EMPLOYMENT TRIBUNALS

Claimant: Miss E Thompson

Respondent: Vale of Glamorgan Council

Heard at: Cardiff **On:** 16 June & 19-22 June 2023

Before: Employment Judge C Sharp
Mrs M Walters
Mrs J Beard

Representation:
Claimant: Mrs C Thompson (Mother; lay representative)
Respondent: Ms B Criddle KC (Counsel)

Interpreters: Mr S William (19 & 20 June 2023)
Ms N Lloyd-Rees (22 June 2023)

JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The Claimant's claims of failure to make reasonable adjustments under sections 20-21 Equality Act 2010 are not well-founded and are dismissed;

2. The Claimant's claim of unfair dismissal remains unfounded and is dismissed.

REASONS

These reasons have been produced and delivered in writing at the hearing as the Claimant was concerned about hearing them in the absence of interpreter headphones or a hearing loop (which were not available and had not been ordered as a reasonable adjustment previously).

Background

1. The Claimant, Ms Emma Thompson, was a teacher of Welsh as a second language employed at Barry Comprehensive School between 1999 and 31 August 2016. Barry Comprehensive School no longer exists, and it is accepted that the Vale of Glamorgan Council was the employer and responsible for any remedy to be paid to the Claimant if she was successful.

2. The Claimant issued proceedings in the Employment Tribunal on 24 May 2016, and asserted unfair dismissal, direct disability discrimination, harassment related to disability, and failure to make reasonable adjustments. The final hearing of the claim took place over 13 days in November and December 2018 ("the Williams Tribunal"). All of the Claimant's claims were found not to be well founded and were dismissed.

3. The Claimant appealed this decision, and in a judgment handed down on 17 May 2021, the Employment Appeal Tribunal ("EAT") partially upheld the Claimant's appeal. It found that the previous tribunal's findings regarding the failure to make reasonable adjustment claims were not sufficiently set out and therefore had to be reconsidered by a fresh tribunal. As a consequence, the unfair dismissal claim was also remitted on the basis that if the new tribunal found that there had been a failure to make reasonable adjustments, this might mean that the Claimant had been unfairly dismissed. Only these issues were remitted to this Tribunal.

4. Since the EAT's decision, this case has been case managed and directions made to allow the final hearing to take place before this Tribunal. The applications made on behalf of the Claimant to amend her claim or for the Response be struck out were not successful.

5. Significant reasonable adjustments have been made to the tribunal process to enable both the Claimant and her mother (acting as the Claimant's representative) to take full part in the proceedings. These adjustments were more substantial than those made for the original tribunal hearing or those at the EAT hearing.

6. The adjustments put in place were:

    1. A ground floor hearing room was provided due to Mrs Thompson's mobility issues.
    2. Mrs Thompson was provided with a chair with arms and no wheels.
    3. An additional table was provided to the side for Mrs Thompson's papers.
    4. Regular breaks, upon request, and a break after oral submissions from the Respondent for Mrs Thompson to process what has been said (which was an overnight break in practice).

5. Blue paper in the Claimant's bundle and size 14 font for the bundle index and paper bundles were provided by the Respondent.
6. A Welsh language interpreter to assist the Claimant was provided; the interpreter translated from English to Welsh as required and the Claimant also lip read.
7. The seating within the hearing room was re-arranged so that the Claimant had a clear view of those speaking.
8. A judge without facial hair was provided.
9. Suitable equipment was provided by HMCTS to ensure that the hearing was audio recorded. A transcript is to be provided after the hearing by HMCTS at public expense.
10. Note takers were provided at public expense to provide the Claimant and her representative with notes of the hearing at breaks to enable them to be consulted during the course of the hearing – the Claimant's representative agreed the timing of the delivery of those notes with Judge each day;
11. Paper bundles were used.

7. The members of this Tribunal have not been involved in either the previous proceedings, case management or any interlocutory issues in respect of proceedings.

8. The Welsh language interpreter, Mr Steffan William, booked for these proceedings by HMCTS is an elected Councillor for the Respondent. This was disclosed at the outset of the proceedings by the Judge to the parties. Mr William confirmed that he had no actual bias for or against a party; the principles of apparent bias and the need for a fair hearing was explained by the Judge and the parties given an opportunity to take instructions. Neither party objected to Mr William; his services were not used by the Claimant at any point during the hearing.

9. No oral evidence was heard. Instead, the Tribunal was provided with the original bundle before the Williams Tribunal, relevant witness statements, notes of the cross-examination of the witnesses identified in the case management previously, and submission bundles (as well as costs bundles). Despite directions that a joint bundle would be provided, the Claimant provided her own set of bundles, which were accepted by the Tribunal. It was made plain to the parties, as is normal, that the Tribunal would only review documents to which it was referred during the course of the hearing (which would include references within written submissions).

10. The Tribunal had a day and a half for reading, and considered the written submissions provided by the parties. The Tribunal noted that while the Respondent's written submissions were focussed on the issues before it, the Claimant's written submissions were in excess of 100 pages. The Claimant's submissions did not focus on the remitted issues, and contained much that did

not assist the Tribunal, such as allegations of a very serious nature against various judges and tribunal staff, and attempted to argue that the entirety of the Williams judgment should be over-turned by this Tribunal. The Tribunal took the opportunity at the outset of the hearing to remind the parties of the issues it was to determine, and heard oral amplification of the written submissions from both parties. As a result of the diffuse submissions made by the Claimant, it is not possible to usefully further summarise the submissions.

The issues before the Tribunal

11. The EAT judgment assisted the Tribunal as it clearly identified the issues to be considered at the remitted final hearing. During subsequent case management, the issues were identified as:

    (1) Did the Respondent apply a provision, criterion or practice ("PCP"), namely (a) the capability procedure in its entirety; and/or (b) requiring teachers to achieve a good standing of teaching?

    The ET has already determined that these PCPs were applied (and this was not disputed by the Respondent).

    (2) Did either or both of these PCPs put the Claimant as a disabled person (by reason of dyslexia and deafness) at a substantial disadvantage compared with persons who are not disabled, namely was the Claimant more likely to fail the capability procedure because of her disability?

    (3) Did the Respondent know or ought the Respondent to have known that the Claimant was likely to be placed at that substantial disadvantage by either or both these PCPs?

