EMPLOYMENT TRIBUNALS

Claimant: Mr J Patel

Respondent: Lucy A Raymond & Sons Limited

Heard at: London Central (Remotely by CVP)
On: 14, 15, 16 and 17 February 2022 and 2 March 2022 (in chambers)

Before:
Employment Judge Heath
Mrs J Griffiths
Mr T Cook

Representation
Claimant: In Person
Respondent: Mr G Mitchell (solicitor)

RESERVED JUDGMENT

1. The claimant's claim of discrimination arising from disability in respect of his dismissal is well-founded and is upheld.

2. The claimant's remaining claims are not well-founded and are dismissed.

3. The parties are to write to the tribunal within 14 days of this Judgment being sent to the parties if they wish the tribunal to list this matter for a remedy hearing, setting out any directions they wish the tribunal to make.

REASONS

Introduction

1. The claimant, who has dyslexia, was employed by the respondent for just over a month at the end of 2020. He claims indirect disability discrimination, breach of the duty to make reasonable adjustments,

discrimination arising from disability, victimisation, breach of contract and unlawful deduction from wages. He also claims age-related harassment in respect of a comment made at his dismissal meeting.

The issues

2. There was initially a degree of confusion about what, if any, of the claimant's claims had been withdrawn at a preliminary hearing on 8 July 2021. The tribunal asked the parties to clarify this during a break, and Mr Mitchell was able to confirm that the issues the tribunal had to determine were accurately set out in the Agreed List of Issues within the bundle, which we annex to this decision.

Procedure

3. The hearing was listed for four days. Prior to the hearing the respondent had conceded that the claimant's dyslexia amounted to a disability for the purposes of the Equality Act 2010 ("EA 2010").

4. In preparing for the hearing, the tribunal observed that the claimant had set out how his dyslexia affected him in a Disability Impact Statement ("DIS"). The claimant was also diagnosed with anxiety and depression, for which he was receiving medication and talking therapy. The tribunal attempted to establish with the claimant at the outset of the hearing how his disability and his anxiety and depression might impact his participation in the hearing. We observed that the DIS identified problems with concentration, listening and taking notes at the same time, understanding documents unless they are in large font, capturing and absorbing information and recalling instructions. We told the claimant that participating in tribunal proceedings did involve these sorts of activities.

5. The claimant told us that he had not taken his medication on that day. He considered that his anxiety and depression might affect his participation in that his responsiveness and his attention might be compromised. He also told us that he had slept very little. Asked how the tribunal could attempt to mitigate those difficulties, the claimant said "Give me some time and I will let you know". He did not identify any adjustments to address his difficulties beyond the tribunal sitting late, and for there to be regular breaks. We encouraged the claimant to alert us to any difficulty he may be encountering. For his part, Mr Mitchell helpfully offered to slow down his questioning and to take regular breaks.

6. At 1.43 PM the claimant emailed the judge to say that he was feeling overwhelmed at the thought of being questioned for two hours. He said he could not recall everything due to his poor memory and was feeling the effects of lack of sleep. He could not think of any particular adjustment to address this.

7. In the circumstances, and at the claimant's request, we shortened the sitting day by starting at 11 AM on day two and three, and we took regular breaks. We offered the claimant a break every half hour. He did not wish to take a break each time it was offered. The claimant also told us that he felt anxious with numerous people in the CVP room. We therefore asked everyone apart from the tribunal panel, Mr Mitchell and the witness giving evidence to turn off their cameras. We assured the claimant that a tribunal

hearing was not simply a memory test, and that we would break down any questioning which caused him difficulty.

8. We were provided with a 606 page bundle. The claimant provided a witness statement and gave evidence on his own behalf. For the respondent, Mrs Lucy Williams, Chairwoman and Managing Director, and Mr Mario Fernandez-Pinado Alonza ("Mr Fernandez"), Compliance and HR Officer and provided witness statements and gave live evidence in that order.

9. The claimant requested that Mr Fernandez should not be allowed in the CVP room while Mrs Williams gave evidence. His basis for this request was that he did not want witnesses to adjust their answers to questions which were going to be similar in nature. He wished to catch out inconsistencies between the two witnesses. Mr Mitchell resisted this application citing the general principle of open justice and submitting that there was no basis for one witness to be excluded. We did not allow the claimant's application, and we permitted Mr Fernandez to remain in the CVP room while Mrs Williams gave evidence. This is the normal practice of the tribunal in England and Wales unless the interests of justice require it. A mere desire to catch out inconsistencies (which might be a factor in many cases) did not present a strong case for departing from the normal practice.

10. After dealing with some preliminary "housekeeping" issues, the tribunal took the first morning of the hearing to read the witness statements and documents they referred to. The claimant gave evidence first. The tribunal heard evidence into the fourth and final day. Mr Mitchell had provided a skeleton argument at the start of the hearing, and gave oral closing submissions on the afternoon of the fourth day. The claimant had provided written submissions but did not feel able to provide oral submissions as he felt very anxious. We offered him the opportunity to communicate through the CVP chat function. We explored with him the possibility that he might provide further written submissions the following morning, although this was not a sitting day. This issue was explored, but in the end the claimant wished to "draw a line" under things and not to prolong his anxiety into the following day. He asked us to accept the existing submissions as his final submission.

11. The tribunal reserved its deliberation for a further day in chambers, and reserved its decision.

The facts

12. The claimant is a 26-year-old man who was first diagnosed with dyslexia in 2011, when he was in the sixth form at school and struggling with his A-Levels. He took four years completing his A-levels, before going to university where he studied Accounting and Management. He obtained a first-class honours degree, and also gained, as part of his course, part exemptions to Association of Chartered Certified Accountants ("ACCA") qualifications.

13. While in sixth form he had a diagnostic assessment of his dyslexia. At university there were further assessments, leading to a DSA Study Needs

Assessment Study Aid and Study Strategies Report. He was deemed entitled to learning support at university.

14. The DIS highlights the following difficulties (among others) experienced by the claimant: -

    a. "*I continually have problems with concentration, and I find it extremely hard to listen and take notes at the same time. I struggle with understanding documents unless they are in large font and printed format".*

    b. *"I have difficulty in capturing and absorbing information by listening, and when this is rushed, I cannot absorb everything. I also require complete silence in order to fully focus on what is being said and take notes at the same time".*

    c. *"I have difficulty in recalling instructions. I often misread, and since reading puts constraints on my mind and eyes, I need frequent breaks. Thus, my reading is slow, inefficient and erroneous compared to abled people. I require time to absorb and process information communicated to me. Consequently, I require tasks/procedures to be re-explained to me".*

    d. *"Due to my mental impairment, I often suffer from being overwhelmed, mental exhaustion, anxiety, burnout, exacerbation of my disability conditions and being stretched beyond my capabilities, all of which I experienced during my school years without reasonable adjustments".*

    e. *"… My ability to process information and my memory is slower and poorer than average, forcing me to study for much longer than my peers. As a result, I have always had to prepare for exams many months in advance when compared to my peers/colleague*s".

15. Between June 2015 and August 2018 (while he was an under-graduate) the claimant was employed as a Finance Assistant at a firm of accountants. In August 2018 the claimant was employed as a Trainee Accountant at a firm, BKL. Whilst employed here a diagnostic report by the British Dyslexia Association was carried out. The claimant attempted to take to professional exams whilst working for BKL, both of which he failed as a result, according to him, of the employer's failure to make reasonable adjustments.

16. In 2019 the claimant went back into full-time education and gained a Distinction in an MSc Management course at university.

17. The respondent is an independent, international insurance and reinsurance Lloyd's broker based in the City of London. The company was founded by Mrs Williams, who has 42 years' experience in the insurance industry, in 2000. It is a small company employing 17 people at the time of the hearing. It is divided into the following teams, Broking, Finance and Claims, Compliance and Human Resources.

