EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102139/2023

Held in Glasgow on 7 – 9 August 2023

Deliberations on 10 and 11 August 2023

Employment Judge D Hoey
Members P McColl and D Frew

Mr A Campbell	**Claimant** **Represented by:** **Mr S Swan - Solicitor**
North Lanarkshire Council	**Respondent** **Represented by:** **Ms K Beattie - Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the respondent complied with its duty to make reasonable adjustments and the claim is dismissed.

REASONS

1. The claimant raised a claims for unlawful disability discrimination on 15 March 2023. The claim form was brief and noted a former claim for failure to make reasonable adjustments and harassment had been brought and resolved by judicial mediation. That claim had been withdrawn on 20 September 2022 and agreement had been reached as to adjustments to be made. The adjustments had been expected to be made as soon as possible and no later than 30 November 2022. The claimant had been unhappy as to progress and raised a grievance. He had understood the adjustments should have been made within the timescale he believed had been agreed.

2. The claim had been raised as the reasonable adjustments had not been made and there was "a risk of time bar". The respondent disputed the claims noting that there had been no absolute timescale and issues had arisen as to implementing the agreement and making the adjustments. Their position was that the agreement that had been reached included dates for adjustments to be made subject to the adjustments being capable of being made. There were practical issues in making the adjustments and reasonable steps had been taken and continue to be taken to progress. The response also noted some of the adjustments were unsuitable or incompatible with the security and infrastructure requirements of the respondent.

3. At a case management preliminary hearing matters had been focussed and it was agreed a full hearing would be convened. The full hearing took place in person with both parties being represented.

4. The claimant has a visual impairment. The claimant's solicitor was able to assist the claimant and where productions were relied upon during the hearing these were read out to ensure everyone could participate in the hearing fully. The hearing proceeded in accordance with the overriding objective.

Case management

5. The week before the hearing the parties had been asked to finalise a list of issues and statement of agreed facts which developed during the course of the hearing and was finalised.

6. The parties had worked together to focus the issues in this case (and a number of aspects of the claim were withdrawn as the case progressed). The parties were able to agree timing for witnesses and the parties worked together to assist the Tribunal in achieving the overriding objective, in dealing with matters justly and fairly taking account of the issues, cost and proportionality. The case was able to conclude within the allocated time.

Issues to be determined

7. The issues to be determined are as follows (which is based on the agreed list which has revised).

a. Did the lack of an auxiliary aid, namely security key, put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that he was unable to fully access the respondent's systems?

b. Did the lack of an auxiliary aid, namely JAWS software on his laptop, put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that he was unable to fully access the respondent's systems?

c. Did the lack of an auxiliary aid, namely training on JAWS software, put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that he was unable to fully access the respondent's systems?

d. Did the lack of an auxiliary aid, namely a working mobile telephone device, put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that he was unable to access the respondent's systems within a reasonable time?

e. What steps could have been taken to avoid the disadvantage? The claimant suggests the security key should have been provided, the JAWS software should have been working and JAWS training and the mobile device should have been provided sooner.

f. Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant?

g. What financial losses has the discrimination caused the claimant?

8. The respondent had not disputed that the claimant had a disability at the relevant time and his impairments were known. The respondent did not also dispute knowledge of the disadvantage relied upon.

9. The parties agreed that in essence the focus of this case was on the reasonableness of the steps contended (whether, for those aids not provided, it was reasonable for the aids to have been provided and whether, for those

aids that were provided, it was reasonable to have provided the aids sooner than when they were provided by the respondent), together with the argument that the claimant was not at a substantial disadvantage.

Evidence

10. The parties had agreed a bundle of some 336 pages.

11. The Tribunal heard from the claimant, Mr Robertson (the external consultant the respondent engaged to provide solutions for those with impairments), Ms Barclay (claimant's line manager), Ms Heron (Service manager for business change and improvement) and Ms Hughes (Digital Infrastructure Manager). The witnesses each gave oral evidence and were cross examined and asked further relevant questions.

Facts

12. The Tribunal is able to make the following findings of fact which it has done from the evidence submitted to it, both orally and in writing. The Tribunal only makes findings that are necessary to determine the issues before it (and not in relation to all disputes that arose nor in relation to all the evidence led before the Tribunal). Where there was a conflict in evidence, the conflict was resolved by considering the entire evidence and making a decision as to what was more likely than not to be the case.