    (4) If either or both of these PCPS put the Claimant as a disabled person at that substantial disadvantage, would it have been reasonable for the Respondent to take the following steps to alleviate that disadvantage?

    (a) Providing the Claimant with documents on blue paper typed in size 14-font.
    (b) Allowing the Claimant to tape record all meetings.
    (c) Allowing the Claimant to tape and video record lesson observations.
    (d) Providing a Welsh speaking note taker for all meetings.
    (e) Reducing the Claimant's marking workload, risk assessing and regularly reviewing it.
    (f) Providing the Claimant with a teaching support person.
    (g) Providing curtains in the Claimant's classroom on 7 June 2013 to cut down on the light shining on the white board.
    (h) Providing the Claimant with text to speech software.

(i) Providing the Claimant with the agenda and documents for meetings in advance.
(j) Conducting lesson observations with someone with experience in the Welsh language.

(5) Was the claim presented to the ET in time and if not, would it be just and equitable to extend time to consider it on its merits?

(6) If the Respondent failed in its duty (if any) to make reasonable adjustments as set out above, did this make the decision to dismiss the Claimant for capability unfair?

(7) If the Respondent (a) failed in its duty (if any) to make reasonable adjustments as set out above; and/or (b) unfairly dismissed the Claimant, what is the prospect that the Claimant's employment would have terminated in any event?

(8) Did the Claimant cause or contribute to her dismissal?

12. The Tribunal noted that the issue of when any reasonable adjustments should have been made may also arise.

Law and approach

13. The relevant provisions of the Equality Act 2010 are:

*"**20 Duty to make adjustments***

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.
(2) The duty comprises the following three requirements.
(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.
(4) The second requirement is a requirement, where a physical feature 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 third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put 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 provide the auxiliary aid.
(6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that

in the circumstances concerned the information is provided in an accessible format.
(7) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.
(8) A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.
(9) In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—
(a) removing the physical feature in question,
(b) altering it, or
(c) providing a reasonable means of avoiding it.
(10) A reference in this section, section 21 or 22 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to—
(a) a feature arising from the design or construction of a building,
(b) a feature of an approach to, exit from or access to a building,
(c) a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or
(d) any other physical element or quality.

21 Failure to comply with duty

(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.
(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.
(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

136 Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.
(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
(3) But subsection (2) does not apply if A shows that A did not contravene the provision.
(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.
(5) This section does not apply to proceedings for an offence under this Act.
(6) A reference to the court includes a reference to—

(a) an employment tribunal;…"

14. The relevant provisions of the Employment Rights Act 1996 are:

*"**94 The right***

(1) An employee has the right not to be unfairly dismissed by his employer…

98 General

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—
(a) the reason (or, if more than one, the principal reason) for the dismissal, and
(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
(2) A reason falls within this subsection if it—
(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,…
(3) In subsection (2)(a)—
(a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and …
(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—
(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
(b) shall be determined in accordance with equity and the substantial merits of the case…"

15. The Tribunal noted paragraphs 27 & 28 of the Judgment of the EAT in this case:

"27. A failure by an employer (A) to make reasonable adjustments in accordance with the duty imposed by section 20 of the Equality Act 2010 is an act of discrimination against a disabled employee (see: section 21(2) and 39(5) of the Act). The relevant requirement of the duty is that specified in Section 20(3) as follows:
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.

Para 20 of Schedule 8 to the Act provides that the duty does not apply if A does not know and could not reasonably have been expected to know that the disabled person was likely to be placed at such a disadvantage.
28. The issues whether a disabled person has been put at a substantial disadvantage by a PCP and what steps are required to be taken by virtue of the duty to make reasonable adjustments must be objectively assessed by the tribunal. The subjective motivation of the parties is irrelevant, and any procedure followed (or not followed) by the employer or requests made (or not made) by the employee may be of some evidential value but are in no way determinative of the issues. The Tribunal should identify the nature and extent of the "substantial disadvantage" caused by a PCP before considering whether any proposed step was a reasonable one to have to take (see: Environment Agency v Rowan [2008] ICR 218). There must obviously be some causative nexus between disabilities relied on and the "substantial disadvantage"; the tribunal should look at the "overall picture" when considering the effects of any disabilities. There must be evidence of some apparently reasonable adjustment which could be made before the tribunal can consider it (see Project Management Institute v Latif [2007] IRLR 579). In determining the reasonableness of any step regard should be had to its likely efficacy, practicability and cost, and the extent of the employer's resources, the nature or its activities and the size of its undertaking. So far as the efficacy of any proposed step is concerned it is only necessary to establish that there was a real prospect of the step avoiding or reducing the relevant disadvantage. A holistic approach should be adopted when considering the reasonableness of a number of proposed steps."

16. The Tribunal gratefully adopted this summary of the relevant law regarding reasonable adjustments. It also accepted the recitation of the relevant law provided by the Respondent in its written submissions and the Claimant's submission that the case of Paterson v Commissioner of Police of the Metropolis [2007] IRLR 763 (and later cases) reminds tribunals that their task is to compare the effect of the disability upon the claimant to the claimant's position if they did not have the disability to then be able to consider the substantial disadvantage suffered and whether there had been a failure to make a reasonable adjustment. The Tribunal noted that it must identify what it is about the Claimant's disability that causes the disadvantage to identify what is to be remedied by the reasonable adjustment (Chief Constable of West Midlands v Gardner UKEAT/0174/DA), and there must be a prospect of the reasonable adjustment removing the substantial disadvantage (Griffiths v Secretary of State for Works and Pensions [2017] ICR 160).

17. The Tribunal bore in mind that the unfair dismissal claim had been re-opened to the extent that if the Tribunal found that there had been a failure to make a reasonable adjustments, to what extent (if any) did it affect the fairness of the dismissal. The EAT has upheld the finding of the previous tribunal that the timing of the dismissal was not unfair, but that does not mean that dismissal was within the range of reasonable responses open to a reasonable employer

or that dismissal was substantively fair if there had been a failure to make reasonable adjustments. The Respondent highlighted the case of Knightly v Chelsea and Westminster Hospital NHS Foundation Trust [2022] IRLR 567, which confirms that merely failing to make reasonable adjustments does not necessarily mean the dismissal was unfair. The Tribunal will have to consider if the Claimant contributed to her dismissal if it is found to be unfair.

