# EMPLOYMENT TRIBUNALS

**Claimant:** Mr C Wilde

**Respondent:** OCS Group Limited

**Heard at:** Manchester (in person) **On:** 28 and 29 April 2022

**Before:** Employment Judge McDonald
Ms B Hillon
Mr B Rowen

**Representatives**
For the claimant: In person
For the respondent: Miss K Barry, Counsel

# JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's claim of direct disability discrimination under section 13 of the Equality Act 2010 fails and is dismissed.

2. The claimant's claim under s.15 of the Equality Act 2010 that he was treated unfavourably because of something arising from his disability fails and is dismissed.

# REASONS

## Introduction

1. By a claim form lodged on 7 February 2020 the claimant brought a claim of disability discrimination against the respondent. The claimant worked for the respondent as a cleaning operative from January 2016. As clarified at the case management hearing held by Employment Judge Whittaker, the claimant's claim is that the respondent cancelled shifts the claimant was due to work in November 2019 and then did not offer him further shifts. The claimant says that is either because of his disability of ADHD or because of something arising out of that disability,

specifically the way he raised concerns with his manager about the performance of other employees.

2. The respondent denies that it treated the claimant less favourably because of his disability. It says that the November shift was cancelled because of complaints from the customer about the performance of the night shift team. It denies the respondent then failed to offer the claimant further shifts. It says that the responsibility was on the claimant to log on and to effectively "bid" for shifts, and this he failed to do.

**Preliminary Matters**

3. The claimant has been diagnosed with ADHD. The respondent accepts that the claimant is a disabled person. At the start of the hearing we discussed what reasonable adjustments the Tribunal needed to make to its usual processes and procedure. The following adjustments were agreed:

- simplifying wherever possible the questions put to the claimant in cross examination by Miss Barry and by the Tribunal; and

- giving the claimant extra time to answer questions and when he himself was questioning witnesses or making submissions in support of his case.

4. The claimant confirmed that he was happy for 3 observers from the respondent to attend to observe the case. It was agreed that if their presence did have an impact on his ability to fully participate in the hearing the claimant would let the Judge know. He did not need to do so and the Tribunal is satisfied that he was able to fully participate in the proceedings.

**The Hearing**

5. We heard evidence and submissions over two days. During his cross examination evidence, Miss Barry explained to the claimant what Mr Sciambarella said his reason for cancelling the claimant's shifts was, i.e. the client's complaint. The claimant appeared to the Tribunal to accept that that was the reason for Mr Sciambarella's decision to cancel the shifts rather than his ADHD or the "rant" which was the something arising from his ADHD relied on by the claimant in his s.15 Equality Act 2010 claim.

6. In fairness to the claimant, and with Miss Barry's consent, the Employment Judge explained to the claimant at the end of his evidence that if the claimant did accept Mr Sciambarella's reason for cancelling, his discrimination claims relating to the cancellation would fail. The Tribunal gave the claimant an opportunity over an extended lunch interval to consider whether, in those circumstances, he wanted to withdraw the claims relating to cancellation. The claimant confirmed after that break that he did want to continue with all his claims. The Employment Judge explained that while not saying that this was a case where costs would be awarded, one of the limited circumstances where costs could be awarded in the Tribunal was where a case had been conducted unreasonably, such as being continued with even though it had no reasonable prospect of success. The claimant was given a further

opportunity to consider his position and confirmed that he did want to proceed with all claims.

7. We gave our judgment on the second day of the hearing, explaining the reasons for that judgment. The claimant requested those reasons in writing. The Employment Judge apologises that his absences from the Tribunal and other judicial work have led to a delay in sending these reasons to the parties.

8. As is usual, there are differences between this written version of the judgment and the version given orally at the hearing. The content remains the same but we have changed the order in places and tidied up the wording with the aim of making things clearer. These written reasons also included a fuller statement of the relevant law including the relevant sections from the Equality Act 2010 in full.

**Issues**

9. The issues in the case were identified by Employment Judge Whittaker at the preliminary hearing on 27 July 2021. They are set out in the List of Issues annexed to this Judgment.