Background

13. The respondent is a local authority. The respondent has over 30,000 laptops and 15,000 desktops and 4,500 mobile telephones for which it is responsible.

14. As a local authority the respondent is required and has agreed to comply with strict IT protocols to seek to protect the digital infrastructure and ensure data and information is safe and secure. As a consequence there are strict rules as to the adoption of hardware and software to ensure such matters can be properly controlled and kept safe and up to date.

15. The respondent also has a relatively small team of IT specialists whose job it is to manage the hardware and software, ensuring staff have relevant access

whilst maintaining the integrity of the data and system security. In order to provide new equipment (or software) it is important that any such equipment is properly tested. The respondent requires to ensure its IT team are sufficiently trained and can deal with any issues arising.

16. The claimant commenced employment with the respondent on or around 9 September 2013 and is employed as a Rehabilitation and Mobility Officer in the Respondent's Health and Social Care Service. He covers the Airdrie and North Bellshill areas. He supports people who have recently lost their sight or hearing and offers advice, guidance and signposts to help such individuals lead fulfilled and successful lives personally and professionally. The claimant's employment was continuing as at the date of the Hearing.

Respondent and disabled staff

17. The claimant is a disabled person within the definition contained in section 6 of the Equality Act 2010 by virtue of his visual impairment. He is registered as blind. This was known by the respondent at the material times.

18. The respondent also works with other disabled staff (some of whom have similar visual impairments to the claimant) and the respondent engages an external consultant to assist with adjustments and support staff with such impairments. The company which provides consultancy services has worked with the claimant for many years (since 2013). The lead, Mr Robertson, has a close working relationship with the claimant.

External consultancy assistance to deal with adjustments

19. Mr Robertson is the lead consultant and he has considerable knowledge and experience of working with visually impaired employees. He has close working relationships with the developers of JAWS (a screen reader) and familial experience of the issues the claimant encounters. He has also worked with others employed by the respondent (and others) with a similar impairment to the claimant who carry out similar roles.

20. Mr Robertson knew the claimant and his ways of working and had a detailed knowledge of the respondent's organisation. His approach is to identify the

specific issues and requirements of the worker within the working environment, knowing the specific solutions that exist and the adaptions that can be made while working at the pace dictated by the worker.

21. Mr Robertson worked with between 60 and 70 so people in health and social care (within the respondent at the relevant time) who had impairments (10 of whom have visual impairments) and was expert in identifying their requirements given his knowledge of products, systems and his solution based approach.

Policies

22. The respondent has a number of policies. This includes a grievance policy which sets out the process to determined grievances, both informally and formally. The respondent also had a number of IT policies that sought to manage the IT infrastructure in terms of software and hardware and ensure passwords and access to the systems were appropriate and compliant with relevant security protocols and that relevant systems were suitable for the network.

A mediated solution regarding adjustments

23. On 20th September 2022 the parties attended judicial mediation and settled the claimant's previous claim for a failure to make reasonable adjustments and harassment. It was agreed, at the judicial mediation, amongst other things, that:

    a. "There will be a meeting amongst the respondents, the claimant and an IT contractor within 14 days (the contractor not having been present at the mediation).

    b. There is a commitment that the respondents shall use their best endeavours to procure an IT contractor who will be in a position to provide the following:

        i. Laptop

        ii. Mobile phone

iii. JAWS installed

iv. Microsoft Packages/My NL/Learn NL

v. Internet access – search engine and in particular for websites for RNIB and RNID

vi. Itrent

vii. Yammer

c. Items i to iv above will be provided as soon as possible but anticipated to be by 31 October 2022.

d. Items v to vii above will be provided as soon as possible but anticipated to be by 30 November 2022.

e. The software must allow the claimant to access it independently and within a reasonable time."

24. In fact the timescales created at the mediation and captured in the agreement were aspirational (which was why the dates were not set in an absolute sense, such as by saying specific things would be done by the dates set out). This was because those present at the mediation for the respondent (and the claimant) did not have the IT knowledge to understand precisely what was needed to ensure the relevant matters could be done nor how much work would be needed to ensure they were done (safely and securely). The dates chosen were dates it was hoped the items could be provided but the matters would be finalised at the meeting at which the consultant would be present.