18. The Tribunal also reminded itself of the limited basis of the remitted case before it. The findings of fact made by the previous Tribunal remained untouched, except in relation to the issue of reasonable adjustments. The direct discrimination and harassment claims could not be considered further. Any arguments that the Claimant was not actually underperforming, or a victim of a conspiracy could not be considered.

Findings – the Williams Tribunal

19. The Tribunal draws the following findings of fact from the Judgment of the Williams Tribunal. It noted that the Claimant's representative throughout her submissions challenged many of the findings made by that tribunal, and attempted to show that they were not correct e.g. that Estyn had concerns about teaching of the Welsh language. However, the Tribunal must adopt the findings of the Williams tribunal, except where they have been overturned by the EAT.

20. The Claimant was disabled due to dyslexia and a hearing impairment, both of which are lifelong conditions, from the relevant time which has been found to be from 2013 until 31 August 2016 (the effective date of termination). Before 2013, there were concerns about the Claimant's teaching skills in the minds of the management of the school, which were found to be substantiated by the Williams Tribunal.

21. The Claimant was off work from 14 March 2012 until 22 October 2012, following a road traffic accident in March 2012. There was no finding of disability due to PTSD or anxiety in the Williams Tribunal, but it accepted that the hearing impairment had been worsened due to the RTA (which arose from a judgment in a separate case by Employment Judge J Thomas on 4 June 2013 – the Thomas judgment). There was no similar finding in respect of dyslexia. The Respondent was aware of the two impairments throughout the Claimant's employment.

22. The Claimant returned to work and the newly appointed headmaster Mr Gerald McNamara concluded that she should be placed on the informal individual support programme, which was intended to precede and hopefully avoid the need for formal capability procedure. The Claimant was placed on this informal programme from 25 April 2013 and given three specified targets which she

needed to improve – lesson planning, classroom management and bookmarking quality.

23. The school was inspected by Estyn in March 2013, and its report of May 2013 criticised much about the school, including the school standards in Welsh as a second language. The Claimant's lessons were observed on 16 January 2013, 7 June 2013 and 22 November 2013 by Mr McNamara and other teachers. In each observation, she was found to be unsatisfactory.

24. This led to Mr McNamara concluding that the Claimant should go through a formal capability procedure, and she was issued with a first written warning on 17 January 2014. The matters of concern identified for her were lesson planning, classroom management, and marking. The Claimant's appeal was unsuccessful.

25. The Claimant was supported by a trade union representative throughout until late 2015 when her mother took over as representative (though a union representative did briefly attend the Disciplinary and Dismissal committee meeting on 29 February 2016 on the Claimant's behalf). The Claimant was represented solely by her mother by the time of the appeal against dismissal.

26. The Claimant's lessons were observed under stage 1 of the formal capability procedure on 31 March 2014 and 2 April 2014 by teachers including the head of faculty. They were found to be unsatisfactory. The Claimant was then absent due to anxiety and stress between June 2014 and March 2015.

27. On the Claimant's return, on 1 May 2015, Mr McNamara issued a second written warning and commenced stage 2 of the formal capability procedure. The Claimant's lessons were observed under stage 2 on 4 June 2015 and 16 June 2015 by various teachers including Mr Geraint Hilbourne (a fluent Welsh language speaker and head of the Welsh department from 2015), and again her lessons were found to be unsatisfactory. Stage 3 was then commenced, and the Claimant was given a final written warning on 22 June 2015. The Claimant's appeal was unsuccessful.

28. In July 2015, Estyn issued a follow-up report which stated that teaching of the Welsh language remained a cause of concern, amongst other things. The stage 3 observations of the Claimant's lessons took place on 23 June 2015, 7 July 2015 and 13 July 2015 by various teachers including an external head teacher who was fluent in Welsh but not a Welsh language teacher; again they were found to be of an unsatisfactory standard.

29. On 2 September 2015, the Claimant's trade union representative, Mr Geraint Davies, noted the Welsh government guidance on a possible connection between poor performance and disability, and asked for an occupational health appointment to address the issue. Mr McNamara agreed. The Claimant also

said at this meeting that her absence from June 2014 to March 2015 had been due to stress caused by the capability procedure.

30. This request led to 4 reports being obtained - an optometric vision report from Eurfron Nyhan dated 15 September, an occupational health report from Dr Joanna Lever dated 25 September; a short addendum report by Dr Martin Andrew dated 13 October and a report from Ann Rees of Dyslexia Action Cardiff Learning Centre dated 22 October. As the EAT observed, Dr Lever's report expressly commented that she considered the claimant's disabilities (and other matters) caused an adverse effect on her ability to carry out her role as a teacher, and the stress caused by the capability procedure could affect the quality of her teaching.

31. The report from Ms Rees noted that person with dyslexia could be affected by stress, which in turn increased the number of errors that they could make. The other two reports were of less relevance to the issues before the Tribunal today.

32. Both Dr Lever and Ms Rees advised about potential adjustments that could be made to assist the claimant. Dr Lever advised that the Claimant be allowed additional time to prepare lessons and to mark; that she be provided with any paperwork for capability meetings in advance, possibly in larger font, and be allowed extra time to respond; that voice-activated software might be of benefit if the Claimant had to write reports on her laptop; and that it might be preferable for her to use a computer and projector rather than a blackboard or whiteboard.

33. The Williams tribunal at paragraph 36 of its judgment found that:

"Ms Rees noted that the claimant did not feel that her dyslexia had an impact on her teaching although she felt it made some administrative tasks more difficult, such as writing lesson plans in English and writing reports, and that she felt that because of the stress she was under her observed lessons did not represent her usual standard of teaching. Mr McNamara, whom Ms Rees also met, stressed that he had no issues with the claimant's spelling or report writing; the primary concern was the progress of children in her classes. Ms Rees listed some fifteen adjustments which had already been made to support the claimant, including an allowance of planning and preparation time (PPA) which was 12% in the previous year and 20% in the current year compared with the usual 10% for other teachers (p. 1559). Ms Rees noted in summary that 'difficulties that may be attributed to Emma's dyslexia, for example, with accurate spelling and writing of reports, are not considered to be important issues by the head teacher. Emma does not consider that her dyslexia affects her teaching, but identifies a range or problems that may be exacerbated by her dyslexia in relation to the capability process, i.e. lesson observation and meetings. However, she accepts that lesson observations are essential for all teachers and therefore she cannot be exempt from them.'"

