Neutral Citation Number: [2023] EAT 36 EA-2020-000655-AT

IN THE EMPLOYMENT APPEAL TRIBUNAL

ON APPEAL FROM THE EMPLOYMENT TRIBUNAL SITTING AT LONDON CENTRAL

Rolls Building, Fetter Lane,
London EC4A 1NL

Date: 10 March 2023

Before :

THE HONOURABLE MR JUSTICE KERR

- -

Between :

PHILIP McQUEEN **Appellant/Claimant**

- and –

GENERAL OPTICAL COUNCIL

Respondent

- -
- -

Ms Emma Foubister (instructed by **Employment Law Appeal Advice Scheme**) for the **Appellant**
Mr James Boyd (instructed by **DLA Piper UK LLP**) for the **Respondent**

Hearing date: 20 December 2022

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JUDGMENT

This judgment was handed down remotely by circulation to the parties' representatives by email and will be released for publication on the National Archives caselaw website. The date and time for hand-down is 10 March 2023 at 10.30am. The version released for publication may be treated as authentic.

SUMMARY

Disability Related Discrimination

Although the tribunal's decision that the claimant had not suffered discrimination because of something arising in consequence of his disabilities (under section 15 of the Equality Act 2010) was not happily structured and drafted, there was no error of law or principle in the tribunal's findings that the claimant's conduct on the occasions when he came into conflict with co-workers was not something arising in consequence of his disabilities (dyslexia, symptoms of Asperger's Syndrome, neurodiversity and left sided hearing loss). Once the tribunal had made those findings, the question whether any unfavourable treatment alleged and proved had been "because of" something arising in consequence of his disabilities did not arise.

The Honourable Mr Justice Kerr:

Introduction and Summary

1. The appellant, the claimant below (**the claimant**), appeals against part of a liability decision of an employment tribunal sitting at London Central (Employment Judge Sarah Goodman, sitting with Mr G. Bishop and Mr D. Carter) in February 2020. Judgment was reserved. The decision and written reasons were dated 8 July 2020 and sent to the parties on 10 July 2020.

2. The appeal is against the decision dismissing the claim for unfavourable treatment because of something arising in consequence of a disability, brought under section 15 of the Equality Act 2010 (**the EqA**). The claimant submits that the tribunal misapplied the broad test of causation required where a claim under section 15 is being considered. He says that the tribunal applying too strict a test of causation is the only explanation for the tribunal's reasoning, as expressed in the decision.

3. Specifically, the claimant says the reasoning was contrary to the psychiatric and psychological evidence (though no perversity challenge is brought); that the respondent employer (**the respondent**) had itself linked the claimant's behaviour to his disabilities; and that in considering whether there was discrimination of the kind where "A treats B unfavourably because of something arising in consequence of B's disability" (section 15(1)(a) of the EqA), the tribunal failed to appreciate that the words "in consequence of" are at least as broad as the "because of" test.

4. In the alternative, the claimant relies on the same points to support a submission that the tribunal failed to give adequate reasons for its conclusion that the claimant's behaviour did not arise in consequence of his disabilities. On either view, the claimant asks the appeal tribunal

to remit the matter back to the employment tribunal for reconsideration of his section 15 claim.

5. The respondent, the claimant's former employer, accepts (as it did below) that the claimant suffered from disabilities within the meaning of the EqA, namely dyslexia, symptoms of Asperger's Syndrome, neurodiversity and left sided hearing loss. It accepted also that the claimant, arising from his disability, had a need for written instructions to be provided to back up verbal communications; and that he required some physical adjustments to the workplace.

6. The respondent submits that most of the section 15 allegations were found to be out of time and that the tribunal must have been focussing on those found to be in time, which were few. The respondent's case below was that while (as just explained) some adjustments were required arising from the disability, others contended for by the claimant were not. The contested issues were whether there was a need, arising from the disability, not to approach the claimant in a seemingly confrontational manner; and whether there was a need for him to stand when speaking to colleagues.

7. The tribunal had to decide whether the claimant's conduct at work arose from disability. Having carefully considered the medical evidence, the tribunal properly found, said the respondent, that while the disability could cause the claimant to behave in a manner described as a "meltdown", on the occasions when that had happened his behaviours were not the consequence of his disability. Rather, the tribunal properly found, with sufficient reasoning, he had behaved as he did because he had a short temper, resented being told what to do and had lost his temper.