Support worker provided for the claimant

25. Utilising funds from Access to Work, the respondent has been providing a dedicated Support Worker to the claimant on a one-to-one basis (21 hours per week) for several years. Access to Work provided an increase in funding from April 2023.

26. The tasks the claimant's Support Worker undertakes includes opening, reading and dictating emails, managing the social work database, creating

and updating spreadsheets, working on the respondent's HR system for the claimant (including dealing with annual leave and sickness matters online), assisting the claimant in visits, processing invoices, processing statistics and other administrative matters.

Laptop

27. The respondent provided the claimant with a Laptop computer with base build and Microsoft 365 packages installed on 22 September 2022. The respondent removed the requirement for any password at all at start-up of the laptop for the claimant as the parties worked together to seek to provide the claimant with equipment that was accessible.

JAWS

28. The respondent installed "JAWS" screen-reader software by 22 September 2022. JAWS provides speech output and is a screen reader that allows those with a visual impairment to be told by the machine what the screen says. It operates once access to the systems has been secured (following the log on processes). JAWS is a screen reader in respect of the laptop or desktop computer. An important aspect of JAWS is the "focus" to ensure the programme knows which part of the screen to read. "Focus" is managed ordinarily via the keyboard and keys to navigate through the screen. Simplified keystrokes exist to make it easier to read the screen.

29. While Microsoft has a built in screen reader (which has similar keystrokes to JAWS), JAWS was a programme with which the claimant was familiar and one the claimant wished installed onto his work laptop. The respondent agreed to this and did so. The claimant was familiar with JAWS having used it in his personal affairs.

30 September 20232 meeting to discuss adjustments

30. The initial meeting to discuss adjustments following the mediation took place on 30 September 2022 to agree a way forward in terms of the claimant's requests for reasonable adjustments. There were a number of people present which included the claimant, his line manager and Mr Robertson.

31. Mr Robertson wanted to ensure he fully understood what the claimant's issues were and what he needed to carry out his work effectively. The agenda was based upon the agreement reached at the mediation which included the list of items to be provided. It was Mr Robertson's job to understand what the claimant needed and to work with the claimant (and respondent) and provide the necessary equipment and adjustments to allow the claimant to carry out his role effectively.

32. Mr Robertson asked the claimant to work up a detailed plan, alongside his line manager, to allow Mr Robertson to identify precisely what the claimant needed (which would allow him to prioritise). That was taken forward in subsequent meetings.

33. Mr Robertson had advised the claimant (and his line manager) that the claimant could contact him at any time (during business hours) to discuss any concern or issue that arose to ensure the claimant could get up to speed with the new technology and any issues were resolved as soon as possible. The claimant did not contact Mr Robertson outwith the formal meetings.

34. Mr Robertson had expected the claimant to be using the equipment outwith the times he was with the claimant as that would allow the claimant to become familiar with the hardware and software and allow the claimant to become proficient, for example, with keystrokes and the applications. The claimant had become reluctant to do so and did not do so on occasions.

35. It would not be possible for the claimant to immediately have a fully functional laptop and mobile phone following the mediation (nor within the timescales set out) given the specific requirements the claimant had and what was required. It would take time to identify the claimant's precise requirements and customise the devices to ensure the claimant's specific needs were met and the devices were aligned to the respondent's systems (and the devices were working and safe to use). It was Mr Robertson's role to work with the claimant to achieve this and he worked with the claimant.

Security key

36. On 30 September 2022, it was suggested that the claimant may benefit from an additional adjustment, namely a security key. The cost was around £45 each and it is recommended that there are at least two, with the second being a spare. For reasons set out below, the key was not progressed. It was not suitable at all for the mobile phone and significant issues arose in using it with the claimant's laptop which rendered it unsuitable.

Meetings to discuss ongoing issues

37. With a view to helping the claimant obtain the necessary adjustments, regular meetings were arranged with the claimant, his line manager and Mr Robertson. There were various meetings involving different personnel to provide the hardware, software and access above and to discuss any other adjustments. The claimant's line manager was supportive of the claimant and worked closely with him, involving others where necessary to seek to secure the necessary adjustments.

38. The claimant met with Mr Robertson and his line manager broadly on a fortnightly basis to discuss ongoing issues and to provide the claimant with one to one support and assistance. Mr Robertson worked at a pace he considered suitable in light of what the claimant had asked for, using his expertise and knowledge of the claimant, support available and the respondent's systems.