34. Ms Rees recommended text-to-speech software; documents in electronic format; experimentation with paper size, colour and font; agendas provided in advance; audio-recording of meetings or electronic minutes. Mrs Nyhan made very similar recommendations as Dr Lever and Ms Rees in her report.

35. On 5 November 2015, Mr McNamara referred the Claimant's case to the disciplinary and dismissal panel of the governing body, and recommended dismissal of the Claimant.

36. On 17 December 2015, the panel considered that the Respondent's policy and procedure had been followed correctly, but wanted more information before reaching a final decision. It required a four week extension to stage 3 of the capability process, starting on 4 January 2016, which was to include two further lesson observations in the presence of a specialist Welsh language teacher, to visits to Treorci Comprehensive School which would include observation of its Welsh second language classes, a new link person to be identified by the Claimant, at least two regular timetabled meetings with the head of Department with agreed notes taken, and appropriate support by a Welsh language teacher to be provided. The panel said it had considered the various reports obtained and considered that the additional PPA time was a reasonable adjustment to address the issues with lesson planning and the capability assessment.

37. The Tribunal noted that there were subsequent events. Matters that are relevant included the Claimant and her mother attending a meeting with the occupational health advisor in early January 2016 and refusing to authorise full disclosure of the report to the respondent; an escalation in the disputes between the Claimant and Mr McNamara/ her trade union representative; and the suspension of the Claimant on medical grounds on 19 January 2016 on the basis that she was not fit to remain in the workplace. The Claimant never returned to work for the school (which later closed).

38. The Disciplinary and Dismissal panel met on 29 February 2016 in the absence of the Claimant. The decision was made to terminate the Claimant's employment on the following grounds:

    a. Consistently unsatisfactory judgments on teaching capability;
    b. Lack of medical information to determine a return to work date;
    c. Lack of engagement since the meeting of 16 December;
    d. Requirements of the school and the Welsh department in particular highlighted in an Estyn inspection as requiring additional support;
    e. The four-week extension period had been agreed in order to provide additional support, however there had been a lack of engagement, a refusal to provide detailed occupational health information and the Claimant was currently on sick leave with no return date known.

39. This decision was confirmed to the Claimant in a letter of 8 March 2016, which informed her that her employment would terminate on 31 August 2016, and that she had a right of appeal.

40. The Claimant through her mother did appeal on 10 March 2016. However, they did not attend on the basis that they considered they should have been successful "*by default*" because the appeal was not heard within 10 working days of receipt of the appeal. On 29 April 2016, the Claimant's appeal was not upheld. This was confirmed to the Claimant in a letter of 6 May 2016, and the Claimant's employment terminated on 31 August 2016.

41. The Williams Tribunal found that there was no vendetta, conspiracy or corruption underlying the Claimant's dismissal. It further found that "*the dismissal panel and appeal committee were reasonably entitled to conclude that the teachers who observed the claimant conducted themselves with professional integrity, that they were experienced teachers who were well qualified to judge the claimant's performance and that they gave honest judgments which were entitled to respect*."

42. In paragraph 82, the Williams Tribunal said:

"The disciplinary panel and appeal committee were reasonably entitled to reject the claimant's assertions that those who observed her and found her wanting were in some way unqualified to judge because they were not Welsh speakers, or were not Welsh teachers, or were not Estyn inspectors. Before us the claimant's approach was routinely to blame others rather than to acknowledge any deficiencies on her own part."

43. The Williams Tribunal found that the Claimant was a witness whose reliability was in question as she made extravagant and unsupported allegations. The Claimant did not prove that she had suffered a nervous breakdown due to either the capability procedure or the actions of Mr McNamara.

44. The Williams Tribunal specifically found that "*the claimant at all times knew very well what she was required to achieve and received extensive feedback, oral and written, from those who observed her lessons informing her in what respects she was failing to achieve it*." (paragraph 65). It also found that "*From 1999 to late 2015 the claimant requested no adjustments of any kind relating to her disabilities of dyslexia and hearing loss.*" (paragraph 66), "*Following the claimant's road traffic accident in 2012 she was provided with a different chair, a footrest and a writing slope*" (paragraph 67), and that the Claimant did not complain about the blinds in her classroom until 2015 (paragraph 67). It also found that the Claimant had twice as much PPA time as any other teacher (paragraph 90).

45. These findings are undisturbed by the partially successful appeal.

Findings – the remitted final hearing

46. The Tribunal noted that the Claimant in her submissions never referred specifically to any part of the Claimant's witness statements, and they were not included in the bundles created by the Claimant's representative (in breach of the case management orders).

Substantial disadvantage

47. The first issue requiring findings of fact was whether either of the PCP's put the Claimant at a substantial disadvantage due to her disabilities of hearing impairment and/or dyslexia. The difficultly was that in her witness statements, the Claimant did not address what substantial disadvantage she suffered in a way that matched the issues before the Tribunal. This was because the case argued at the Williams tribunal was not the one remitted by the EAT to this Tribunal.

48. The Claimant's position in her evidence was in essence that she was not underperforming at all and had been set up to fail, due to a conspiracy (a position rejected by the Williams tribunal) or other reasons such as trade union membership (again, rejected by the Williams tribunal). These arguments were repeated during these proceedings, despite the Tribunal explaining that it was bound by the findings of the Williams tribunal, which included findings that the Claimant had been underperforming.

49. The Claimant did not argue during the relevant time that the PCP's caused her substantial disadvantage due to her hearing impairment and/or dyslexia, though she observed that the capability process/lesson observations caused stress which affected her performance (Dr Lever's report); the contemporaneous evidence from Ms Rees' report was that the Claimant at the relevant time said her dyslexia had no impact on her teaching. The Tribunal accepted that it is possible for an individual to honestly believe their disability had no impact, but to be mistaken, but it was for the Claimant to adequately identify (with the benefit of hindsight perhaps) what was the substantial disadvantage(s) being asserted.