Facts

8. The claimant has dyslexia (diagnosed in 2000) and some symptoms of Asperger's Syndrome. He has neurodiversity and left sided hearing loss. It is common ground that his

conditions can cause some difficulties with his interactions in the workplace. The respondent is the statutory regulator of optometrists and opticians practising in this country. It employed the claimant as a registration officer from 31 July 2014. The respondent was aware that he had dyslexia when it recruited him.

9. The claimant was examined at various times from 2015 to 2017 by an occupational health adviser, a psychologist and a psychiatrist. Some of those examining him had sight of earlier reports predating his employment. The tribunal summarised this evidence. The findings included altered speech in situations of stress, anxiety or conflict. He would raise his voice and adopt mannerisms suggestive of aggression, with inappropriate speech and tone.

10. He did, indeed, become involved in difficult interactions with co-workers during his time with the respondent. The tribunal described what it called "the first meltdown" in April 2015. The claimant challenged an instruction from a more senior colleague, Ms Nadia Patel, to give priority to a certain registration application. She complained that while the instruction was reasonable, his spoken response had been rude, disrespectful and wholly inappropriate, with aggressive gestures and body language that was wholly out of place.

11. Ms Patel warned that any repetition could lead to disciplinary action. She did not accept that any disability removed the need to behave appropriately. The incident led to a referral to occupational health and consequent changes to his method of working. He was to be given emailed instructions if asked to change the way a task was to be done. He would be given a "recording pen" to record conversations, so he could check them afterwards.

12. The "second meltdown" examined by the tribunal occurred a year later, in April 2016. Again there was a confrontation between the claimant and Ms Patel. He objected to a request that he pass some of his backlog of work to colleagues. Ms Patel was left in tears. The claimant

made a request of an administrator in human resources that Ms Patel should have some disability awareness training. The tribunal commented (paragraph 42) that the request to pass work to others was not asking him to vary or step outside a process and was "hard to read as something arising from Asperger's, with a need for set routines, or dyslexia. It seems more likely to be resentment at being told what to do."

13. After that, there were further difficulties between the claimant and the respondent and between him and work colleagues. The tribunal went into a lot of detail in making its findings. I will omit the detail. A conflict occurred over a new job description issued in November 2016. He was given a written warning in January 2017 for failing to follow instructions. In February 2017, he had a further confrontation with Ms Patel which led to a further referral to occupational health and a report from a Dr Padraic Ryan dated 15 March 2017.

14. Ms Patel carried out the claimant's annual appraisal in May 2017. She awarded him a mark of 3, but commented that some of his work was worth only the lower mark of 2. She would give him a mark of 3 notwithstanding, because his work had improved. He became antagonised by the comment that some of his work was only worth a mark of 2 and wanted that comment changed or removed. It was not changed or removed and the matter rested there.

15. In June 2017, the claimant was disciplined again, this time for giving a candidate for registration wrong information about whether it was possible to resit a qualifying examination if she failed it. He was warned that he could face dismissal as he had already had a written warning and the allegation could amount to serious misconduct. However the charge was found not proved and the evidence supporting it "contradictory and weak", in the words of the manager chairing the disciplinary meeting.

16. The claimant was not content with that outcome. He brought a grievance complaint in

July 2017 about the two disciplinary charges, the job description issue and his appraisal by Ms Patel. The grievance process became protracted, lasting well into 2018. The first of two claims in the employment tribunal was brought on 11 August 2018, with an early conciliation certificate dated 19 June 2018. This led the tribunal to observe (paragraph 5) that "anything before 20 March 2018 is at first sight out of time … [t]he claimant argues that earlier events were part of conduct extending over a period which ended within time".

17. The claimant went off work from 10 December 2018 and did not return, apart from one brief visit on 8 February 2019. His second claim was brought on 25 February 2019. Both claims were before the tribunal, but not his third and fourth claim, by then issued, which had yet to be listed when the tribunal heard the first and second claims. In them, wide ranging allegations of discrimination on the ground of race, sex and disability, victimisation and harassment were made.

18. The claimant left the respondent's employment later in 2019. The hearing of the first two claims in the tribunal took place over seven days in February 2020, with two further days for the tribunal's deliberations. There was an agreed list of 130 issues. All except one of the claims failed; a single claim for victimisation succeeded. Except as set out in this judgment, the other claims and their outcome are not relevant.