Keyboard issues

39. Mr Robertson had assumed that the way in which the claimant would access the devices to carry out his role would be via a keyboard. There was nothing the claimant had advised the respondent (or Mr Robertson) that this default position was different in his case. Mr Robertson was therefore very surprised when he learned the day before the first formal catch up session on 3 November 2022 that the claimant has having issues using the keyboard to access the devices. This was surprising to Mr Robertson because the claimant had been very experienced in using a keyboard based solution

before and the approach Mr Robertson intended to take was solely based upon a keyboard based solution. This was a major hurdle to be overcome.

40. The claimant's challenges in operating the keyboard were also surprising to the claimant's line manager as she had understood the claimant had previous experience of operating the systems and had not been aware of the challenges the claimant disclosed. The claimant's line manager did all she could to work with the claimant, secure solutions for him and involve other colleagues as required. The claimant's line manager considered that the claimant was not proactive in practising and using the equipment. The claimant's line manager had visibility of the claimant's diary and work commitments and was supportive of giving the claimant protected time to work on adjustments as needed.

41. The claimant had said that he was unable to locate the keys on the keyboard. This made it difficult for the respondent to progress since the intention was to commence training and support on the system. If the claimant was unable to access the system and unable to use the keyboard, the sessions would not be effective and the keyboard issue required to be resolved before matters could progress properly.

42. Mr Robertson's approach was not to force adaptations on users but rather to work with system users and allow users time to consider what works for them best. It was the system users that dictated the pace of training and support. That was the approach taken in relation to the claimant.

43. Mr Robertson concluded that the claimant's training (including JAWS training) could not progress until a solution had been identified that allowed the claimant to access the systems. Had the claimant communicated with Mr Robertson in between the formal meetings, or otherwise asked him to expedite the training, despite the issues with regard to the keyboard, Mr Robertson would have progressed the training but Mr Robertson was content to allow the claimant to progress at his own pace. At no stage did the claimant raise any concern, for example, about the lack of (or delayed) training with Mr Robertson. Had the claimant raised the issue with Mr Robertson, training

would have been provided. There was no reason why others within the respondent would second guess Mr Robertson's conclusion that training be progressed once the claimant is able to access his systems.

44. The biggest issue for Mr Robertson was therefore to identify a solution that allowed the claimant to operate the devices. In this regard he explored different forms of keyboards and wanted to identify other options for the claimant which he did. That was the reason matters beyond dealing with the keyboard issue did not progress at this time. That took time to undertake.

45. The claimant had been reluctant to use the equipment himself and had done little by way of private use. He believed that the system was not working and as a result chose not to persevere. The claimant could have accessed the system, whether via his support worker or line manager, and practised using it but chose not to do so. The claimant believed that the system was not fit for purpose and was frustrated with the pace of change.

System access

46. Whilst the claimant had difficulties using the devices, the claimant's line manager had ensured the claimant had online iTrent access, including access on his personal phone, so that he could access HR systems, i.e. record time, book annual leave days and check payslips on his personal mobile phone. He could not do all of this independently but had assistance from his line manager and dedicated support worker. That ensured the claimant was still able to carry out work related tasks.

47. The claimant was also given online access to myNL (an intranet) to give him access information about the respondent on his laptop. He was able to access his devices with the support of his line manager or his dedicated support worker.

48. The respondent provided online access to Inside NL and Viva Engage on Microsoft Teams being a form of internal social media which replaced the former Yammer application.

Provision of mobile phone

49. On 20 October 2022 the respondent provided the claimant with an Android mobile phone for work communications/calls i.e. email, telephone and text messages. The Android device was configured with the respondent's systems, being a device that had been tried and tested. The claimant did not want an Android device as he was familiar with an Apple device. The respondent was prepared to see if this accommodation could be made to allow an exception to their policy that allowed only specific Android devices to connect to their internal networks. Had the claimant used the Android device, it was more likely than not that it would have been operational many months before the Apple device was operational but the respondent wished to accommodate the claimant as best it could.