50. The Tribunal was not assisted in this task by the Claimant's submissions. Indeed, at points they undermined the case that the Claimant needed to advance. One example was at page 19 Part 2 paragraph 225 of the Claimant's written submissions, dealing with the proposed reasonable adjustment that meetings should be recorded. The submission advanced centred on Mr McNamara in his statement complaining that the Claimant did not appear to be listening to what had been said to her about her poor performance in the many meetings held to discuss it; the Claimant's submission was that the substantial disadvantage she suffered was not being able to listen and take notes but later

at page 73 paragraph 658 the substantial disadvantage was that being able to record "*relived her physical injuries to upper body and wrists".* This was repeatedly orally.

51. The difficulty with this submission is threefold. First, this was not what the Claimant said in her witness statement; submissions are not the place to give new evidence. Second, the substantial disadvantage has to be caused by the PCP's (in other words, by the capability procedure or the requirement to achieve a good standard of teaching); neither PCP in the judgment of the Tribunal caused the substantial disadvantage of not being able to listen and take notes at the same time; the capability process might need to be adjusted to ensure the Claimant's full participation and understanding due to her disabilities, but the substantial disadvantage cannot be pain to the Claimant's wrists. It was also relevant that the Claimant was accompanied at these meetings and was sent documents telling her what had been discussed and critically knew what was required, though the evidence before the Tribunal suggests that the Claimant did not always read such documents (Ms Rees' report). Thirdly, the substantial disadvantage cannot be anything to do with physical injuries or the Claimant's wrists. If she could not take notes, she did not suffer the disadvantage regarding her wrists; issues regarding her wrists had nothing to do with her hearing impairment or dyslexia – the Claimant had not been found to be disabled due to such physical issues and there was no evidence of any link.

52. The Tribunal found this difficulty arose repeatedly when considering the Claimant's diffuse submissions. Accordingly, it considered that it was best to go back to the Claimant's witness statements and identify what she said there about the substantial disadvantage caused by the PCP's arising from the two impairments.

53. The Respondent's position is that the Claimant has failed to identify what arose from her disabilities led to a substantial disadvantage caused by the PCP's, and she was in the capability procedure because her poor lesson planning, poor classroom management, and poor quality of marking of pupils' work. It denied any link between these issues and the Claimant's disabilities.

54. The Tribunal struggled to find much addressing this issue in the Claimant's witness statements, The Claimant in paragraph 745 of her first statement said that fatigue made her dyslexia much worse (as she allegedly was up until 5am marking), and this caused her problems in focussing on her marking in particular (though anyone up until 5am might have the same issue). The Tribunal found that the Claimant did not specifically address any other alleged disadvantage sufficiently; there was much setting out of the reports received from Dr Lever and Ms Rees and assertions made, but very little on the substantial disadvantage <u>caused by the PCP's</u>, as opposed to her disabilities or other health matters more generally.

55. The Tribunal bore in mind the previous finding of the Williams tribunal that the Claimant was an unreliable witness, prone to exaggeration. It did not accept on the balance of probabilities that the Claimant was up until 5am most nights marking, and then attending work a few hours later. The Tribunal reminded itself of the criticism of the Claimant's marking by the Respondent. Mr McNamara at paragraph 65 of his statement said that in 2013, the Claimant's marking was described by her head of department as "*very rigorous*", but there were concerns as to its usefulness and quality of what the Claimant was saying. There was no challenge in the cross-examination that the Claimant had not been given options to see examples of good practice. Later reviews in December 2013 showed that the Claimant had not told a pupil what was wrong when marking (paragraph 89 McNamara statement), which was described as outdated practice. This was not challenged in the cross-examination. It was though also described by Mr McNamara as "*not a major issue*".

56. The Tribunal concluded that the Claimant had not described in evidence what substantial disadvantage she suffered due to either the capability procedure or the requirement to achieve a good standard of teaching arising from to her hearing impairment at all. At its highest, she asserted that she could not read Mr McNamara's lips at all, something the Tribunal found that it did not accept (see paragraph [ ] below).

57. In relation to dyslexia, the Claimant's case at its highest had touched on the marking requirement (which the Tribunal was content was within both PCP's), but had failed to explain sufficiently how dyslexia meant she could not tell a pupil what they had done wrong when noting an error in their book. The evidence before the Tribunal from both parties was that the Claimant was capable of marking books and did so in quantity. The problem was her approach/quality. Allowing for the possibility that stress can cause those with dyslexia to increasingly make errors, this does not explain why the Claimant's quality of marking was poor; this was not about spelling.

58. However, the Tribunal wanted to ensure that despite diffuse submissions and voluminous evidence, it had properly examined everything that could be said on the issue of substantial disadvantage. The Claimant's submissions could be summarised as because the Claimant had a hearing impairment and dyslexia, she could not understand what the concerns were about her teaching practice and address them. The further submission logically would then be that to address that disadvantage, reasonable adjustments such as recording meetings, having a Welsh note taker, documents in a size 14 font were required. The evidence though did not support such a finding. The Williams Tribunal found that the Claimant did know what was required of her. The evidence showed that she was represented throughout by a union, whose role was to explain matters to the Claimant. It is inconceivable that a union would not realise that its member did not understand at all what was required of them

and ensure this was addressed; the Claimant's previous credibility issues counts against her in accepting a different narrative put forward by her.

59. Another way of putting what the Claimant's representative submitted could be that the Claimant failed to reach the required standard due to issues arising from her dyslexia. For example, people with dyslexia are more likely to make errors when under stress; people with dyslexia often need more processing time; people with dyslexia need different tools to help them plan lessons. However, the contemporaneous evidence was that the Claimant did not accept that her performance was poor (and still does not accept), that she did not think dyslexia was impacting her performance (the Rees report), and only asked for adjustments in 2015, years into the capability process. When the Tribunal looked at the specific and sustained criticism of the Claimant's performance over several years from many observers, the issue of classroom management was about how pupils were behaving in her lessons (it was not about pupils speaking Welsh to each other), the content and insufficient level of her lessons, the failures to address the weaknesses of each class of pupils or give them sufficient time to undertake tasks, and marking without telling the pupil what the issue she had identified was in the marking book. There was no evidence that any of this arose from the Claimant's disabilities. The Williams tribunal found that the Claimant knew what was required of her, but she fundamentally did not accept it, choosing instead to blame others and insist that there was a concerted plan to get rid of her.

60. The Tribunal found that the Claimant had failed to establish that she had suffered a substantial disadvantage when subjected to the PCP's arising out her disabilities. However, in case the Tribunal is incorrect, it considered the issues of knowledge and reasonable adjustments.

