Close to me Case No: 1802185/2021

EMPLOYMENT TRIBUNALS

Claimant	**Respondent**
Mr J Hurley	Rotherham Metropolitan Borough Council

Heard by CVP: 4- 6 May 2021
deliberations 20 September 2021

Before: **Employment Judge Rogerson**
Mrs L Anderson-Coe
Dr D. Bright

Appearances:

For the Claimant: **in person**

For the Respondent: **Mr K Ali (counsel)**

JUDGMENT

The complaints of a failure to make reasonable adjustments made pursuant to sections 20 and 21 of the Equality Act 2010 fail and are dismissed

REASONS

1. These reasons deal with the claimant's remaining complaints made in this claim of a failure to make reasonable adjustments. Unfortunately, there has been a delay in providing these reasons. Firstly, because the hearing could not be completed as intended on 6 May 2021, because of the Claimant's ill-health. Case management orders were made for the parties to provide written submissions before the Tribunal reconvened to make its decision. Further delays were then caused due to the ill-health of one of the panel members which has meant that deliberations could not

take place until 20 September 2021. The Tribunal apologises to the parties for that delay but has endeavoured to provide these reasons as quickly as possible thereafter.

The List of Issues.

2. The applicable law and issues had been clearly identified at three preliminary hearings before three different Employment Judges (Employment Judge Lancaster on 1 July 2020, Employment Judge Shulman on 5 August 2020 and Employment Judge Wade on 12 November 2020).

3. The list of issues is set out at page A27 in the bundle of documents and identifies the issues to be determined for each complaint brought which included the remaining reasonable adjustments complaint. At the beginning of the hearing The Tribunal checked the list of issues was accurate and explained to the claimant why it was important identifying to have the complaints and issues identified at an early stage to enable both parties to prepare the case in order to address those issues to establish liability for the claim to succeed or to defend the claim at the final hearing. This was important to record because the Claimant has attempted to shift the grounds for parts of his complaint which we will address later in these reasons.

4. The Respondent accepts that at the material time (December 2019 – March 2020) the Claimant was a disabled person by reason of "Chronic Fatigue Syndrome" (CFS). This is the 'particular' disability the Claimant relies upon to support his complaint of a failure to make reasonable adjustments. The Claimant relies upon Section 20(3) of the Equality Act 2010 "EQA 2010" to contend that a "provision criterion or practice('PCP') applied by the Respondent put the Claimant as a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled. The Claimant relies upon 2 PCPs applied to him by the Respondent in relation to 2 relevant matters, the arrangements made for interviews in December 2019 during a restructuring exercise ('the Interview PCP') and during a grievance process in March 2020 ('the Grievance PCP').

The Interview PCP

5. The Respondent accepts a "PCP" was applied of "scheduling interviews in the afternoon". On 13 December 2019, the Claimant was shortlisted for 2 interviews for 3 posts, the first interview was arranged for 12pm on 16 December 2019 and the second at 1pm on 18 December at 1pm. The Claimant asserts the timing of the interviews put him at a substantial disadvantage compared with persons who are non-disabled person.

6. The Claimant attended the interview at 12 noon on 16 December 2019 and asserts that the substantial disadvantage was that "*by reason of his CFS he became more tired later in the working day and did not perform well at interview which he specifically requested be held "as early as possible*". The Claimant also identified the reasonable step the Respondent could have taken to avoid that disadvantage which was "*rescheduling the interview to an earlier time*". (see list of issues 9.1.1 and 9.2.1 at page A27)

7. The Claimant did not attend the interview arranged for 18 December 2019 at 1pm because he went off sick that morning. The reasonable step the Claimant identified the Respondent could have taken to avoid putting him at that disadvantage was "rescheduling the interview to an earlier time when it was initially arranged". (see issues 9.2 and 9.2.2 at page A27).