18. Mr Fernandez was and is the respondents Compliance and Human Resources Officer. He does not have a background in human resources, having practised as a medical malpractice and insurance lawyer in Spain prior to taking up this role.

19. The person in charge of the Finance and Claims team at the time the claimant was employed was Mr Ananthakrishan (referred to in the hearing by his first name, Ganesan). Also in the Finance and Claims team were Ms Romero (referred to in the hearing by her first name Amalia) and Ms Gomez. Mr Katsarski was also a Claims Executive who assisted with IT.

20. Mrs Williams has considerable personal knowledge and experience of dyslexia, as close family members have the condition. In 2018 she looked into starting a charity called Shapes and Forms to support children with dyslexia. On 5 March 2020 there was a reception at the Wallace Collection to launch Shapes and Forms. This event was attended by the company's employees and 120 guests. The invitation provided some background about Mrs Williams is family's personal experience and also general information about dyslexia. In particular it was set out "*Ten per cent of the population are believed to be dyslexic, but it is still often poorly understood. With the right support, the strengths and talents of dyslexic people can really shine, just as my family have. Dyslexia is a neurological difference can have a significant impact during education, in the workplace and in everyday life. Dyslexia is actually about information processing. Dyslexic people may have difficulty processing and remembering information they see on here, which can affect the learning and the acquisition of literacy skills. Dyslexia can also impact on other areas such as organisational skills*".

21. Prior to October 2018 the respondent had employed an accountant in-house. An external firm of accountants, MKS, had also supported the Finance team. When the in-house accountant left, numerous problems emerged about how he had been doing his job. This caused substantial difficulties for the respondent.

22. On 16 October 2020, a Mr McCarthy from MKS, emailed all members of the Finance and Claims team, cc'ed to Mrs Williams, to set out problems experienced by the team. He identified that the team was focusing on the inherent historical unreconciled balances and trying to amend them. He pointed out that while this was being done the team still had to process current work in a timely fashion to keep up-to-date on work flowing through. He assumed that there would be regular day-to-day problems of clients and underwriters paying amounts it did not reconcile with their account. He asked how the team was dealing with this problem on a day-to-day basis while it was trying to correct older balances. If a process to address these problems needed to be agreed, he said that he could discuss this when he came into the office the following week.

23. Mr Ananthakrishan replied to this email the same day pointing out that "*many activities in the Finance Dept are kept on hold and there is a huge backlog to clear since only Amalia is available full-time to attend to LAR finance jobs*". He pointed out that members of the team were fully committed in terms of their time. He concluded "*Situation could change only if we were able to get a hand for Finance and Lucy is well aware of*

this. Until that happens, reconciliation of clients' payments will only be in fits and starts and we may not see any wholesome progress on this front for the foreseeable future".

24. Mr McCarthy responded, again the same day, to say that "*from what you have told me it is extremely unlikely that we will get anyone at any level of competence that has Brokersure [a specific software package] system experience. As I highlighted before, any additional staff resource needs to be experienced and preferably part qualified in accountancy with Spanish-speaking or Insurance experience secondary or merely an advantage…. We really need to resolve the current endemic problems and get a system that works so that today's work is being processed correctly otherwise we are getting nowhere*".

25. On 20 October 2020 Mrs Williams responded to this email chain saying that she could not understand Mr McCarthy's comments. She said that the finance team understood the systems and that "*we are aiming for a qualif[ied] acca….. We will advertise for an acca accountant with a proven record in the insurance market*". It appears, therefore, that the discussion towards the end of October 2020 between Mrs Williams, Mr Ananthakrishnan and Mr McCarthy of MKS was about recruiting someone to the Finance and Claims team to help address the historic difficulties and to help with ongoing work.

26. The respondent advertised for a qualified accountant to join them. 12 people applied, two of whom were interviewed. Neither of these was deemed appointable.

27. At this time the claimant was registered with the recruitment consultant Reed. It is not entirely clear how it happened, but, despite not being a qualified accountant, the claimant's CV was passed on to the respondent. When the respondent's attempts to recruit a qualified accountant came to nothing, Mr Fernandez took the decision to invite the claimant for interview. He was impressed by the claimant's CV which set out some experience with insurance (as an intern) and that he was Part ACCA accredited.

28. On 28 October 2020 Mr Fernandez emailed the claimant to invite him for an interview for the role of Accountant on 30 October 2020. The email said the interview would be a competency-based interview. The claimant responded later that day saying he would attend the interview but asked for job descriptions to be emailed to him and queried whether he needed to bring his academic certificates. After a couple of further short emails Mr Fernandez said that the role would be fully explained at interview and urged the claimant to focus on his professional experience for the competency-based interview. He advised the claimant to investigate how a Lloyd's reinsurance brokers company operates.

29. On 30 October 2020 the claimant attended for interview. The panel interviewing him was Mrs Williams, Mr Fernandez and Mr Ananthakrishan. The evidence from both of the respondent's witnesses was that Mr Fernandez normally takes notes during meetings. There were no notes of the claimant's interview, but it is difficult to be certain about whether this was because none were taken, or none could subsequently be located.

Either situation appears odd in a regulated organisation. The evidence given by the claimant was at odds in a number of respects with that of the respondent's witnesses. We make the following findings in relation to the interview: -

a. The claimant in his witness statement briefly refers to being asked competency-based questions. Beyond this, we were given no sense of the extent to which his skills and experience were explored.

b. At some point the claimant explained that he had dyslexia. This was a matter of huge importance to Mrs Williams. On the evidence we have heard, we consider that this revelation by the claimant was a major factor and was decisive in him being offered the job. As set out earlier, Mrs Williams has close family members with dyslexia and had sought to set up a dyslexia charity. In her evidence to us she said that the claimant "*landed in the job because of his dyslexia*" and that it was "*an enormous privilege to help*" the claimant. She said to the claimant during cross examination "*you were my blue-eyed boy, my project to show what people with dyslexia can achieve*".

c. The claimant offered the respondent diagnostic material on his dyslexia which he felt would demonstrate that he had the condition and would explain the impact it would have on him in the workplace. One of the panel, probably Mrs Williams, told him that this would not be necessary and that she believed him and "*waived every requirement*".

d. Mrs Williams, though she has considerable direct experience of dyslexia, appeared to view the condition entirely through the lens of her personal experience. There was no sense that the respondent at the interview sought to enquire how the claimant's dyslexia affected him as an individual and what specific requirements he might have and what the respondent could do to address any needs.

e. As is often the case in small businesses, the chair/managing director appeared to wield considerable power and influence. We imply nothing sinister in this, it can often the way in small companies. Mrs Williams took the decision to offer the claimant to the job, and other panel members almost certainly fell in line. This is despite the fact that the claimant was not "*an acca accountant with a proven record in the insurance market*" and that his skills and experience fell short of what Mr McCarthy had identified as being required.

f. There would have been some discussion at interview about the claimant's ACCA qualifications. We find that he was on a course, but we do not find that the respondent agreed at the interview that it would fund the remainder of his course. We do not find that the claimant specifically set out any need at interview for any professional objectives to be signed off by an ACCA qualified supervisor. The claimant was told that the respondent would pay for

him to undertake Chartered Insurance Institute ("CII") qualifications once he had passed his probation period.

30. The claimant was offered the job with a start date of 2 November 2020, and on 30 October 2020 was sent the contract of employment by email by Mr Fernandez. Clause 5.1 of the contract effectively sets out his job description. He was employed as an Accountant Assistant, and his duties were "*to assist the Accountants within Finance and Accounts Department from the Company. Your main tasks will be the data entry on Brokersure in respect of premiums, upload underwriting documents on LIRMA/Lloyds electronic platforms – CLASS & BUREAU & IMR, deal with and resolve queries from CLASS & BUREAU & Xchanging, chase clients for prompt payments of premiums within due dates, deal with premium warranty extension requests from the clients, generate MIS reports from the Company's database, any other jobs assigned by the company from time to time*".