Knowledge

61. The Respondent's submission is that as there is no evidence of substantial disadvantage, there could be no knowledge of it. The Tribunal accepted that there was a lack of evidence, and also that the hearing impairment appeared not to be the pertinent impairment when the list of proposed reasonable adjustments was considered. Further, the Claimant told Ms Rees that she did not consider dyslexia to have any impact on her teaching in 2015, a comment reported to the Respondent in the report, which is relied upon as further evidence that the Respondent was reasonably unaware of any substantial disadvantage as the Claimant was similarly unaware.

62. The Claimant's argument was that the Respondent knew of her disabilities from June 2013 when the Thomas judgment was sent to it by her mother. However, the Tribunal accepts that what the law requires is for the Respondent to be aware, or ought to have been aware of, the substantial disadvantage caused by the PCP's, not the disabilities themselves.

63. The issues with the Claimant centred on marking (the Tribunal has addressed above why there is no connection between this and dyslexia), poor classroom management (no evidence of any link with dyslexia), and poor lesson planning (failing to ensure lessons were at the right level and addressed what the pupils were struggling with). The Tribunal was willing to accept that poor lesson planning could be affected by dyslexia, but it noted the repeated professional observations of the observer teachers that the Claimant was persisting in using worksheets that were not of sufficient quality, was not giving the pupils time to use peer review or engage with challenging material (McNamara statement paragraph110; Hilbourne statement paragraph 21 are examples), and not teaching at the sufficient level for the class. The Claimant does not accept this to be the case and gave no evidence how dyslexia gave rise to such concerns.

64. The reports from Dr Lever and Ms Rees did not result in any recommendation that could have addressed the Claimant's marking, poor classroom management and poor planning. Dr Lever made no recommendation in respect of the Claimant's stress due to the capability procedure (and linked it to anxiety, not a disability relied upon in these proceedings); the Claimant made no request relating to this. No text-to-speech software for example could make the Claimant adjust her approach or improve her timings in the classroom. Her teaching practice was out of date compared to more modern flexible and pupil-centred approaches in the judgment of the education professionals; this was not due to dyslexia.

65. The Welsh Government's guidance says that it is possible during the course of a capability procedure a headteacher may become aware that a teacher has a disability, and should then consider if the poor performance may be caused by or related to the disability. While Mr McNamara was at the relevant time aware of the Claimant's disabilities of hearing impairment and dyslexia, when this point was put to him by the Claimant's trade union representative, he agreed to seek advice from Occupational Health. This was in the Tribunal's view wholly consistent with both the guidance and good industrial practice. There was nothing earlier to put him on notice that there may be a specific issue when in all the meetings with the Claimant; she had not said so until September 2015. It is worth noting that it was not until 1 September 2015 that the Claimant asked for documents to be in a size 14 font on blue paper and a Welsh note taker for example.

66. In Dr Lever's report of 25 September 2015, she advised on whether the Claimant's disabilities were likely to have had a substantial effect on her ability to meet the professional standards required of a teacher. Dr Lever noted the Claimant's dyslexia was a disability, but said nothing about her hearing impairment. Additionally, Dr Lever talked about the RTA suffered by the Claimant and referred to the Claimant having an anxiety disorder, which she said may be a disability; the Claimant has not been found by a Tribunal to be

disabled due to anxiety or the RTA (or work-related stress). Dr Lever had previously seen the Claimant and the evidence in the bundle before the Tribunal showed that there were long-standing issues for the Claimant regarding anxiety, which was known to Dr Lever. However, an expert medical report from a psychiatrist (page 1542 original bundle) said that the Claimant's anxiety arose from the RTA and it caused the Claimant to suffer poor concentration and an inability to cope with her role as a teacher, not dyslexia or her hearing impairment.

67. The recommendations of Dr Lever, whose advice was predicated on the Claimant's "*disabilities*" as being dyslexia, and potentially the impact of the RTA and anxiety, focussed only on steps to address any disadvantage caused by dyslexia. Dr Lever also talked about work-related stress. Dr Lever's opinion was that "*Miss Thompson's conditions are causing an adverse effect on her ability to fulfil her role although certainly any capability procedures and observations will increase her anxiety levels which may impact on her level and quality of teaching.".*

68. The Tribunal draws the conclusion that Dr Lever did not consider that the Claimant's hearing impairment had any relevance to the issues she faced at work, including the capability procedure. Dr Lever's advice was also based on her recommendations on conditions that have not been found to be disabilities and must be read in that context.

69. Dr Lever helpfully suggested further reports were obtained from specialists, which was actioned (the report from Ms Rees of Dyslexia Cymru and an optician, Mrs Nyhan, regarding possible visual disturbance connected to dyslexia being the most relevant reports subsequently obtained).

70. Ms Rees produced a detailed report. There were eight recommendations, with a nuanced analysis as to whether they were likely to assist in this workplace e.g. Ms Rees noted that the Claimant said she found it difficult to take in and recall everything said in meetings, but Ms Rees then observed that it might not be possible to record due to confidentiality, but consideration should be given to providing detailed minutes in an electronic format so it could be read using text-to-speech software.

71. Ms Rees also commented that people with dyslexia are often affected by stress, which can cause them to make more mistakes, which may be the case with the Claimant in the capability process. She also noted that the Claimant had "*accepted that lesson observations are essential for all teachers and therefore she cannot be exempt from the*m", while Mr McNamara did not consider difficulties that could be attributed to dyslexia (accurate spelling for example) to be important; he was more concerned that pupils were not receiving the right level of teaching or given enough time to understand new work.

72. Taking everything into account, until the union representative raised the point in 2015 that it was possible the Claimant's disabilities affected her performance, there was nothing to put the Respondent on notice of the possibility. The Claimant had been teaching since 1999, with the impairments, and the concerns raised about the Claimant did not obviously arise from them. The many meetings since 2013, with union representation present, saw the Respondent raise its concerns, both formally and informally, and the Claimant had every opportunity to suggest that there might be a connection between her disabilities and the performance issues; she did not. It was her union representative who raised the concern; even as late as these proceedings, the Claimant is adamant that she did not underperform and has repeated the conspiracy allegations in submissions.