Law: Discrimination Arising from Disability

19. So far as material to this appeal, section 15 of the EqA 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, … ."**

There was no disagreement between the parties about the correct approach to applying the words "because of something arising in consequence of B's disability".

20. I was referred to the usual leading authorities: *IPC Media Ltd v Millar* [2013] IRLR 707, per Underhill J (P) (as he then was) at [17]; *Basildon and Thurrock NHS Foundation Trust v. Weerasinghe* [2016] ICR 305, per Langstaff J (P) at [26]-[28]; *Pnaiser v. NHS England* [2016] IRLR 170, per Simler J (P) (as she then was) at [31]; *Risby v. London Borough of Waltham Forest*, UKEAT/0318/15/DM (18 March 2016), per Mitting J at [17]-[18]; *Charlesworth v. Dransfield Engineering Services Ltd*, UKEAT/0197/16/JOJ (12 January 2017), per Simler J (P) at [11]-[15] and [18]; and *Secretary of State for Justice v. Dunn*, UKEAT/0234/16/DM, 27 January 2017, per Simler J (P) at [49] (appealed on a different point, [2018] EWCA Civ 1998).

The Tribunal's Decision

21. The following are the relevant parts of the decision for the purposes of this appeal. The tribunal began by referring to the issues and the witnesses, and (at paragraph 5) to the time point which I have already mentioned. It went on to record the common ground that the claimant suffered from the disabilities already mentioned (paragraph 11).

22. The tribunal then recorded (paragraph 12) the extent to which the respondent accepted that certain consequences flowed from the disabilities, namely that there was a need for written instructions to back up verbal communications and a need for some physical adjustments to the workplace. The respondent did not accept, the tribunal noted, that a need "not to be approached in a seemingly confrontational manner" or "to stand up and speak" arose from the disabilities.

23. The tribunal went on to summarise the medical evidence. It then stated its assessment of the extent of and effect of the claimant's disabilities, which I must quote in full (paragraphs 14 and 15):

> **"14. Standing up at work, as something arising from disability, is not explained in the medical reports, and we have resolved that issue after hearing the claimant's**

evidence. The respondent's managers had asked the claimant not to stand up at his desk to speak to his colleagues in the working area because he had a loud voice, and it was disruptive. The claimant's evidence was: (1) he did not need to wear his hearing aid at work (2) he did not stand up to hear people, as despite there being half height partitions between one row of desks and another he could hear them sitting down, and (3) he stood up so that others could hear what he said. We could not make sense of this. We would have understood if he had said he needed to stand up to hear colleagues, as we know people who are hard of hearing sometimes do better looking at a speaker, relying to a degree on lip reading, but this was not his evidence. We concluded that he stands up because that is his habit, not because it is something arising from disability.

15. Whether the 'need not to be approached in a seemingly confrontational manner' arose from disability, whether the disability was dyslexia or Aspergers or both, caught by the term 'neurodiversity', was more difficult. Not pleaded, but entered by the claimant on the schedule of issues, is the formulation:

> **'Autistic/ND perception as a difficult character; perception of intentionally being obstructive towards management; communication issues (including speech; non-visual); perceived demeanour'.**

The behaviour that resulted when confronted was described by the claimant as a 'meltdown'. We deduce from Dr Burgess's report that this was the type of behavior she was asked to report on. As already noted, she mentions loss of control as associated with Aspergers symptoms, and Dr Pitkanen mentions 'emotional and behavioural' symptoms, without specifying what these were. It is commonly known that people with Aspergers have difficulty reading social situations, body language, and understanding figurative expressions of speech, though on the evidence before us, including interaction with him over seven hearing days, these are not difficulties met by the claimant. It is not clear to us on the evidence that people with Aspergers have difficulty handling disagreement. We did understand that on the claimant's account he relied on set processes being followed, and that he was confused by changes, and needed to have changes to set process put in writing, so he could understand and remember them. He had agreed with the respondent that he would have written confirmation of changes. We could understand without formal medical evidence, that if there were unconfirmed changes of process then, taken with the challenges of dyslexia, he might become frustrated to the point of anger. We therefore examined the occasions during the time he worked for the respondent when he went into 'meltdown' to see what had happened to cause it. Paragraphs 25-34 cover the first meltdown at work, 40-42 another. The cause of the episode in paragraphs 60-61 is not explained by the claimant, and in 70 and 75 seems to occurred when it was pointed out to the claimant that he had not followed policy on what to say about resits. In 98, the claimant said the perception of his loud voice was caused by dyslexia and hearing loss, not any neurodiverse trait. Finally, in 112, he became loud and angry because his line manager asked him to enter a room for a discussion. This cannot be related to any failure to record changes to process in writing. In our finding these episodes did not arise from changing processes without noting them in writing, they arose when the claimant was asked to do a task in accordance with the set process, and he objected to doing that task rather than another task, and sometimes just that

> **he resented being told what to do, or told that he had done something wrong. The circumstances of these outbursts indicate that they were not caused by dyslexia or Aspergers, but because he had a short temper, and he resented being told what to do."**

24. The decision writing technique is unusual. The references to subsequent paragraph numbers refer forwards to later parts of the decision dealing with the conflict incidents that arose during the claimant's time with the respondent. Normally, you see a tribunal's assessment of and conclusions drawn from its findings of fact after the findings are set out. Here, it is the other way round. Nevertheless, the assessment and conclusions are there to be seen, early in the tribunal's decision.

25. The tribunal then turned to its "Findings of Fact", which it proceeded to set out at length and in detail. The narrative history was more or less chronological. I have summarised it above, but without the detail. That exercise occupied paragraphs 17 to 112 of the decision.

26. The tribunal then turned to "The Time Issues" (paragraphs 114 to 134). It referred to section 123 of the EqA and to the case law concerning acts that extend over a period, which by section 123(3) are treated for limitation purposes as done at the end of the period. The tribunal went through the various allegations (not just of discrimination under section 15 of the EqA).

27. In some instances, the tribunal rejected the proposition that the allegations were conduct of the respondent extending over a period. There is no appeal against the findings that most of the allegations were out of time and there was, indeed, no application below to extend time on the "just and equitable" basis. In other instances, the tribunal dealt with the timing issue in a less orthodox way by stating their conclusions on the merits of the allegations. So far as material to this appeal, the findings were as follows.

28. As for the dispute about the job description in December 2016, the tribunal found at

paragraph 118 that the dispute over "whether the claimant's 'training' of colleagues amounted to more than the coaching he already did – was not because of disability, or something arising from disability." The manager's approach to the issue had been "firm, to a degree tough", but:

> **"that was not because of the need for written instructions or any physical changes in the workplace (the 'something arising' from disability) but because she was out of sympathy with the claimant because of the history of meltdown behavior towards a manager, and the claimant disrupting work with his custom of standing up and speaking loudly. In our finding, neither trait was 'something arising' from disability."**

29. At paragraph 119, the tribunal turned to the disciplinary warning in January 2017 and commented that it was "unfair, because the man[a]ger was prosecutor, witness and judge" but "[i]n our finding this was not because of disability, or something arising from it." They went on to point out that the claimant's behaviour included "what looked like insubordination" and concluded that:

> **"[t]he reason he had a warning was because he was disruptive, and did refuse to do work, and because the manager did not check the policy. Had she given an informal warning, as she could have done within the policy, we would not have found it discriminatory, and that she wrongly gave a formal warning was not in our finding because of disability or something arising from it."**

30. At paragraph 120, the tribunal turned to the claimant's appraisal in May 2017. Addressing the reason for Ms Patel's comment in that appraisal to which the claimant had taken exception, the tribunal said the reason:

> **"is essentially because the claimant found the criticism that his performance the previous autumn had been lacking unfair. It is hard to see this as detriment, when he was assessed for the year at a level he does not dispute, which had no effect on his pay or prospects, and when there do appear to have been shortcomings, such as being behind with emails, and not doing work allocated to him, but even if it was, it is not in our finding because of disability or something arising from it. Her refusal to alter her comments arose from the history of meltdown behaviour challenging her authority."**

31. Next, the tribunal turned at paragraph 121 to the further disciplinary process in June 2017:

> **"We did not conclude this was because of disability, or something arising from it.**

> **It arose from Aaron Grell's concerned report of what the claimant was telling would-be applicants. The concern was in part that the claimant would not accept he was wrong, saying in effect that the policy was wrong, and resits should be allowed. This was not, in our finding, about the claimant not having something in writing, it was that he did not like being told he was wrong, and had become 'passionate' about it. In the event, the discipline case was found not proved, and it was allowed that he may have made a mistake, or not said what was alleged, but we found there was good reason to bring the charge on the basis of the statements made. That excludes a discriminatory reason for starting disciplinary action."**

32. The tribunal then stated (paragraph 122):

> **"To conclude, we do not find a discriminatory course of conduct or state of affairs, and as already noted, events before 20 March 2018 are on the face of it out of time, unless there is conduct extending over a period which ended after that date."**

33. In that unusual way, the tribunal dealt with some of the time points by finding that the allegations were not well founded on their merits and therefore could not be a continuing course of (discriminatory) conduct; rather than by looking at what was alleged by the claimant and asking whether, if made good on its merits, it would amount to conduct extending over a period (and if an application to extend time were made, which was not the case here, whether that should be granted).

34. The tribunal did go on to make further remarks about the timing points and reaffirmed its cut-off date of 20 March 2018, saying that events prior to that date could not be relied on because the claim was to that extent out of time. At paragraph 133 the tribunal returned to the respondent's instruction to the claimant "not to stand up and talk at work …", as to which "[t]he position had been made very clear in November 2016, and again in January 2017.

35. Then at paragraph 134 the tribunal said:

> **"If we are wrong about that, and the standing up instruction or any remaining lack of clarity did continue after March 2018, and so was in time, we have in any case found that standing up when talking to colleagues at work was not something arising from disability, but a personal habit. The tribunal does not accept, in view of our findings about disability and about something arising from disability, that the need to stand up results from hearing loss, nor does it accept that the claimant**

> **was because of dyslexia or other neurodiversity in any way confused about the instruction."**

36. The tribunal then addressed parts of the claim that are not relevant to this appeal, before returning at paragraph 149 to the claim under section 15 of the EqA. After setting out the section, they said at paragraph 150:

> **"Where the claim is of something arising, that something is stated in the list of issues (with some variations in wording) as 'autistic/ND reactions; perception as a difficult character; communication issues (including speech; non-verbal)'. The Tribunal's finding is that any perception of the claimant as a difficult character was because of the meltdown behavior already described, and that this behavior was not related to changes in process, or dyslexia, or something arising from dyslexia, hearing loss or Aspergers. The respondent from time to time noted that the claimant said he behaved in this way because of process change, and sometimes made allowance for it, but in our finding, the immediate trigger for meltdown behavior in each case we had to examine was not unrecorded process change, and any claim based on this is dismissed."**

The Parties' Submissions

37. For the claimant, Ms Foubister submitted first that, on the authorities, the disability does not necessarily need to be the sole or even main reason for the "something" that arises in consequence of it. The disability needs only to have a significant or more than trivial influence on the "something". The test for "in consequence of" is broader than, or at least as broad as, the "because of" test in section 15 of the EqA. A broad approach must be taken to what amounts to a consequence of a disability. The consequences vary depending on the particular circumstances of the individual.

38. Next, Ms Foubister submitted, the medical evidence drew a clear link between the claimant's disabilities and his conduct. He was referred to Dr Padraic Ryan (according to the latter's report of 15 March 2017) because of "his preferred style of mannerism in the workplace, as well as altered speech in certain situations, especially conflict". Dr Ryan recommended an assessment by a consultant psychiatrist. That assessment was carried out by a Dr Mervi

Pitkanen who, in July 2017, recommended an MRI scan but that scan was not carried out.

39. Earlier, in February 2014 before the start of his employment with the respondent, the claimant had been assessed by an educational psychologist, Ms Naomi Burgess. The tribunal's summary of her findings (paragraph 13.4 of the decision) was that "she did not consider the claimant had autism, but he did have 'neurodiverse traits'. He had 'a number of symptoms consonant with the possible likelihood [sic] of Asperger's syndrome'". Ms Burgess had, the tribunal noted, observed among other things that neighbours could hear him through the walls and work colleagues (before he worked for the respondent) found his behaviour unacceptable and that "under stress, control falls away".

40. Ms Foubister submitted that the tribunal effectively adopted a test of what was the principal reason or predominant cause of the claimant's conduct when asking itself whether his "meltdowns" arose in consequence of his disability. They did not, she submitted, consider whether the disability could have been a contributing factor to the claimant's conduct, without necessarily being the only or even the predominant cause of it. The tribunal repeatedly said that the meltdown behaviour was not related to his disability, without directing itself on how broad the two part causation test is under section 15 of the EqA.

41. The claimant himself, Ms Foubister pointed out, consistently attributed his own behaviour at work to his disability. That explanation from him was noted in the report of 11 June 2015 of Ms Angela Kavuma, Occupational Health Advisor. Ms Kavuma recorded that the claimant had presented her with Ms Burgess's 2014 report as evidence of this. Ms Kavuma had accepted the link. The respondent's 2016 appraisal also, Ms Foubister submitted, accepted the link: it included the observation that he "needs to sometimes be aware of the way he speaks on the phone however, we are aware of his disabilities which can have an affect [sic] on how he responds to difficult customers".

42. Ms Foubister contended that the tribunal's short analysis of the section 15 claim at paragraph 150 of the judgment did not do justice to the legal test of causation. There was no legal direction on the scope of section 15 and the analysis of the decision did not include any consideration of the possibility of dual or multi-factor causation of the claimant's conduct. Alternatively, the reasoning was inadequate and the matter should be remitted on that ground.

43. This was not a case, the claimant submitted, like the one relied on by the respondent, *DPP Law Ltd v. Greenberg* [2021] EWCA Civ 672 (see per Popplewell LJ at [57]-[58]), where the appeal tribunal could infer that the tribunal had applied the correct principles because it had correctly stated them. Here, it had not stated them and the indications in the decision were that they had not correctly applied them; cf. *Fitzmaurice v. Luton Irish Forum*, EA-2020-000295/RN, 16 September 2021, per His Honour Judge James Tayler at [11] and [16]-[18].

44. There, Ms Foubister pointed out, the judge accepted at [11] that the tribunal had "correctly directed itself as to the approach to be adopted to causation in public interest detriment claims"; but "did not direct itself to the relevant law in respect of distinguishing between the making of a protected disclosure and the manner in which it is made, things done at the time that it is made, the circumstances in which it is made; or the consequences of it being made". At [16] and [17], Judge Tayler said that with regret he was driven to the conclusion that the presumption (of correct application of the law to the facts) alluded to by Popplewell LJ in *Greenberg* was rebutted.

45. The tribunal in the *Fitzmaurice* case asked itself, wrongly (per Judge Tayler at [17]) whether "the making of the protected disclosure was **the** reason for the treatment and failed to appreciate that if the making of the protected disclosure was **a** material factor in the occurrence of the detriment, that was sufficient for the claim to be made out (bold in original)." A

comparable error has occurred here, Ms Foubister submitted.

46. For the respondent, Mr Boyd submitted that only a few allegations were found in time, namely those where the discrimination alleged lasted beyond 20 March 2018. They were allegation 82 (that Ms Patel made a statement on 23 May 2018 saying she feared physical attack from the claimant arising from the incident in April 2015); allegations 90 and 91 (false statements made by another employee, Mr Aaron Grell on 27 November 2018, making direct reference to the known overt adverse effect of the claimant's conditions); and allegation 94 (Ms Patel confirming at a hearing on 19 December 2018 that the claimant had been awarded a mark of 2 in his appraisal in May 2017).

47. Mr Boyd referred to the tribunal's findings about the effect of the claimant's disabilities, at paragraphs 14 and 15 of the decision, which I have quoted above. He submitted that the authorities showed that in applying the two stage causation test, it did not matter in what order a tribunal approached the questions raised in a section 15 claim. It could ask itself, first, "what the consequence, result or outcome of the disability is"; or it might equally ask itself first "why it was that A treated B unfavourably" (per Langstaff J (P) in *Weerasinghe* at [17]).

48. The essence of Mr Boyd's submission was that, here, the tribunal permissibly adopted the former course, asking itself whether the claimant's conduct arose from his disabilities. The tribunal answered that question in the negative; on the occasions when he was treated unfavourably, his disabilities played no part in the conduct that led to him being treated unfavourably. That finding was properly reasoned and, there being no perversity challenge, unassailable, said Mr Boyd.

49. Once that conclusion had been reached, Mr Boyd reasoned, the further question why the respondent had treated the claimant unfavourably, logically did not arise. The reason for the

claimant's unfavourable treatment could not have been "something arising from his disability" because there was no relevant conduct arising from his disability; there was no "something" arising from his disability; there was nothing arising from his disability to consider because the relevant conduct in response to which he was treated unfavourably did not arise from his disability.

Reasoning and Conclusions

50. I have found the tribunal's decision difficult to understand and interpret. It is curiously structured and drafted in an unorthodox manner, mixing time points with the merits and expressing conclusions about the effect of the claimant's disabilities before making its findings of primary fact. It does not address the issues in a systematic way. It does not make clear which of the pleaded allegations are considered to be in time, i.e. which of them it found had occurred or continued after 20 March 2018.

51. These features of the decision are not conducive to clarity of thought, expression and reasoning. Thus, for example, one of the allegations of unfavourable treatment that Mr Boyd accepted was in time (though the tribunal did not say so in terms) was that Ms Patel had made a statement on 23 May 2018 saying she feared physical attack from the claimant arising from the incident in April 2015. The tribunal at no point referred to the making of that statement as an allegation of unfavourable treatment made in time. The content of the statement is not examined in the decision.

52. It would have been better if the tribunal had structured its decision by asking itself the questions (i) what are the disabilities (ii) what are their effects (iii) what unfavourable treatment is alleged in time and proved and (iv) was that unfavourable treatment "because of" an effect or effects of the disabilities. Or, the tribunal could have reversed the order of the questions and

asked instead (i) what unfavourable treatment is alleged in time and proved (ii) what was the reason for that unfavourable treatment (iii) what were the effects of the disabilities and (iv) was the reason for the unfavourable treatment an effect or effects of the disabilities.

53. Whichever way a tribunal decides to approach the issues, it should structure its decision so that a reader can understand clearly what question is being asked and answered at each stage of the analysis. Further, the tribunal did not at any point refer to the proposition that "something" can arise "in consequence of" a disability if the disability plays more than a trivial part in causing that "something"; and that the disability need not be the predominant cause of the "something" that arises from it.

54. In paragraph 150, the tribunal stated in unfortunate language that "the immediate trigger for meltdown behavior in each case we had to examine was not unrecorded process change, and any claim based on this is dismissed". The expression "immediate trigger" does not sit easily with the broad causation test found in the words "arising in consequence of …".

55. The difficulties I have had with understanding and following the tribunal's decision, and Ms Foubister's critique of them in her eloquent submissions, have come close to persuading me that the decision should not stand and should be remitted. However, in the end I have come to the view that the reasoning of the tribunal is not flawed by any error of law or principle and that it correctly applies the law embodied in section 15 of the EqA.

56. The way in which the tribunal approached its task was as follows. First, it noted the disabilities, which were common ground. Next, it made findings about their extent and effect, in paragraphs 14 and 15. The effects were limited to a requirement for written instructions to back up verbal communications; and a need for some physical adjustments to the workplace.

57. Next, it rejected in paragraphs 14 and 15 the claimant's case that the effects of the

disability went further and included a need to stand up at work and speak and a need not to be approached in a confrontational manner. Then, it found at paragraph 15 (referring forwards to the paragraphs stating its findings about specific incidents) that on the occasions the claimant went into "meltdown" or became "loud and angry", the disabilities played no part in his conduct; it was "because he had a short temper, and he resented being told what to do".

58. I accept the submission of Mr Boyd that, once the tribunal had determined that the disabilities did not have *any* effect on the claimant's conduct on the occasions in question, the further question whether any unfavourable treatment was "because of" that conduct did not arise. In my judgment, the tribunal did reach that conclusion in relation to all the unfavourable treatment complained of (or all that was not time barred); see the decision at paragraphs 14, 15; the paragraphs cross-referred to in paragraph 15 (namely, paragraphs 25-34, 40-42, 60-61, 70, 75, 98 and 112); and in the part of the decision dealing with the time points, paragraphs 118-122 inclusive, 133, 134; and paragraph 150.

59. After reflection, I do not accept the submission of Ms Foubister that the tribunal adopted too strict a test of causation when considering the effects of the claimant's disabilities. I think the correct reading of the decision is that the tribunal found that those effects did not play *any* part in the conduct that led to the unfavourable treatment complained of. It was not the tribunal's finding that those effects played a significant but less than predominant role in causing that conduct. This is therefore not a case where dual or multi-factor causation had to be analysed.

60. The tribunal was well aware of the medical evidence, summarised it carefully and fairly and drew from it some effects of the disabilities but rejected others. The tribunal was well aware that the claimant himself, whether dealing with a work colleague, doctor or psychologist, ascribed a very major role to his disabilities as a cause of his loud and aggressive behaviour;

but the tribunal was not bound by the claimant's self-assessment and largely rejected it.

61. In the end, although I have the reservations about the structure and quality of the decision and reasoning which I have already mentioned, I do not find in it any error of law or principle in the application to the facts of section 15 of the EqA. The findings of fact are not challenged as perverse; nor, realistically, could they be. The decision therefore stands and the appeal is dismissed.