50. On 20 October 2022 the respondent provided the claimant with an iPhone mobile phone in accordance with his preference as an alternative to the Android. It was not ready for use as it required to be configured to the claimant's specification and the respondent required to undertake detailed and rigorous testing and assessment to ensure it was capable of being used on the respondent's network and worked (and could be properly supported by a trained team). The respondent required to ensure its IT staff were suitably trained and experienced in the particular product, given their then lack of knowledge and experience with this product. The decision to adjust the respondent's IT policies and support his request to use an apple product was a very significant step and required substantial adjustment to the respondent's internal processes and protocols and took many hours of work (much of which was "behind the scenes"). The respondent required to ensure the integrity of the respondent's systems was not risked by adjusting their network access in such a significant way, given the respondent was responsible for managing large amounts of confidential data relating to individuals.

51. The respondent's security system was such that only Android products were permitted as they had been tried and tested. That ensured the respondent was able to manage and control how its systems were used and provide support. The respondent adjusted its processes and worked hard to make an exception to their system for the claimant. The respondent acquired an Apple

product for the claimant and adjusted their system to ensure there was an apple product available for the claimant. That required extensive behind the scenes changes to ensure the respondent's infrastructure and systems were capable of working with the device and that staff were trained to support the claimant and the device (and any system issues). It was also important to ensure the claimant was able to safely and securely access what he required from the device and that there were no security issues arising.

52. The claimant had been advised of the technical challenges the equipment raised. While the iphone had been obtained on 20 October 2022 it was likely to take until the end of the year to configure the phone, test it on the respondent's network and ensure the device was operating properly. Those present at the meeting, including the claimant, were advised as to the timescales and issues arising. Mr Robertson was of the view this was a reasonable time scale given the work required.

Issues with keyboard prevent matters progressing

53. Between 3 November 2022 and 20 March 2023, the respondent provided the claimant with a range of keyboards, including a one-handed keyboard, for the claimant to try out and allowing the claimant to use tactile add-ons (such as Velcro) on the keys. The claimant had advised Mr Robertson that he was unable to locate the keys on the keyboard. Progress had been slow and Mr Robertson wished to ensure the claimant was comfortable with a keyboard solution before progressing with JAWS training. The training would be on the claimant's lap top and there was little point progressing training if the claimant was unable to access the laptop (and there was a possibility that might not progress and focus turned to the mobile device).

54. Another solution that was considered was to try and accommodate voice recognition to allow the claimant easier access to the systems. That focus was in relation to the mobile device.

55. It was not possible to accommodate voice recognition with each of the applications and devices and so a keyboard solution required to be identified in addition to progressing the mobile phone. Mr Robertson continued to

source and provide samples to the claimant to try to see if a solution could be found that the claimant liked and that worked for him.

56. By March 2023 the claimant had become more familiar with the keyboard which he had achieved by some practise, which was what Mr Robertson would have expected. By using the hardware frequently, muscle memory and practice achieves familiarity and ease of use. Instead therefore of using any of the other keyboards Mr Robertson had provided, the claimant returned to the keyboard with which he was already familiar and used it which resulted in the claimant being able to locate the keys sufficiently to provide him with suitable and independent access to the laptop.

57. The claimant had been given the same phone for work that he used in his personal life as he was familiar with that device. The phone had been set up to try and provide the claimant with access to as many platforms as possible using voice without the need for keyboard use.

58. Mr Robertson sensed a reluctance on the part of the claimant to practise on the devices and equipment that had been sourced for the claimant. The claimant had previous experience of things not working or progressing at a speed that he wished and the claimant was reluctant to practise (and would often assume things would not work rather than spending time trying them out). In fact the claimant did not spend a large amount of time outwith sessions with Mr Robertson familiarising himself with the software and hardware. This was evidenced, for example, by the laptop which had been provided to the claimant on 22 September 2022. In the absence of any adverse comment from the claimant it had been assumed that the laptop was working well. Unfortunately it was only when Mr Robertson asked the claimant on 30 September 2022 about how things were going that the claimant disclosed he could not access it due to the keyboard issue and the claimant had done nothing further to seek such access. The claimant had concluded that it was not working and therefore did nothing to seek to procure access or get round the issue.

59. Mr Robertson was aware of the up to date position with JAWS and was a very experienced user. He also worked with others who used JAWS in the same way as the claimant. Mr Robertson was a JAWS expert and fully understood how it worked and any limitations. He was an expert in this area and with this programme.