73. The Tribunal found that there was no basis on which the Respondent was or ought to have been on notice that the Claimant was likely to be placed at a substantial disadvantage due to the PCP's before September 2015. Once it received the reports from Dr Lever and Ms Rees, there was nothing recommended that would address the identified difficulties with marking, classroom management and the quality of the Claimant's lessons (or indicate that there was a substantive disadvantage caused by the PCP's), particularly when the Claimant was adamant that she was an excellent teacher. The adjustments relating to extra time and the blue paper on size 14 had already been actioned (with one exception after the reports were obtained).

Failure to make reasonable adjustments

74. The Tribunal acknowledges that it is difficult to assess this issue in the absence of any finding of substantial disadvantage; the purpose of reasonable adjustments is to address such disadvantage. It is difficult to assess what is reasonable in such a vacuum. The Claimant also said very little about when the adjustments should have been put in place; the implication seemed to be from provision of the Thomas judgment confirming that the Claimant was disabled, but this is not in accordance with the legal principles.

75. The Tribunal notes that the Claimant was given a final additional opportunity to meet the required standard and access additional support in the four-week extension starting from January 2016. The Claimant was in work until 19 January 2016, though cconcerns were raised about the Claimant's health from the start of term on 4 January 2016. This led to several Occupational Health and GP meetings, and ultimately the medical suspension 19 January 2016 that she was suspended from work on medical grounds (confirmed in writing on 21 January 2016). However, the evidence is that the Claimant did not fully engage with this plan while in work, though the Respondent did adapt it to meet her complaints.

Providing the Claimant with documents on blue paper typed in size 14-font.

76. The Claimant first asked for documents on blue paper on 1 September 2015 (page 414 original bundle). After this, the Respondent provided documents in this format, with one exception (the decision of the disciplinary panel on 17 December 2015 – on that one occasion, the decision was read out to the Claimant and her union representative and confirmed in writing later).

77. In any event, for this one failure, there was no failure to address a substantial disadvantage caused by the PCP's. The Claimant understood the decision as she and her representative commented on it. The failure to provide this document in the requested format did not make it more likely that the Claimant would fail the capability procedure or reach the required standard; the Claimant has been found to have understood what was required of her and did not meet the required standard.

78. As the Respondent submitted, the Claimant understood what was required. The Claimant has not shown any substantial disadvantage that she suffered before or after 1 September 2015 when the request for made, or that the Respondent ought to have known of such a substantial disadvantage.

Allowing the Claimant to tape record all meetings.

79. The Claimant first asked for this on 1 September 2015 (page 414 original bundle). Ms Rees did not expressly recommend it, noting the potential confidential issues. Dr Lever did not recommend it either.

80. While allowing for the failure to identify a substantial disadvantage arising out the PCP's, the Tribunal accepted that those with dyslexia have processing and memory issues; this is well established. However, the Claimant was not only spoken to about the various issues, but she was also represented and accompanied by union representatives (who could take a note) and given documents recording what was expected of her and at each stage, what was happening. Once she requested a different format, documents were given to her in that format (with one exception). The Williams tribunal found that she understood what was required of her.

81. There was no evidence of any substantial disadvantage caused by the PCP's relating to the Claimant's hearing. In addition, the Tribunal finds it difficult to accept that the Claimant was completely unable to lip-read or understand Mr McNamara without raising vociferous multiple complaints from the outset or her union representative raising the point – the evidence shows that the Claimant (and her mother) were capable of raising lengthy and multiple complaints at the relevant time.

82. There is no evidence of any substantial disadvantage caused by the PCP's arising from either impairment that would have been addressed by this adjustment.

Allowing the Claimant to tape and video record lesson observations.

83. The Tribunal does not have the notes of the Claimant's cross-examination, but there was no challenge to the Respondent's submission that the Claimant conceded that the first time this was raised was by Mr McNamara on 5 November 2015, once he had seen the reports of Dr Lever and Ms Rees. The point was not disputed in the submissions of the Claimant either. The Respondent made the point in its submissions that the Claimant only wanted a recording to show that she was not underperforming (in her first witness statement). The Tribunal agreed that the evidence (the Claimant's statement) and the Claimant's oral submissions did in essence make this argument, though orally the Claimant's representative spoke more about IRIS and that it could have helped the Claimant understand better. This submission was not reflected in the Claimant's evidence.

84. There was some evidence before the Tribunal about the IRIS system; this is a method of recording lessons so the teacher can review them for their own development purposes. The Williams tribunal found that the Claimant did understand the issues she needed to address; the evidence before both tribunals was that she simply did not accept them. The Claimant was given both oral and written feedback about the lesson observations, and her union representative attended some observations to ensure that the views formed were appropriate. Neither Dr Lever nor Ms Rees recommended this adjustment. The Claimant has not shown what substantial disadvantage arising from the PCP's would have been addressed by this step; the Tribunal agrees with the Respondent that it was likely to led to further disputes by the Claimant about the quality of her teaching (which she did not accept was poor).

85. Accordingly, there no reasonable adjustment was required.

Providing a Welsh speaking note taker for all meetings.

86. The Claimant's representative was asked by the Tribunal to explain the link to the PCP's/disability as the evidence and written submissions did not assist. It was the Claimant who explained that as a first language Welsh speaker, her dyslexia was much worse when working in English. The Claimant was asked if there was evidence to this effect in her witness statement; she could not. The Respondent submitted that there was no such evidence in her statement. The Tribunal could not locate it either. It did note though in Ms Rees' report (page 1558 original bundle) a record that the Claimant was saying she struggled more in English (while working in an English medium school), but Ms Rees made no

recommendation to address this, despite being a dyslexia adviser well placed to advise if she perceived there to be an issue.

87. Given the finding that the Claimant did understand what was required of her by the Williams Tribunal, this adjustment would not have made any difference and would not have been reasonable.

Reducing the Claimant's marking workload, risk assessing and regularly reviewing it.

88. The Williams Tribunal found that the Claimant had additional PPA time which was double that for other teachers; the Claimant also had a lower class allocation. The Claimant confirmed that her books/marking were reviewed as she complained of such reviews in her evidence. The concern about the Claimant's marking was one of quality, not quantity as outlined above; Mr McNamara's evidence was clear that it was how the Claimant marked that was the concern. The Tribunal has already found that it does not consider as credible that the Claimant was up to the early hours of the morning marking books.