31. The claimant's normal hours of work were 9 am to 6 pm for a five day week, with an hour's break for lunch. The contract expressly indicated that he might be required to work such additional hours as may be necessary for the proper performance of his duties without extra remuneration. There was a Working Time Regulations 1998 exemption on the 48-hour week.

32. The respondent has a HR General Procedure which sets out that CII support for exams would be given after the probation period has been completed.

33. On 31 October 2020 the claimant emailed Mr Fernandez to say that he had "thoroughly read" the employment contract but did not agree with the Working Time Regulations exemption. No other problems with the contract were identified by the claimant, and he did not mention of funding his course or signing off any objectives.

34. On 2 November 2020 the claimant commenced employment in the respondent's offices in the City. At this time Mr Ananthakrishan was on holiday. Ms Romero was assigned to begin training the claimant. The claimant did not have a computer of his own at this stage, and he sat next to Ms Romero who showed him on her computer how to carry out tasks. We find that Ms Romero would have been made aware that the claimant had dyslexia. As we have found that there was no real attempt to explore how the claimant's dyslexia affected him as an individual, Ms Romero would not have had any significant knowledge of how the claimant's dyslexia impacted him or his ability to carry out his work. We find that she would have been told, probably by Mr Fernandez or Mrs Williams, that she would need to take the claimant's training slowly and to repeat things to him. We find that the claimant informed the respondent that he needed to take things slowly and have things repeated to him, but that he did not articulate any further needs for adjustments.

35. On his first day at work the claimant had a discussion with Mr Fernandez about a couple of matters. First, he raised his objection again to the Working Time Regulations opt out, and he was told that this would only apply in exceptionally busy times. The claimant also gave evidence to us that in this conversation Mr Fernandez "reneged" on the agreement

reached at interview to pay for his exams and sign off on his professional objectives. As set out above, we do not find that there was such an agreement. We do not find that Mr Fernandez reneged on anything. However, we do find that the claimant did raise that he was looking for some the kind of support with his training.

36. On his first day at work the government announced that there would be a further lockdown, and that people would be advised to work from home wherever possible from 5 November 2020.

37. On 4 November 2020 the claimant emailed Mr Fernandez attaching a breakdown of costs for the four remaining papers in his ACCA qualification, saying that he wished to attempt his first paper in March 2021. He further said "*I would like my membership fee to be paid prior to my probationary period ends only because without paying the membership fees, I cannot book the exam in March 2021. If LAR can pay for my membership fees, then I can book my exam paper for March 2021 (from my own pocket) and attempt and pass the exam paper prior to my probationary period ends of March 2021 exam paper. Please get back to me with your thoughts/agreeance"*. The reference here to the probationary period supports our finding that the respondent did not agree during the interview simply to pay for the claimant's exams. It also tends to support the respondent's evidence that they would support CII training after the probation was satisfactorily completed, as set out in their HR procedure.

38. From 5 November 2020 the claimant, along with most of the respondent's staff, worked from home. He was supplied with a laptop which was bought on 4 November 2020.

39. The claimant continued to be trained at home. There was a combination of training and on-the-job learning supervised, initially, by Ms Romero. He communicated with her, and any other colleagues, in a combination of ways. Some of the training and working with colleagues was done via Microsoft Teams, which facilitated video-conferencing and screen sharing. Additionally, he spoke to his colleagues over the telephone and also using WhatsApp video and WhatsApp text messaging. The parties have produced copies of WhatsApp text messages between the claimant and Ms Romero and the claimant and Mr Ananthakrishan. The other forms of communication left no record.

40. From the second week of the claimant's employment Mr Ananthakrishan, who was his line manager, became involved in his training. Mr Ananthakrishan similarly was aware that the claimant had dyslexia, and that the claimant would need more time to learn things and complete tasks and that he would benefit from repetition of instructions.

41. During his homeworking the claimant had some technical issues with computer hardware and software. In this regard he was often assisted by Mr Katsarski, and we were shown WhatsApp messages between him and the claimant. One of the problems the claimant had was the laptop switching itself off because it was overheating. This was because the claimant left it on at night, and this problem was solved when he began switching it off at night. He also had a problem with the router he was

using, which was resolved when he spoke to his Internet provider. He also had problems with remote applications sometimes dropping off.

42. On 10 November 2020 Mr Fernandez replied to the claimant's email of 4 November 2020, in which the claimant had requested payment of ACCA membership fees. Mr Fernandez apologised for the delay, said that Mrs Williams was on holiday that week, and that he would review with her payment of the fee prior to the probation period. He asked the claimant to confirm the amount was £201.

43. On 12 November 2020, the claimant confirmed the total amount for the membership fee, and stated that if the company paid that then he could pay for his exam in March 2021. He said if he could do this, he could start preparing for the exam then. He said he would like to be reimbursed in April after his probation ended, if he were successful. He said that he wished for the membership fee to be paid then so that he could finish all his papers within 2021.

44. Mr Fernandez replied the same day, again saying he would review this issue with Mrs Williams. He asked whether the claimant was enjoying his training. The claimant responded "*I am enjoying the training however there are constant issues with connectivity and the laptop*". There were a couple of further emails in which the claimant was pointed towards Mr Katsarski for IT support. Mr Fernandez concluded "*let me know if you need anything*". We find, on the one hand, Mr Fernandez did not proactively attempt to gauge how a disabled employee was coping in the workplace or to establish whether any support was needed. On the other hand, we find that the claimant, although he was prepared to articulate the difficulties he was having with computer issues, did not inform Mr Fernandez, or anyone else, of any difficulties he may have been having.

45. On 17 November 2020 the claimant and Mr Fernandez exchanged messages on WhatsApp about the claimant's faulty router. Mr Fernandez let the claimant know that he was on holiday that week but would be available "*if you need anything urgent*". The claimant asked "*out of curiosity did you have a word with Lucy [Williams] by any chance? Also is there anyone within LAR who is a qualified accountant?*"

46. On 19 November 2020 the claimant telephoned someone at ACCA to enquire about sign off of performance objectives. He received an email that day ACCA to confirm that performance objectives could be signed off by anyone who was the claimant's "*nominated supervisor and is a qualified accountant*". The claimant enquired by email whether the nominated supervisor could be an external qualified accountant where accountancy services were outsourced. The response was "*yes, if there is a qualified external accountant who completes some work within your workplace they will be eligible to sign off your performance objectives. However, you should set up meetings between the accountant and your line manager so that they can discuss your work and your role. This gives the accountant an insight into your work to gain an understanding of what you do, and decide whether you have completed enough work to claim each objective*".

47. On 23 November 2020 Mr Fernandez responded to the claimant's WhatsApp message of 17 November 2020 and asked about the problems with the router. The claimant said he had sorted out that problem, and said "*I have spoken to ACCA and will forward you their reply. What they did confirm is that I can have an external firm which we outsourced to sign off my professional objectives. However, I would like you to speak to the external accountants for LAR and forward those same emails which I'm going to forward you to confirm whether they were able to do this*".

48. On 23 November 2020 the claimant forwarded Mr Fernandez the emails from ACCA about sign off by an external accountant. He said "*As previously highlighted on the phone to you, please see below conversations with ACCA where I require our external accountant to become my supervisor in order for the 9 professional objectives to be completed and signed off. It is imperative for the external accountants to confirm this so that I can record his/her details as my supervisor*". Mr Fernandez, who was on holiday, replied that day there would soon be a meeting with the accountant where this could be discussed further

49. Mr Fernandez responded "*Perfect great news! You will meet the accountant shortly and you will be able to discuss this with him*". Later the claimant said "*Yes it is very important to me to finish the exams and meet the 9 objectives alongside competing my exams as I want to qualify as an accountant next year by Dec*".