**Evidence**

10. The parties had agreed a bundle of documents consisting of 184 pages ("the Bundle"). References to page numbers in this Judgment are to pages in that Bundle.

11. The claimant had provided a written witness statement. It did not entirely address the key issues in the case. With the respondent's consent, the claimant's emails of 15 September 2020 (p.40 in the Bundle) and 26 November 2019 (p.130 of the Bundle) were adopted as additions to his written statement. They helpfully set out what the claimant said had happened when it came to the events complained about.

12. The respondent had provided written witness statements for its two witnesses. The first was Mr Luca Sciambarella ("Mr Sciambarella"). At the relevant time, he was the General Manager for Manchester Central, which is a large conference and event centre located in the city centre of Manchester. The respondent had a contract to provide security and cleaning at that venue for its client ("the Client"). The respondent's second witness was Mr Denville Furlong ("Mr Furlong"), a cleaning supervisor at Manchester Central.

**Findings of Fact**

13. We start with the findings of fact on the matters in dispute between the parties. Some matters were not in dispute, for example it is accepted that the respondent did cancel the claimant's shifts at the Manchester Central for November 2019. It also seems to us to be accepted that the date when the claimant started at Manchester Central, having moved from the Etihad Stadium, was in June 2019 rather than February 2019 as suggested by some of the claimant's witness statements.

14. In setting out our findings about the key disputes of fact, we have to set out whose evidence we prefer. It is important to note that on occasion the Tribunal will

be faced with two witnesses giving different versions of what happened on a particular day or during a particular incident. Where we have found that we prefer one witness to another that does not mean that we find that the other person was misleading the Tribunal: it may be that they have misremembered, made an error, and that is particularly the case in this claim where the events we are concerned with happened three years or so before the witnesses were giving their evidence.

15. Dealing then with the key findings of facts which were in dispute, the first was whether the respondent as an organisation knew about the claimant's ADHD. We are satisfied on the evidence that we have heard that it did. We find that at the latest the respondent as an organisation was aware of the claimant's ADHD in June 2019 when the claimant submitted medical evidence as part of the disciplinary process against him. On balance it seems to us probable that in fact the respondent was aware of the claimant's ADHD before that when the claimant filled in medical information forms at the start of employment in 2016.

16. The second disputed matter on which we are making a finding is whether the claimant had what by way of shorthand we will refer to as a "rant" at Mr Furlong about the work of colleagues some two weeks or so before the cancellation of his shifts in November 2019, and whether he then subsequently apologised, explaining to Mr Furlong that his behaviour was because of his ADHD. The claimant gave very clear and precise evidence about this incident. Mr Furlong in his turn said he could not remember the "rant" (as we have called it), although he did remember the claimant refusing to talk to him. The claimant's explanation was that he did at one point walk away from Mr Furlong to avoid his ADHD causing his behaviour to escalate and to avoid him having a confrontation with Mr Furlong. The claimant's evidence, which we accept, was he had not taken his medication on that day.

17. Taking into account the precise nature of the claimant's evidence, and on the other hand Mr Furlong's inability to recollect much detail about the conversation, we prefer the claimant's evidence. What we find is that the claimant did have what he perceived as being an inappropriate rant at Mr Furlong in relation to his colleagues about 2 weeks before the cancellation of his shifts. However we also accept that Mr Furlong did not view that incident as being as significant as the claimant did. We find that the claimant is very aware of the potential impact of his ADHD on his behaviour, and he took admirable steps on occasion to ensure that it did not lead to matters escalating. For example, on this occasion we find that he did walk away from Mr Furlong, but that was because he was aware that his ADHD was leading to him becoming more agitated rather than because he was being rude or refusing to talk to Mr Furlong. We find that although the claimant did indeed come back and apologise and tell him that his behaviour was due to his ADHD, Mr Furlong did not pay much mind to that.

18. The next question is then whether Mr Furlong passed on information about the claimant's rant to colleagues, and specifically to Mr Sciambarella who made the decision to cancel the claimant's shifts. On this point we accept that Mr Furlong did pass on some information about what had happened by way of a note, which was a handover note to the supervisor of the next shift. As we have said, however, we think that the key thing that Mr Furlong took from the incident was not what the claimant saw as a rant or any link to ADHD but rather the claimant's apparent unwillingness to talk to Mr Furlong.

19. We find firstly that the handover note did not refer to the claimant having ADHD nor did it specifically refer to the claimant having had a rant at Mr Furlong. As we have said, that is because we think that Mr Furlong did not really perceive it as a rant in the way the claimant did. Importantly, we also find that on the balance of probabilities any handover note would not have come to the attention of Mr Sciambarella, but would have gone to the supervisor of the next shift. That is important because it means that we find that Mr Sciambarella was not aware of the "rant" (as we have called it), and that means that it could not have played any part in his decisions, including the decision to cancel the shifts.

20. The next disputed incident was the phone call which the claimant said he had with Mr Sciambarella on or around 13 November 2019. This happened after the claimant's shifts had been cancelled. Those cancellations were notified to the claimant by the Timegate system, which sent him an automated message saying his shifts had been cancelled. Mr Sciambarella's evidence, which we (and the claimant in cross examination) accepted, was that what had happened was that he had received a complaint from the Client at Manchester Central about the work carried out by the night shift on 9 November 2019. The claimant was part of the night shift team on 9 November. We take note of the fact that Mr Sciambarella was new in post as of October 2019. The concerns raised by his contact at the Client (page 89(a)) were of a serious nature, and particularly being new in post Mr Sciambarella would have wanted to (and did) take action in relation to that. That was particularly so when the complaint was followed up by a further complaint from the Client contact's Manager, Sarah.

21. We find that what happened was that Mr Sciambarella instructed Lois, who was the scheduler for Manchester Central, to cancel the shifts for the night shift team, which included the claimant. We find that in error what she instead did was to cancel all the claimant's scheduled shifts up to the end of November 2019. We find that she also cancelled the shifts for the other members of the night shift team, namely Mr Garside and a female operative who may have been a casual or agency worker.

22. On balance, we prefer the claimant's evidence that he did have a conversation with Mr Sciambarella on the phone on 13 November 2019. We say that because there is near contemporary documentary evidence in the Bundle in the form of an email on 26 November 2019 (p.103) as part of the claimant's grievance complaint, and also a further email which we find was sent by the claimant in January 2020, both of which refer to a telephone conversation with Mr Sciambarella.

23. We find that the claimant did attempt to speak to Mr Sciambarella to try and clarify why his shifts had been cancelled. We accept his evidence that having initially struggled to find a signal he manager to get through to Mr Sciambarella, but the conversation did not lead to a satisfactory outcome. We accept the claimant's evidence that because he was getting agitated, he decided to bring that conversation to an end. What we do not accept is the claimant's evidence that during that conversation Mr Sciambarella told him that his shifts were cancelled for the foreseeable future. We find that inconsistent with the evidence of Mr Sciambarella about why the shifts were cancelled. We have accepted his explanation that the shifts were cancelled because of a complaint from the Client about a particular event. We therefore find it inconsistent with that that he would have told the claimant

that his shifts were cancelled for the foreseeable future. We also find that inconsistent with the fact that in December 2019 when the claimant did return to seek work at Manchester Central with the respondent, Mr Sciambarella was more than happy for him to return to work.

24. To be clear then what we find is that the claimant did call Mr Sciambarella at around 6:30pm on 13 November. We find that the claimant sought an explanation for why his shifts had been cancelled. We find that he found the explanation unsatisfactory, but we do not accept that Mr Sciambarella said that his shifts were cancelled for the foreseeable future.

25. In terms of what happened after the claimant's conversation with Ms Sciambarella on 13 November 2019, we find that the claimant, having received the notifications of cancellation, went to speak to his former manager, Mr Cauldwell, who managed the respondent's contract at the Arndale. He then took on some shifts at the Arndale and on 17 November 2019 he emailed Lois at Manchester Central to say that he had left Manchester Central. This is no criticism of the claimant, but we find that the email sent on that date could be read to mean that the claimant was no longer intending to be employed by the respondent at all. We can understand why that might have led Lois not to offer the claimant any further sessions.

26. We also find that Mr Sciambarella, having taken up his post in October 2019, had noted that the system which should have been used for offering and arranging shifts (i.e. the Timegate system) was not being used properly. Instead of staff effectively bidding for shifts what was happening in practice was that schedulers such as Lois were contacting individual cleaners by email to ask them whether they were willing to work particular shifts. We find that the claimant had not used the Timegate system to bid for shifts from September 2019. We find that he did not do so from November onwards. We also find that there is evidence in the bundle that he turned down offers of shifts provided to him by Lois. He did so on 29 November 2019 saying that he could not take up a shift at that point because his grievance was ongoing. We have also found, as referred to already, that when the claimant did seek to return to work at Manchester Central Mr Sciambarella was willing for him to do so.

27. In deciding whether the claimant was treated less favourably because of his disability or something arising from it, we need to make findings about the comparator relied on by the claimant. We made findings about what happened to other workers who were on the contract at Manchester Central. The claimant pointed to the treatment of Ero (who was a cleaner working at Manchester Central) whose shifts were not cancelled. For the respondent it was said that the evidence supported a finding that Ero was working on a different area of Manchester Central on the night when complaints were raised. Although the claimant explained that the information in the bundle (pages 122(a)-(e)) did not necessarily correspond with what happened on the ground, on balance we prefer the respondent's case on this point. We find that Ero was working in a different area of Manchester Central and therefore the complaint raised in relation to the night shift on which the claimant was working did not apply to Ero. For that reason, they are not an appropriate comparator.

28. In terms of the employees working on the same team as the claimant on the night shift on 9 November, we find their shifts were also cancelled. There was no suggestion that they were disabled.

## Relevant Law

Disability Discrimination -burden of proof

29. The claimant brought two complaints under the Equality Act 2010 ("the 2010 Act"). These were a complaint of direct discrimination and of discrimination arising from disability.

30. The 2010 Act provides for a shifting burden of proof. Section 136 so far as material provides as follows:

> **"(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."**

31. Consequently it is for a claimant to establish facts from which the Tribunal can reasonably conclude that there has been a contravention of the Act. If the claimant establishes those facts, the burden shifts to the respondent to show that there has been no contravention.

Direct discrimination

32. The definition of direct discrimination appears in section 13 of the 2010 Act and so far as material reads as follows:

> **"(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others"**.

33. The concept of treating someone "less favourably" inherently requires some form of comparison, and section 23(1) provides that:

> **"On a comparison of cases for the purposes of section 13 … there must be no material differences between the circumstances relating to each case".**

34. It is well established that where the treatment of which the claimant complains is not overtly because of a protected characteristic (in this case disability), the key question is the "reason why" the decision or action of the respondent was taken.

Discrimination arising from disability ("a s.15 claim")

35. Section 15 of the 2010 Act states:

> **(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.**

36. There is a need to identify two separate causative steps in order for a s.15 claim to be made out (**Basildon and Thurrock NHS Foundation Trust v Weerasinghe 2016 ICR 305, EAT**):

- the disability had the consequence of 'something';
- the claimant was treated unfavourably because of that 'something'.

37. In **Basildon** the EAT said it does not matter in which order the tribunal approaches these two steps: 'It might ask first what the consequence, result or outcome of the disability is, in order to answer the question posed by "in consequence of", and thus find out what the "something" is, and then proceed to ask if it is "because of" that that A treated B unfavourably. It might equally ask why it was that A treated B unfavourably, and having identified that, ask whether that was something that arose in consequence of B's disability'.

38. In **Pnaiser v NHS England and anor 2016 IRLR 170, EAT**, the EAT summarised the proper approach to establishing causation under S.15:

- First, the tribunal has to identify whether the claimant was treated unfavourably and by whom.
- It then has to determine what caused that treatment — focusing on the reason in the mind of the alleged discriminator, possibly requiring examination of the conscious or unconscious thought processes of that person, but keeping in mind that the actual motive of the alleged discriminator in acting as he or she did is irrelevant.
- The tribunal must then determine whether the reason was 'something arising in consequence of the claimant's disability', which could describe a range of causal links. This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

39. For a s.15 claim to succeed the 'something arising in consequence of the disability' must be part of the employer's reason for the unfavourable treatment. The key question is whether the something arising in consequence of the disability operated on the mind of the alleged discriminator, consciously or unconsciously, to a significant extent (**T-Systems Ltd v Lewis EAT 0042/15**).

40. A claimant needs only to establish some kind of connection between the claimant's disability and the unfavourable treatment. In **Hall v Chief Constable of West Yorkshire Police 2015 IRLR 893, EAT** the EAT confirmed that a s.15 claim can succeed where the disability has a significant influence on, or was an effective cause of, the unfavourable treatment.

41. A s.15 claim will only succeed if the employer (or other person against whom the allegation is made) is unable to show that the unfavourable treatment to which the claimant has been subjected is objectively justified as a proportionate means of achieving a legitimate aim.

**Application of Law to Facts**

42. Turning then to the List of Issues and applying the relevant law to the facts as we have found them.

Issue 1: Time limit points

43. The List of Issues included at number (1) an issue relating to time limits. However, Miss Barry in her submissions agreed (and we also find) that the claim was brought in time, and so there is no time limit issue in this case.

Issue 2: The direct disability discrimination claim

44. There are two separate acts of less favourable treatment complained of. The first is cancellation by the respondent on or around 13 November 2019 of the claimant's dates which had been scheduled in as shifts at Manchester Central until the end of November 2019. Although the respondent's amended grounds of resistance denies that there was a cancellation we find that there was, so that treatment did happen. I will come back to whether it was less favourable treatment in a moment.

45. As to the second "less favourable treatment", that was the alleged failure or refusal of the respondent to offer further shifts to the claimant to work as a cleaner at Manchester Central from 13 November 2019 to 27 February 2020. We find that on balance the evidence does not support the claimant's claim that the respondent refused or failed to provide him with shifts. Instead we find that there was a view initially that he was no longer working for the respondent (because of the wording of the claimant's email to Lois when he started working at the Arndale) and that subsequently Lois did offer him shifts. When he did return or spoke to Mr Sciambarella about returning in December 2019 that was facilitated and following a return to work meeting the claimant was then allowed to return to work. What that means is that the part of the claim which is based on the failure or refusal by the respondent to provide shifts from 13 November 2019 until the end of February fails because on the facts we find that the respondent did not fail or refuse to do so.

46. That leaves us with the cancellation of the shifts in November 2019. When it comes to that we have found that Mr Sciambarella instructed Lois to cancel the shifts for the night shift for the rest of the event in November which had led to the complaint from the client. We find that in error Lois did cancel the shifts for the rest of November not limited to that event. As Miss Barry said in her submissions, the key question is why that happened.

47. In reaching that decision we have taken into account what happened to other workers who were on the contract at Manchester Central. We have decided the proposed comparator, Ero, was not an appropriate comparator because they were not (as far as Mr Sciambarella knew) working in the same area of Manchester

Central on the night when complaints were raised. We found that those employees working on the same team as the claimant on the night shift on 9 November also had their shifts cancelled. There was no suggestion that they were disabled. We also find that although the respondent as an organisation knew about the claimant's disability, Mr Sciambarella did not. What that means is that the claimant's disability could not have played a part in his decision to cancel the shifts.

48. When it comes to the direct discrimination claim, therefore, what we find is that the decision to cancel the shifts was not because of the claimant's disability. For that reason, the claimant's claim fails.

