



EMPLOYMENT TRIBUNALS

Claimant: Mr C Mallon

Respondents: Blacktrace Holdings Ltd (1), GB Ingredients Ltd (2), Spider Web Recruitment Ltd (3)

Heard at: Birmingham (by CVP)

On: 22, 23, 24 November 2022

Before: Employment Judge Meichen, Mr R White, Mr D Faulconbridge

Appearances

For the claimant: in person

For the respondents: Mr Bignell, barrister (1), Mrs Hilton, HR lead (2), Ms Pollard, managing director (3)

JUDGMENT dated 25 November 2022 having already been sent to the parties and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided. Oral reasons were given at the end of hearing and so these written reasons are based on the transcript of the recording of the reasons given orally.

REASONS

Introduction

1. These two claims arise out of two unsuccessful job applications that the claimant made at the end of 2020. In respect of each application the claimant alleges that the respondents failed in their duty to make reasonable adjustments for him as a disabled person.

The issues

2. The respondents have appropriately conceded that the claimant was disabled within the meaning of the Equality Act at all relevant times by reason of the impairment relied upon by the claimant which is dyspraxia.. Further, the respondents have also appropriately conceded that they either knew or ought to have known that the claimant was disabled. Therefore there is no need for us to determine those issues.

3. This case has been carefully case managed and the issues for us to determine were set out at a preliminary hearing held on 11 October 2021. They are as follows:
 - 3.1 A “PCP” is a provision, criterion or practice. Did the respondents have the following PCP:
 - 3.1.1 Sifting applications by reference to written CV’s only.
 - 3.2 Did the PCP put the claimant at a substantial disadvantage compared to someone without the claimant’s disability, in that he could not express himself effectively in writing and/or could not adapt his CV to reflect the specific needs of the post?
 - 3.3 Did the respondents (or any of them) know or could it reasonably have been expected for them to know that the claimant was likely to be placed at the disadvantage?
 - 3.4 What steps could have been taken to avoid the disadvantage? The claimant suggests:
 - 3.4.1 Permitting him to make his application orally, either face-to-face, by telephone or by video call.
 - 3.5 Was it reasonable for the respondents to have to take those steps and when?
 - 3.6 Did the respondents fail to take those steps?

The law

4. The duty to make reasonable adjustments is in section 20 Equality Act 2010. The relevant duty in this case is at subsection (3):

“The first requirement is a requirement, where a provision, criterion or practice of A’s puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.”
5. The claimant’s case is that the respondents discriminated against him by failing to comply with that requirement.
6. It should be noted that the duty requires positive action by employers to avoid substantial disadvantage caused to disabled people. To that extent it can require an employer to treat a disabled person more favourably than others are treated (Archibald v Fife Council [2004] ICR 954). It should also be noted that “the purpose of the legislation is to assist the disabled to obtain employment and to integrate them into the workforce” (O’Hanlon v HM Revenue and Customs UKEAT/0109/06).
7. The correct approach to reasonable adjustments complaints was set out by the EAT in Environment Agency v Rowan [2008] ICR 218:
 - a. What is the provision, criterion or practice (“PCP”) relied upon?

- b. How does that PCP put the claimant at a substantial disadvantage in comparison with persons who are not disabled?
 - c. Can the respondent show that it did not know and could not reasonably have been expected to have known that the claimant was likely to be at that disadvantage?
 - d. Has the respondent failed in its duty to take such steps as it would have been reasonable to have taken to have avoided that disadvantage?
8. As to the identification of the PCP the EHRC Employment Code (“the Code”) makes it clear the phrase is to be broadly interpreted. The Code says (paragraph 6.10): *“[It] should be construed widely so as to include, for example, any formal or informal policies, rules, practices, arrangements or qualifications including one-off decisions and actions.”*
9. The provisions relating to the burden of proof are to be found in section 136 Equality Act 2010 which provides in section 136(2) that if there are facts from which the tribunal 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. However, by virtue of section 136(3) this does not apply if A shows that A did not contravene the provision.
10. In reasonable adjustment claims, the burden of proof is on the claimant to establish the existence of the provision, criterion or practice and to show that it placed them at a substantial disadvantage. The burden then remains on the claimant to identify potential reasonable adjustments. At the point where the duty to make reasonable adjustments has been engaged, and the claimant has identified one or more potential reasonable adjustments, the burden of proof is reversed. The respondent must then show, on the balance of probabilities, that the adjustment could not reasonably have been achieved.
11. In Lamb v The Business Academy Bexley EAT 0226/15 the EAT confirmed that the term “PCP” is to be construed broadly *“having regard to the statute’s purpose of eliminating discrimination against those who suffer disadvantage from a disability”*.
12. The approach that Tribunals should take to PCPs was considered by HHJ Eady QC in Carreras v United First Partners Research UKEAT/0266/15/RN:

“As noted by Laing J, when putting this matter through to a Full Hearing, the ET essentially dismissed the disability discrimination claim because it found that an expectation or assumption that the Claimant should work late was not the pleaded PCP.