50. On the evening of 26 November 2020, while Mr Fernandez was still on holiday, the claimant messaged Mr Fernandez to ask about a pay discrepancy and enquired about the company's pension policy. Mr Fernandez replied on 27 November 2020 to say the information would be sent by post. There were further messages, including one in which Mr Fernandez said that he could discuss the issue with Mr McCarthy, the external accountant, who would be in the office the following Friday. On 30 November 2020 at 11:38 PM, the claimant sent a further enquiry by WhatsApp.

51. Going back to 25 November 2020, Mr McCarthy emailed Mrs Williams about a number of matters. He mentioned the respondent's ongoing problems with Brokersure records and client money reconciliations. He said that he would be reducing his working hours in the next month for personal reasons. He mentioned that Mr Rushmer, a partner at MKS, had come up with an idea on how to assist on resolving the historical issues and provide a practical way forward so that the problems in the accounts department would remain under strict control and that everything would be processed correctly. He suggested discussing these proposals at a meeting after 2 December 2020.

52. On 1 December 2020 Mr Rushmer wrote to Mrs Williams with details of a business outsourcing proposal. The first part of the proposal was to provide assistance with historic reconciliations. MKS would provide training on using Brokersure, assist with reviewing monthly bank reconciliations and then provide a full review of the client and underwriter balances and propose any adjustments in order to reconcile the balances to the end of September 2020. The charge for this would be £8400 plus VAT. He then proposed an arrangement to ensure that business books

and records were fully reconciled on a monthly and ongoing basis. A member of MKS staff would attend the respondent's premises two days per month to provide services. The monthly charge for this for the respondent would be £3100 plus VAT.

53. Pausing, and reviewing the claimant's training since he started employment, the claimant claims that his training was "*extremely intense*" and conducted at pace. He alleges he was required to work extra hours and was scolded aggressively for mistakes caused by his disability while he was working from home. The tribunal has not had the benefit of hearing from Mr Ananthakrishan, who retired from the respondent company to live in India, or Ms Romero who left the respondent and lives in Spain.

54. We heard, and accept, evidence from the respondent's witnesses that the claimant was not subject to any targets whilst he was working at the respondent. Because of the length of his employment, most of what he was doing was training, on-the-job training and a few tasks which were checked by other members of the Finance and Claims team. We are mindful that his experience and qualifications fell short of what the respondent was looking for, and we question whether this, alone, may have meant that he was always going to find things difficult.

55. We are mindful also that although we have seen the WhatsApp messages passing between the claimant and Ms Romero, and him and Mr Ananthakrishan, there has been no record of Microsoft Teams and WhatsApp video interactions. We have gone through the WhatsApp messages in detail, and would observe that there is nothing in them that supports allegations of aggressive scolding of the claimant, intense or fast-paced training or indeed of working extra hours. There appeared to have been five days where the claimant worked after 6 PM. On one of these days the last message was at 6:57 PM, and on the other four the last messages were before 6:15 PM.

56. The interactions with Ms Romero tend to suggest that she was patient and supportive of the claimant. The claimant himself acknowledged to Ms Romero on 6 November 2020 "*Without you I'd be struggling… It's slow progress but better than nothing I guess. Thanks again sis!*" Ms Romero assured him on this date "*You will get the speed later*". On 11 November 2020 he told Ms Romero he was confused and stressed by the fact he could not find something. Ms Romero responded that he was not to worry as it was the same for her at the beginning. That same day he apologised for making a careless error, and she replied "*no problem*". The messages are peppered with praise such as "*great*", "*well done*", "*brilliant*" etc.

57. The WhatsApp interactions with Mr Ananthakrishan are also on the face of them suggestive of a patient and supportive approach. The only thing we could find which could conceivably seem less than supportive occurred on 27 November 2020 when Mr Ananthakrishan asked the claimant how things were going as he had only done three endorsements that day (up to 12 would have been expected). He hoped the claimant would "*pick up speed from Monday*". The claimant responded that he spent significant time on one particularly difficult issue, that even Ms Romero could not resolve. The following exchange occurred (Claimant "JP", Mr Ananthakrishnan "GA"): -

"GA - In future please discuss with me first.

JP - I will try, speed is picked up when repetition is applied.

GA - Amalia is also relatively new

JP - I did, but I couldn't wait for you forever so I had to take initiative and called Amalia

GA - that is fine no problem

JP – OK but she seems to know a lot

GA – Yes she is very efficient. But there are certain things which are beyond her where I can be of help

JP - I'm still finishing this one which I am working on so it shows I am not avoiding work or going slow for the fun of it. Things take time to go into my head

GA - Yes I appreciate that

JP – Okay that's fine, I mean I have applied the approach of going to you first but if you take too long then I will go to Amalia

GA – Ok

JP - It's not even been a month plus working from home hasn't been easy

GA – Yes I know

JP – Exactly.

JP – So please bear with me, otherwise I will make countless mistakes which I do not want to do

GA – Ok thanks

[there was further discussion about a specific task]

JP - Thank you for your help!

GA - Well done and thank you for your efforts. You are indeed a quick learner and you have done well. It is quite natural for someone new like you to be cautious and slow initially but that is essential prerequisite for good learning. Have a great weekend.

JP - Thank you for the compliments".

58. It is, of course, conceivable that Ms Romero and Mr Ananthakrishan behaved in a completely different way whilst on video. However, we find it more likely than not that the WhatsApp messages give a realistic flavour of the way in which the claimant's colleagues interacted with him. We consider that it is more likely that there was some kind of perceptual gulf between the claimant and his colleagues. What is meant, for example, as

a genuine inquiry like "*Have you finished that yet?*" can be interpreted by the receiver as brusque and pressurising. It can later be recalled as something like "*Haven't you finished that yet?"* and remembered as having been delivered in an exasperated or aggressive manner.

59. In addition to the WhatsApp messages, we bear in mind that the claimant said to Mr Fernandez that he was enjoying his training and only raised issues about the IT. We also take account of the fact that the claimant made no contemporaneous complaint about how his training was going. The claimant was someone who was able to articulate his disagreement with the Working Time Regulations opt out with his employer, and was prepared to pursue issues concerning payment of ACCA membership and sign off of professional objectives in both email and WhatsApp messages (including late at night whilst Mr Fernandez was on holiday). We consider that if his employment was "*4 weeks of constant abuse, total disregard of my disability and unscrupulous behaviour from the respondent*", as he asserts in his witness statement, then this would have left some sort of trace in the documentation. There was none.

60. That said, and again acknowledging that the absence of Mr Ananthakrishan and Ms Romero as witnesses leaves something of a hole in the evidence, we consider that the Finance and Claims team began to have concerns about whether the claimant was able to perform his role effectively. Prior to his employment, the respondent had been looking for a qualified accountant who spoke Spanish, with experience of the insurance market. His recruitment was against the background of the Finance and Claims team having significant historic difficulties which they were struggling to address while keeping on top of ongoing work. The role Mr McCarthy had suggested was not the role the claimant was recruited to - he was not qualified, he spoke no Spanish, he had no experience of Brokersure and his experience in the insurance industry was confined to 2 months as an intern. We consider, on the balance of probabilities, that the likelihood was that Mr Ananthakrishan considered that the claimant was not up to the task for which he had been recruited, and the Department was not making the improvements identified as necessary by Mr McCarthy. We find that he was concerned that it was taking the claimant too long to do tasks allocated to him.

61. From the evidence in the DIS, which the claimant referred to in his witness statement, we find the overwhelming likelihood is that the claimant's dyslexia, with his attendant difficulties processing information, memory problems, difficulty concentrating, meant that the claimant was in fact taking longer to do certain task than might be otherwise expected.

62. We have considerable sympathy with the claimant's position of having to work from home after just two days in the office, and his line manager being absent on holiday for at least a week of his short employment. The history of the difficulties in the Finance and Claims team would also suggest that those tasked with training the claimant would have had extremely busy jobs of their own in addition to training and supervising the claimant. We find that it is likely that there may have been at least some frustration with how the claimant was progressing with his training.