49. We have in reaching our decision taken into account the burden of proof, which says that if the claimant can prove facts from which the Tribunal could conclude the discrimination had occurred the burden passes to the respondent to show an adequate non-discriminatory reason why the treatment had occurred. In this case what we have found is that there is no evidence to pass the burden. If we were wrong about that we would have found that the explanation given by Mr Sciambarella about the reason for the decision that the shifts be cancelled was a non-discriminatory one.

Issue 3: The s.15 claim – discrimination arising from disability

50. This is a claim that the cancellation of the shifts arose from the rant which the claimant had to Mr Furlong. We accept the rant was "something arising" from the claimant's ADHD. The decision to cancel the shifts was made by Mr Sciambarella. Our findings of fact are that he was not aware of the rant. On that basis, his decision to cancel the shifts could not have been related to the rant. That means is that the section 15 claim also fails.

**Summary**

51. The judgment of the Tribunal therefore is that both the claimant's claims do fail.

52. The Tribunal, however, do want to comment on the circumstances of this case. First of all, we want to commend the claimant on the way that he has presented his case, which has been helpful to the Tribunal and very clear. He was also very honest in the way that he gave his evidence. That included being willing to concede in cross examination when a full explanation was given for the reason for cancellation that this was something which provided a non-discriminatory explanation for the cancellation of shifts.

53. Second, although we did not have the grievance outcome papers in the case, (in fact there was more than one example of relevant documents being missing), on the papers in front of us, however, we think that there was a regrettable lack of communication from the respondent to the claimant. Mr Sciambarella's explanation in giving evidence was that the cancellation of all the shifts for the claimant was an error. We accept that that was the case, but it seems to us that had that been explained to the claimant at a far earlier stage matters have been resolved without the need for the parties to come to the Tribunal. We find that the claimant in the absence of such an explanation genuinely did not understand why his shifts were

cancelled. In the absence of such an explanation, and given that the respondent as an organisation was aware of his disability, we find it perfectly understandable that the claimant may have taken the view that his disability had some part to play in the decision to cancel his shifts.

54. In short then what we are saying is that the Tribunal understands why the claimant took the view that he did; that is particularly because the amended version of the grounds of response simply denies that there was a cancellation of shifts and therefore does not provide any explanation as to why that happened. When in cross examination Miss Barry explained Mr Sciambarella's explanation for the cancellation to the claimant, he was willing to accept that explanation. As we have said, we find that until then the claimant did not really have a clear understand of why this had happened to him. That does not alter the outcome of the case, which is that the claims fail, but it does seem to us to be something that is relevant for the Tribunal to record in this judgment.

Employment Judge McDonald
Date: 24 August 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON
26 August 2022

FOR THE TRIBUNAL OFFICE

# Annex
# List of Issues

1. **Limitation – section 123 Equality Act 2010**

   The claimant presented his claim form to the Tribunal on 7 February 2020. He commenced Early Conciliation on 14 January 2020, and the relevant ACAS certificate was issued on 5 February 2020.

   (1) Were any of the claims of direct discrimination and/or disability related discrimination set out below presented to the Tribunal outside the relevant three month time limit?

   (2) If so, do any of the claims set out below constitute conduct extending over a period?

   (3) If so, were the claims presented within the relevant time limit from the end of that period?

   (4) If not, were the claims submitted within such other period as the Employment Tribunal thinks just and equitable?

2. **Direct discrimination – section 13 Equality Act 2010**

   (1) The claimant complains of two separate acts of less favourable treatment, namely:

      (a) Cancellation by the respondent on or about 13 November 2020 of a schedule of dates and hours of work as a cleaner at Manchester Central Exhibition Centre which the claimant says he had been offered and which he says he had accepted. The claimant presented himself for work on 13 November 2019 but was told that his services were not required that day, and he was told that there were no further dates booked for him after 13 November 2019.

      The claimant alleges that the cancellation was at the request of or on the instructions of Mr Daniel Furlong and/or Mr Sciambarella.

      (b) The failure/refusal of the respondent to offer further shifts of work as a cleaner at the Manchester Central Exhibition Centre between 13 November 2019 and 27 February 2020 inclusive. The claimant alleges that the failure/refusal to offer shifts of work was at the request of or on the instructions of Mr Furlong and/or Mr Sciambarella.

   (2) The Tribunal will decide whether these two acts – if they occurred – amounted to less favourable treatment. The claimant compares his treatment to that of another cleaner by the name of Ero who the claimant

says was offered and carried out work in the period 13 November 2019 to 27 February 2020 inclusive. The claimant does not know his surname. The claimant also compares his treatment to that of any other cleaners who were in that relevant period offered shifts of work as a cleaner but who were not disabled by reference to section 6 of the Equality Act 2010.

(2) The Tribunal will decide whether the claimant was treated in the manner alleged above by Mr Furlong and/or Mr Sciambarella because of his disability of ADHD – Attention Deficit Disorder. The employer accepts that at all material times the claimant was disabled by reference to that physical/mental impairment.

(3) The Tribunal will decide whether the two alleged acts occurred, and if so whether they occurred as acts of less favourable treatment on the grounds of the claimant's admitted disability.

3. **Disability-related discrimination – section 15 Equality Act 2010**

(1) Did the respondent know, or could it reasonably have been expected to know, that the claimant had the disability of ADHD at the material times?

(2) If so, did the respondent through Mr Furlong and/or Mr Sciambarella treat the claimant unfavourably by either:

(a) Cancelling the shifts of work on or about 13 November 2019 which the claimant had been offered and accepted during November 2019 which were due to commence on 13 November 2019; and

(b) The failure/refusal to offer shifts of work to the claimant as a cleaner at the Manchester Central Exhibition Centre between 13 November 2019 and 27 February 2020. The claimant alleges that this failure/refusal was at the request of or on the instructions of Mr Furlong and/or Mr Sciambarella.

The Tribunal will decide whether the respondent treated the claimant unfavourably in either of those alleged respects.

(3) Did the following things arise in consequence of the claimant's disability?

(a) The claimant alleges that he aired concerns about the standards of work of some of the other cleaners that he worked alongside at the Manchester Central Exhibition Centre. The claimant says that he raised these concerns shortly before 13 November 2019. The claimant says that he aired these concerns to his supervisor, Mr Furlong. The claimant in particular complained about an employee named Fetus (surname unknown). This employee was subsequently dismissed. The claimant says that he did however complain generally about the conduct of other work colleagues. The claimant says that the manner in which he spoke to Mr Furlong was as a result/consequence of his ADHD. The claimant says that he may have been agitated and may have expressed his views forcefully. The claimant says that he may also have been seen as representing

challenging behaviour. The claimant says that his behaviour may have been seen as "ranting off". The claimant says that this behaviour arose from his disability of ADHD. The claimant alleges that as a result of his behaviour Mr Furlong complained to Mr Sciambarella. He alleges that they were both friendly and acted together to use the claimant's behaviour as the reason and justification to cancel his shifts with effect from 19 November 2019 and to then refuse/fail to offer him any further work as a cleaner at the Manchester Central Exhibition Centre up to and including 27 February 2020.

(4) Has the claimant proven facts from which the Tribunal could conclude that the two separate acts of unfavourable treatment were because of the conduct of the claimant in the presence of Mr Furlong?

(5) If so, can the respondent show that there was no unfavourable treatment because of something arising in consequence of disability? The Tribunal will decide if the respondent through Mr Furlong and/or Mr Sciambarella treated the claimant unfavourably by cancelling his agreed shift pattern with effect from 13 November 2019, and refusing/failing to offer him work as a cleaner at the Manchester Central Exhibition Centre up to and including 27 February 2020 as a consequence of his conduct, which was related to his disability of ADHD.

(6) If not, was the treatment a proportionate means of achieving a legitimate aim? The respondent will be required to identify what it says was a legitimate aim.

(7) The Tribunal will decide in particular:

(a) Was the treatment an appropriate and reasonably necessary way to achieve those aims?

(b) Could something less discriminatory have been done instead?

(c) How should the needs of the claimant and the respondent be balanced?