89. The Claimant has not been able to show any substantial disadvantage arising from the PCP's caused by her disabilities, though the Tribunal was willing to accept that in principle a person with dyslexia might struggle to process and take longer to mark. There was no evidence though that a person with dyslexia would be unable to tell a pupil what they had done wrong when marking their book, or that the Claimant had that difficulty. The Claimant was given additional time for such work and it was reviewed. The Tribunal does not consider more was required to be reasonable.

Providing the Claimant with a teaching support person.

90. The Tribunal during the Claimant's representative's submissions asked for an explanation as to what the Claimant was referring to for this adjustment. It was explained that the Claimant's family friend and neighbour assisted her with her teaching practice (this is in the Claimant's witness statements), and she should have been given this support by the Respondent. Ms Rees' report recorded though that the Claimant had access to an in-school non-judgmental supportive mentor (page 1559 original bundle).

91. However, there is no evidence that this was ever recommended by any specialist adviser or sought by the Claimant. There is no evidence to assist the Tribunal as to how such a teaching support person would address a substantial disadvantage caused by a PCP arising from the Claimant's disabilities. The Williams tribunal found that the Claimant knew what was required of her; she had been teaching since 1999 in addition. The Tribunal does not find that this

adjustment would have been reasonable, particularly when the Claimant did not accept there was any underperformance.

Providing curtains in the Claimant's classroom on 7 June 2013 to cut down on the light shining on the white board.

92. The background to this proposed reasonable adjustment is that it is about one lesson observation which took place on 7 June 2013, which found the Claimant's performance to be unsatisfactory. The Tribunal noted that the Claimant failed many lesson observations, so it was difficult to understand how one single observation made any difference.

93. The Tribunal did not have any evidence as to how this proposed adjustment related to dyslexia. Visual disturbance is part of dyslexia, hence the need for a specialist optician report and different coloured paper. The Tribunal was willing to bear this in mind. However, in oral submissions at the hearing, the Claimant said the light stopped her from reading her lesson plan, which was related to her dyslexia. The Claimant also said that she could not see if the pupils were being noisy (which would relate to her hearing impairment). The actual evidence in her witness statement said that the lack of curtains stopped the pupils reading the whiteboard (paragraph 410 Claimant's first statement). The Claimant also in oral submissions linked her difficulties to the writing slope she was given, which she said caused pain when she used it.

94. The Claimant's account on this matter was viewed as confused, particularly as it did not address the simple solution of the Claimant moving her desk (something the Williams Tribunal found she could do) or not using the whiteboard (as suggested later by Dr Lever). This was a conclusion reached without having to deal with the issue before the Williams tribunal on the subject of blinds and whether they were broken. The Tribunal was not satisfied that the Claimant had given sufficient evidence of any substantial disadvantage arising from the PCP's, or that the adjustment was reasonable, or that one single observation made any difference at all given the number of unsatisfactory lesson observations overall between 2013 and 2015.

Providing the Claimant with text to speech software.

95. This was recommended by several of the reports obtained in the autumn of 2015. However, the context was if the Claimant had to write reports, such software might assist. The Tribunal accepted Mr McNamara's evidence that the concerns about the Claimant's performance did not centre on report writing. However, planning lessons were a concern, but text-to-speech software would not assist with that task. Mr McNamara's evidence dealt with the tools available, and the Tribunal accepted it.

96. In the oral submissions, the Claimant and her representative focused on Mindgenius, a well-known mind-mapping and project management tool. However, this is not text-to-speech software. Mindgenius was referred to by Ms Rees in her report as a way to create a concept map to keep the lesson on topic and could help planning more generally; this was a suggestion, not a formal recommendation. The Claimant gave no evidence about Mindgenius and there was no evidence to challenge the account in Mr McNamara's witness statement that it was discussed on 15 November 2015 with her (paragraph 180). The Tribunal accepts Mr McNamara's unchallenged evidence that better packages were available, and the Claimant was to talk to the IT team to access them. The Claimant gave no evidence about this and whether she followed up on the matter.

97. In any event, it was the content of the lesson plan (being not of the right level of challenge for pupils) that was the concern; the Claimant did not give any evidence how Mindgenius would have addressed a substantial disadvantage she faced due to her disabilities from the PCP's. The Tribunal does not find that this adjustment would have been reasonable.

Providing the Claimant with the agenda and documents for meetings in advance.

98. This adjustment was recommended by Dr Lever and Ms Rees. Persons with dyslexia often need more time to process, something the Claimant's representative highlighted in her submissions.

99. However, Ms Rees in her report (page 1559 original bundle) recorded that the Claimant admitted that she did not read or respond to emails and did not regularly check her pigeon-hole. This had led to Mr McNamara having to personally deliver documents by hand to her to ensure receipt.

100. In addition, the Williams Tribunal found that the Claimant knew what was required of her and there is no evidence that the Tribunal could rely upon that the Claimant truly did not understand the capability process. The Tribunal saw evidence that the Claimant did receive documents in advance (for example she received an agenda on 7 October 2015).

101. The Claimant has not shown any substantial disadvantage suffered by her due to the PCP's arising from her disabilities to be addressed by such an adjustment.

Conducting lesson observations with someone with experience in the Welsh language.

102. The Claimant has not explained how this would address a substantial disadvantage she faced due to her disabilities caused by the PCP's. This issue was plainly about whether those who observed her lessons were qualified to

do so (the Claimant said that they were not). This was something the Disciplinary and Dismissal panel asked to be done during the four-week extension period given to the Claimant to avoid dismissal, but there was no evidence that this instruction was due to her disabilities. The Tribunal does not find that this adjustment would have been reasonable.

Unfair dismissal

103. As the Tribunal has not found a failure to make reasonable adjustments, the Tribunal considered that there was no basis on which it could find the dismissal was unfair (given the surviving findings of the Williams tribunal).

Conclusions

104. The Claimant's claims of failure to make reasonable adjustments are not well-founded and are dismissed. The finding of the Williams tribunal that the Claimant was not unfairly dismissed remain in light of this Tribunal's conclusion. The Tribunal will deal with the issue of costs orders and preparation time orders separately.

Employment Judge C Sharp
Dated: 22 June 2023

JUDGMENT SENT TO THE PARTIES ON

……22 June 2023……..

…… ……..
FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS