reasonable adjustment.

84 On or about 22 July 2019, a progress report was provided to the claimant by Mr Rasekh with the next steps. This recorded that they would have a meeting with KD which Mr Rasekh said would help facilitate '*effective communication and support initiatives*'. The report requested that the claimant provide the model pictures to Mr Nath or Ms Rogers; and that there were various comments in relation to the LEARN forms. It was noted that there was a further LEARN form to be reviewed in relation to a bridal client (which as noted above, was one of the disciplinary allegations mentioned in the 21 July letter).

85 Mr Rasekh says in his witness statement at paragraph 23 that the adjustments had been explained to KD and she then communicated to the

rest of the reception team. We were not shown any record as to how and when this was done and assume there is no such formal record.

Setting up of Shortcuts on iPad

86 On 24 July 2019 Shortcuts, the respondent's appointments system, was set up for the claimant on an iPad device he was borrowing. GF emailed Mr Nath later about that in the following terms. She told him the claimant had told her:

> *"I will need extra training on this, you need to send me all written instructions on how to do it". I said well once you click here with your finger that is pretty much it, there's no other instructions to be honest, I said I could email him his pin if he wish.*

87 Mr Nath told us that he did not intend to raise this with the claimant and did not do so. He did however state in cross examination that the claimant was 'just being difficult'.

88 Also on 24 July, Mr Rasekh emailed Mr Nath as follows:

> *She said ok but an hour later [GF] came back to me and said "Yashar I was just in the staff room and I caught Emmanuel reading his iPad so I said oh Emmanuel you have access to your iPad and your reading? I thought you can't? Maybe we can do the shortcuts now, he started to fluster and panic he was saying no erm I think you should email me the instructions I'm too stressed now erm. So I said don't worry it's ok just come up now so he had to follow me upstairs and he said you need to email me the instructions and I said it's ok this is going to support you I'm here for you, you have said you are dyslexic and this is easy we can walk through the steps together if you still need the instructions when I've done this I can send it but I'm doing it for everyone and they all love it it's easy, so reluctantly he had to do it but kept pulling his iPad away so I couldn't see it but now he is set up. …*
>
> Later on in the email Mr Rasekh stated:
>
> *I'm really quite rattled by the Dyson conversation I have asked the HR team for a without prejudice conversation and I got a weird wrong spelling out of office, which suggests someone saw my email and decided to reply without it being on email, it also was not immediate which suggest that someone definitely typed the message, I'll call them tomorrow. Katie sounded very concerned when I asked her about a reference for him, she took a sharp intake of breath as I mentioned his name and was adamant "I can not speak about this individual at all regarding anything but I can direct you to HR who may be able to give you information that is possible to share????" I'm going to call them tomorrow. PLEASE can we do a criminal search can you ask peninsula how we can find out, I've mentioned this a few times now and I really do feel there is something more that is unsettling and dangerous. Did you also manage speak to the peninsula consultant?*

89 In relation to the conversation with Dyson, Mr Rasekh told us that he wanted to ask Dyson about any adjustments they had made for the claimant's dyslexia. For the reasons set out above, he did not get a response, and he told us that he had 'fifty plus team members starting to get scared' of the claimant. Mr Rasekh also told us that the email from GF suggested she was

starting to get scared. Her email does not state or suggest that at all. As for the criminal search reference, Mr Rasekh wanted to see if anything had happened on shopfloor environment between the claimant and other Dyson staff.

'Discrimination' comment

90 Around this time Mr Rasekh also had a conversation with one of the colourists 'T', who:

> [T]*told me she over heard him telling someone on the phone "that's discrimination thanks" and she thought I should know she didn't know what context he was talking about but she thought it was a strange comment, she came to me as she has known Paul for 35 years and I trust her and told her a broad overview of what is happening.*

Mr Rasekh told us that he understood that matters are confidential but he only gave her 'a broad overview'.

Complaint by the claimant about GF – 25 July 2019

91 In an email sent by Mr Barnett to Mr Nath on 25 July 2019, the claimant raised concerns about the way GF dealt with the setting up of Shortcuts on his iPad on 24 July. Mr Nath did not respond to that email.

92 Mr Barnett also emailed Mr Rasekh on 25 July in similar terms:

> *On another note I do not think [GF] has the right skill sets to facilitate my training on the rota technology app. I find that she is impatient with me and is patronising. I have a disability with severe dyslexia, I feels she lacks the understanding of that and does not have the empathy needed with my training. She just keep saying "its easy, its easy" is neither helpful or works for me, indeed easy if you don't have dyslexia would be my response.*

93 Mr Rasekh replied to say that he would raise the points with GF but that:

> [F]*rom a business perspective, [GF] reflects the best skills on the team for this project, she was allocated to the task to connect and show 35 team members their columns to mobile devices to enable them to see where and what time clients are due and on what day with the opportunity for team members to pre plan their column opportunities for weeks ahead, such as insight for maximising columns on quieter days, ensuring clients have rebooking availability and clarity for appointments, all the more this helps to improve customer service and clients efficiency with handling appointments, all areas that clients are telling us they want.*

94 In a further email from the claimant to Mr Rasekh on 25 July 2019 he said:

> *I have attached a useful document (at the bottom of this thread) that I would encourage [GF] and others to read, understand and give measured consideration to, particularly when dealing with someone who on the face of it has a hidden disability and may on the outside appear perfectly normal until those negatives dyslexic traits manifest themselves.*
>
> *It's seems I'm often compare against able bodied individuals and how they seem to be 'okay with things' - the difference is I have a disability - a protected characteristic. Thus I have a significant disadvantage when learning new things. I hope the document will allow a more empathic approach.*

95 There is no record of that document being passed onto staff as requested.

96 Also on 25 July 2019 Mr Rasekh emailed GF about her earlier email about getting the claimant set up on the system. He stated:

> *Don't stress about getting him activated on the system, should he wish to do so it is up to him, it is not a company requirement it is a tool to help him. We will continue to support him through verbal communication and email.*

Request for iPad/request for adjustments at disciplinary hearing

97 On 26 July 2019, the claimant emailed Mr Rasekh to inform him that he only had use of the iPad as a goodwill gesture, it was not his and was not a long-term solution. He pointed out that he had requested that the respondent provide him with his own iPad. (The request was first made on 10 July - see above).

98 In a further letter from the claimant dated 26 July 2019 to Mr Nath, the claimant asked again for the detailed minutes and notes of the investigatory meetings to be provided to him, prior to the disciplinary hearing. He also stated:

> *I note that insufficient reasonable adjustments have been made within this document to modify and relax the Disciplinary procedures to accommodate my Severe Dyslexia for this meeting and shall challenge this at a later stage.*
>
> *I have recorded this as just one further example of Indirect disability discrimination by the company.*

Second grievance meeting – 31 July 2019

99 On 31 July 2019, a meeting was held in relation to the claimant's second grievance. The hearing was conducted by Joe Thomas from Face2Face, who in turn had been instructed by Peninsula, who the respondent retained to provide a package of employment related services. Following the meeting, the claimant wrote to express his surprise that Mr Thomas had not been given any written background information relating to him. The claimant promised to forward Mr Thomas a series of emails or written evidence and information he wished Mr Thomas to consider when drawing his conclusions. These dated back to when he first informed the company of his dyslexia and requested workplace adjustments.

Alleged reduction in clients

100 The claimant alleges that from 1 August 2019, the respondent started to remove clients from his workload (the second alleged detriment). We now understand that by mutual agreement, the claimant was not at work between 2 and 22 August 2019. In any event, August is generally a quieter month.

101 We note however that there is marked reduction between the number of clients booked in for the claimant in July, compared to September. The table at page 997 shows 35 clients in July but 15 in September. The respondent put this down to clients changing stylist due to the claimant's absences. A further explanation given by Mr Rasekh is that the claimant is a senior stylist but at Knightsbridge the price range is much higher. The business tries to maximise appointments with more senior staff to maximise income from clients. Also, colourists are less busy during the summer period and when the

colourist is busy, that feeds the claimant work. During that period, the colour department was not busy which has a direct impact on lower point stylists. In contrast, the claimant was more fully booked when working at Battersea.

First disciplinary hearing - 2 August 2019

102 On 2 August 2019 the first disciplinary hearing took place. It was conducted by Mr George Hickman of Face2Face, who again, had been instructed by Peninsula, on the respondent's behalf. Questions were given to the claimant in writing, the meeting was audio recorded and a full transcript was provided.

103 The allegations considered by Mr Hickman were the peroxide incident; the Little Princess hair donation issue; the MA hair extensions issue; the pricing for a bridal client being allegedly contrary to the pricing structure of the company; the claimant bringing a model into the salon and then failing to supply photos of the model's hair; and an allegation of him being late to work on 13 July 2019 (and so keeping a client waiting).

104 On 3 August 2019 the claimant wrote to Mr Rasekh, to complain amongst other things that Mr Rasekh had been discussing the contents of the disciplinary hearing and grievance hearing in the salon.

Meeting with Mr Nath – 22 August 2019

105 On 22 August 2019 Mr Nath had expected to receive the grievance outcome from Mr Thomas and he had planned to meet with the claimant to give him a copy of that. The claimant was told by Mr Nath that he wanted an informal catch up meeting. Mr Nath intended to talk to the claimant about salon changes; and an allegation that the claimant had mentioned to a client he had been discriminated against. Mr Nath intended to ask the claimant to keep matters confidential. We assume this refers back to the conversation that 'T' the colourist overheard although Mr Nath's witness statement does not set out that detail.

106 The claimant became stressed and collapsed during the meeting. An ambulance was called and he was taken to A&E.

Third formal grievance - 23 August 2019

107 As a result, on 23 August 2019 the claimant wrote to Mr Hickman to complain about the events of the previous day. This was the claimant's third formal grievance [383]. He also wrote to Mr Nath to inform him of that fact and stated:–

> *It is perhaps now appropriate and sensible you step aside from the events as I consider your recent actions both indirectly and directly discriminatory.*

108 The claimant continued:

> *To this end any meeting unaccompanied and un-accommodated with yourself is not considered reasonable, as you have now acted in a manner contrary to your office, both with misleading me and not recognising the need for reasonable adjustments to be made.*

Disciplinary outcome – 23 August 2019

109 On 23 August 2019 the claimant was provided with the first disciplinary hearing outcome report. Mr Hickman partially upheld two of the six allegations.

110 In relation to the peroxide incident Mr Hickman (GHI) concluded:

> *GHI finds that Zoe Rodgers was misguided in letting MB mix the peroxide for her even though she has stated that it was MB who offered to assist with the task. Zoe Rodgers stated a number of times that she had to allegedly raise her voice to MB in relation to the correct quantities she required and that she was extremely concerned and worried what the consequences to the client would be if he had done it incorrectly. GHI notes that although [SK] has stated that MB disclosed to him at the time that he had upped the peroxide levels deliberately there is no other evidence to support this and this is refuted by MB to be non-factual. GHI further notes that if this conversation did occur between MB and [SK] then GHI does not understand due to the catastrophic consequences as highlighted by Zoe Rodgers that would have occurred why he did not inform Zoe Rodgers immediately he became aware of the alleged incident and prevent the application of the product before any harm was caused.*

111 As for the Little Princess hair donation issue, Mr Hickman partially upheld the allegation on the basis that the claimant should have raised with Ms Rodgers or Mr Rasekh that he had not been trained in the procedures and did not understand the written instructions provided. He held that it was not reasonable to 'pinpoint' the client's unhappiness that they were kept waiting for a long time onto the claimant.

112 In relation to the allegation that the claimant brought a model into the studio and did not subsequently provide the photos, Mr Hickman concluded:

> *GHI does find however, that MB has created an air of distrust in relation to his assertion that he had provided the Employer with photographs of the model that may be used for publicity purposes when in fact he had failed to do so, even if their eventual non-existence came about as the result of being accidently deleted from his mobile telephone.*

113 In his recommendations Mr Hickman stated:

> *GHI recommends that although MB is considered as detailed above to be of short service that it would not be appropriate for the Employer to dismiss MB due to GHI's findings of a failure to follow what would be considered good practice, which have been further exacerbated by MB's disability and a failure by the employer to fully understand how MB's disabilities impact upon his daily working life due to no recent and relevant workplace needs assessment having been carried out by the Employer. GHI finds that the Employer has relied on their generic understanding of Dyslexia and referred to information presented within workplace assessments provided to them by MB as undertaken by his previous employers.*

114 In relation to the MA hair extension issue Mr Hickman found that the claimant was authorised to carry out this procedure. The allegation was not upheld.

115 As for the pricing structure for the bridal client, Mr Hickman found that was not supported by the facts and that the claimant had been singled out in relation to that allegation.

116 As for the timekeeping allegation i.e. that the claimant was late to work by an hour on 13 July 2019, GHI concluded:

GHI finds that although [it is] a fact that MB was late for work on July 13th 2019 that it would be wholly inappropriate for him to receive a disciplinary sanction due to a one off incident that has not been raised as an issue of concern previously and as such does not uphold this allegation as evidence of misconduct.

Digital clock

117 The claimant was provided with a digital clock on 24 August 2019 to assist him with over-running on appointments.

118 The claimant sent an email on 27 August 2019 to KD about the digital clock in which he stated:

The most important thing is that the letters stand out rather than are faded. The current clock is perhaps far too big in that it serves to humiliate rather that assist. Ideally a digital watch, which is on my person within the salon, is the better option. Otherwise the clock will not be remembered to be at each workstation, which then becomes less practical.

Second grievance hearing outcome

119 On 30 August 2019 the claimant wrote to Mr Hickman again, summarising his communications with the respondent and what he saw as the outstanding issues. He put Mr Hickman on notice that he intended to commence Acas Early Conciliation and to proceed to submit an ET1 if matters could not be resolved.

120 On the same day, the second grievance hearing outcome was delivered to the claimant by email by Mr Nath. The grievance was only partially upheld. Mr Thomas (JT) rejected on the whole the allegations that there had been a wholesale failure to make reasonable adjustments. He made the following recommendations:

Having given full and through consideration to the information presented JT recommends that this Grievance be upheld in part as detailed above.

JT would also advise that the business takes into account an appropriate method for advising MB to attend meetings and that they take into account his dyslexia, the business may want to consider purchasing MB some headphones, purely for the purposes of listening to emails and letters.

JT recommends that the business ensures that MB's workplace support is available when he is at work and that support is in place for his whole rota. If there are any shifts where MB and [KD] do not usually work the same pattern the business needs to ensure that support is in place.

A copy of this report in its entirety should be made available to MB with the appropriate cover letter.

A copy of the Grievance Hearing notes should be made available to MB.

121 On 3 September 2019 the claimant was provided with headphones. The claimant asked KD about these in an email dated 6 September 2019. She told him they had been purchased 'to aid him in the salon'.

Appeal against second grievance outcome

122 On 4 September 2019, the claimant submitted an appeal against the second grievance outcome. In particular, he maintained that the grievance should

have held that the respondent had failed to put in place the necessary reasonable adjustments. The claimant welcomed the commitment to provide a buddy at all times; and to request a full diagnostic assessment. He also requested a workplace assessment.

123 The claimant also sent an email on 4 September 2019 to KD, asking who was to support him when she was not around (given that, as noted above, she worked three days a week and was not always on the same shift or in the same salon as him). He also asked that client's names were always announced for him. He noted that this was only happening sporadically.

Hair washing incident – 4 September 2019

124 On 4 September 2019 the claimant asked Ms Rodgers if he could try out a new product, K-Water, on his hair. In his witness statement, the claimant states that he does not recall being given an express order by Ms Rodgers not to shampoo his own hair. The statement Ms Rodgers provided for the disciplinary proceedings states that she specifically instructed the claimant that he could not shampoo his own hair because the salon was open until 8pm on Wednesdays so clients would have been present within the salon. At this point she says, the employee NK walked past, so Ms Rodgers instructed NK to carry out the shampoo and administer the treatment for the claimant.

125 According to NK, the claimant had asked her to do him a 'massive favour', because he was going to wash his hair but if Ms Rodgers asked her about that, NK was to tell Ms Rodgers that she, NK had washed it for him. Then, when was Rodgers was putting on her shoes to go, the claimant made a point of asking NK '*Is it okay if you shampoo my hair for me*?', to which she replied '*yes that's fine'*.

126 During cross examination, the claimant maintained that he did not hear Ms Rodgers give him the instruction that his hair needed to be washed by a colleague. He also said he did not understand the instruction.

127 At page 674 of the bundle is the claimant's written response to this allegation in which he states:

> *I would have been very happy for [NK] to wash my hair however on that day in particular. However she had been in the staff room and I was close by she had her bag open that was near to where I was sitting in there was an overwhelming stench of what appeared to be the smell of marijuana, coming from her belongings.*
>
> *From the moment when Zoe Rodgers had quickly left the salon after suggested her to shampoo my hair I made a conscious decision that I did not believe it was reasonable for her to wash my hair on this occasion, given the smell of drugs from her clothing and bag.*

128 Ms Rodgers told us during cross examination that two days later, NK came and told her she had not washed Mr Barnett's hair that evening and that he himself had done it going against her instruction. NK also told Ms Rodgers there were clients still in the salon at the time. That is not mentioned in Ms Rodgers' witness statement for these proceedings and nor is it mentioned in the statement prepared for the disciplinary hearing. Nor does NK mention it. Ms Rodgers did not make any further statement and nor was she asked any further questions about it as part of the disciplinary process which followed

(see below). We note that the hand-written version of NK's statement is dated 27 September 2019. There is no explanation for that delay, if indeed there was a conversation two days or so later between NK and Ms Rodgers.

129 Bearing in mind these conflicting versions, we conclude that on the whole, Ms Rodgers account of the events is to be preferred. In particular, we accept that she did instruct the claimant not to wash his own hair in the salon, because members of the public would be present. That is consistent with the claimant's response to the disciplinary allegation, to the effect that he did not want NK to wash his hair, because her clothes smelt of marijuana. We do not consider NK's version of the events is credible, being inconsistent with the evidence of both the claimant and Ms Rogers. Further, we note that the statement does not appear to have been taken until 27 September, over three weeks after the events in question.

Verbal warning – 5 September 2019

130 On 5 September 2019 Mr Nath issued the claimant with a formal verbal warning, of three months duration, on the basis of the two disciplinary allegations that had been upheld by Mr Hickman on 23 August 2019 – namely, keeping the client waiting for a long time and damage to the brand (over the Little Princess hair donation issue); and failing to provide photos following him bringing a model into the salon – which was said to represent '*a breach of trust causing the company to lose faith in your integrity on this occasion'*.

Further request for adjustments – 6 September 2019

131 On 6 September 2021 the claimant asked for the following adjustments. Whilst expressing his appreciation for the assistance KD gave to him when she was around, he requested that when she was not:

> *this responsibility needs to be properly assigned to others i.e. named individuals rather than simply left unchecked*.

132 The claimant had been told in an earlier email from KD that reception was short-staffed so could not always announce names of clients on arrival. He pointed out that one of the outcomes of his grievance was that a buddy would be available at all times. He expressed concern that had not been properly communicated to KD. Referring to the request for an iPad, he pointed out that this had been requested on 10 July 2019 but no response had been received yet from either Mr Rasekh or Mr Nath.

Appeal against verbal warning – 9 September 2019

133 On 9 September 2019 the claimant submitted an appeal against the verbal warning to Mr Rasekh. Amongst other things, he maintained that there had not been an investigatory meeting; and that he had been deliberately singled out because he had raised a number of grievances. He also complained about the failure to speak to others within the salon, other than Ms Rodgers, Mr Nath and Mr Rasekh; and a lack of reasonable adjustments prior to the disciplinary hearing.

Respondent's request for reports/advice – 9 and 12 September 2019

134 Also on 9 September 2019, Professor D McLoughlin was instructed to provide a report. Consent was given by the claimant for that report to be obtained on 18 September 2019.

135 On 12 September 2019, the respondent contacted the Dyslexia Association for advice. Also on the same day, the respondent instructed Health Assured about an Occupational Health report.

Allegation by claimant -'locked out of' Battersea salon – 15 September 2019

136 On 15 September 2019 the claimant complained that he had been locked out of the Battersea salon in the early morning by GF on two consecutive Sundays. This was later raised as a formal grievance by the claimant because he was concerned that it had not been dealt with. His complaint reads:

> *Again, for the second time [GF] arrived moments before me and quickly went in and locked the door of the salon after herself. She went in and then came to the reception and had full visibility of me at the front door tapping the window to draw her attention to allow me entry*.
>
> *She clearly saw me from the location she was at yet chooses to ignore me and leave me standing there. Then [T] arrived and called on the phone her to finally let us both in.*
>
> *I'm not sure what kind of game [GF] is now playing with me but this is now the second Sunday she has knowingly kept me outside waiting without letting me in.*

137 On 15 September 2019 GF wrote to management regarding the incident on 15 September 2019. She sent a written statement, presumably to Mr Nath and Mr Rasekh, in which she stated that the claimant had asked her to let him into the salon when she saw him:

> *He then goes to the colour area and as per usual he turns the computer on and with a grin on his face calls my name and says: ['G'] please help me, how do I log in? ['T'] was there and I said: like you do every other day Emmanuel, what game are you playing at? Sorry but that came out of my mouth spontaneously so ['T'] says the code is password and he decide[d] not to even log in.*

138 The claimant told us in evidence that he could not spell password. We accept his evidence in that regard. We further accept the claimant's case that on other days, either one of the colourists opened up the screen, and if he was later logged out, someone was there to put the PIN in for him.

139 GF also stated in her email:

> *I went over and Emmanuel gave me a the bottle of creme de la creme from Kerastase (product he was using for his lady) and told me to read out of loud for him as he needs to make sure he is using the right product for his client (he used this exact words). I think we looked really stupid in front of the poor girl sitting in the chair as he was half way his blow dry. I then promptly called [V] next to me and ask him to assist Emmanuel. After that he left me alone but I can tell you both now I felt bullied by him and really uncomfortable, I feel he tried really hard for me to loose my temper and at the end of the day he took the longest time to do his last client, it took him almost 1h and 30 mins.*

Communication with Mr Lawson – 17 and 19 September 2019

140 On 17 September 2019 the claimant had email exchanges with Mr F Lawson, solicitor, who had been engaged by the respondent to conduct the disciplinary appeal for the respondent.

141 On 19 September 2019 Mr Lawson emailed the claimant about proposed arrangements for the meeting on 20 September 2019. The claimant was asking that the meeting deal with the grievance appeal only, since it was too much for him, given his disability, to deal with everything else in one go. That was not agreed by Mr Lawson prior to the meeting commencing.

Second grievance appeal meeting

142 The second grievance appeal meeting took place on 20 September 2019 with Mr Lawson in Woking. Mr Lawson's intention had been to deal with the disciplinary appeal hearing and third grievance hearing on the same day. The evidence of Mr Lawson was that the claimant was uncooperative at that meeting, and at subsequent meetings. It is the claimant's case that Mr Lawson did not appear to understand his disability, or have considered the documents sent to him about his disability, prior to the meeting taking place. We can understand the sense of frustration on both sides. However, since what happened at the grievance appeal, disciplinary appeal and dismissal appeals hearings are not included in the issues before us, we do not consider it proportionate or necessary to make any further findings of fact as to what did or did not happen at them.

Access to Work

143 On 24 September 2019, the respondent asked the claimant to register with Access to Work. The claimant subsequently did so - presumably with the help of his partner, since the respondent did not provide that assistance. On 25 September 2019 the respondent contacted Shortcuts about dyslexia support.

Third formal grievance/disciplinary hearing about 4 September incident

144 On 26 September 2019 the claimant submitted his third formal grievance by email to Ms Rodgers, being his complaint about the alleged actions of GF 'locking him out' of the Battersea salon on 15 September 2019 – see above.

145 On 26 September 2019 a letter was sent to the claimant by Mr Nath 2019 regarding the allegation that he washed his own hair contrary to a direct instruction not to by Ms Rodgers. He was told that Mr Nath wanted 'to investigate this matter further' and was requested to attend an 'informal meeting' to discuss that on 3 October 2019. He was told that he was entitled to have a work colleague present with him during the discussion. When asked why it had taken twenty days to write to the claimant about that allegation, Mr Nath told us that the allegation was 'informal' until the respondent knew whether it was going to take it any further.

Alleged overpayment of salary – detriment 4

146 On 26 September 2019 the respondent sent a letter to the claimant regarding an alleged overpayment of salary, due to him remaining on a guaranteed salary of £28,000 after February 2019. The claimant was informed that the respondent would recover the sum of £2,274.72 from him.