*The identification of the PCP was an important aspect of the ET’s task; the starting point for its determination of a claim of disability discrimination by way of a failure to make reasonable adjustments (see *Environment Agency v Rowan [2008] IRLR 20 EAT, para 27*). In approaching the statutory definition in this regard, the protective nature of the legislation means a liberal rather than an*

overly technical or narrow approach is to be adopted (Langstaff J, para 18 of Harvey); that is consistent with the Code, which states (para 6.10) that the phrase “provision, criterion or practice” is to be widely construed.

It is important to be clear, however, as to how the PCP is to be described in any particular case (and I note the observations of Lewison LJ and Underhill LJ on this issue in Paulley). And there has to be a causative link between the PCP and the disadvantage; it is this that will inform the determination of what adjustments a Respondent was obliged to make.”

13. As to substantial disadvantage section 212 Equality Act 2010 defines “substantial” as meaning “more than minor or trivial”. It must also be a disadvantage which is linked to the disability. That is the purpose of the comparison required by section 20. Simler P said in Sheikholeslami v University of Edinburgh UKEATS/0014/17/JW that:

“It is well established that the duty to make reasonable adjustments arises where a PCP puts a disabled person at a substantial disadvantage compared with people who are not disabled. The purpose of the comparison exercise with people who are not disabled is to test whether the PCP has the effect of producing the relevant disadvantage as between those who are and those who are not disabled, and whether what causes the disadvantage is the PCP. That is not a causation question. For this reason also, there is no requirement to identify a comparator or comparator group whose circumstances are the same or nearly the same as the disabled person’s circumstances.

.... The fact that both groups are treated equally and that both may suffer a disadvantage in consequence does not eliminate the claim. Both groups might be disadvantaged but the PCP may bite harder on the disabled or a group of disabled people than it does on those without disability. Whether there is a substantial disadvantage as a result of the application of a PCP in a particular case is a question of fact assessed on an objective basis and measured by comparison with what the position would be if the disabled person in question did not have a disability.”

14. The Tribunal is required to have regard to the Equality and Human Rights Commission’s statutory Code of Practice on Employment when considering disability discrimination claims. Paragraph 6.28 of the Code sets out the factors which might be taken into account when deciding what is a reasonable step for an employer to have to take:

- Whether taking any particular steps would be effective in preventing the substantial disadvantage;
- The practicability of the step;
- The financial and other costs of making the adjustment and the extent of any disruption caused;
- The extent of the employer’s financial or other resources;
- The availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and
- The size and type of employer.

15. An important consideration is the extent to which the step will prevent the disadvantage. We must consider whether a particular adjustment would or could have removed the disadvantage: Romec Ltd v Rudham [2007] All ER(D) (206) (Jul), EAT.
16. In Griffiths v Secretary of State for Work and Pensions [2017] ICR 160 the Court of Appeal said: *“So far as efficacy is concerned, it may be that it is not clear whether the step proposed will be effective or not. It may still be reasonable to take the step notwithstanding that success is not guaranteed; the uncertainty is one of the factors to weigh up when assessing the question of reasonableness.”*
17. Accordingly it is unlikely to be reasonable for an employer to have to make an adjustment that involves little or no benefit to the disabled person in terms of ameliorating the disadvantage to which he or she has been subjected by the PCP, physical feature or lack of auxiliary aid. We have to consider whether on the evidence there would have been a chance of the disadvantage being alleviated. Our focus should be on whether the adjustment would, or might, be effective in removing or reducing the disadvantage that the claimant is experiencing as a result of his or her disability and not whether it would, or might, advantage the claimant generally.

Findings of fact

18. We will set out our background findings of fact in relation to the following four areas. Firstly our findings on the claimant and his disability, secondly our findings in relation to the claimant’s approach to job applications at the relevant time, thirdly our findings in relation to the two job applications made by the claimant which are the subject of this claim and fourthly our findings as to why the claimant’s job applications were not progressed by the respondents.