63. We find that towards the end of November it is highly likely that Mr Ananthakrishan told Mrs Williams that he was concerned about the claimant's skills. We accept the evidence at paragraph 29 of Mrs Williams's witness statement that "*the claimant's employment was not going well*", and at paragraph 30 that the claimant "*didn't listen to instructions given by Ganesan, despite him repeatedly explaining which tasks needed completing*". We find that it is also likely that Mr Ananthakrishan concerned about aspects of the claimant's attitude, for example the message "*I couldn't wait for you forever*", and that he expressed concern in this regard to Mrs Williams. The respondent's witnesses have sought to characterise the claimant as being "*very discourteous and very demanding with no consideration for other people*" and suggested that he was defensive and demanding. We find this is a considerable exaggeration. The claimant was persistent in asking questions about his ACCA membership, and may have shown poor judgement in messaging Mr Fernandez late at night while he was on holiday; but his persistence was due to the fact that he was not getting any answers. If the claimant was behaving in the wholly inappropriate way suggested by the respondent, we, again, find it likely that it would have left at least some trace within the documentation. There is none.

64. We find that on or around 1 December 2020 Mrs Williams made the decision that she would dispense with the claimant's services and take up the proposal from MKS to deal with the historic problems and provide ongoing support to the Finance and Claims team. We find that she had been made aware by Mr Ananthakrishan that there were concerns about his ability to do the role he had been recruited to do. Mrs Williams was asked why she needed to decide so quickly at the beginning of December 2022 dismiss the claimant and engage MKS. Her response was that the claimant had been pressurising her and that she had to take the decision. She went on to say "*I had taken the wrong decision in giving a dyslexic person the job*".

65. On 4 December 2020 the claimant and other members of staff attended the offices in the City to work. The claimant was called into a meeting at around 10.30 which he thought was to discuss arrangements to sign off his professional objectives, as he had discussed with Mr Fernandez. This meeting was one which led to the dismissal of the claimant, and was therefore clearly a meeting of some considerable importance. Again, there were no notes of the meeting, either because none were taken by Mr Fernandez, or none were kept by him.

66. Again, there is a conflict of evidence between the claimant and the respondent about what happened at the meeting. We find that in addition to the claimant, the meeting was attended by Mr Ananthakrishnam, Mrs Williams and Mr Fernandez. The fact that there were no notes taken at the meeting and that no dismissal letter was provided to the claimant until an undated one was provided on 4 January 2021 has not made finding facts in relation to the 4 December 2020 meeting easy.

67. The subsequent undated "dismissal letter" provided on 4 January 2021 is very brief and refers to a restructuring of the financial management and administration of the company meaning the claimant's position had been replaced. In the grievance the claimant made on 11 January 2021, he said

that there was no mention of a restructuring in the finance department. He advanced that Mrs Williams had that it was not possible to sign-off on his professional objectives.

68. We resolve this dispute in the claimant's favour. While we find that the proposal from MKS to provide outsourced services did in fact form part of the reason to dismiss the claimant, we note that at the time of his dismissal no agreement appears to have been concluded. Additionally, we can see how the respondent might not have wanted the claimant to be talking to his former colleagues when he left the office on the day of his dismssal about any restructure to the finance department. On balance, therefore, we find that the respondents did not refer to the restructuring proposal in the dismissal meeting.

69. The parties are agreed, however, that Mrs Williams made a comment at this meeting about the claimant being too demanding, in common with his generation of millennials. We find that Mrs Williams did indeed make such a comment. We find that during this meeting the claimant was asking for feedback as to why he was being dismissed, and that one of the things that was offered by Mrs Williams was that the respondent found him too demanding (probably in the context of his requests for funding of his ACCA course and sign-off of his professional objectives) and that this was a trait of the millennial generation. We find that the claimant interpreted this comment as suggesting that he had been given everything "on a plate". We find that he was distressed about this comment, not so much of it relating to his age but more because he felt, as a disabled person, brought up by a single mother who prioritised his education, and who himself had overcome numerous barriers to achieve academic success, that very little in life had been handed to him on a plate.

70. The claimant further stated in his witness statement that Mrs Williams went on to say that she was looking for a qualified accountant in his 30s. We do not find that Mrs Williams made this remark, in keeping with our finding that there was no discussion about what would replace the claimant.

71. Mrs Williams agreed to pay the claimant up until the end of December, in excess of his one-week contractual notice. He was asked to, and did, return the company laptop.

72. On 8 December 2020 there was a meeting between personnel at MKS and Mrs Williams (and possibly others). Mr McCarthy had emailed on 4 December 2020 chasing up emails he had sent on the proposal for work going forward. Also on 8 December 2020 the respondent set up a standing order mandate in favour of MKS.

73. On 3 January 2021 the claimant emailed Mr Fernandez asking when he would receive his final pay, and asking for a dismissal letter stating the grounds of his dismissal and what rights he had to appeal. Mr Fernandez, addressed the pay issue and stated that the dismissal was because of a restructuring to the accounts department, which had been explained to the claimant at the meeting of 4 December 2020.

74. On 4 January 2021 Mr Fernandez emailed the claimant an undated dismissal letter. The letter was brief, setting out that because of the restructuring of the financial management and administration the claimant's position as an accountant assistant had been replaced. Mr Fernandez said this had been explained to the claimant during the meeting of 4 December 2020. It was stated that the restructuring "*is not related to individual performance*" and set out the appreciation of "*all the good work you have done during your employment*".

75. On 11 January 2021 the claimant put in a grievance. In it he referred to the respondent agreeing during interview to support the claimant's endeavours towards completing his ACCA qualification and signing off his professional objectives. He said this had been reversed. He went on to cover the dismissal meeting of 4 December 2020, stating that there had been no mention that his role was no longer required because of restructuring. He said that he had been told that he was dismissed because the external accountants could not sign off his professional objectives. Under a heading "Disability Discrimination" he complained that Mr Ananthkrishnan had constantly rushed him to complete his tasks. He said that he had alerted Mr Ananthkrishnan and others to his dyslexia and his requirements for extra support, and that he had told them that he could not be rushed as this would prevent him from learning. He said he was aggressively pushed to work late and was rushed and not given enough time to process, understand and absorb information. He said that he had intended to bring this to Mrs Williams attention at the meeting of 4 December 2020. He went on to mention the comment Mrs Williams made about millennials and her requirement for a qualified accountant in their 30s.

76. Mr Fernandez took responsibility for dealing with this complaint. He told the tribunal that he had no specific experience in handling employee complaints, but had some experience in dealing with complaints relating to call handling. When he received the grievance he reported to Mrs Williams and spoke to Mr Ananthkrishnan and Ms Romero. He believed he had records of discussions, but none had been produced to the tribunal. It did not occur to Mr Fernandez to seek any further information from the claimant in light of his discussion with the respondent's employees. He put together a reply to the claimant, and could not remember if he had a legal support.

77. The respondent replied to the claimant's grievance on 16 March 2020 by letter pp'd by Mr Fernandez on behalf of Mrs Williams. The letter is eight pages long and will not be set out here. The structure of the reply is that the claimant's allegations were set out and responses were made to them. In short, it was denied that any guarantee was provided at interview about the support that would be given to the claimant, and no agreement was reneged on. The respondent denied dismissing the claimant because they could not arrange for his objectives to be signed off, and asserted that the decision to dismiss was based on the proposal from MKS to carry out the outsourced work, and that this had been explained to him at the meeting of 4 December 2020. Disability discrimination was denied, with it being asserted that the respondent was aware of the claimant's dyslexia, that Mrs Williams had a personal and family interest in the condition and that it was "*a positive factor influencing your recruitment to the company*".