Email to Mr Lawson – 26 September 2019 – fourth protected act

147 26 September 2019, Mr Lawson wrote to the claimant with questions about the disciplinary appeal hearing. The claimant responded with annotated comments on Mr Lawson's letter, which included the following allegation:

> *I assert the all-disciplinary allegations were constructed to achieve a desired management result 'i.e. to find way to remove me' as an employee through whatever means necessary.*
>
> *This was owing to the fact that I had been very persistent on the company providing reasonable accommodating workplace adjustments from the outset for my disability and protected characteristic disclosure. Which the company was unyielding and disinclined to provide support or very slow to follow up with giving the necessary support.*
>
> *I further assert that an able body comparator within the company would not have been treated this way I was effectively 'singled out' as described by Mr Hickman in his report. I still believe this to be the case with on-going daily treatment in the salon.*

Further request for adjustments – 27 September 2019

148 On 27 September 2019 the claimant wrote to the respondent about the digital watch that the respondent had since provided to him. He pointed out that he had requested the company provide a company iPad. He was not happy to use his personal phone due to '*privacy on my own device'*. He complained that reasonable adjustments were still not being made; and that assistance from reception staff was 'ad hoc'. The claimant further complained that he had not heard about the diagnostic assessment and workplace assessment he had been asking for; that Notice Board information was not being emailed to him; and that he had escalated the GF complaint as a third formal grievance. He had done that because he had waited ten days for an informal process to deal with the complaint but that request had been 'ignored'.

Change of work location to Battersea – 27 September 2019

149 Also on 27 September 2019, the claimant was told in a letter from Mr Nath that his work location was to change from Knightsbridge and Battersea to Battersea only, from 14 October 2019. As noted above, the claimant had specifically requested to work exclusively at Knightsbridge on 10 July 2019. There was no consultation with the claimant about the change imposed. It was said that the move would mean that the respondent:

> *[W]as better able to consistently implement some of the support measures you are requesting in the Battersea salon given that you will be working within a much smaller team where there is less chance of issues getting lost in the system.*

150 The letter sent to him also stated:

> *As you are aware the objective of your recruitment was due to the need for stylists for the new Battersea venue and the time spent in the Knightsbridge salon was for the purpose of orientation and providing you with insight into the Paul Edmonds business philosophy and brand values.*

151 According to Mr Rasekh, Wi-Fi was also stronger at Battersea which would enable seamless use of his iPad, software and digital watch. Yet further, Battersea is also closer to the claimant's home address in Streatham so there would be less of a commute.

152 As to the lack of consultation, Mr Rasekh stated in evidence before us that:

> [We] *would have had some form of conversation informally at some point, however, we were overwhelmed with SARS and emails, trying to resolve other bits, financially, we needed to utilise Battersea more, two stylists had left – at that point we just wanted to help him, get him there, for everything to be in one place. That was your only thought.*

Emails about appeals – 27 September 2019

153 On 27 September 2019 Mr Lawson sent an email to the claimant, informing him that the appeal against his first disciplinary outcome was scheduled for 2 October 2019 at 11am.

154 Also on 27 September 2019 Mr Lawson wrote to the claimant with questions about his outstanding grievance appeal and the new complaints he had raised. The claimant again annotated his response on the letter. He repeated the request for the reasonable adjustments which had been set out in his lengthy letter of 10 July 2019.

Alleged altercation with Mr Nath – 28 September 2019

155 On 28 September 2019 an incident occurred between the claimant and Mr Nath. In short, the claimant is alleged to have taken a confidential document from him. The incident took place during a meeting at about 5.30 pm at the Knightsbridge salon. The meeting came about as follows. Mr Nath intended to update the claimant about a number of matters. These included:

155.1 The claimant's complaint that GF had left the claimant waiting outside the Battersea salon. Mr Nath considered that issue to have been resolved; reception would in future watch out for the claimant on his arrival. By that stage, as noted above, the claimant had submitted a formal grievance about that issue.

155.2 That the respondent had sourced a tablet to assist him which would vocalise a daily appointment sheet;

155.3 To inform the claimant that instructions had been provided to Access to Work, Occupational Health and a Workplace Needs Assessment had ben organised.

156 We accept Mr Nath's evidence in that regard. However, whether such a meeting was advisable, in light of the contents of the claimant's third formal grievance is something we shall return to in our conclusions.

157 The first matter discussed was the GF incident. Mr Nath informed the claimant that he had spoken to GF and the question of access to Battersea had been resolved. The claimant informed Mr Nath that he had escalated that matter as a formal grievance. We find that Mr Nath attempted to persuade the claimant that it had already been dealt with. The claimant declined to drop his formal grievance about it. Mr Nath was upset by that.

158 Mr Nath found the claimant's demeanour towards him hostile and unresponsive. However, we also accept the claimant's evidence that given his perception about what had happened on 22 August, he was distressed and anxious about meeting with Mr Nath alone.

159 Mr Nath had a bundle of documents with him, to inform his discussion. We find that the claimant requested to see the documents, and Mr Nath moved

the documents towards him. The claimant interpreted this as being handed the documents and took them from Mr Nath's outstretched hand.

160 Mr Nath was concerned that the documents were confidential. He requested that the claimant hand them back for that reason. He moved his hand towards the claimant in order to take the documents back. In doing so, his hand connected with the claimant's wrist. We reject the claimant's argument that this amounted to an assault.

161 The claimant declined to hand the documents back. He told Mr Nath that he 'needed a wee' and left the room with the documents.

162 The claimant returned about ten minutes later. Whilst out of the meeting room the claimant contacted his partner to complain that he had been 'assaulted'. The meeting then concluded. On his way out of the salon, the claimant asked GF about his tips.

163 The documents the claimant took consist of a typed summary of the claimant's employment, setting out issues that had allegedly arisen with other colleagues, and various discussions about reasonable adjustments. A number of hand-written annotations were included on those typed notes. There was also a hand-written document setting out the matters Mr Nath intended to discuss with the claimant. In a statement prepared following the meeting, Mr Nath described the typed document as '*an internal confidential document aimed at capturing a pathway to implementing support measures for Michael which contained both typed and hand written notes, actions steps etc'.*

Suspension on full pay/fourth grievance - 28 September 2019

164 The claimant was suspended on full pay later that day by Mr Rasekh by email, pending a full investigation into the allegation that the claimant had taken a confidential internal document out of the room, contrary to Mr Nath's express instruction.

165 Also on the same day, a grievance (the fourth) was submitted against Mr Nath regarding his alleged grabbing of the claimant's arm '*in an attempt to assault me'*.

166 An email was also sent to Mr Rasekh later that day in reply to the suspension email, complaining that this was the second time Mr Nath had '*tried to ambush me into a situation in an unscheduled and unaccompanied meeting'*.

Grievance 5 and protected acts 5 and 6 – 29 September 2019

167 On 29 September 2019 the claimant submitted a fifth grievance (the fifth protected act), setting out three areas of concern, namely:

167.1 Salary changes/demotion,

167.2 Change of workplace location to the Battersea salon as a new permanent base,

167.3 Reduced number of clients that the receptionists were assigning to his daily appointment column.

168 The claimant again alleged a link between these proposals and his request for reasonable adjustments. The claimant requested that George Hickman deal

with his grievances due to his '*largely balanced approach*' in the first disciplinary hearing.

169 A further letter was emailed by the claimant on 29 September 2019 regarding the proposed deduction from the claimant's wages of the alleged overpayment. This is the sixth protected act. The claimant asserted that the real reason for the attempted recovery of the alleged overpayment was his grievances and his request for reasonable adjustments. He stated:

> *I re-enforce my assertion that it is only now that because I have raised a number grievances, coupled with the fact that company has failed with its spurious disciplinary allegations against me and that further reasonable accommodating adjustment have been sought for my disability that this agreement has apparently been reneged.*

170 We were not shown a response to that letter. We were shown the detailed calculations but there was no covering letter with it.

Third letter – 29 September 2019 – Afro Hair clients

171 A third letter was sent by the claimant on 29 September 2019 complaining that an Afro Caribbean client had not been booked in for 90 minutes as had been agreed. The claimant asserted that the client should have been known to reception. Mr Rasekh stated that he researched the Euphora product and that can be applied in 15 minutes as part of the blow dry service. He did the training with the team on that product. The claimant has been allotted 75 minutes for the appointment but since it was his last, in any event he had further time available to spend on the appointment if required.

172 We were referred to a number of other appointments where the claimant alleged that he did not have enough time for his appointment with the client with Afro hair. It is convenient to deal with those here. The appointments are:

172.1 On 27 July 2019 with client AGh. She was booked in between 12pm and 1pm (30 minutes short) although the claimant had over two hours before his next appointment.

172.2 Regarding LAl, she was a new client so this was an online booking and her hair type would not necessarily be flagged. There was time between the end of the appointment and the next client to finish the work.

172.3 19 September 2019 - LNu – the shift ended at 6pm at Battersea and therefore the claimant had 2 hours to complete this appointment, between 4pm and 6pm. The appointment was 15 minutes short.

Acas Early Conciliation

173 Acas Early Conciliation was commenced on 29 September 2019. The Acas Early Conciliation Certificate was issued a month later, on 29 October 2019.

Request for response to Mr Nath's statement – 30 September 2019

174 On 30 September 2019 the claimant was asked by Mr Rasekh for a line by line response to Mr Nath's statement, to be returned the same day. Mr Raskeh was at this stage intending to conduct the disciplinary hearing himself. Mr Rasekh also told the claimant that the disciplinary hearing into those allegations would now take place on 2 October 2019, the same day the disciplinary hearing appeal was due to take place. The claimant was informed

that, the allegations being gross misconduct, if they were found to be well founded then dismissal without notice could follow.

175 The claimant protested strongly about the timescales imposed in a written response to Mr Raskeh's email, sent on 30 September 2019. He requested that his disability needs be 'fully accommodated'. He also requested that documents be sent to him as an attachment rather than the text being in the email thread

176 On 1 October 2019, Mr Rasekh emailed Mr Nath's statement to the claimant in the format requested. He also provided the statements of Zoe Rodgers and NK in relation to the hair washing incident on 4 September. He requested a written reply to the allegation from the claimant. He informed the claimant that Mr Lawson would hear his outstanding grievances. Finally, he informed the claimant that the disciplinary hearing would be proceeding on 2 October in relation to the gross misconduct allegations.

Letter from Mr Lawson to the claimant – 1 October 2019

177 On or about 1 October 2019 Mr Lawson wrote to the claimant in the following terms:

> *3. In the meantime and pending receipt of the above assessments I have been reviewing dyslexia generally in the context of your workplace and discussed in particular with Paul Edmonds – his having dyslexia and also operating in your industry to a very demanding level and with far less onerous requirements than you.*
>
> *4. Mindful of Paul's much lesser requirements as per above I am also bound to observe that your required "reasonable adjustments" were relatively modest from your arrival for your first several months. I am advised that you then met with Mr Rasekh on 24th April when Mr Rasekh relayed to you unrelated concern expressed by fellow staff members who were upset that they had lost clients after you criticised them directly to the client. You will understand that the timing of your heavily escalated and far more onerous requested adjustments immediately after this sensitive meeting requires explanation when compared with your relatively modest adjustments required prior to it.*

178 The claimant replied the same day as follows:

> *Given I had a three month probationary period, it is now obvious why I decided to not make the full disability disclosure much earlier (which I'm not obligated to do). It would of afforded the perfect opportunity for the Respondent to sight spurious claims that a satisfactory probationary period was not reached, essentially for the first 5 months I largely suffered in silence mindful of the 'hire and fire' mentality of my employer I was clearly struggling to really cope with my disability as time went on. It was apparent that my employer neither cared nor was willing to do any adjustments asked, even at the very simplest level. I was working under a culture of total fear.*
>
> *Needless to say since my full disclosure there has been a very focused, planned and systematic approach by the respondent to remove me from office at any opportunity, sighting minor perceived issues at every turn this*

has been a relentless process by them, highly orchestrated by the Senior management.

179 He also pointed out:

I note you have again sighted Paul Edmond's dyslexia, given that you do not know the level/scope of his or more importantly my dyslexia (in the absence to professional facts). I'm unclear how you are able to draw such salient parallels at this stage.

Adjournment of hearing to 10 October 2019

180 On 2 October 2019 the claimant self-certificated with severe stomach pains. He was then on leave between 3 and 8 October 2019. The disciplinary hearing was therefore rearranged to 2pm on 10 October at Battersea power station.

Instruction of Professor McLoughlin

181 On 4 October 2019, Mr Nath wrote to Professor McLoughlin, asking extensive questions in relation to the issues raised by the claimant during his employment with the respondent.

Appointment of Jaluch Associates

182 Although the initial intention had been that Mr Rasekh would conduct the disciplinary hearing into the alleged gross misconduct allegations, at some point a decision was made to appoint a Mr Philip Jukes of Jaluch Ltd instead. There were no letters or emails in the bundle regarding any instructions to him, about e.g. the scope of the disciplinary hearing or preferred outcome. Mr Jukes told us there would have been 'the odd email here and there' but they have not been disclosed. This is we find a significant omission.

183 Mr Jukes told us he thought he was provided with the witness statements of Mr Nath, Ms Khan and Ms Rodgers, and the previous warning. He could not recall what else had been sent to him at that stage. He told us and we accept that he was not told the claimant had a disability.

184 On 9 October, the day before the hearing, the claimant sent 18 documents to Mr Jukes. These included two written rebuttals to the two allegations faced by him at the disciplinary hearing. These contained the following assertion:

I assert that I have been deliberately again been 'singled out' for unfair treatment by management of the respondent with respect to washing hair in the salon. This action has been a constant and sustained effort over 4-6 months to try to find way to discipline me with total disregard to rights, processes and ACAS recommended Practise.

I assert that this disciplinary has been purely motivated and speeded up (with no regard to my own long standing serious grievance being timely heard). The Respondent is motivated by a desire to remove me from office. This because I had raised a number of grievances regarding my protected characteristic i.e. my disability and the fact that I have consistently asserted my right for reasonable accommodating adjustments that I have been asking the company to make. Yet they still have not made.

Disciplinary Hearing – 10 October 2019

185 On 10 October 2019 the disciplinary hearing took place. The claimant's USDAW representative was not able to be present and cancelled at the last minute. The claimant asked that the meeting be adjourned so that his representative could be present. Mr Jukes refused that request. That is not recorded in the minutes (like a number of other matters referred to below). Nevertheless, we find that it was requested. As will be clear from what follows, we do not consider Mr Jukes' minutes to be accurate or complete.

186 Although the meeting was recorded by Mr Jukes, no recording was provided, nor a transcript - just his notes. Those were sent with the dismissal letter. Hence there was no attempt to agree the contents with the claimant prior to a decision being made whether to move to a disciplinary hearing; or before the dismissal decision was made. Mr Jukes informed us that he deleted the recording, once he had typed up the notes of the investigation and disciplinary hearing. We accept that is what happened. That was bad practice in general; but even more so in relation to an employee with dyslexia, requiring reasonable adjustments.

187 Mr Jukes insisted at the commencement of the meeting that all devices were switched off, apart from the one he was using. The claimant was not able to use any assistive technology as a result. Mr Jukes did not share the questions he wanted to ask the claimant in advance of the meeting. According to Mr Jukes, that would have meant that he 'lost control of the hearing'.

188 We find that the conduct of Mr Jukes at the hearing was aggressive. He fired answers at the claimant rapidly, and wanted yes or no answers. He had prepared questions which he did not depart from in light of the response from the claimant. This is illustrated for example by the following exchange:

> *PJ asked MB if he understood that he had been told not to wash his hair in public. MB paused for a long while and then answered that he did not wash his hair in public. PJ then asked MB why he had washed his hair in public. MB did not answer the question.*

189 In light of the answer to the previous question, the follow up question was superfluous. That did not however stop Mr Jukes putting it to the claimant, expecting an answer, and concluding guilt from the lack of one.

190 As a further example, we note the following exchange [680]:

> *PJ asked MB if he thought it was professional behaviour to take a management document without authorisation. MB answered saying 'but I didn't take a management document, it was given to me'. PJ pressed saying that he was not accusing MB and asked if he could please answer the original questions, MB did not answer. PJ then asked MB if Tito had said to him 'do not remove that document from the room' and asked MB for a simple yes or no answer. MB did not answer. PJ asked MB if Tito had made him aware that the information within the document was confidential. MB said he didn't know. PJ asked MB if he would say he took the document or was handed the document. MB said he was in the staff room having his lunch, PJ stopped MB and said could he please answer the question with a simple yes or no. MB said PJ was being very firm and did not answer the question further.*

191 Mr Jukes was asked in cross examination whether he thought the meeting was rushed. Mr Jukes answered to the effect of: '*How much more time and*

energy [was the] employer willing to spend after reaching this point?'. He then said that was not part of his considerations; but then went onto say that '*people want resolutions in a reasonable time*'. Those answers appear to the tribunal to be contradictory.

192 Finally, Mr Jukes stated in evidence before us that the way the claimant gave evidence at this hearing was in marked contrast to the way he conducted himself during the disciplinary investigation and disciplinary hearing. We do not doubt that was the case. However, we conclude that was because this tribunal made reasonable adjustments for the claimant, as set out above. Whereas, save for the brief exception outlined in the paragraph below, Mr Jukes did not make any reasonable adjustments at all.

193 We accept the claimant's evidence regarding his request to use Siri assistive software during the meeting. His evidence is that:

> *[Mr Jukes] placed his iPhone in the centre of the table to indicate that audio recording was taking place. I explained that all my disciplinary meeting mitigation notes were prepared and accessible by me on an iPad, which I needed to use assistive software through Siri to read out. He simply said no devices, you can tell me in your own words, I said these are my own words they are my own words that I have pre-prepared and had written down so that it is concise. I said, "I have a disability you know". He wasn't at all interested. He simply said: "did you not hear what I said –no devices".*

Later on, the claimant tried to use Siri but it did not work, so Mr Jukes read that document to him. That was the only time the claimant was allowed to use Siri during the meetings with Mr Jukes.

194 After a ten minute break, Mr Jukes went from the disciplinary investigation meeting straight into the disciplinary hearing. The justification given by Mr Jukes for this was the undue stress for employees of prolonging matters. Mr Jukes told us he is aware of the Acas Code on Disciplinary Hearings and the suggestion that there be different people conducting the disciplinary investigation and disciplinary hearings; but Mr Jukes did not act on it.

195 Further, due to the investigation meeting being separated from the disciplinary hearing by only 10 minutes, there were no minutes of the investigation meeting provided to the claimant before the disciplinary hearing. They were only sent with the dismissal letter.

196 Mr Jukes did not speak to any of the respondent's witnesses, in the light of what was said at the disciplinary hearing, or in the claimant's response to the allegations. For example, in relation to the claimant's defence that the salon was at that stage closed to the public and therefore he did not wash his hair in a public area. Mr Jukes simply maintained that the claimant was told not to do something and then went on and did it anyway.

197 Mr Jukes did not undertake any further investigation into the obvious inconsistencies between NK's statement and that of Ms Rodgers. He was he told us more interested in Ms Rodgers' statement. The only one of the respondent's witnesses that Mr Jukes could remember speaking to was Mr Nath, although he could not be certain about that.

198 As for the claimant's allegation that he was singled out in relation to the hair washing incident, in that his colleagues SK and AO had washed their own hair at the salon, no investigation was carried out into that defence either. He did not ask for further information about this or about the alleged victimisation of the claimant for making requests for reasonable adjustments etc. No consideration was given as to whether the alleged confidential document was in fact confidential. Mr Jukes insisted before us that he could not get through his own questions and that a thorough investigation was done.

199 Mr Jukes told us and we accept that he drafted the dismissal letter. Again, the covering email with that, and the draft letter, are a notable omission from the documents provided by the respondent on disclosure.

200 Finally, it was put to Mr Jukes that the claimant's alleged evasiveness was linked to his disability. Mr Jukes responded to the effect that given the volume of information that the claimant had provided, he believed that the claimant's disability did not adversely affect him. Mr Jukes did not enquire, and was not therefore aware that such written information was being prepared by the claimant's partner.

Purchase of tablet and associated training

201 On 10 October 2019 a tablet/iPad was purchased for the claimant. On 16 October 2019 the claimant underwent training at the Battersea salon on the new iPad. Both parties have a different slant on that training but no findings are necessary in relation to the conflict of evidence that exists since they are not relevant to the issues before us.

Dismissal of claimant – 16 October 2019 – alleged detriment 6

202 On 16 October 2019 the claimant was dismissed. The dismissal was by letter which was emailed to the claimant that day. The decision was made by Mr Rasekh. He could not tell us what documents he saw before making his decision. He did have a telephone conversation with Mr Jukes and he recalls having the notes of the investigation and the disciplinary hearing. During cross examination Mr Rasekh told us that he was devastated by what had happened to Mr Nath. It is possible he just '*checked out'*. He approved the letter sent by Mr Jukes. We find that in effect Mr Rasekh simply rubber stamped Mr Jukes' decision. The letter states:

> *During the course of the investigation meeting and disciplinary hearing, several questions were asked which you failed to answer or you fell silent and looked away, and on a notable number of occasions the questions asked were met with a response that failed to answer the question itself, such behaviour is befitting of an individual who appears to be avoiding questions and unable to provide a truthful and factual answer.*
>
> *Therefore, based on my review of allegation 1, namely; your actions on the 4th September, where you had been washing your own hair in an open salon and in full sight of the public and team members, despite being specifically requested not to do so. I find there is enough evidence to demonstrate a breach in trust and confidence and gross insubordination on the grounds of continued misconduct.*
>
> *In respect of allegation 2, namely; your actions during a meeting held with Tito Nath, HR Manager on 28th September, namely failing to follow*

reasonable management request. In that you failed to return a private and confidential document when requested to do so. I find that there is enough evidence to demonstrate a breach in trust and confidence and gross insubordination constituting gross misconduct.

Having carefully considered your responses including the fact that you have a short amount of service and the warning you have on file I have decided that your employment should be terminated with immediate effect.

203 The claimant appealed against his dismissal on 20 October 2019. Amongst other things, the claimant alleged that he had been singled out for unfair treatment because he had raised a number of grievances. He also alleged that there had been a total lack of consideration of any reasonable adjustments prior to or during the disciplinary investigation or hearing. He requested that adjustments be made for the appeal hearing, including for the hearing to be audio recorded and a written transcript provided; that it take placed in a neutral venue; and that any questions asked that could not be answered would need to be given in writing by email to allow a reasonable amount of time to articulate a concise response.

Deduction of wages – 27 October 2019 – alleged detriment 7

204 On 27 October 2019 the claimant was provided with a final pay slip showing the deductions made, in line with the respondent's letter of 26 September 2019. This showed the sum of £2274.72 was deducted from the claimant's final salary.

205 On 28 October 2019 the claimant submitted a grievance regarding the deduction from wages.

First disciplinary appeal hearing – 29 October 2019

206 On 29 October 0219 the first disciplinary appeal hearing took place, regarding the verbal warning. It was conducted by Mr Lawson. At page 728 it is alleged by Mr Lawson that during the Little Princess hair donation incident he was '*making a BIG scene with the client and screaming to the client, you are going to sue the client or something to that effect*'. Mr Lawson confirmed in cross-examination that he had been told by Mr Rasekh that was how the claimant had behaved. That had not formed part of the allegations put to the claimant during the first disciplinary hearing, was not raised in any of the evidence and had not been mentioned in the outcome letter.

207 During the meeting Mr Lawson did not ask the claimant about his allegation of victimisation in relation to the disciplinary proceedings, as set out in his response to the 26 September 2019 letter from Mr Lawson.

208 Following the meeting, the claimant sent Mr Lawson an email reminding him of the adjustments required including the use of assistive software, access to Wi-Fi, provision of the recording of the meeting and a transcript of the meeting, and an opportunity to answer questions which had not been answered at the hearing in a follow-up email. Mr Lawson responded the following day. Since the issues raised do not form part of the case before us, we make no further findings about them.

Submission of ET1/Professor McLoughlin report

209 On 1 November 2019 the claim form was submitted.

210 On 4 November 2019 Professor McLoughlin provided his report. This confirmed that technology was available to assist with reading client's names; people with dyslexia can have trouble adapting to change, and with time estimation (meaning appointments could overrun); again there were Apps to assist with the latter; that work activities should be changed regularly and breaks built in; the appointment of a mentor was welcomed; that Access to Work could source appropriate software, fund administrative assistance (the mentor) and provide training; and that working in one salon should address a number of difficulties such as adapting to change.

Appeal against dismissal meeting - 7 November 2019

211 The appeal against dismissal hearing took place between the claimant and Mr Lawson on 7 November 2019. The claimant used Siri software to read out from a 13 page document which was later provided to Mr Lawson, after the meeting had ended. The claimant was not asked by Mr Lawson about the allegation that his dismissal was an act of victimisation.

Decision on appeal against first disciplinary hearing

212 On 15 November 2019 the claimant was provide with the outcome to the first disciplinary appeal hearing. In relation to the Little Princess hair donation, Mr Lawson did not consider it was necessary to determine the conflict of evidence between what the claimant was saying, and other witnesses because the sanction imposed of a three month verbal warning was justified in any event by the failure by the claimant to provide copies of the photo shoot, which he had told Zoe Rodgers he would do. Mr Lawson did not find the claimant's explanation that he had deleted the photographs convincing. He asserted that most digital imagery can still be recovered post deletion. The latter point was never put to the claimant, so he could comment on it.

Further questions regarding the dismissal appeal

213 On 18 November 2109 Mr Lawson emailed a list of questions to the claimant regarding the dismissal appeal. The claimant did not respond as he was on leave in New York. No timescale was given for a response to be provided.

214 On 19 November 2019 the claimant commenced new employment.

215 On 25 November 2019, Mr Lawson sent an email to the claimant rejecting his appeal against his dismissal. Referring to the hair-washing incident on 4 September 2019 and the incident with Mr Nath on 28 September 2019, Mr Lawson concluded:

> *Both the above acts of insubordination are as a minimum indicative of somebody who has a cavalier and disrespectful approach to legitimate management instruction and who takes the view that the same are not applicable to him. Both constitute "failure to carry out reasonable instructions" and hence are clear breaches of the company handbook see C) i on page 31.*
>
> *In relation to the latter act it is so flagrant and deliberate that it alone and viewed independently was gross misconduct as it could do none other than destroy any remaining trust and confidence – see E) on page 32 of company handbook. It therefore justifies (and for the protection of the company necessitates) summary and immediate dismissal.*

216 During cross examination, Mr Lawson explained that he reached his decision on the appeal because he found Ms Rodgers' evidence more persuasive in relation to the 4 September incident. Ms Rodgers gave the claimant an instruction and the claimant ignored that instruction. The question as to whether the claimant washed his hair in a public part of the salon was not dealt with. As for the 28 September incident with Mr Nath, Mr Lawson found Mr Nath's evidence more persuasive. The claimant accepted that he knew Mr Nath wanted the document back but he left the room without returning it to him. The allegation of victimisation was not dealt with.

217 On 26 November 2019 the claimant emailed Mr Lawson to say:

> *Further to your e-mail and letter dated the 25th November 2019, I have not had the opportunity to responded to the written questions submitted on the 18th November 2019 as I have been overseas on a pre-arranged vacation so had limited access to my e-mails. I was very open to responding to those questions within a reasonable time.*

218 As noted above, M Lawson did not set a deadline for a response. However, since this does not form part of the issues before us, we do not consider it necessary to make any further findings of fact about the appeal process.

Law

Discrimination arising from disability (section 15)

219 Section 15 Equality Act 2010 provides:

> *(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.*

220 In a disability discrimination claim under section 15, an employment tribunal must make findings in relation to the following:

220.1 The contravention of section 39 of the Equality Act relied on – in this case either section 39(2)(c) – dismissal; or (d) - detriment.

220.2 The contravention relied on by the employee must amount to unfavourable treatment.

220.3 The "something arising in consequence of disability"; for example, disability related sickness absence.

220.4 Whether the unfavourable treatment is because of something arising in consequence of disability.

220.5 If unfavourable treatment is shown to arise for that reason, the tribunal must consider the issue of justification. That is, whether the employer can show the treatment was "a proportionate means of achieving a legitimate aim".

220.6 In addition, the employee must show that the employer knew, or could reasonably have been expected to know, that the employee or applicant had the disability relied on. Knowledge that the something arising led to the unfavourable treatment is not however required.

See the decisions of the EAT in *T-Systems Ltd v Lewis UKEAT0042/15* and *Pnaiser v NHS England [2016] IRLR 170 (EAT)*.

221 Applying the guidance laid down by the EAT in *Basildon& Thurrock NHS Foundation Trust v Weerasinghe [2016] ICR 305*, the definition of "*the something*" under section 15 EqA gives rise to a question of causation: it had to be *that* which caused the employer to treat the employee unfavourably: it required the ET to look into the mind of the relevant decision taker and ask what were the factors (conscious or subconscious) that materially operated on his or her mind.

222 The principle of proportionality requires a Tribunal to strike an objective balance between the discriminatory effect of a measure and the reasonable needs of the employer's business. Again, the Equality Act 2010 provides no guidance on what is proportionate and, therefore, this is something the Tribunal must decide. In general terms, however, the greater the disadvantage caused **by** the unfavourable treatment, the more cogent the justification must be. It is an objective test, albeit one that has regard to the working practices and business considerations of the employer: *Hardy & Hansons plc v Lax [2005] ICR 1565 CA).*

Reasonable adjustments (sections 20 and 21)

223 Section 39(5) of the Equality Act 2010 imposes a duty on an employer to make reasonable adjustments.

224 Section 20 provides that where a provision, criterion or practice (a PCP) applied by or on behalf of an employer, places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the employer to take such steps as it is reasonable to have to take in order to avoid the disadvantage. The same duty arises where the substantial disadvantage arises from a failure to provide an auxiliary aid or a physical feature of premises.

225 Section 21 of the Equality Act provides that an employer discriminates against a disabled person if it fails to comply with a duty to make reasonable adjustments. This duty necessarily involves the disabled person being more favourably treated in recognition of their special needs.

226 In addition to the requirement for the employer to have knowledge, or constructive knowledge, of the employee's disability, it must also have knowledge, or constructive knowledge, of the alleged substantial disadvantage – see Equality Act 2010 Schedule 8, part 3, s.20(1)(b).

227 In *Environment Agency v Rowan 2008 ICR 218* and *General Dynamics Information Technology Ltd v Carranza 2015 IRLR 4,* the EAT gave general

guidance on the approach to be taken in reasonable adjustment claims. A tribunal must first identify:

(1) the PCP applied by or on behalf of the employer;

(2) the identity of non-disabled comparators; and

(3) the nature and extent of the substantial disadvantage suffered by the claimant in comparison with those comparators.

Once these matters have been identified then the Tribunal will be able to assess the likelihood of adjustments alleviating those disadvantages identified. The question is whether the PCP 'bites harder' on the claimant - *Griffiths v Secretary of State for work and Pensions [2017] ICR 150* at #58. There just needs to be a prospect of the step alleviating the substantial disadvantage; there does not need to be not a 'good' or a 'real prospect' - *Leeds Teaching Hospital NHS Trust v Foster [2011] UKEAT/0552/10 at #17.*

228 A PCP must be more than a one-off act. In *Ishola v Transport for London* [2020] IRLR 368, Simler J held:

> *The words 'provision, criterion or practice' are not terms of art, but are ordinary English words. They are broad and overlapping, and in light of the object of the legislation, not to be narrowly construed or unjustifiably limited in their application. However, it is significant that Parliament chose to define claims based on reasonable adjustment and indirect discrimination by reference to these particular words, and did not use the words 'act' or 'decision' in addition or instead. As a matter of ordinary language, it was difficult to see what the word 'practice' added to the words if all one-off decisions and acts necessarily qualify as PCPs*.

229 The question is whether the employer failed to make reasonable adjustments as a question of fact, not whether it simply failed to consider making any. The latter is not in itself a breach of s 20 - *Tarbuck v Sainsbury Supermarkets Ltd [2006] IRLR 664, EAT.*

230 The test of reasonableness imports an objective standard. The Statutory Code of Practice on Employment 2011 published by the Equalities and Human Rights Commission contains guidance in Chapter 6 on the duty to make reasonable adjustments. Paragraph 6.28 sets out some of the factors which might be considered in determining whether it is reasonable for an employer to have to take a particular step in order to comply with the duty to make reasonable adjustments. These include whether taking the step would be effective in preventing the substantial disadvantage, the practicability of the step, the cost to the employer and the extent of the employer's financial and other resources.

231 During their employment, a claimant does not need to suggest any adjustments, for the duty to arise – see *Royal Bank of Scotland plc v Ashton [2011] ICR 632*. The duty falls on the employer. See also *Cosgrove v Caesar & Howie EAT/1432/00 2001*. These cases are reflected in the EHRC Statutory Code of Practice which states at paragraph 6.24:

> *"There is no onus on the disabled worker to suggest what adjustments should be made (although it is good practice for the employer to ask)."*

232 When it comes to the tribunal proceedings however, a tribunal will only consider the reasonable adjustments that have been suggested by the claimant and which form part of an agreed list of issues - *Newcastle City Council v Spires UKEAT/0334/10*.

Victimisation (section 27)

233 In order to succeed in a victimisation claim, a claimant must demonstrate that they did a protected act. This includes making a complaint of discrimination covered by the Equality Act. A claimant must then show that they were subjected to a detriment because of the protected act(s) (S.27 EQuA).

234 The pre-Equality Act discrimination provisions did not require a person claiming victimisation to prove that the treatment of the claimant was solely by reason of the protected act. In *Nagarajan v London Regional Transport 1999 ICR 877* HL Lord Nicholls stated that, if protected acts have a 'significant influence' on the employer's decision making, discrimination will be made out. In Igen Ltd v Wong 2005 ICR 931 CA, Lord Justice Peter Gibson clarified that for an influence to be 'significant' it does not have to be of great importance. A significant influence is rather an influence that is more than trivial. The change of language pre and post the Equality Act from 'for a reason' to 'because of' is not substantive and the test remains essentially the same: *Amnesty International v Ahmed 2009 ICR 1450, EAT*.

Burden of proof

235 Section136 Equality Act 2010 provides that if there are facts from which a tribunal could decide, in the absence of any other explanation, that person A has contravened the provision concerned, the tribunal must hold that the contravention occurred, unless A can show that he or she did not contravene the provision.

236 Guidelines on the burden of proof were set out by the Court of Appeal in *Igen Ltd v Wong [2005] EWCA Civ 142; [2005] IRLR 258*. The tribunal can consider the respondents' explanation for the alleged discrimination in determining whether the claimant has established a prima facie case so as to shift the burden of proof. (*Laing v Manchester City Council and others [2006] IRLR 748; Madarassy v Nomura International plc [2007] IRLR 246, CA*.)

237 The Court of Appeal in *Madarassy*, a case brought under the Sex Discrimination Act 1975, held that the burden of proof does not shift to the employer simply on the claimant establishing a difference in status (eg sex) and a difference in treatment. LJ Mummery stated at paragraph 56:

> *Those bare facts only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that on the balance of probabilities, the respondent had committed an unlawful act of discrimination.'*

238 Further, it is important to recognise the limits of the burden of proof provisions. As Lord Hope stated in *Hewage v Grampian Health Board [2012] IRLR 870* at para 32:

> *They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other.*

239 The relevant time-limit is at section 123(1) Equality Act 2010. The tribunal has jurisdiction if the claim is presented within three months of the act of which complaint is made. By subsection (3), conduct extending over a period is to be treated as done at the end of the period. If the claim is presented outside the primary limitation period, i.e. the relevant three months, the tribunal may still have jurisdiction if the claim was brought within such other period as the employment tribunal thinks just and equitable.

240 S.4 Employment Rights Act 1996 provides:

> *(1) If, after the material date, there is a change in any of the matters particulars of which are required by sections 1 to 3 to be included or referred to in a statement under section 1, the employer shall give to the worker a written statement containing particulars of the change.*
>
> *…….*
>
> *(3) A statement under subsection (1) shall be given at the earliest opportunity and, in any event, not later than—*
>
> *(a) one month after the change in question …*

241 Section 11 Employment Rights Act 1996 provides:

> *(1) Where an employer does not give a worker a statement as required by section 1, 4 or 8 (either because the employer gives the worker no statement or because the statement the employer gives does not comply with what is required), the worker may require a reference to be made to an employment tribunal to determine what particulars ought to have been included or referred to in a statement so as to comply with the requirements of the section concerned.*

242 Section 38 Employment Act 2002 provides that in circumstances where the employment tribunal finds in favour of the worker in relation to a claim under s.4 and where other specific claims such as a wages claim, an Equality Act claim, and/or a breach of contract claim under the 1994 Order (see below) is successful and the Tribunal makes an award, the tribunal must increase the award by the minimum amount of two weeks' pay (subject to the cap) and may increase the award up to the 'higher' amount of four weeks' pay (S.38(3), (4) and (6) Employment Act 2002).

243 Section 13 ERA 1996 provides that:

> (*1) An employer shall not make a deduction from wages of a worker employed by him unless—*
>
> *(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or*
>
> *(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.*
>
> *…*

> *(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.*

244 Article 3 of the *Employment Tribunals (Extension of Jurisdiction) Order 1994* gives an employee a right to take a breach of contract claim which is outstanding on the termination of an employee's employment before an Employment Tribunal.

Conclusions

245 In reaching our conclusions, we have applied the burden of proof under the Equality Act 2010, where necessary. In some instances, the respondents' explanation is so connected with the incident itself that we have considered it at stage one when deciding whether the burden of proof shifts. We have considered each alleged incident of discrimination separately and we have also considered them collectively. As will be seen, in relation to some of the incidents, we have considered the same evidence from which inferences may be drawn that discrimination did occur.

246 It was submitted on behalf of the respondent that the claimant is a serial litigant, having made ET claims alleging disability discrimination against four of his five previous employers. The tribunal did not find that submission helpful. The fact that the claimant has taken previous Employment Tribunal proceedings does not assist us, particularly where we do not have any other details of those legal proceedings before us. From the information which is before us, it appears that at least some of those proceedings were settled. Again, we have no information before us in relation to the details of any such settlements (which is unsurprising, given the likelihood of confidentiality issues). We have therefore approached the issues in this case by reference solely to findings of fact below.

247 The sub-headings below refer to the allegations set out in the agreed list of issues.

Disability

248 It is accepted that the claimant's dyslexia amounts to a disability. Knowledge of disability is conceded from 25 April 2019. All of the alleged acts post-date that.

Discrimination arising from disability – Section 15 Equality Act 2010

Issue 1 - in dismissing the Claimant, the Respondent relied upon the assumption that he was evading questions during the Disciplinary Meeting on 10 October 2019 when he did not answer questions. This arose out of his disability because the Claimant did not answer because he could not understand the questions on account of his disability

249 Dismissing a person is unfavourable treatment. It also comes within section 39 Equality Act 2010.

250 As for the something arising, we conclude that it was not so much that the claimant did not understand the questions on account of his disability, but that the claimant struggles with mental processing, particularly in a stressful context, which is clear from the reports referred to above. We refer in particular to the penultimate paragraph of the report on page 934 of the bundle, quoted in paragraph 67 above.

251 We conclude that the rapid-fire way in which the questions were put to the claimant by Mr Jukes, taken together with questions being put on the basis of the script, even when the claimant had already answered the question in his previous answer, left the claimant unable to answer. These matters have been explored in evidence at length by both parties and we do not consider the slight change in emphasis in relation to the 'something arising' puts the respondent at a disadvantage. Mr Munro did not challenge the way it was put in Mr Egan's submissions.

252 As demonstrated at paragraph 202 above, this 'something arising' was relied on by the respondent in its reasons for dismissing him.

253 No justification defence has been raised and that issue does not therefore need to be considered by us. This claim therefore succeeds.

Issue 2 - In dismissing the Claimant, the Respondent disciplined the Claimant for not following reasonable management instructions, when he had not clearly understood the relevant instructions because of his disability

254 The respondent's position is that the claimant's own evidence was that he understood Ms Rodger's instruction, but refused to follow it because he thought a member of staff had been taking recreational drugs. That is accepted by Mr Egan at paragraph 123 of his submissions. That position is also reflected in our findings of fact – see paragraph 129 above. This claim therefore fails and is dismissed.

Victimisation - Section 27 Equality Act 2010

255 The Protected Acts relied upon are as follows:

255.1 *Paragraph 2 of grievance dated 17 May 2019.*

255.2 *Email dated 26 June 2019.*

255.3 *Grievance dated 17 July 2019.*

255.4 *Email dated 26 September 2019.*

255.5 *Email dated 29 September 2019.*

255.6 *Second email dated 29 September 2019..*

256 The respondent accepts that all but number 4 above are protected acts. We consider those concessions to be properly made in the light of the documents' contents. In relation to alleged protected act number 4, Mr Egan has since clarified that the document relied on is the email from the claimant to Mr Lawson of that date. We accept that raises allegations of a breach of the claimant's rights under the Equality Act 2010; it is therefore a protected act too.

257 The alleged acts of detriment are set out below, together with our conclusions on each one.

Initiating and continuing with the first set of disciplinary proceedings against the Claimant. Initiated on 31 May 2019, disciplinary hearing on 2 August 2019

258 In relation to the peroxide incident, we note that whilst disciplinary proceedings were contemplated on or around 31 May, they were not proceeded with at that stage. We conclude that this was an issue that the respondent was entitled to raise with the claimant. However, despite the claimant's colleague SK also being implicated in that incident, due to him alleging that the claimant told him he had changed the concentration of the peroxide level but not reporting that to Ms Rogers, SK was never questioned about that or subjected to any disciplinary investigation or proceedings.

259 The tribunal therefore concludes that the claimant was singled out in relation to this incident. He was also singled out in relation to the bridal client pricing structure issue. The issue in relation to timekeeping was not even put to the claimant prior to the disciplinary hearing (fact findings, #115/116).

260 Further, those issues that were discussed, were discussed at what was described to the claimant as an informal meeting. Notes of that meeting were later relied on by the respondent as notes of an 'investigation hearing'. Further, the hair extension issue had been discussed the month before on 12 June and appeared to have been resolved following the sending of an email to the claimant. Yet this issue was again raised at the meeting on 10 July 2019 and then included as a disciplinary matter.

261 The claimant maintained that he had not been trained properly in relation to the Little Princess Hair donation issue. Ms Rogers did not challenge the claimant in relation to that assertion when the matter was discussed on 10 July. Yet the respondent's case at the disciplinary hearing was that the claimant had been so trained.

262 Also at the 10 July meeting, Ms Rogers described the Little Princess Hair donation client as 'particularly tricky'. Further, the client was annoyed about the price she was charged being different to that quoted on the website; and she felt she had been kept wating a long time, something which GHI found it was unfair to blame the claimant for, a position with which we agree (fact findings, #75 and #130). Yet the respondent subsequently put all or most of the blame on the claimant for the customer being unhappy.

263 We further note that by the time of the appeal, Mr Lawson was told by Mr Rasekh, in relation to this issue, that the claimant had made a 'BIG scene' and was screaming at the client that he was going to sue her. Yet such allegations had never previously formed part of the case against the claimant either on 10 July or during the formal disciplinary hearing (fact findings, #206).

264 Taken together, all of those matters cause the tribunal panel to conclude that the real reason that all of those disciplinary issues were raised by the respondent against the claimant at that time, was because the claimant had raised the first two protected acts.

Removal of clients from Claimant's workload. From 1st August 2019 onwards until dismissal to reduce earnings.

265 Comparing July and September, it appears that there was a marked reduction overall, from 35 clients in July to 15 in September. That presumably

includes figures for the Battersea salon, where the claimant generally saw more clients. So it is likely that the proportionate reduction in clients at Knightsbridge was even greater than that. Whilst we accept that the client's absence during most of August will have impacted on client figures in September, we do not accept that such a large reduction can be put down solely to that issue. Further, whilst we accept that during the summer holidays, the colourists are less busy and that has an impact on the stylists, we are not convinced that explains such a drastic reduction in the client's workload. The July figures include part of the summer holidays, but those holidays are generally finished by September. Bearing in mind the other inferences we have drawn above, in relation to the first set of disciplinary proceedings, we consider that the burden of proof has shifted, and we are not convinced by the respondent's explanation. This allegation therefore succeeds.

Initiating and continuing with the second set of disciplinary proceedings against the Claimant. Initiated on 26 September 2019, disciplinary investigation meeting and disciplinary hearing meeting on 10 October 2019

266 In relation to the 4 September 2019 incident, we have found that the claimant did disobey a management instruction. Similarly, in relation to the incident with Mr Nath on 28 September, again, the claimant did on the face of it disobey a management instruction. On that basis, there were grounds to instigate disciplinary proceedings against the claimant. We conclude that was the reason for the proceedings being instigated, rather than the protected acts which had taken place up to those dates.

Changing the Claimant's work location from Knightsbridge and Battersea to Battersea only on 27 September 2019

267 We note that the respondent had a contractual right to move the claimant's place of work, but a reasonable employer would nevertheless discuss such a movement with the employee beforehand. The tribunal considers that the whole situation was handled very badly by the respondent. However, we do accept that the respondent had a business need to move the claimant to Battersea on a permanent basis, because of two stylists having left that salon. Further, that having the claimant working in one place would enable the respondent to make reasonable adjustments more readily and consistently. We therefore conclude, on the balance of probabilities, that the reason for the claimant being moved to the Battersea salon on a permanent basis was for those reasons, and not because of the protected acts.

On 26 September 2019, reneging on oral variation of contract of employment agreed in February 2019 and informing the Claimant that they would recover the sum of £2,274.72 by way of wage deductions from the Claimant.

268 We have found as a fact that there was an agreement that the respondent would continue to protect the claimant's salary. We have also noted above that the respondent did not challenge or correct the claimant's assertion in April/May that his salary for pension purposes was £28,000 per annum. The respondent only questioned that at a much later stage, resulting in the respondent sending the claimant a letter on 26 September 2019, alleging an overpayment. When the claimant challenged that, in a letter dated 29 September 2019, he received no response. We conclude therefore that the 26 September letter was sent was because of the protected acts carried out

by the claimant up to that date.

Dismissing the Claimant on 16 October 2019

269 The tribunal notes all of the following.

270 Mr Rasekh stated during cross-examination that he felt the claimant's first grievance was 'heavy-handed' (fact findings #43).

270.1 The tribunal was not provided with copies of any emails between the respondent and Mr Jukes [#182].

270.2 The disciplinary process followed was grossly unfair in that the same person, Mr Jukes held the investigation and disciplinary meetings. Further, there was only a gap of 10 minutes between the meetings. The hearings were conducted in a confrontational and aggressive manner. No transcript of the hearing was provided and the notes themselves were only sent with the dismissal hearing outcome letter. There was no independent checking of any of the matters raised by the claimant in his defence – for example, in relation to the hair washing incident, that other colleagues also washed their own hair in the salon; whether the area the claimant washed his hair in was actually in public view; and whether any members of the pubic were present when the claimant washed his hair.

270.3 In relation to the incident with Mr Nath, on the face of it, this is a further example of the claimant not following a management instruction. However, the context of that meeting is important. The claimant had, during a previous meeting with Mr Nath a month earlier, collapsed and been taken to A&E. He had submitted a grievance in relation to that incident, and requested that Mr Nath was not involved in future. Whilst that request was in all the circumstances unrealistic, with an employer of this size, we consider that the attempt by Mr Nath to hold a meeting with the claimant without anyone else present, on 28 September was naïve and ill-advised, in the light of what had happened at the earlier meeting and the ongoing grievance,.

270.4 It is in our judgment important to judge any wrongdoing by the claimant in that context. When questioned about the decision to dismiss the claimant, Mr Rasekh told us he had perhaps just 'checked out', which we take to mean he just rubber stamped the decision of Mr Jukes that the claimant should be dismissed without any independent consideration of the process involved, the reasons given, or the notes of the hearing.

271 We also take note of the fact findings which show to the panel that the respondent did not take the claimant's disability seriously. For example, we note:

271.1 the apparent change in tone between the constructive meeting on 24 May and the content of the letter of 28 May.

271.2 the assertion that it was not the obligation of the respondent to suggest adjustments (fact findings #56).

271.3 there were concerns that if a mentor was provided for the claimant, it would set a precedent for other staff (a view the panel considers to be unreasonable);

271.4 similarly, that it would not be commercially viable to do so, when

in fact assistance from Access to Work was potentially available, if such an adjustment was judged to be required (fact findings, #63 and #64).

271.5 Mr Rasekh discussed confidential issues regarding the claimant with other staff, which indicates that an adverse view had been taken about the claimant by that stage and which was unprofessional (fact findings, #90).

271.6 Mr Jukes was not told that the claimant had a disability (#182).

271.7 the email from Mr Lawson of 1 October 2019 to the claimant in which he refers to Mr Edmonds having dyslexia but needing less adjustments than the claimant and suggesting that the reason the claimant raised the need for adjustments was that he had been challenged about the poaching of clients. This indicates that the respondent had failed to recognise that dyslexia affects different people to differing degrees.

272 All of this strongly suggests to the panel that the respondent's senior management considered that the claimant was exaggerating his disability and the adjustments he needed.

273 Bearing in mind all of the above, we conclude that objectively analysed, the respondent did not have reasonable grounds to consider that the claimant had committed acts of gross misconduct in relation to the two incidents. All of the above matters, and in particular, the failure by the respondent to provide copies of any communications between Mr Jukes and Mr Rasekh or others in the respondent business, the grossly unfair way in which the disciplinary proceedings were conducted, and its sceptical view of the claimant's request for adjustments, lead the tribunal to the conclusion that by this stage, the respondent was looking for an excuse to dismiss the claimant. We further conclude that this was because of the claimant's protected acts, in which he complained that his rights under the Equality Act had been breached, particularly in relation to the failure to provide reasonable adjustments. This allegation is therefore upheld.

Deducting £2,274.72 from the Claimant's final salary in October 2019

274 We refer to our findings of fact in relation to this issue above. We have found that there was an agreement that the claimant's salary be protected at £28,000 per annum. The respondent's explanation for the deduction, that management 'discovered' there had been an overpayment is not therefore accepted. The claimant sent a letter on 29 September 2019, setting out his view about the agreement that had been reached. The claimant did not receive any response to that letter, except for an indirect one, when the defence to his tribunal claim was submitted. We conclude, on the balance of probabilities, that the real reason for the respondent alleging an overpayment and deducting his salary, was the claimant's protected acts. This allegation is upheld.

Failure to make reasonable adjustments – sections 20 and 21 Equality Act 2010

PCP - the provision of information to employees in written form

275 Conclusion – the respondent did not challenge that this is a PCP. We conclude that it is.

Disadvantage - this placed the Claimant at a disadvantage due to his severe

difficulties with reading and writing

276 Conclusion – the report of Professor McLoughlin dated 14 August 2015 confirms that the claimant '*has significant difficulties with all aspects of literacy'*. We accept that the claimant did suffer a substantial disadvantage in relation to this PCP.

Reasonable adjustments

Implementation of an effective worker buddy and/or mentor system

277 It is the respondent's case that this adjustment was implemented. We refer however to our findings of fact above. The system that was implemented was that KD assist the claimant when she was available. However, it was only guaranteed that they would work together one day a week. It was left to the claimant to sort out the arrangement with KD. The claimant's grievance had been partially upheld on 31 August 2019 on the basis that only a partial adjustment had been provided to the claimant. We consider that conclusion to have been well founded. The claimant again pointed out the difficulties by email on 6 September and asked for it to be remedied but nothing was done (fact findings, #70 and #131).

278 We also note that the claimant had sent a document to Mr Rasekh to pass on to staff but there was no record that it was distributed further (fact findings #95 and #96). We refer to our conclusions above that the claimant's complaints/dyslexia were not taken seriously. The buddy system had been discussed and agreed in principle as early as 24 May 2019. Access to Work funding was potentially available but this was not explored by the respondent and a referral was only made much later. As noted above, the respondent appear to be concerned about 'setting a precedent' and about this adjustment not being commercially viable. However with Access to Work funding, if that had been approved, it would have been affordable. We conclude that the adjustment was reasonable, it was a practicable step that could have been taken, and was affordable. We conclude that the adjustment should have been made by 10 July, when the formal arrangement with KD was announced. Had proper enquiries been made at an earlier stage, we conclude that a workable reasonable adjustment could have been implemented from this date.

Adoption of an effective system whereby all written material that was being provided to employees (either generally or to the Claimant specifically) was either orally read to him or was sent to him by email.

279 We conclude, on the basis of our findings if fact, that insofar as this was practicable, the respondent did make this adjustment. We further conclude that the suggestion by the claimant that all notices on the notice board should be provided to him by other means was not practicable. We therefore dismiss this allegation.

Use of screen reading software within the salons where possible.

280 This adjustment had first been discussed on 24 May. Access to Work funding was available for this adjustment. The claimant had first mentioned the provision of an iPad to the respondent on 10 July. It was further mentioned on 26 July by the claimant to Mr Nath; and during the grievance meeting on 31 July. The adjustment was not made until the last day of the claimant's employment on 16 October, the date of his dismissal. We conclude that had

the respondent acted with due diligence, this reasonable adjustment could have been put in place at the latest by the end of August 2019.

These should have been implemented by the Respondent's management shortly after the Claimant provided the Respondent with his pre- existing reports relating to his disability on 25 April 2019.

281 Conclusion – see above, in relation to the dates by which these adjustments should have been made – i.e. 31 August 2019.

If the above reasonable adjustments had been effectively implemented it would have allowed the Claimant to overcome the disadvantage as the relevant written material would have been provided to him orally (emails sent to him could be read to him by his partner or through his computer assistive software Siri at home)

282 Conclusion – the tribunal agrees. See above.

PCP - undertaking work on clients within a specified standard time frame

283 Conclusion – it is not challenged that this is a PCP. The tribunal accepts that it is.

Disadvantage - this placed the Claimant at a disadvantage due to his difficulties in managing his workload and the anxiety arising from those difficulties

284 Conclusion – we refer to our findings of fact at #67 in relation to the Katherine Kindersley report above. The tribunal accepts that the claimant was at a substantial disadvantage in relation to the application of this PCP.

Reasonable adjustment – effectively allowing the Claimant 90 minutes work time when allocated an Afro-Caribbean client. This should have been effectively implemented by the Respondent's management when requested on 10 July 2019. This would have allowed the Claimant to overcome the disadvantage as it would have enabled to the Claimant to undertake this type of work within a timeframe that he could cope with. R says the Respondent made every effort to increase styling time for Afro-Caribbean clients.

285 We refer to our findings of fact in relation to this issue. Whilst we accept that the claimant felt that the respondent was failing to implement this adjustment and was irritated by that perception, we conclude that as far as it was practicable to do so, the respondent did so. In relation to the incidents referred to above in our fact findings, one was in relation to a new client where it was not always practicable to check beforehand. Another appointment was 15 minutes short, but the claimant nevertheless had time to conclude that appointment, prior to his next appointment. The other appointment with 30 minutes short, but again the claimant had time to carry out that work. We conclude that even if there had been a failure to make an adjustment, the issues raised would have been too minor for it to be considered a breach of the Equality Act.

PCP – Respondent holding meetings with members of staff

286 Conclusion – the respondent does not challenge that this is a PCP. The tribunal accepts that it is.

Disadvantage - the Claimant's difficulties with reading and remembering and following verbal communications plus stress and anxiety that he suffers from

in any formal meeting context

287 The Katherine Kindersley report states:

> *Weaknesses in cognitive processing are core to specific learning difficulties. These weaknesses could include poor visual memory, poor auditory memory or remembering what is heard, and a slow speed of processing visual information relative to underlying abilities. Testing indicated that Mr Barnett processes both visual and spoken information inefficiently and very slowly. This is consistent with a profile of dyslexia.*

We accept this evidence and therefore conclude that the claimant did experience this substantial disadvantage as a result of the PCP.

288 *Reasonable adjustments.*

288.1 Provide the Claimant with plenty of notice of any meeting.

288.2 Provide the Claimant in advance of meetings with information about the meetings.

288.3 Where the Claimant is expected to contribute to the meeting, allow the Claimant to use assistive software, such as Siri, to present his pre-prepared contributions orally via Siri.

288.4 Provide the Claimant with additional time in meetings to process information that is being provided to him.

288.5 Where the meeting related to a formal grievance or disciplinary matter, allowing the Claimant extra time to arrange union representation at that meeting.

289 The Claimant relies upon the following specific failures:

The failure of Tito Nath to provide any notice or any information prior to the meetings that he held or attempted to hold with the Claimant on 22 August and 28 September 2019

290 In relation to the 22 August 2019 meeting, we conclude that it was reasonable for Mr. Nath to hold this meeting without any adjustments in place. It was not intended as a formal meeting. We therefore dismiss the allegation in relation to the 22 August meeting.

291 However, in relation to the 28 September meeting, we conclude that the claimant should have been provided with formal notice of that meeting, a draft agenda, and the summary document which Mr Nath had prepared. Had that been provided, it is unlikely that the subsequent altercation would have occurred.

The failure of Yashar Rasekh to provide additional time for the Claimant to arrange union representation for the Disciplinary Investigation and Disciplinary Hearing meetings on 10 October 2019

292 The tribunal accepts it was not until the morning of the hearing that it transpired that the claimant's representative was not available. We further accept that the meeting had been planned to take place on 2 October. However, that was never realistic. It would have been extremely tight for a person without the claimant's disability to comply with such a tight timescale. For the claimant, those timescales were unreasonable. When it became apparent that, through no fault of the claimant, his representative was not

available, Mr. Jukes should (with the agreement of Mr Rasekh if required) have adjourned the hearing to a date when he could attend. We conclude that it would have been a reasonable adjustment to postpone the meeting in these circumstances. This allegation is upheld.

The failure by Philip Jukes to allow the Claimant to use Siri reading software to present his case at the hearings on 10 October 2019

293 We refer to above findings of fact in relation to this issue. Apart from one isolated incident during the disciplinary hearing, Mr Jukes did not allow the claimant to use any assistive technology. We have accepted that Mr Jukes was not informed that the claimant had a disability, prior to that meeting. He should have been informed, and that adjustment should have been made. We therefore uphold this allegation.

The rushed approach taken when questioning the Claimant in these meetings

294 We refer to our conclusions at 292 above, as well as our conclusions above in relation to the victimisation allegation, regarding the claimant's dismissal (#273). We have found that the approach was rushed, the timescales imposed were unreasonable. We conclude that Mr Jukes had already decided that the only reasonable outcome was the claimant's dismissal. The claimant was not therefore provided with sufficient time to allow him to process the information in the meeting. We therefore uphold this allegation.

If Tito Nath had provided advance warning of the two meetings to the Claimant and information as to what those meetings were about, the Claimant would not have suffered the serious stress and anxiety that he did on those two occasions

295 See above, at #291 and #292. No further conclusions are necessary. This is a in the tribunal's judgment a duplication of the claim considered by the tribunal in that section.

If Yashar Rasekh had allowed the Claimant adequate time to obtain union representation at the 10 October 2019 meetings such representation would have materially assisted the Claimant in presenting his case and dealing with his stress and anxiety

296 See above, at 292. No further conclusions are necessary, this again is a duplication of that claim.

If Philip Jukes had allowed the Claimant to use Siri during the hearings on 10 October 2019 this would have allowed the Claimant to effectively present his case in response to the disciplinary allegations raised against him

297 See above, at 293. No further conclusions are necessary. We would however add that there was no need for the claimant to use Siri to read out a pre-prepared written statement as happened at later meetings. Such statements could have been reasonably taken as read, just as statements are generally taken as read in Employment Tribunal proceedings.

Unauthorised deduction of wages – section 13 Employment Rights Act 1996 - following his dismissal, the Respondent deducted the sum of £888.47 from the Claimant's final October salary plus £235.44 from accrued commission plus £1,050.01 from accrued holiday pay, this was purportedly to recoup the alleged overpayment (as per attached pay slip)

298 We refer to our findings of fact above. We conclude that there was an unauthorised deduction of wages from the claimant's final salary. There does however appear to have been an overpayment of salary to some extent because of the mistake made in May 2019 when the claimant's basic pay was increased to £2333.33 pcm plus commission and sale of products. If the parties are not able to resolve this issue, we will hear further evidence and submissions on it at the remedy hearing.

Statement of changes – section 4 Employment Rights Act 1996 - the Respondent failed to provide the Claimant with a statement of changes to the contract of employment to reflect the changes agreed with Paul Edmonds and Yashar Rasekh in February 2019.

299 We refer to our findings of fact above. We have concluded that there was an oral variation of contract in relation to wages. That variation was not formally confirmed to the claimant in writing. Therefore the claim succeeds. If we award compensation in relation to the Equality Act 2010 or wages claims, the claimant is entitled to a minimum of two and a maximum of four weeks' pay in addition, subject to the statutory cap. The amount to be awarded can be dealt with at the remedy hearing, following further submissions, if the parties cannot agree an appropriate amount in the meantime (which we encourage them to do).

Wrongful dismissal - the Claimant avers that the manner of his dismissal amounts to wrongful dismissal and claims his contractual notice entitlement of one week.

300 We refer to our conclusion at #273 above that the claimant did not commit an act of gross misconduct on either 4 or 28 September (or alternatively, taking into account the previous verbal warning). Further, the documents the claimant took on 28 September, for a limited period, in a distressed state, were not confidential. Copies should have been provided beforehand in any event of the typed document and the draft agenda.

301 There was already an outstanding grievance against Mr. Nath in relation to the 22 August 2019 meeting. That should have been dealt with before there was any attempt by Mr. Nath to hold impromptu meetings with the claimant.

302 Those conclusions only reinforce our view that the claimant did not commit acts of gross misconduct, either individually or taken together, in relation to those two incidents/the previous verbal warning. This allegation is therefore upheld. The claimant is entitled to a week's notice. Again, we trust that the parties can resolve that matter prior to the remedy hearing but if not we can make a decision about the value.

Right to be accompanied – ss 11 & 12 Employment Relations Act 1999 - the Claimant avers that he was denied the right to be accompanied by a union representative at the disciplinary investigation and hearing meetings on 10 October 2019

303 This claim does not appear to be pursued any longer. It is not mentioned in Mr Egan's submissions. We assume it is no longer pursued as a separate claim. We have in any event upheld the reasonable adjustments claim in relation to these facts. This specific allegation is therefore dismissed.

Unpaid holiday pay - the Claimant avers that he was owed 8.5 holiday

pay as at the date of termination.

304 This is effectively dealt with above in relation to the wages claim. It is not necessary to deal with it as a separate holiday pay claim.

Time-limits

Time limits were not raised as an issue before us. We do not in these circumstances consider it necessary to consider them.

Employment Judge A James
London Central Region

Dated 14 December 2021

Amended judgment dated 14 February 2022

Sent to the parties on:

21/02/2022

For the Tribunals Office

ANNEX A – AGREED LIST OF ISSUES

[Note – the respondent's response is indicated by under-lining. Whilst this does not need to be reflected in the list of issues, since they appear in the agreed list we have left those sections in.]

Disability

1 It is accepted that the claimant's dyslexia amounts to a disability. Knowledge of disability is conceded from 23 to 25 April 2019.

Discrimination arising from disability – Section 15 Equality Act 2010

2 *The Claimant relies upon the 'something arising in consequence of his disability' in relation to his dismissal as:*

2.1 In dismissing the Claimant, the Respondent relied upon the assumption that he was evading questions during the Disciplinary Meeting on 10th October 2019 when he did not answer questions. This arose out of his disability because the Claimant did not answer because he could not understand the questions on account of his disability. R says, during the Disciplinary Hearing, the Claimant did not answer on three occasions. On the first occasion, he had been asked whether he understood the meaning of a word. He was then asked to research the word on the internet to gain more insight into its meaning. On the other two occasions, it was clear that the Claimant understood the questions but chose not to answer them.

2.2 In dismissing the Claimant, the Respondent disciplined the Claimant for not following reasonable management instructions, when he had not clearly understood the relevant instructions because of his disability. On Wednesday 4th September 2019, a rapid verbal exchange of instructions were given by Salon Manager Ms Zoe Rodgers to the Claimant, as she was rushing to leave the salon that was effectively closing. Some time after, the Claimant subsequently discovered that Ms Rodgers had allegedly informed the Claimant about washing and/or shampooing his hair. The Claimant had not understood the instruction, owing to the way and manner in which the instruction was delivered. Ms Rodgers had not confirmed with the Claimant if he fully understood the details of the instruction given. R says, the Claimant's own evidence is that he refused to allow his colleague to wash his hair due to his alleged concern that the colleague had been taking recreational drugs. He therefore understood Ms Rodger's instructions.

Victimisation -- Section 27 Equality Act 2010

3 The Protected Acts relied upon:

3.1 *Paragraph 2 of grievance dated 17 May 2019. In writing*. It is accepted that this was a Protected Act.

3.2 Email dated 26 June 2019. In writing. It is accepted that this was a Protected Act. Page 233A/194

3.3 Grievance dated 17 July 2019. In writing. It is accepted that this was a Protected Act. Page 256/232

3.4 *Email dated 26 September 2019. In writing.* It is NOT accepted that this was a Protected Act.

3.5 *Email dated 29 September 2019. In writing.* It is accepted that this was a Protected Act.

3.6 *Second email dated 29 September 2019. In writing.* It is accepted that this was a Protected Act.

4 *The acts of detriment by the Respondent were:*

4.1 *Initiating and continuing with the first set of disciplinary proceedings against the Claimant. Initiated on 31 May 2019, disciplinary hearing on 2 August 2019*. R says the first set of disciplinary proceedings was instigated on proper and reasonable grounds and had nothing to do with the Claimant having made any Protected Act.

4.2 *Removal of clients from Claimant's workload. From 1st August 2019 onwards until dismissal to reduce earnings*. The Respondent denies removing Clients from the Claimant's workload for any improper reason. Any removal was due to the Claimant being unavailable and was unrelated to any Protected Act.

4.3 *Initiating and continuing with the second set of disciplinary proceedings against the Claimant. Initiated on 26 September 2019, disciplinary investigation meeting and disciplinary hearing meeting on 10 October 2019*. R says the second set of disciplinary proceedings was instigated on proper and reasonable grounds and was unrelated to the Claimant having made any Protected Act.

4.4 *Changing the Claimant's work location from Knightsbridge and Battersea to Battersea only on 27 September 2019*. R says that the Claimant's work location was changed because of (i) business needs and (ii) to support the Claimant. It was unrelated to any Protected Act.

4.5 *On 26 September 2019, reneging on oral variation of contract of employment agreed in February 2019 and informing the Claimant that they would recover the sum of £2,274.72 by way of wage deductions from the Claimant*. **R says it is denied that there was any oral variation in February 2019. In September 2019, the Respondent became aware that the Claimant had been overpaid and quite properly informed the Claimant of this.**

4.6 *Dismissing the Claimant on 16 October 2019.* **R says that the Claimant's dismissal was on reasonable grounds and was not in anyway connected to the Claimant's Protected Acts.**

4.7 *Deducting £2,274.72 from the Claimant's final salary in October 2019*. **R says that in September 2019, the Respondent became aware that the Claimant had been overpaid and quite properly informed the Claimant of this. The amount was deducted from the Claimant's final salary.**

Failure to make reasonable adjustments – sections 20 and 21 Equality Act 2010

5. *PCP. The provision of information to employees in written form.*

6. *Disadvantage. This placed the Claimant at a disadvantage due to his severe difficulties with reading and writing.*

7. *Reasonable adjustments:*

a. *Implementation of an effective worker buddy and/or mentor system.* R says this had been implemented

b. *Adoption of an effective system whereby all written material that was being provided to employees (either generally or to the Claimant specifically) was either orally read to him or was sent to him by email.* R says as far as reasonably practicable, this had been and/or was in the process of being implemented

c. *Use of screen reading software within the salons where possible.* R says as far as reasonably practicable, this had been and/or was in the process of being implemented

d. *These should have been implemented by the Respondent's management shortly after the Claimant provided the Respondent with his pre-existing reports relating to his disability on 25 April 2019.*

e. *If the above reasonable adjustments had been effectively implemented it would have allowed the Claimant to overcome the disadvantage as the relevant written material would have been provided to him orally (emails sent to him could be read to him by his partner or through his computer assistive software Siri at home).*

8. *PCP*. U*ndertaking work on clients within a specified standard time frame.*

9. *Disadvantage. This placed the Claimant at a disadvantage due to his difficulties in managing his workload and the anxiety arising from those difficulties.*

10. *Reasonable adjustment – effectively allowing the Claimant 90 minutes work time when allocated an Afro-Caribbean client. This should have been effectively implemented by the Respondent's management when requested on 10 July 2019. This would have allowed the Claimant to overcome the disadvantage as it would have enabled to the Claimant to undertake this type of work within a timeframe that he could cope with.* **R says the Respondent made every effort to increase styling time for Afro-Caribbean clients**

11. *PCP – Respondent holding meetings with members of staff.*

12. *Disadvantage. The Claimant's difficulties with reading and remembering and following verbal communications plus stress*

and anxiety that he suffers from in any formal meeting context.

13. Reasonable adjustments.

a. Provide the Claimant with plenty of notice of any meeting.

b. Provide the Claimant in advance of meetings with information about the meetings.

c. Where the Claimant is expected to contribute to the meeting, allow the Claimant to use assistive software, such as Siri, to present his pre-prepared contributions orally via Siri.

d. Provide the Claimant with additional time in meetings to process information that is being provided to him.

e. Where the meeting related to a formal grievance or disciplinary matter, allowing the Claimant extra time to arrange union representation at that meeting.

5 *The Claimant relies upon the following specific failures:*

5.1 The failure of Tito Nath to provide any notice or any information prior to the meetings that he held or attempted to hold with the Claimant on 22 August and 28 September 2019. On 22nd August 2019, following his annual leave, the Claimant was invited to attend a Meeting with Tito Nath. This was to update him on changes that had taken place during his absence. It would have been unreasonable to expect Mr Nath to have provided any notice and/or information prior to this meeting. On 28th September 2019, the Claimant was invited to attend an informal meeting with Tito Nath. He was told that it was a 'quick catch upheld informally to cover some points raised in his recent emails'. The Claimant did not object at any point of the meeting and willingly contributed his views and asked questions.

5.2 The failure of Yashar Rasekh to provide additional time for the Claimant to arrange union representation for the Disciplinary Investigation and Disciplinary Hearing meetings on 10 October 2019. R says that on 9th October 2019, the Claimant confirmed that he had TU representation for the Hearing at 2pm on 10th October 2019.

5.3 The failure by Philip Jukes to allow the Claimant to use Siri reading software to present his case at the hearings on 10 October 2019. R says the Claimant was allowed to use Siri reading software as borne out by the notes of the meeting.

5.4 Plus the rushed approach taken when questioning the Claimant in these meetings. R says that during these meetings, the Respondent and/or its agent, allowed the Claimant much time to comment, use his Siri reading software etc.

5.5 If Tito Nath had provided advance warning of the two meetings to the Claimant and information as to what those meetings were about, the

Claimant would not have suffered the serious stress and anxiety that he did on those two occasions.

5.6 *If Yasher Rasekh had allowed the Claimant adequate time to obtain union representation at the 10 October 2019 meetings such representation would have materially assisted the Claimant in presenting his case and dealing with his stress and anxiety.*

5.7 *If Philip Jukes had allowed the Claimant to use Siri during the hearings on 10 October 2019 this would have allowed the Claimant to effectively present his case in response to the disciplinary allegations raised against him.*

Unauthorised deduction of wages – section 13 Employment Rights Act 1996. Particulars.

6 *The Claimant's original written contract of employment provided that the Claimant would initially be paid a salary of £28,000 per annum plus commission reducing to £21,000 per annum plus commission after three months.*

7 *In late February 2019, the Claimant had a number of discussions with both Paul Edmonds and Yashar Rasekh in the Knightsbridge Salon about his salary. The first conversation was with Paul Edmonds. The Claimant made it clear that he could not continue to work for the Respondent if his salary reduced to £21,000 per annum. Paul Edmonds and the Claimant orally agreed that the Claimant would continue to be paid a basic salary of £28,000 per annum. This was subsequently verbally confirmed by Yashar Rasekh to the Claimant.*

8 *Pursuant to the verbal agreement, the Claimant continued to be paid a basic salary of £28,000 per annum until September 2019.*

9 *On 26 September 2019 the Claimant received a letter from the Respondent asserting that he had been paid at the rate of £28,000 in error from March 2019 onwards and that he had allegedly been overpaid in the sum of £2,274.72 and that that sum would be recovered from his future wages.*

10 *By email dated 29 September 2019, the Claimant challenged the assertion that he had been accidentally overpaid, making detailed reference to the oral agreement entered into in February 2019.*

11 *Following his dismissal, the Respondent deducted the sum of £888.47 from the Claimant's final October salary plus £235.44 from accrued commission plus £1,050.01 from accrued holiday pay, this was purportedly to recoup the alleged overpayment. (as per attached pay slip).* *R says that i*t is denied that there was any oral variation in February 2019. In September 2019, the Respondent became aware that the Claimant had been overpaid and quite properly informed the Claimant of this. The amount was deducted from his final salary.

Statement of changes – section 4 Employment Rights Act 1996

12 *The Respondent failed to provide the Claimant with a statement of changes to the contract of employment to reflect the changes agreed with Paul Edmonds and Yasher Rasekh in February 2019. R denies* that there was any oral variation in February 2019.

Wrongful dismissal

13 *The Claimant avers that the manner of his dismissal amounts to wrongful dismissal and claims his contractual notice entitlement of one week.* It is denied that the Claimant was wrongfully dismissed.

Right to be accompanied – Sections 11 and 12 Employment Rights Act 1999

14 *The Claimant avers that he was denied the right to be accompanied by a union representative at the disciplinary investigation and hearing meetings on 10 October 2019*. It is denied that the Claimant was denied the right to be accompanied.

Unpaid holiday pay

15 *The Claimant avers that he was owed 8.5 day's holiday pay as at the date of termination.* It is denied that the Claimant was entitled to 8.5 holiday pay.