The claimant and his disability

19. The claimant is intelligent and articulate. As his CV demonstrates he has a number of academic qualifications and a varied work history which shows that he has worked in a variety of different positions.
20. The claimant also has a number of health conditions. For the purposes of these claims the claimant has made it clear from the start that the condition he relies on to show he is disabled is dyspraxia only.
21. All of the respondents have we think rightly accepted that the claimant was disabled by reason of this condition and that they knew or ought to have known about that at the time of his job applications.
22. The evidence provided by the claimant indicates that people with dyspraxia often find it difficult to express themselves in writing. They have difficulties with processing which mean that written work may be poorly presented or contain errors, particularly spelling errors. Dyspraxia affects the quality and speed of handwriting. People with dyspraxia generally perform better in verbal than in non-verbal tasks.

23. The claimant told us that he feels that when he writes he writes “like a child”. He therefore feels more confident speaking orally where he feels he can express himself more clearly.
24. The claimant’s work is important to him and he wishes to be in work rather than claiming benefits. The claimant is now aged 48 and his career history started in around 1996 and since that time the claimant has had something like 25 different jobs.
25. The claimant has been largely unemployed since around May 2019 and this is a major source of disappointment to him. The claimant does have what he describes as a “hobby business” which brings in some income for him but he has not been able to obtain permanent full time employment as he would like since 2019.

The claimant’s approach to job applications at the relevant time

26. The claimant has made extensive efforts to obtain employment since 2019. The claimant’s preferred method of applying for jobs is online via what is known as a one click application process. At the time we are concerned with in 2020 the main sites which the claimant used to make his job applications were CV-Library and LinkedIn.
27. The one click application process meant that the claimant could submit his preprepared CV or information from his preprepared LinkedIn profile to apply for jobs very quickly, i.e. by just making one click. The claimant has applied for very many jobs using this method. The claimant estimated that in 2020 alone he made at least 2000 job applications in this way. The claimant spent very little time checking if he was in fact suitable for the large number of jobs he applied for. It was a very unselective way of applying for jobs. The result was that the claimant ended up applying for jobs which it was not realistic he would obtain. The jobs in these two claims are clear examples of that.
28. As is obvious from the number of applications that the claimant was making the claimant did not make any effort to tailor his application to each individual role that he was applying to. As the claimant confirmed in his evidence this was a blanket method of applying for a very large number of jobs and even somebody who did not have dyspraxia or any other difficulty could not possibly tailor each individual application in view of the large volume of applications overall.
29. The claimant has over a period of a number of years honed and perfected his CV. As we have said the claimant finds it difficult to express himself clearly in writing but he had a significant amount of support in preparing his CV and plainly spent a lot of time and effort on it. In 2020 alone the claimant had support writing his CV from a job centre charity and a professional CV writer.
30. The result was that the CV which the claimant used for his one click applications was a professional looking document. It was well structured and clearly set out. It contained no obvious errors. There are no obvious mistakes of spelling, syntax or punctuation. The CV was fairly well presented. It set out the claimant’s key experience and in particular his key roles going back to 1997. The claimant’s key work experience, qualifications and achievements were set out in a readable and accessible way.

31. Similarly the claimant had over an extended period of time put a great deal of effort into his LinkedIn profile. The claimant included on his profile a more detailed version of his work history than was on his CV. The claimant used cut-and-paste to place the details of the various jobs which he has had into his LinkedIn profile so that a reader could understand the detail of the roles which he had been doing. Again the part of the profile which we were referred to read well and was well presented. Again the information is clear and well-structured and there are no obvious errors of syntax, grammar spelling or punctuation.
32. In short therefore both the claimant's LinkedIn profile and his CV were well written and professionally presented documents. The reader can clearly understand the claimant's key experience and qualifications from reading those documents. This information is accurately and effectively written and presented to the reader. There is in our view nothing in the writing or presentation of the documents that could be held against the claimant.
33. The CV the claimant submitted to these respondents and in respect of other job applications he made at the relevant time was generic, albeit it was comprehensive. However, the claimant is capable of amending and updating his CV. This is demonstrated by the fact it was honed by him over a long period. The bundle contained an updated CV which we understand post-dated the applications to these respondents and this shows the refinements that the claimant made to his CV.
34. Within his CV the claimant explained his diagnosis of dyspraxia. He made a reasonable adjustment request. The reasonable adjustment request that the claimant made was to complete an oral application which would be a 5 to 10 minute phone call to talk about his relevant experience. The claimant also requested the essential criteria for the role to be emailed to him so that he could prepare for the oral application. The claimant asked to be judged by what he said and not his written CV.
35. A very small proportion of prospective employers complied with the claimant's request for this adjustment. The claimant estimated that in 2020 of the at least 2000 applications that he made only around 25 prospective employers arranged an oral application as he requested. The claimant also explained that for the vast majority of his unsuccessful applications he would either receive no confirmation of rejection at all or would simply receive a generic rejection letter with no further contact from the prospective employer.
36. The information the claimant provided in his CV about his disability emphasised that his disability causes significant impairment in terms of written communication and in particular his ability to complete application forms or structured answers. It said that the claimant would be unable to manage an application process that requires a great deal of writing and it suggested that undertaking a STAR analysis would also be difficult for the claimant.