8. The Respondent denies the Claimant was substantially disadvantaged in the way alleged by the timing of the interview. The Respondent also contends that it did not know or could not be reasonably expected to know that the Claimant was likely to be placed at a substantial disadvantage. The record of the preliminary hearing records that the Claimant provided clarification on this issue (paragraph 9.3) to the effect that "*although the interview fell within normal working hours and the Claimant accepted the interview time and did not express any concerns when he attended, he says that he had already brought his request for an earlier time slot to a member of the interviewing panel and nothing had been done to rearrange it"*.

9. The Equality and Human Rights Code of Practice on Employment (2011) provides guidance on the Equality Act 2010. Paragraphs 6.14 and 6.16 consider the question: "What disadvantage gives rise to the duty?".

10. Paragraph 6.14 of the Code explains that the duty to make reasonable adjustments under section 20(3) "arises where a provision criterion or practice puts a disabled person at a substantial disadvantage compared with people who are not disabled".

11. Paragraph 6.15 of the Code provides that "*The Act says that a substantial disadvantage is one which is more than minor or trivial. Whether such a disadvantage exists in a particular case is a question of fact and is assessed on an objective basis*".

12. Paragraph 6.16 of the Code explains the purpose of the comparison that is made with people who are not disabled is to "*establish whether the provision criterion or practice disadvantages the disabled person in question*".

13. Paragraph 6.19 the Code provides that "*an employer only has a duty to make an adjustment if they know or could reasonably be expected to know that a worker has a disability and is, or is likely to be, placed at a substantial disadvantage*".

14. For the first interview on 16 December 2019, the comparators are the other candidates who are not disabled and were also shortlisted for interview when the interviews were offered on 12 December 2021. Candidate A was interviewed at 9 AM, Candidate B was interviewed at 11 AM. All three candidates worked together in the same team. Candidate A was successful. The Claimant and Candidate B were unsuccessful.

15. The Claimant did not attend the second interview arranged for 1pm on 18 December 2019.

The Grievance PCP

16. It was agreed that the Respondent applied a PCP generally of applying its grievance policy of "*not allowing an employee at a grievance meeting to be accompanied other than by a trade union representative or a fellow employee"*. The Claimant asserts

that this PCP put him at a substantial disadvantage in comparison with persons who are not disabled in that by reason of his CFS "*he could not necessarily remember all that had been said in the grievance meeting on 5 March 2020 and so required a further witness (his brother) present to assist him in later checking the accuracy of the record provided by the independent note taker"*. The reasonable step the Claimant identifies the Respondent should have taken to avoid that disadvantage was "to permit his brother to be in attendance or to allow a recording of the proceedings" (see issue 9.4 at page A27).

Burden of Proof

17. Section 136 of the 'EQA' provides that if a contravention of the EQA is alleged (here the Claimant alleges a failure to make reasonable adjustments contrary to section 20(3) and section 21), the burden of proof requires the Claimant to prove facts from which the Tribunal could decide, in the absence of any other explanation that a person (here the Respondent) has contravened those provisions. This requires the Claimant to establish a prima facie case, before the burden of proof shifts to the Respondent to prove on the balance of probabilities that it did not act unlawfully.

18. At paragraph 15.32 of the EHRC Code the guidance explains what these provisions mean "*a Claimant alleging that they have experienced an unlawful act must prove facts from which an Employment Tribunal could decide or draw inference that such an act has occurred*".

19. At paragraph 15.33 the Code provides that an Employment Tribunal will hear all the evidence from the Claimant and the Respondent before deciding whether the burden of proof has shifted to the Respondent.

Prospects of Success

20. In the record of the Preliminary Hearing of 1 July 2020, Employment Judge Lancaster set out the reasons based on the arguments advanced by the claimant and the asserted agreed facts the complaint of a failure to make reasonable adjustments had little reasonable prospects of success.

21. For the "Interview PCP" the Employment Judge expressed his provisional view that the Claimant faced "*some difficulty with the argument advanced about the timing of the interview if the 12 o'clock slot fell within the Claimant's adjusted working hours of 7 AM to 3 PM, the Claimant had accepted the interview time and had not expressed any concerns about the timing when he attended the interview*". The note records the Claimant's position at the time was that he had already brought his request to a member of the interview panel and nothing had been done to rearrange it. At this hearing the panel member the Claimant was referring to in that record was identified as Ms Deborah Johnson, who was the manager with overall responsibility for the Claimant's team and there was a clear dispute of fact about what was said.

22. For the "Grievance PCP" the record sets out the Employment Judge's provisional view that "*the claim has little reasonable prospects of success because it is predicated on the Claimant's mistrust of the Respondent, notwithstanding that he*

has admittedly no actual reason to impugn the integrity of the independent note taker who was provided by the Respondent on this occasion".

23. We highlight those matters in our reasons because the Claimant was forewarned about the potential weakness in his case.

Findings of fact

24. The Tribunal heard evidence for the Claimant from the Claimant and for the Respondent from Ms Deborah Johnson(Corporate Performance and Business Intelligence Manager, Ms Jackie Mould (Head of Policy Performance and Intelligence), Ms Trish Ann Law (Senior HR Consultant) and (Ms Theresa Caswell (HR Business Consultant).

25. Most of the central facts were agreed and were not disputed. Where there was any material factual dispute, we considered the available contemporaneous documentary evidence to resolve the factual dispute and support our assessment of the credibility of the witness evidence.

26. The Claimant was employed by the Respondent as a "Business intelligence Officer" in the Performance Intelligence and Improvement team (PII). He had performed that role for four years. Prior, to joining the Respondent the Claimant had worked for Doncaster Metropolitan Council for over 25 years holding various Senior Management roles. He was an experienced Senior Manager.

27. The Claimant is and was at the material time a disabled person by reason of Chronic Fatigue Syndrome. The material time for the purposes of these complaints is 16 December 2019 until 5 March 2020.

28. When the Claimant started working for the Respondent, reasonable adjustments were put in place for the Claimant to perform his role. His contracted hours of 37 hours a week, were required to be worked on an 'adjusted basis' which permitted him to work his hours from 7 am till 3 pm, Monday to Friday.

29. The Claimant had a good work record and there were no performance/attendance concerns. On occasion by prior agreement the Claimant participated in a rota and worked until 5pm. Otherwise, the Respondent only expected the Claimant to work until 3pm much earlier than the normal finish time. The Claimant could choose to start later and could work later if he wished but his adjusted hours were 7am-3pm.

30. The flexibility of the hours worked is demonstrated in the records produced at this hearing. In the 6 weeks preceding the 18 December 2019, the Claimant was regularly choosing to work later than the 3pm. There was nothing that should have alerted the Respondent, that the Claimant was struggling to work in the afternoons.

31. In contrast to that contemporaneous evidence, the Claimant's oral evidence was that because of his CFS by around lunchtime he was physically and mentally exhausted and "anything beyond 12 o'clock noon was too late". There was no evidence to support the Tribunal making any inference that the Respondent knew or ought to have known that was the case.

32. In September 2019, the Respondent started a consultation process with the Trade Unions and employees about a proposed restructure. In the PII team this restructure directly affected the Claimant's team. The Claimant and his colleagues were performing Band B and Band J roles. As a result of the restructure Band L and all Band J roles were deleted and the team could not be directly matched into any of the new roles. New job profiles were provided for the 5 new posts created in the new structure which the team could apply for.

33. On 7 December 2019, the Claimant completed an expression of interest form (EOI Form) pages B3-B7. The Claimant set out in detail his experience and skills and how he met the requirements of the new roles. The form specifically requests the applicant to provide information about any unavailability for interviews. The Claimant did not identify any unavailability instead stating that he would "*make himself available for the interview*". The form also makes a 'reasonable adjustments' enquiry for the express purpose of enabling the Respondent to support him through the "*recruitment and selection process"* The Claimant answered that enquiry stating "*should I be selected for interviews/testing etc I would prefer to be seen earlier rather than later in the day".* The Claimant did not provide any further clarification on the form of a preferred time.

34. In the Claimant's witness statement (paragraph 19) he says he did not ask for a specific day or time for interview because he did not know if any of the other candidates applying had protected characteristics or when the tests or interviews were going to held. It was not clear why either of those matters prevented the Claimant from identifying a preferred time for an interview as the reasonable adjustment he wanted the Respondent to make for him. His evidence suggests he was waiting for an interview time before deciding if the time allocated was suitable for him.

35. On 12 December 2019, Ms Mould sent an email to the Claimant informing him he had been shortlisted for 3 posts: Performance and Improvement Business Partner, Communities Manager: and Policy Officer. The Claimant was not shortlisted for the post of Policy and Equalities Manager. There were to be 2 interviews covering the 3 roles. The Claimant was offered an interview for the Business Partner, a higher band role (band K) on Monday 16 December 2019 at 12 - 1.15pm. He was informed the interview would consist of a test and an interview. The test would be provided on the day of interview and the Claimant would have 30 minutes to complete it. A comfort break would then be followed by an interview consisting of a series of questions based on the criteria within the job profile and person profile for the role. The claimant was informed the interview panel would comprise Ms Mould, Ms Johnson and Mr McLaughlin (Head of Democratic Services).

36. The second interview was for the role of Communities Manager and the role of Policy Officer, both at the same band as the Claimant's existing role. That interview was to be held on Wednesday 18 December 2019 from 1 pm to 2:30 pm. Again, the same interview format was identified for both interviews. The panel for the second interview was different comprising Ms Mould, Mr Dennis (Corporate Improvement and Risk Manager) and Mr McLaughlin.

37. At the end of the email Ms Mould sent she expressly states that "*If you require **any reasonable adjustments for the interview** please let me know and I will look into making the necessary arrangements" (highlighted text, Tribunal's emphasis)*. Ms Mould also requested that the Claimant confirm if he was able to attend the interviews at the arranged times.

38. At this point the Claimant had been provided with all the information about the arrangements for the interview, the start and finish times and the format. He knew what to expect so that if he had any difficulties with those arrangements the he could take up the offer of having "any reasonable adjustments for the interview". The Claimant did not inform Ms Mould that he had any issues with the timing of the interview or any other arrangements that had been made. Instead the Claimant decided he would not do anything right away to request an adjustment but would "*wait and consider his options*" (paragraph 22 CWS).

The Disputed Factual Issue

39. Two different accounts were given about the conversation that then occurred between the Claimant and Ms Johnson on 13 December 2019. The Claimant says that towards lunch time on Friday 13 December 2019, Ms Johnson asked him why he had not responded to Ms Mould's email. The Claimant says *"I told her about the issues I had and how they made me feel. She admitted seeing my request when the panel shortlisted me and suggested I go to see JM. I again told her how anxious and nervous I felt about doing this, as I said common features of how my disabilities make me feel when I am put under pressure, and she said "**Well Ok, do not worry about it, leave it with me, just accept the interview, I am seeing Jackie this afternoon and I will sort it out for you**". Knowing DJ was now speaking to JM about the timing of my interview I accepted the interview as I had been instructed to do by DJ"* (paragraph 23 CWS) *(highlighted text, Tribunal's emphasis).*

40. Ms Johnson recalls events differently. She had had a one to one with Ms Mould on 13 December 2019 at which it had been mentioned that the Claimant had not yet replied to the shortlisting email. Ms Mould asked Ms Johnson to speak to the Claimant about it. On returning to her desk Ms Johnson asked the Claimant about the email. He told her he was still considering his response due to his reasonable adjustment requesting his preference to be seen early. Ms Johnson confirmed she had seen this on the EOI but given the time of the interview was still well within his standard working pattern she had thought this was OK for the first interview which she had arranged. She told the Claimant she was not involved with arranging the second interview. Ms Johnson's evidence was: "*I said clearly that if there was an issue with any of them given his first interview was on Monday, he needed to make a decision and let Jackie know asap so it could be sorted. I also suggested he go speak to Jackie direct or give her a call as I knew she was available and talk it through with her if he was unsure about any of his interviews*" (paragraph 37 DJ).

41. On 13 December 2019 at 12:02 the Claimant sent an email to Ms Mould confirming his attendance at the interviews at the times offered and thanking her for shortlisting him.

42. On Monday 16 December 2019, the Claimant attended work as normal at 7am. He made no attempt to contact Ms Johnson or Ms Mould or anyone else if he was concerned about the timing of the interview. He worked until the interview at 12 noon without raising any issue. He attended the interview. He did not raise any issue at the interview about the timing or about his conversation with Ms Johnson on 13 December 2019.

43. Mr Ali explored this further with the Claimant in cross examination. He put to the Claimant the suggestion that the Claimant's recollection of the conversation with Ms Johnston was unlikely to be true given the subsequent chain of events which were more consistent with Ms Johnston's account. Mr Ali also suggested it was unlikely the Claimant would unequivocally accept the interview times in the way he did if he expected them to be changed. It was surprising that the Claimant made no reference at all in his email to the fact that he was expecting the times of the interview on Monday 16 December 2019 and Wednesday 18 December 2019 to be changed. Mr Ali contends that If Ms Johnstone had agreed to 'sort it out' (meaning changing the times for both interviews) the Claimant would have been expecting something different to happen (change of interview times) and when that did not happen would have said something about it to someone. Instead the Claimant proceeded with the scheduled interview at 12 noon and did not raise any concerns. It was put to the Claimant that all those inconsistencies meant the account he gave was not credible. The Claimant was unable to explain the inconsistencies in his own account of the events.

44. To help shed some light on the matter The Tribunal considered the Claimant's grievance letter dated 18 January 2020 (page B37) which was sent closest in time to this event. The Claimant refers to his discussion with Ms Johnson on 13 December 2019 and quotes the words he said she used:

> *"Deborah's response was that '**Oh yes I've seen that, why don't you popup and see her**". I didn't think this was a very smart thing to do to question the panel's decision before the interviews and thought my best course of action would be to go to the interview and do my best" (highlighted text, Tribunal's emphasis)*.

45. The Tribunal found that the Claimant had decided on 13 December 2019 to accept the interview times offered for both interviews. His email is an unequivocal acceptance of the times for both interviews which is inconsistent with his evidence that he was expecting the times to be changed. Prior to or at the interview on 16 December 2019, no concerns were raised by the Claimant about the arrangements for the interviews because he had accepted them. If the Claimant had felt disadvantaged in any way by the arrangements made and he was expecting the Respondent to make any adjustments, he could have requested them. Consistent with the Claimant's unequivocal acceptance the Claimant attended the interview at the prearranged time without raising any concerns. The Tribunal preferred and accepted Ms Johnson's account of the discussion on 13 December 2019 which is corroborated by the Claimant's grievance letter. The Respondent would not have

known and could not reasonably be expected to know that the Claimant felt disadvantaged in any way by the timings of the interviews.

Interview on 16 December 2019

46. At the interview on 16 December 2019 the Claimant thought he had performed well enough to get the job. At the end of his interview he asked Ms Mould when he would get feedback on his interview. He told her it would be preferable to have that before the second interview so that if he was successful in his first interview, he would not need to prepare for the second. Ms Mould agreed to provide feedback the next day. It was odd that the Claimant having raised this question about the second interview, did not mention any of the concerns he now says he had at the time about not performing well in interview due to tiredness because of his CFS or requesting a change of time before the second interview based on his experience at the first interview.

47. During the grievance investigation meeting on 5 March 2020 the Claimant was asked how he thought he had performed during the interview on 16 December 2019 and what sort of feedback he had expected to receive. His answer was "*I thought I'd done well. I thought I was invited upstairs to be given the job".*

48. Ms Mould recollection of the Claimant's performance at interview was that "*Overall the Claimant's interview went well, he was engaging, energetic and talkative answering all the questions. However, the other candidate was stronger and scored higher on several questions and was able to demonstrate skills and abilities across many of the skill assessment areas providing specific examples as well as completing the test*" (paragraph 33 JM WS)

49. Ms Johnson recalled the Claimant's interview went well he answered all the questions at length with confidence and provided examples. He showed no outward signs of fatigue.

50. The Respondent's witnesses' recollection of the interview was supported by the contemporaneous notes of the interview. The Claimant answered all the interview questions. On most questions he scored very well but scored less on 3 questions (Data/IT/Leadership on Equality at a Corporate level). The Tribunal accepted the evidence of the Respondent's witnesses that the scores awarded for each candidate were based on the answers given during interview. When those answers supported a higher score, it was given and when they did not a lower score was given. The panel made a fair assessment of the Claimant's performance measured against the answers he gave.

51. At this hearing, the Claimant presents a very different picture of his performance. In his witness statement (CW paragraph 25) he suggests that during the interview he had issues with memory loss, he was very confused, had difficulties concentrating, thinking properly and trying to remember things. He says he had to "*dig deep to construct and deliver some rational answers"*. The picture painted by the Claimant now does not fit well with how he presented/self-assessed his performance at the time.

Conclusions on the application of the 'Interview PCP' on 16 December 2019

52. The Claimant performed well in interview, but his performance was not as good as that of the successful candidate, Candidate A. Following the restructure, the Respondent had to put in place a process of selection for the new roles. It chose competitive interviews. The outcome of that exercise was that Candidate B and the Claimant did not perform as well as Candidate A.

53. When the times for the interviews were offered to the Claimant on 12 December 2019, the Claimant could have asked for different times if he felt the time would adversely affect his performance. The timing of the interview fell within the Claimant's adjusted working hours of 7 AM to 3 PM. The Claimant had accepted the interview time. He had not expressed any concerns about the timing before the interview or when he attended the interview or at the end of the interview. The Claimant was not substantially disadvantage in his performance at interview because of his CFS. He performed well. He has not proved the substantial disadvantage he relies upon that "*by reason of his CFS he became more tired later in the working day and did not perform well at interview".* For those reasons the Tribunal concludes the first PCP applied of scheduling interviews in the afternoon specifically at 12 noon on 16 December 2019, did not put the Claimant at a substantial disadvantage. The duty to make reasonable adjustments under section 20(3) EQA 2010 was not engaged and the Respondent has not failed to comply with duty under section 21. Accordingly, that complaint therefore fails and is dismissed.

Interview on 18 December 2019

54. On 13 December 2019 at 12:02 the Claimant had accepted the times for both interviews, one scheduled for 12 noon on 16 December 2019 and the second one for 18 December 2019 at 1pm.

55. On 17 December 2019, the Claimant received the requested feedback from Ms Mould. She told him he had been unsuccessful. She explained the positive aspects of his performance and the areas where he had not performed so well. She discussed the weaker answers he gave to the IT and Data Intelligence questions. The Claimant admitted these areas were not his strengths. Ms Mould thought the Claimant had taken the feedback provided on board constructively.

56. On the morning of 18 December 2019, the Claimant emailed his line manager Mr Clayton reporting in sick with stress. He asked Mr Clayton to inform Ms Mould that he would not be attending the interview scheduled for 1pm. For the first time the Claimant informed the Respondent that the scheduled time of 1pm was not suitable for him. For the first time he suggested his performance in the interview on 16 December was impacted by '*brain fog and confusion*' because his fatigue becomes "*worse throughout the day*".

57. Ms Mould responded by email that afternoon immediately offering to rearrange the interview and offering 2 alternative dates (Friday 20 December at 8.30am or 23 December at 8.30 am). The Claimant agreed that those were genuine offers made to change the time and Ms Mould would have had no idea how long the Claimant's sickness absence would last.

Conclusions on the application of 'Interview PCP' on 18 December 2019

58. The Claimant's complaint is that he was put at a substantial disadvantage in relation to the interview "*scheduled for 1 pm on 18 December 2020 that he did not attend due to his sickness absence, rather than attend at a time when he believed he would again be disadvantaged".* The problem for the Claimant is that this complaint is predicated on the basis that he did not perform well at his interview on 16 December 2019 because of CFS and that he was substantially disadvantaged at that interview by reason of his disability. The exchange of emails on 18 December 2019 demonstrates that when the Claimant spells out the difficulty, he says he has because of his CFS by informing Miss Mould that 1pm is too late, she promptly agrees to change the time. It was reasonable to infer that if the Claimant had made this request earlier it would have been granted earlier.

59. What the Claimant had done on the 13 December 2019 was unequivocally accept the time offered of 1pm. That time fell within his adjusted hours. No concerns were raised by the Claimant about the time after it was offered, before the interview on 16 December, at the interview when the second interview was being discussed or afterwards. The only concern the Claimant raised with the Respondent about the interview on 18 December 2019 was whether he would need to prepare for it if he was successful in his first interview on 16 December 2019. The claimant was not substantially disadvantaged by the PCP applied by the Respondent on 12 December 2019 of scheduling the Claimant's second interview at 1pm on 18 December 2019. The duty to make reasonable adjustments under section 20(3) EQA 2010 was not engaged. Accordingly, the Respondent has not failed to comply with duty under section 21 EQA 2010 and that complaint therefore also fails and is dismissed.

The Grievance PCP

60. A second PCP, the "Grievance PCP" was applied on 5 March 2020 by the application of the grievance policy "*not allowing an employee at a grievance meeting to be accompanied other than by a trade union representative or a fellow employee"*. The Claimant wanted his brother to attend the grievance meeting and asserts that this PCP put him at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled because by reason of his CFS "*he could not necessarily remember all that had been said in the grievance meeting on 5 March 2020 and so required a further witness (his brother) present to assist him in* ***later checking the accuracy of the record provided by the independent note taker****"*. The reasonable step the Claimant identifies the Respondent should have taken to avoid that disadvantage was to permit his brother to be in attendance or to allow a recording of the proceedings.

61. Prior to the grievance meeting, the Respondent had agreed with the Claimant that the services of a notetaker from the legal department would be made available. This was a separate department to the department the Claimant worked in. The note taker was provided as an alternative to recording the hearing or having the Claimant's brother attend to check the accuracy of the notes. It had been agreed notes would also be taken by the Manager conducting the hearing and the HR

officer. The Claimant would use his memory book for note taking which was his normal practice.

62. After the grievance meeting the independent notetakers notes were provided to the Claimant. With the benefit of his memory book the Claimant was able to check the accuracy of the notes taken and made some corrections/amendments. Neither the Manager nor the HR officer made any corrections/amendments to the notetakers notes. The Claimant's amendments were accepted by the Respondent. The Claimant was not substantially disadvantaged by having the services of an independent notetaker provided at his grievance meeting in comparison to a non-disabled person, attending a grievance without a companion and without the services of an independent note taker. The Claimant had those services provided to him and was able to check the accuracy of the notes. His ability to recall and check the accuracy of the notes is demonstrated by the fact that he was the only person in attendance who made amendments to the notes.

63. In those circumstances at this hearing, the Claimant put the substantial disadvantage in a different way. He suggested he needed his brother present for '*prompting to support him to answer questions*". From the Tribunal's reading of the notes of the grievance hearing it appeared that the Claimant had no difficulty in raising his grievance and in answering questions about his grievance. It was not clear to the Tribunal how the Claimant's brother could have prompted the Claimant to answer questions about the Claimant's grievance. In any event, the disadvantage the respondent knew or ought to have known about before the grievance meeting was about the accuracy of the notes provided.

64. Although the respondent did not agree to a recording it had agreed an alternative practical, effective and reasonable step of providing the services of an independent note taker. Just because the Claimant would have preferred a different step (recording the hearing/having his brother present) does not mean the step taken by the Respondent was not effective. It was clearly effective because the notes taken by the independent note taker were checked and corrected by the Claimant. The Respondent complied with its duty to make reasonable adjustments. For those reasons this complaint and all the complaints made under section 20 and 21 of the Equality Act 2010 fail and are dismissed.

Employment Judge Rogerson:

Date: 30 September 2021

Sent to the parties on:

Date: 8 October 2021

For the Tribunal:

Ms J L M Philpott