It was advanced that the requirement for the applicant to be qualified was waived in the claimant's case because of his condition. It was set out that Mr Ananthkrishnan had been supportive of the claimant, and that the claimant's contract required him occasionally to work additional hours necessary for the proper performance of his duties. The respondent asserted that it had been clear from the claimant's attitude and behaviour that he had "*no desire to continue working for the company without funding or support through your ACCA*". The respondent reiterated that it decided to enter into a new arrangement with the external firm "*which was in part influenced by the unreasonable, demanding behaviour you had shown in the role so far, which resulted in there being no requirement for your role going forwards*". Respondent denied saying the claimant was dismissed because his objectives could not be signed off, and denied making reference to requiring an individual and their 30s.

The law

Indirect discrimination

78. Section 19 of the Equality Act 2010 ("EA") provides:

> *(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.*
>
> *(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—*
>
> > *(a) A applies, or would apply, it to persons with whom B does not share the characteristic,*
> >
> > *(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*
> >
> > *(c) it puts, or would put, B at that disadvantage, and*
> >
> > *(d) A cannot* show it to be a proportionate means of achieving a legitimate aim.

Reasonable adjustments

79. Section 20 sets out the duty to make reasonable adjustments, which comprises three requirements, the first of which is: -

> *where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.*

80. "Substantial" is defined in section 212(1) as meaning "more than minor or trivial".

81. Section 21 EA provides that a failure to comply with any of the requirements in section 20 is a failure to comply with the duty to make reasonable adjustments. A person or body subject to the EA discriminates against a disabled person if they or it fails to comply with that duty in relation to that person.

82. Whether a substantial disadvantage is present is a matter of fact for the tribunal to determine, and it is not enough for the claimant simply to assert some disadvantage in general terms (*RBS v Ashton* [2011] ICR 632).

83. In considering a reasonable adjustments claim the tribunal identify (*Environment Agency v Rowan* [2008] ICR 218**)** :-

    a. the provision, criterion or practice ("PCP") applied by all on behalf an employer

    b. …

    c. The identity of non-disabled comparators, and

    d. the nature and extent of the substantial disadvantage suffered by the claimant.

Discrimination arising from disability

84. Section 15 EA 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.

85. Guidance was given by the EAT on the correct approach to section 15 claims in *Pnaisner v NHS England* [2016] IRLR 170. In short

    a. Was there unfavourable treatment and by whom?

    b. What caused the alleged treatment, or what was the reason for it?

    c. Motive is a relevant.

    d. Was the cause/reason "something" arising in consequence of the claimant's disability?

    e. The more links in the chain of causation, the harder it will be to establish the necessary connection.

f. This stage of causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

g. The knowledge requirement is as to the disability itself, not extending to the "something" that led to the unfavourable treatment.

h. It does not matter in which order these matters are considered by the tribunal.

Harassment

86. Section 26(1) Equality Act 2010 provides: -

> *A person (A) harasses another (B) if—*
>
> > *(a) A engages in unwanted conduct related to a relevant protected characteristic, and*
> >
> > *(b) the conduct has the purpose or effect of—*
> >
> > > *(i) violating B's dignity, or*
> > >
> > > *(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*

87. Section 26(4) Equality Act 2010 sets out factors which tribunals must take into account: -

> *(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—*
>
> > *(a)the perception of B;*
> >
> > *(b)the other circumstances of the case;*
> >
> > *(c)whether it is reasonable for the conduct to have that effect.*

88. Section 212(1) Equality Act 2010 provides that conduct amounting to harassment cannot also be direct discrimination.

89. The Court of Appeal in *Richmond Pharmacology v Dhaliwal* [2009] IRLR 336 stated:-

> *"an employer should not be held liable merely because his conduct has had the effect of producing a proscribed consequence. It should be reasonable that that consequence has occurred. The claimant must have felt, or perceived, her dignity to have been violated or an adverse environment to have been created, but the tribunal is required to consider whether, if the claimant has experienced those feelings or perceptions, it was reasonable for her to do so….We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear*

that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase."

90. The Court of Appeal again emphasised that tribunals must not cheapen the significance of the words of section 26 Equality Act 2010 as "*they are an important control to prevent trivial acts causing minor upsets being caught up by the concept of harassment*" (*Land Registry v Grant [2011] ICR 1390*).

91. A single incident may be sufficient to create an "environment" for the purposes of section 26, provided the effects are of a sufficient duration (*Weeks v Newham College of Further Education UKEAT 0630/11*).

Victimisation

92. Section 27 Equality Act deals with victimisation and provides: -

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

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

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

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

The burden of proof

93. The burden of proof provisions are set out in section 136 Equality Act 2010:-

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

94. When considering the "reason why" the alleged discriminator acted as they did, the protected characteristic need not be the only reason why the individual acted as they did, the question is whether it was an "effective cause" (*O'Neill v Governors of St Thomas More Roman Catholic Voluntary Aided Upper School and anor [1996] IRLR 372*). This principle applies to section 15 EA claims *per Pnaisner*, which makes clear that in establishing a *prima facie* case the claimant does not have to show that the "something arising" was the sole cause of the unfavourable treatment.

95. Guidance on the application of the burden of proof provisions of the Sex Discrimination Act 1975 (which is applicable to the Equality Act 2010) were given by the Court of Appeal in *Igen v Wong [2005] IRLR 258*:

> *"(1) Pursuant to s 63A of the SDA 1975, it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful by virtue of Part II or which by virtue of s 41 or s 42 of the SDA 1975 is to be treated as having been committed against the claimant. These are referred to below as "such facts".*
>
> *(2) If the claimant does not prove such facts he or she will fail.*
>
> *(3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be an intention but merely based on the assumption that "he or she would not have fitted in".*
>
> *(4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.*
>
> *(5) It is important to note the word "could" in SDA 1975 s 63A(2). At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.*
>
> *(6) In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.*
>
> *(7) These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw in accordance with s 74(2)(b) of the SDA 1975 from an evasive or equivocal reply to a*

questionnaire or any other questions that fall within s 74(2) of the SDA 1975.

(8) Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in determining, such facts pursuant to s 56A(10) of the SDA. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.

(9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.

(10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.

(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since "no discrimination whatsoever" is compatible with the Burden of Proof Directive.

(12) That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not a ground for the treatment in question.

(13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice."

96. Tribunals are cautioned against taking too mechanistic an approach to the burden of proof provisions, and that the tribunal's focus should be on whether it can properly and fairly infer discrimination (*Laing v Manchester City Council [2006] ICR 1519*). The Supreme Court has observed that provisions "*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*" (*Hewage v Grampion Health Board [2012] UKSC 37*).

97. The Court of Appeal has emphasised that "*The bare facts of a difference in treatment, without more, sufficient material from which the tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination"* (*Madarassy v Nomura International plc [2007] IRLR 246*). "Something more" is needed for the burden to shift. Unreasonable behaviour without more is insufficient, though if it is unexplained then that might suffice (*Bahl v Law Society [2003] IRLR 640*).

Conclusions

Indirect discrimination

2.1a) Training and 2.1c) pace of work

98. We find it convenient to take these two linked issues together. On our findings of fact, we have not concluded that the respondent conducted an "*extremely intense period of training for the claimant's role*" or that it was required to be conducted at a particular place. While there were deficiencies in the enquiries made of the nature of the claimant's dyslexia and how it might impact his performance of the role, the evidence does not support what the claimant claims. He was set no targets, the documentary evidence suggests a patient and supportive approach from his colleagues and he makes no contemporaneous complaint. The facts we have found do not support the existence of this as a PCP applied to the claimant.

2.1b) Computer:

99. The evidence we heard suggests that on the first two days in the claimant's employment he, effectively, pulled up a chair to observe Ms Romero working on her computer as she began training him. From day three onwards he worked on a laptop that was provided for him. We do not conclude that this brief requirement to observe Ms Romero at her computer amounted to a PCP. Had we concluded that it was a PCP, there is insufficient evidence for us to conclude that this requirement put the claimant and others who shared his disability at a particular disadvantage compared to those who do not share the disability.