The job applications made by the claimant to the respondents

37. In around November 2020 the first respondent decided to recruit for a new laboratory scientist. An advert was placed which contained the job description. The first respondent received 93 applications. The claimant applied via a one click application process on LinkedIn. Although it was not compulsory the

process gave applicants an opportunity to provide a cover letter. The claimant did not write a cover letter and instead wrote “call me” in the space provided.

38. The result of the claimant applying through this process was that the respondent had access to the claimant’s LinkedIn profile and his CV. All applications submitted to the first respondent in this way went through a computer platform called Workable. The Workable platform collected information from the applicants’ LinkedIn profiles and their CVs. The system presented the hiring manager with a summary of the information collected in relation to each applicant. The information presented was the applicant’s last eight years of employment history and their qualifications. The Workable platform extracted the claimant’s employment history from his LinkedIn profile. This was a detailed history of the claimant’s work experience spread over about 4 pages. It was more detailed than the claimant’s CV. This was the information that was presented to the hiring manager in respect of the claimant.
39. The hiring manager at the first respondent was Ben Knappett. The tribunal heard evidence from Mr Knappett. His evidence was consistent with the documents and cogent. We formed the view he was an honest and credible witness who accurately explained the process he had undertaken and the reasons why the claimant’s application was not progressed.
40. Mr Knappett explained that when he was viewing the claimant’s application on Workable he had the opportunity to view the claimant’s CV but that involved scrolling down in a separate viewing panel. Mr Knappett did not scroll down that far and so did not access the claimant’s CV when he decided not to progress the claimant’s application. This meant that Mr Knappett did not see the information about the claimant’s disability and the claimant’s request for reasonable adjustments as that was on the CV. Mr Knappett did see that the claimant had written “call me” where he could have put a cover letter but he did not attach any particular significance to that given that the claimant did not explain why he was making the request.
41. Mr Knappett viewed the claimant’s work history and based on that took the view that the claimant did not have the necessary experience for the role. As Mr Knappett explained in his evidence he had a large number of candidates to assess quickly and so he focused on looking for candidates who had recent experience working in the laboratory in a relevant field, which the claimant did not. As a result of Mr Knappett’s decision the claimant’s application was not progressed any further. The claimant was emailed and informed that his application had been unsuccessful. The claimant was told that there were other candidates whose skills and work experiences more closely matched the requirements of the role.
42. Within a short period of time there was correspondence to the first respondent from the claimant. The claimant asked why his reasonable adjustment request had not been complied with. The first respondent took the time to explain the position to the claimant and in particular they explained that his application had not been progressed because he lacked the relevant experience for the role.
43. The claimant quickly indicated that he would wish to raise a formal complaint. The parties corresponded further and the first respondent explained in more

detail why the claimant did not have the relevant experience they were looking for. The claimant responded to say their position was “wrong”.

44. In internal communications with HR Mr Knappett emphasised that he had decided not to progress the claimant’s application purely because there were other candidates whose skills and work experiences more closely matched the requirements of the role. Nevertheless he said he would be happy to conduct an oral application with the claimant, but it would be unlikely to change his decision based on the claimant’s job history which he had already read. Before this could be communicated back to the claimant the claimant quickly wrote to the respondent to say that he only wanted things dealt with in writing because it was now a legal matter. The claimant quickly contacted ACAS and then indicated that he would only speak to the respondent through ACAS. Because of the speed at which he contacted ACAS and decided to focus on bringing a claim the claimant lost the opportunity to have an oral discussion with the respondent, which is what he wanted in the first place.
45. In December 2020 the second respondent advertised for the post of senior project manager with the assistance of the recruitment company which it works closely with (the third respondent). The third respondent included in the advertisement a job description and a description of the requirements for the role. The application process was simply to submit a CV. The claimant submitted his CV as a one click application using the CV-Library website.
46. The initial advert placed by the third respondent was live for 28 days between 18 December and 15 January, but this was later extended by a further 28 days. The claimant submitted his application on 31 December. Accordingly there was plenty of time left if the claimant had wished to work on his application any more. The third respondent received a large number of applications but only interviewed two applicants. Therefore the vast majority of applicants were not progressed to interview on the basis of their CV only. This is what happened to the claimant.
47. The second and third respondents were plainly aware of the claimant’s disability and his request for reasonable adjustments because they read his CV. As a result they treated his application carefully. They carefully analysed the claimant’s work history and reached the view that he did not have sufficient relevant experience for the role they were recruiting into.
48. The third respondent wrote to the claimant and it was explained to him that his application would not be progressed because other candidates matched the requirements of the role more closely. It is notable that when they were assessing his CV at the time the second respondent described it as “more than adequate in comparison to other applications” and the reason why they decided not to progress the claimant’s application was because the CV showed that the claimant’s “background skills and experience are insufficient for the role”. This demonstrates the point that the claimant’s CV was an effectively written and presented document but his application failed because he lacked relevant experience.
49. The tribunal heard evidence from Alison Hilton who is the HR Lead for the second respondent and Michelle Pollard who is the Managing Director of the third respondent. Their evidence was consistent with the documents and with

each other and it was cogent. We formed the view that these witnesses were honest and credible and they accurately explained the process they had undertaken and the reasons why the claimant's application was not progressed.

50. Again the decision not to progress his application prompted a flurry of correspondence from the claimant. Again it was explained to the claimant why his application had been rejected and in particular why the second respondent held the view that the claimant lacked the necessary experience for the role. Again the claimant challenged the view that he did not have sufficient experience for the role. The second and third respondents made it clear in light of the claimant's objections that he could submit an oral application if he considered any relevant experience had been missed from his CV. The claimant never accepted this opportunity, even though it was essentially the adjustment that he had been requesting in the first place. He never identified any relevant experience that may have been missing from his CV. Instead as he had done in relation to his application to the first respondent the claimant quickly contacted ACAS and indicated that he would be pursuing a legal claim. The claimant also promptly asked what sort of compensation the second and third respondents would be willing to offer.
51. The claimant explained in his evidence that the reason why he had not been prepared to engage with the respondents when they attempted to offer an oral application was because he was upset about the initial rejection of his applications.

Why the claimant's job applications were not progressed by the respondents

52. The claimant acknowledged in his submissions that there would be no point in arranging an oral application if the employer had already decided that the claimant did not meet the essential criteria for the role. This was significant because the respondents' position in this case is that the claimant did not meet the essential criteria for the roles they were recruiting into. This was because he lacked relevant experience.
53. The claimant spent a large amount of time at the hearing attempting to show that contrary to the view the respondents took he was in fact suitable for the vacancies they were recruiting into. The claimant spent a lot of time attempting to set out in considerable detail his scientific knowledge and expertise which he believes shows the respondents were wrong to think he did not have the right experience for the roles. We think this was the wrong thing for the claimant to focus on and in any event the attempt to show the respondent's view was incorrect failed. The claimant did not demonstrate that there was any relevant information about his experience which could be given in an oral application that was not contained in his CV. The CV was in fact comprehensive and contained the claimant's key relevant experience. We were entirely satisfied that the respondents' view that the claimant lacked sufficient relevant recent experience for the roles the respondents were recruiting into compared to other candidates was not only genuinely and reasonably held but also accurate. It was in fact obvious that the claimant lacked sufficient relevant experience for these roles and the claimant's attempt to argue otherwise was wholly unconvincing.

54. On behalf of the first respondent Mr Knappett summarised the reasons why he had not progressed the claimant's application on the basis of the information he viewed at paragraph 5.5 of his witness statement. It was because the information he reviewed:

54.1 contained a significant amount of information about R&D Tax relief and Vehicle MPG/emissions improvements which were of no relevance to the role he was recruiting into;

54.2 confirmed the claimant's recent job experience (mainly in tax relief advice) was not relevant to the role;

54.3 confirmed the claimant had spent more than five years' working outside of the laboratory;

54.4 confirmed that his postgraduate qualifications related to high temperature corrosion/fuel cells, and instrument analytical science, neither of which are of immediate relevance to the role he was recruiting into, unlike a large number of other candidates who had postgraduate degrees in microfluidics or flow chemistry.

55. We accept this evidence as a reasonable and accurate basis as to why the claimant's application to the first respondent was not progressed. As the claimant did not meet the essential criteria for the role of having sufficiently relevant experience arranging an oral application would have been pointless.

56. On behalf of the second and third respondents Alison Hilton set out the reasons why they considered that the claimant did not have the requisite skills and experience for the role they were recruiting into at paragraph 16 of her witness statement. The specific reasons were as follows:

56.1 The requirement for food manufacturing or related technology knowledge was key and the claimant did not have this – i.e. he had not worked in food, brewing or dairy and therefore does not have familiarity with relevant industry standard equipment or technical expertise.

56.2 The claimant does not have project management certification.

56.3 The claimant does not have NEBOSH or IOSH safety certificates.

56.4 The claimant does not have knowledge of maintenance planning principles and approaches.

56.5 The claimant does not have sufficient experience of leadership of significant sized projects, He has delivered savings and revenues for different projects and programmes that he has been involved with, but the second respondent was looking for someone who has been leading a team of contractors or skilled engineers to deliver an installation on a plant of a similar nature.

57. We accept this evidence as a reasonable and accurate basis as to why the claimant's application to the second respondent was not progressed. As the

claimant did not meet the essential criteria for the role of having sufficiently relevant experience arranging an oral application would have been pointless.

Conclusions

58. The respondents have we think appropriately conceded that the claimant was disabled and that they knew or ought to have known about the disability. We can therefore proceed directly to considering the claimant's claim for reasonable adjustments.
59. As was confirmed at the preliminary hearing the claimant relies solely on there being a provision criterion or practice (a "PCP") which put him at a substantial disadvantage compared to somebody without his disability.
60. The PCP relied upon is that the respondents sifted applications by reference to written CV's only. We find that the respondents did have this PCP.
61. As it happens in respect of the first respondent they generally sifted applications by reference to both the written CV and the LinkedIn profile of applicants. In relation to the claimant they in fact made their decision based on the more detailed employment history taken from the claimant's LinkedIn profile only. However we don't intend to focus on this distinction. The point is that all the respondents sifted applications by reference to the written documents submitted by the applicants. We think interpreting the PCP in this way is consistent with the liberal approach recommended in Carreras.
62. We next have to consider whether that PCP put the claimant at a substantial disadvantage compared to somebody without the claimant's disability. The substantial disadvantage relied upon by the claimant is that he could not express himself effectively in writing and/or could not adapt his CV to reflect the specific needs of the post. We consider this is where there are significant and fatal flaws in the claimant's case. We do not think the PCP put the claimant at the substantial disadvantage relied upon. We do not think there was anything in the application processes used by the respondents which put the claimant at a substantial disadvantage compared to someone without his disability. We will explain our reasons.
63. Although we accept the claimant had a general difficulty expressing himself in writing this was not a difficulty that manifested itself to any extent in the written documents on which the respondents based their decisions. As we have observed the claimant's CV and his LinkedIn profile were in fact clearly written and professionally presented. Somebody without dyspraxia could not have presented the claimant's experience in a CV or profile any better than the claimant did. The documents effectively express the claimant's key experience, qualifications and achievements in a summary form. This information was set out accurately and clearly. The presentation of the documents was not held against the claimant, on the contrary the evidence was that the respondents viewed the presentation of the claimant's CV favourably compared to other candidates. There is no evidence that something was missed off the claimant's CV that he would have included were it not for his disability. In particular the claimant did not demonstrate that anything which showed he could meet the requirements for these roles had been missed off his CV or LinkedIn profile.

64. The reality is that the claimant was unsuccessful in these applications not by reason of any issue of form (in other words because of an ineffectively written, poorly presented or badly expressed document) but instead by reason of a matter of substance (that is because the respondents it seems to us reasonably and indeed accurately took the view that the claimant's experience did not sufficiently match what they were looking for). Contrary to the suggestion in the first part of the alleged substantial disadvantage the claimant's relevant experience was expressed effectively in his CV and LinkedIn profile. The reality is simply that his applications were not progressed because he lacked sufficient relevant experience for these roles.
65. The second element of the substantial disadvantage identified by the claimant was that he could not adapt his CV to reflect the specific needs of the post. The claimant made no effort to tailor his CV to any of the jobs that he was applying to, but in our judgement this was not linked to his disability. It was not a substantial disadvantage compared to someone without the claimant's disability. As we have observed the claimant *is* in fact able to adapt his CV, as is demonstrated by the fact that he has honed and updated it over the years. However, the claimant could not possibly have tailored his CV to each individual job he was applying for in 2020 even if he did not have dyspraxia due to the very high number of jobs that he was applying to. The claimant fairly accepted that point in his evidence.
66. Furthermore, the one click application process is just that. If the claimant was tailoring his application to each individual job then it would not be a one click application process because the whole point of that process is that it only takes one click to submit an application. The claimant chose to use the one click application process rather than any other process for applying for jobs. It seems to us that the process itself has advantages and disadvantages. One advantage is that an applicant is able to quickly and easily apply for jobs. One disadvantage is that the information put before the prospective employer is generic and this may make the application less attractive to the prospective employer. This is in our view a disadvantage linked to the process itself rather than the claimant's disability. A person without the claimant's disability would face the exact same disadvantage if they chose to apply for jobs using the one click application process.
67. The claimant's real problem arises from the fact that he has chosen to be very unselective about the jobs he is applying to and this means he makes lots of applications, many of which are unrealistic. This is not linked to disability. The claimant could have taken the time to be more selective about what jobs he applied for rather than just applying for lots and lots of jobs which are only tangentially related to his experience and skillset, such as the jobs in this claim. Somebody without the claimant's disability who took the same indiscriminate approach to applying for jobs would face the same problem of receiving lots of rejections following an initial sift by the prospective employer.
68. It is not clear how the claimant could have adapted his CV for these specific roles if he had had the time to do so. Again this issue is not linked to disability. The application process adopted by the respondents did not require applicants to submit an application including, for example, an explanation of why candidates thought they were suitable for the role. Instead, they just wanted to

see the candidates' work experience by way of viewing the CVs/LinkedIn profiles so they could perform an initial sift of applications. The claimant's work experience would be the same no matter what position he was applying to. The fundamental point is that the claimant work's history on his CV or LinkedIn profile would have looked the same and contained the same information if he did not have dyspraxia, and the respondents would have reached the same decisions. There is no disadvantage here compared to someone without the claimant's disability.

69. As the information contained in the claimant's CV made clear the claimant would struggle with an application which required him to do a lot of writing. But the claimant was not in fact required to do any writing when making these applications (as his CV and LinkedIn profile were pre prepared documents which he had honed over a long period). The claimant was also not required to access drop down menus or fill in an application form. He was not required to provide written answers to questions or undertake a STAR analysis. All he had to do was press click to submit his CV and allow access to his LinkedIn profile. This did not create any difficulty for the claimant or put him at any disadvantage compared to someone without his disability.
70. The claimant's CV did not contain all the information about the roles the claimant had done and the scientific knowledge he says he gained in each role and in his academic studies which the claimant attempted to explain in considerable detail during the hearing. As we have observed the claimant did this in order to challenge the respondents' views that he lacked sufficient experience for the roles they were recruiting into but this challenge failed and we were satisfied that the view the respondents took was reasonable and accurate. To the extent it may be suggested that there was a disadvantage in the claimant being unable to put this level of detail in his CV we do not think that is right either. The claimant had spent a long time honing his CV with professional support and he could have expanded it if he wished to. However the purpose of a CV is to submit a summary or precis of an applicant's relevant experience. A CV is typically no more than 2 to 3 pages long and it should be concise and easy to read quickly. It is not meant to be a lengthy document containing a lot of detail. We note that in her witness statement Michelle Pollard - who works in the field of recruitment - described the claimant's CV as "very detailed". We accept that was an accurate description from somebody with relevant experience and we have found the claimant's CV to be comprehensive. There is no reason to think that the claimant's CV was lacking in any relevant detail. There is no disadvantage here compared to someone without the claimant's disability.
71. The respondents in this case were each faced with a lot of applications for the roles they were recruiting for and they had to make quick decisions based on the summaries of the applicants' experience which were contained in their CVs or LinkedIn profiles. They did not have the time to review a detailed and lengthy history of each applicant's work history and knowledge gained. The claimant's concern appears to be that he was not able to present the full detail of his experience and knowledge to the respondents in order to show that he was suitable for these roles. This is misguided because the simple fact is that the claimant's experience did not match what the respondents were looking for and nothing he has said or could have said can change that. We do not think there

was a disadvantage here because the claimant presented his relevant experience in his CV and the respondents were able to make an accurate and reasonable decision on that. Nothing the claimant has said has shown that relevant information was missed off his CV and he has not substantiated the suggestion that the respondent's decisions were wrong. Moreover even if there was a disadvantage in the claimant being unable to present the detail of his skills and experience as he believes them to be in order to argue his case that he is suitable for these roles that is in our view another disadvantage that is linked to the process rather than to the claimant's disability. Someone without the claimant's disability would have faced the exact same disadvantage.

72. We have therefore concluded that the PCP did not put the claimant at a substantial disadvantage compared to somebody without his disability and therefore the duty to make adjustments did not arise in respect of either of these applications. As the duty to make adjustments did not arise these claims must fail and be dismissed. We have gone on to consider the other elements of the claim in any event.
73. We would not have found that the respondents knew or could reasonably have been expected to know that the claimant was likely to be placed at any disadvantage in the application processes. Specifically the respondents could not reasonably have been expected to know that the claimant could not express himself in writing and and/or could not adapt his CV to reflect the specific needs of the post. This is because his CV and LinkedIn profile were both well written and professionally presented documents which effectively, clearly and accurately expressed the claimant's key experience and expertise. Furthermore, the information the claimant provided in his CV about his disability emphasised that he would be unable to manage an application process that requires a great deal of writing such as filling in an application form. It did not suggest that the claimant had been unable to prepare his CV effectively due to his disability. As we have already made clear the claimant was not in fact required to fill in an application form or indeed do any writing in these job applications.
74. The step which the claimant contended should have been taken to avoid the alleged disadvantage was permitting him to make his application orally, either face-to-face, by telephone or by video call. We would not have found it was reasonable for the respondents to take that step. We will explain our reasons.
75. It is clear that it would have been wholly impractical for this step to be taken. As we have said the claimant made at least 2000 job applications using the one click application process in 2020 and he made the same request for adjustments in each one. Only around 1% of prospective employers complied with the request. It appears that the reason why claims were progressed against these particular respondents was because they engaged with the claimant and explained why he had not been successful. The claimant could not possibly have completed 2000 oral job applications in a single year. The adjustment sought was therefore clearly impractical.
76. As the claimant acknowledged in his submissions there was no point in arranging an oral application if the employer had already decided that he did not meet the essential criteria for the role. This is what happened in both of these

applications. The respondents decided that the claimant did not meet the essential criteria for the roles they were recruiting into because he lacked relevant experience. We do not think it would be reasonable to expect the respondents to arrange an oral application when they already knew that the claimant lacked the relevant experience and so would not be recruited. It would be superfluous for the claimant to present extra detail in an oral application when an accurate and reasonable decision could be made on the sift of the written documents. An oral application in these circumstances would be futile and a waste of the respondents' time and resource which were already stretched in dealing with recruitment processes which had attracted a lot of applicants.

77. Finally we should record that in our view it is in fact crystal clear that the claimant lacked the relevant experience for these roles and this was obvious to the respondents from the outset. We note that Mr Knappett's original response when he was informed by HR that the claimant was challenging his decision was that he rejected the claimant's application because "it seemed like a spam application", meaning he assumed it was not a genuine application because the claimant's experience was so unrelated to the role. Similarly the second respondent advised the third respondent at the time that the claimant's CV showed that he did not meet the criteria they were looking for and they too queried whether the claimant's application was genuine given his obvious lack of relevant experience (and also because he lives in Staffordshire and the role was based in Suffolk). It has become apparent through this hearing that what the claimant really wanted to do was argue his case as to why he believes the respondents' view that he was not suitable for the roles was "wrong", but the claimant has failed to substantiate the suggestion that the respondents somehow got it wrong and at the end of the day it is for the respondents to decide what the right experience for the job is. They made their decision about the claimant based on accurate information he had effectively presented in his CV and LinkedIn profile about his experience. This was in the context of the clear fact that the claimant was using a method of applying for jobs which was very indiscriminate; he took little to no time to check that he was in fact suitable for the jobs he was applying for and did not check whether his skills and experience closely matched what prospective employers were looking for. This resulted in the claimant making unrealistic job applications which is exactly what happened in this case. These factors reinforce our view that the adjustment contended for is not a reasonable one.

78. For these reasons the claims fail and they must be dismissed.

Employment Judge Meichen on 26.1.23