2.1d) Extra hours

100. We find that there was no real requirement for the claimant to work additional hours. On our findings of fact this occurred on a handful of occasions, without complaint, consistent with the claimant's contract of employment. There was one day in which the claimant apparently worked 57 minutes beyond his working hours. We do not find that there was a PCP requiring him to work additional hours. Had we found this was a PCP, we would not have found that such requirement as there was to work these additional hours was such as to place the claimant at a substantial disadvantage. There was insufficient evidence to conclude that such would put persons who share the claimant's disability at a particular disadvantage.

2.1e) Reneging on the promise to support and fund qualification

101. Our findings were that no promise was made and that the respondent did not renege on any agreement allegedly made during interview. That aside, we struggle to see how what is formulated in this issue can amount to a PCP.

102. In all the circumstances, we do not uphold any of the claimant's claims of indirect discrimination, and they are dismissed.

Reasonable adjustments

103. Issues 3.1a), 3.1b), 3.1c), 3.1d) and 3.1f) entirely mirror issues disposed of under the heading indirect discrimination. Our conclusions in respect of the overlapping issues are sufficient to dispose of these issues re-framed as failure to make reasonable adjustments.

3.1e) Failure to make reasonable adjustments to training

104. It appeared to us that the claimant was attempting to frame an alleged breach of the duty to make reasonable adjustments to the intensity and pace of training, as a PCP in itself. We did not understand this issue as formulated by the claimant. We had not even concluded that there was a PCP in relation to the pace and intensity of training. We do not conclude that the respondent failed to make reasonable adjustments to training and that such amounted to a PCP.

105. In all the circumstances the tribunal does not uphold the claimant's claims for failure to make reasonable adjustments, and they are dismissed.

Discrimination arising from disability

106. The claimant claims that he was subjected to unfavourable treatment in three ways, set out in paragraph 4.1 of the List of Issues.

4.1a) Longer hours

107. We have not found that the claimant was required to work longer hours than other employees. Section 15 EA requires no comparison with others for the purposes of establishing unfavourable treatment, but he appears to frame this unfavourable treatment in terms of working longer hours than others. He has provided no evidence to suggest that he has worked longer than others. In any event, we have found as a fact, that the claimant was not required to work long (rather than longer) hours. As set out above, on a handful of days he worked without apparent complaint beyond his contracted hours, as envisaged in his contract of employment. We do not consider that this could reasonably be regarded as unfavourable treatment.

108. Had we concluded that there was a requirement to work longer (or indeed long) hours, we would not have found on the facts that this was because of something arising from disability. The claimant's case is that the "something" arising from his disability was his inability to work as quickly as other employees or to process information during his training at the pace of other employees. While we can see that if someone worked slower, they might be asked to work longer, there was no evidence that this was the case with the claimant.

109. This element of his claim is not upheld and is dismissed.

4.1b) aggressive language

110. We have found, on the basis of the documentary evidence and assessing the overall probabilities, that the claimant was not subjected to aggressive language. We consider that the explanation that best fits the available facts is that Mr Ananthkrishnan was as consistently patient and

supportive of the claimant in video calls as he was in text messages. It is likely, given the backlog in work, that Mr Ananthakrishnan was under pressure of work, that the need to train the claimant added to his workload, and that he may at times have enquired how quickly the claimant had been getting on with his training and work. It may be that he expressed surprise, at times, at how little progress the claimant had made. We have found it likely that the claimant may have (perhaps defensively) misinterpreted and subsequently misremembered genuine enquiry for impatience and aggression.

111. We do not find any unfavourable treatment here, and we do not uphold this element of the claim and we dismiss it.

4.1.c) Dismissal:

112. Dismissal is unquestionably unfavourable treatment. The main focus of the tribunal was whether the dismissal was because of something arising from the claimant's disability. He relies on that "something" as his inability to work as quickly as other employees or to process information during his training at the pace of other employees. He says this is as a result of his dyslexia.

113. This is a case where the tribunal has not heard from the claimant's manager or the other colleague who worked closely with him during his time with the respondent. It is not a case (*per* Hewage) where the tribunal was in a position readily to make positive findings about the reason for dismissal. Consequently, the burden of proof provisions have been of assistance to us.

Stage 1 – burden of proof

114. We first consider whether the claimant has proved facts from which we could conclude in the absence of any other explanation, that the respondents dismissed the claimant because he was unable to work, or process information, as quickly as others.

115. The claimant was recruited following Mr McCarthy, of MKS, identifying significant difficulties in the finance and claims department in mid-October 2020. Mr McCarthy had specifically addressed the qualities that "*any additional staff resource*" needs to have. So, Mr McCarthy was thinking in terms of the respondent recruiting someone to deal with the problems, rather than MKS providing this service.

116. We have found, in this case, that the claimant's dyslexia was actually a significant and causative factor in his getting a job with the respondent in the first place. The respondent initially was looking for a qualified accountant, who spoke Spanish, who knew how to use Brokersure and who had experience of the insurance industry. When it was unable to recruit anyone with the skills and experience, it no doubt lowered it sights somewhat.

117. We formed the impression that the claimant's dyslexia caused Mrs Williams to overlook the fact that the claimant was not qualified, did not speak Spanish, was not experienced in using Brokersure and whose

experience of the insurance industry was limited to a short period of internship. The claimant was, again, to use Mrs Williams's words, her "*blue-eyed boy, my project to show what people with dyslexia can achieve*".

118. We note the evidence at paragraph 29 of Mrs Williams's witness statement that "*the claimant's employment was not going well*", and at paragraph 30 that the claimant "*didn't listen to instructions given by Ganesan, despite him repeatedly explaining which tasks needed completing*". Mrs Williams also referred to the complaint about the claimant being demanding and disrespectful, but the failure to listen to instructions despite repeated explanations was one factor that was raised with her. Her oral evidence was that she was made aware of the claimant's shortcomings towards the end of November 2020. It is clear from the claimant's DIS that he can struggle with concentration and can have difficulty capturing and absorbing information by listening. There is sufficient evidence to suggest that it could have been the case that disability-related issues were playing a part in causing Mr Ananthkrishnan to have concerns about the claimant's suitability of the role because he did not follow instructions despite repeated explanations, which he escalated to Mrs Williams.

119. In around a month of the claimant being employed, Mrs Williams made the very sudden decision to decide that the claimant was no longer needed within the financial claims department, and that MKS, who a only a month previously had been involved in the conversation about recruiting someone, would provide an outsourced resource. It is undoubtedly the case that MKS did in fact offer to provide outsourced services to the respondent, and that they subsequently did provide the services. Mr McCarthy emailed Mrs Williams on 25 November 2020 indicating that a colleague, Mr Rushmer, had come up with ideas about how MKS could assist on dealing with historic issues and provide ongoing assistance in the future.

120. Mrs Williams was asked whether this pitch had come "out of the blue". Her response was that Mr McCarthy was selling his company and wanted to pass on the respondent's business to the buyer. It remained unclear to the tribunal why, within a month, the conversation with Mr McCarthy changed from being about recruitment of a person to address the respondent's difficulties, to MKS providing outsourced services. No proper explanation was given for this apparent about-turn. There is sufficient evidence to suggest that the claimant's performance in the role, which in part was impacted by his dyslexia, could also have been a factor in the decision to dismiss him.

121. We also have regard to Mrs Williams response to the question why she had suddenly decided to dispense with the claimant's services and engage MKS - "*I had taken the wrong decision in giving a dyslexic person the job*". This remark could support a suggestion that Mrs Williams had started to come to the conclusion that the claimant's dyslexia was a factor in his perceived inability to carry out the role satisfactorily.

122. Putting all of this together, we conclude that the claimant has proved facts from which we could conclude, in the absence of any other explanation, that the claimant's inability to work or process information as

quickly as someone who did not have dyslexia was a non-trivial factor (among others) which operated on Mrs Williams's mind when she decided to dismiss the claimant. We therefore considered that the burden shifted to the respondent to prove that the dismissal of the claimant was in no sense because of the pleaded matters arising from his disability.

Stage 2 – burden of proof

123. In considering whether the respondent had discharged the burden of proving that the claimant's dismissal was in no sense because he was unable to work as quickly, or process information as others, which arose from his disability, we had regard to the following:

a. We have found as a fact that the restructure whereby MKS' services were engaged was not given as a reason for dismissal during the meeting of the 4 December 2020. Therefore, the respondent when it subsequently referred to the restructure has not been entirely consistent in the reasons it advanced for the claimant's dismissal.

b. The meeting of the 4 December 2020 which led to the dismissal was not minuted, or if minutes were taken, they have not been put before us. This in of itself does not prove discrimination, but the lack of a paper-trail does not assist the respondent in discharging the burden upon it.

c. The dismissal letter was very brief, and was not provided to the claimant until around a month after his dismissal. Again, this does not prove discrimination. However, it is easier for a respondent to prove that its acts or omissions were in no sense discriminatory if it provides consistent, contemporaneous reasons.

d. They dismissal letter made clear that the "*restructuring is not related to individual performance*" and "*we appreciate all the good work you have done during your employment*". This is again inconsistent with the line the respondent took before the tribunal about the claimant's performance. Mrs Williams gave evidence not only about the claimant not listening to instructions and not completing tasks despite repeated instructions, but she also made reference to the claimant "*failing to grasp basic accountancy tasks*". Mr Fernandez referred to the claimant's performance in the team as "poor", said he made basic errors, and said that he was told the claimant failed to grasp basic accountancy tasks. The tribunal is conscious that many employers can choose to be charitable in dismissal letters, but this runs the risk of inconsistency. The tribunal was focusing on the respondent's decision to dispense with the claimant's services and engage those of MKS. Being inconsistent in how the respondent appeared to describe the claimant's work performance made it more difficult for the tribunal to have confidence in its explanations. We also note that there is no evidence that these alleged shortcomings were put to the claimant whilst in employment.

e. In a similar vein, we considered that other factors used by the respondent in their evidence to the tribunal, apparently to support the decision to dispense with the claimant services, were exaggerated. Mr Fernando described the claimant's communication on the issue of funding his ACCA qualification as "*relentless*". We do not find this a fair characterisation. The claimant did approach Mr Fernandez on a number of occasions about funding his qualification and was never given an answer. It is no surprise that he continued to press for an answer. Similarly, Mrs Williams said the claimant was "*demanding and wanted to do things his own way*" and that he "*exhibited a lack of respect and poor manners*". The example she gives of this is the claimant saying to Mr Ananthakrishnam "*I couldn't wait for you forever*" which we have set out above in our findings relating to the WhatsApp messages. We find this criticism is inflated and also note that there is no evidence that these alleged shortcomings were put to the claimant whilst in employment.

f. Then there is Mrs Williams' evidence that she had taken the wrong decision in offering the job to a person with dyslexia in the first place. She did not expand on what she meant by this, but there is ample scope for the inference that his disability meant that he was not up to the job.

124. In short, the respondent's explanations for dismissing the claimant (which was a sudden about-turn on a decision a month or so previously) were not consistent, not adequately documented, contained criticisms not previously shared with him (some of which seem bolstered after-the-event) with the context that the decision-maker believed she had made a mistake offering the job to someone with dyslexia in the first place. We conclude that the respondent has failed to discharged the burden it shoulders.

125. We uphold this element of the claimant's claim.

Harassment

126. We have found as a fact (indeed, it was not contested) that comments were made to the claimant on 4 December 2020 that he was demanding, in common with his fellow millennials.

127. We find that this comment was unwanted conduct and that it related to the claimant's age. We do not find that Mrs Williams' purpose was to violate the claimant's dignity or create a hostile, degrading, humiliating, offensive or intimidating (for short "harassing") environment. Our focus, therefore, has been whether the conduct had the effect of violating the claimant's dignity or creating a harassing environment. We have focused on the claimant's perception, the circumstances of the case in determining whether it was reasonable for the conduct to have had that effect.

128. When giving evidence about this issue the claimant was clearly distressed. However, it was clear that what he found objectionable about the comment was not so much that it was a comment about his own age or that of his contemporary millennials, but more the sense that he was demanding, or expected things to be handed to him "on a plate". He gave

evidence about being brought up by a single mother who prized a good education, and the significant barriers he faced in education and employment due to his disability. What was notably absent about this evidence was the role age played in the affront to his dignity or the atmosphere created.

129. Looking, therefore, at the claimant's own perception and the relevant circumstances of the case we do not consider that it would be reasonable to regard the admittedly age-related conduct to have the requisite effect. In short, it is not the "age relatedness" of the comment that caused offence but something else, more personal to the claimant.

130. If we are wrong on this, and the claimant's age was inextricably bound up in his sense of grievance, we find that it is not reasonable to regard this one off, off-the-cuff remark as crossing the lines as suggested by the cases of ***Dhaliwal*** and ***Grant***. The harassment claim is not upheld and is dismissed.

Victimisation

131. The protected acts relied on by the claimant are allegedly requesting reasonable adjustments in the form of adopting different methods of training and not requiring him to work longer hours than other employees from Mr Ananthkrishan from the second week of November onwards. The detriments he relies on are escalating criticism and unreasonable demands from Mr Ananthakrishnan and his dismissal.

132. Our findings are that the claimant did not make any requests for reasonable adjustments as set out. The claimant had been assessed at school, university and his previous employment in relation to his dyslexia and adjustments had been made previously, certainly by educational establishments, and so he is familiar with the concept of reasonable adjustments. There is nothing in the bundle that has been brought to our attention to suggest the claimant made requests for any adjustments during the course of his work, beyond a broad request to take things slowly and repeat things. The documentary evidence we have seen suggests that the respondent was supportive in this regard.

133. We therefore find that there were no protected acts for the purposes of section 27 EA. With no protected act there can be no victimisation. To the extent that any broad, vague requests could be regarded as protected acts the claimant has not proved facts from which we could conclude, in the absence of any other explanation, that the respondent's decision to dismiss was in any way to do with those requests. In relation to the other detriments relied on, we have found as a fact that the claimant's colleagues were supportive rather than critical or unreasonably demanding.

Breach of contract/unpaid wages

134. The claimant alleges that the respondent breached his contract by not paying his examination fees. Our findings of fact were that no such promise was made. The claimant's breach of contract claim in respect of this is not upheld and is dismissed.

135. In respect of unpaid wages, it was not clear until the very last questions in cross examination of Mrs Williams, what the claimant's case was. He had not set it out in his pleadings, at the Preliminary Hearing, in the list of issues and had not even referred to it in his witness statement. The claimant had not fairly and properly put any evidence before the tribunal from which it could conclude that there had been unlawful deductions from wages. When we pointed this out, the claimant said that there had been deductions from his pension in November 2021, but this was simply an assertion unsupported by any evidence.

136. The tribunal did not consider, at such a late stage of proceedings, that it was fair to the respondent that the claimant should put a case speculatively in cross examination which had not been advanced in any way beforehand. In any event, no evidence was put before the tribunal to substantiate such a deduction.

137. Unlawful deduction from wages is not upheld and is dismissed.

Remedy

138. If the parties are unable to reach a swift agreement on remedy, the matter will be listed for a remedy hearing. The parties are to write to the tribunal within 14 days of this judgment being sent to them if they wish it to list a remedy hearing, suggesting any directions they may wish the tribunal to make.

Employment Judge **Heath**

30 March 2022_____

Date

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

31/03/2022..

FOR EMPLOYMENT TRIBUNALS