60. While the claimant believed there were technical issues with JAWS, that was not something Mr Robertson recognised. No specific issues had been raised about the JAWS system (whether in relation to the migration to Microsoft 265 or otherwise) by the claimant or other users. Had there been any issues with regard to the stability of JAWS, Mr Robertson would have known about it (and he would have taken action to resolve it). As with all IT systems, there can be errors and issues, but the issues the claimant encountered were no different to those of other users and the claimant had been given a laptop with JAWS that was stable and accessible. While the claimant's belief may have been different, in fact the JAWS programme was working in a normal manner.

61. In the event JAWS ceases to operate there is back up available which was installed. That back up is a Microsoft product and uses a similar approach and is capable of being used as a last resort. It was possible therefore for the claimant (and other JAWS users) to have a backup in the event of a malfunction of JAWS where it was unable to restart.

Other adjustments

62. The respondent had also made a number of other adjustments to ensure any disadvantage experienced by the claimant was removed or minimised. This included exploring alternative headphones (to manage privacy concerns) and a suitable chair. The respondent has also accommodated time off for the claimant for various matters and been flexible as to how the claimant carried out his duties.

Claimant unhappy with slow pace

63. The claimant raised an informal grievance on 7 December 2022 with his line manager expressing concern that things were not moving as quickly as he

had expected. This in part stemmed from the timescales that had been included in the mediation outcome, which the claimant had (mistakenly) assumed were essentially time limits for the adjustments to be completed (rather than aspirational dates the respondent had hoped to carry out the steps, but were subject to the steps being capable of being carried out by those dates, which in fact proved not to be possible).

64. The claimant's line manager had advised the claimant in response to his informal grievance that there was "a whole team effort behind getting this to work for you" and noted that there had been some movement. The response noted the detailed steps taken to try and resolve the keyboard issue and how the phone was being progressed to become workable for the claimant.

Issues with signing in

65. Given the challenges the claimant encountered with regard to logging into his laptop, the respondent and its IT team worked hard to find alternative ways to allow the claimant to sign into the network. The respondent's requirements for users was generally that a number of complex and lengthy passwords were required before entry to the network was permitted. The claimant was unable to complete the ordinary processes.

66. The respondent worked hard to reduce the usual password requirements for the mobile phone on 19 December 2022. However, the claimant continued to experience issues when inputting his password and further work was needed.

67. The respondent continued to see whether further adjustments to the sign on protocol could be made, balancing the need for the claimant's ease of access with the need for sufficient security. A significant amount of work was being undertaken behind the scenes to try and find a way to allow the claimant to access his systems with lesser complexity than other users. A balance had to be struck between ensuring the claimant had easy access to the respondent's systems whilst maintaining the security of the systems and data.

68. The reduction of the complexity of the password was a significant reduction and ultimately a solution was identified that allowed the claimant a significantly

easier password than that required by other users. While the claimant had some difficulty using that password, it was a reasonable solution that enabled the claimant to secure access to the systems whilst managing the security and access issues to protect the respondent's systems.

Consideration as to other sign in methods

69. In November 2022 it had been agreed to explore other ways to achieve an easier sign in process. Windows Hello was explored as a further potential adjustment. The option was being considered from on or around 14 November 2022. That was not something that would work on the respondent's systems.

70. The respondent had also considered another alternative, CBA, which was built into Microsoft but this did not work. The respondent was looking at all reasonable ways of overcoming the challenges the claimant faced and expended significant time and effort in working with him and behind the scenes in exploring all available opportunities, within the confines of the operational limits of the respondent's system and security considerations.

Security key issue

71. The security key that had been identified in September as another option would also require a number of digits by way of password. The difference between using the security key and a password that the respondent had ultimately secured for the claimant to access the system was marginal (since a user input password was still needed).

72. Further, the security key could give rise to other challenges a simple password did not create (such as not being in the correct line of sight for the camera and other challenges).

73. In short, the security key would not have provided the claimant with a log in solution that was easier than the password adjustment the respondent had secured for the claimant.

74. Having considered matters in November 2022, the respondent discovered the security key was not compatible with the devices used by the claimant and

the respondent's infrastructure and security systems. Other options were under consideration (and they may give rise to fewer challenges for the claimant).

Progress with mobile phone

75. By mid November the respondent had worked with Mr Robertson and identified ways in which the Apple phone could be configured to work with the respondent's systems. As the respondent did not have any Apple products, they had managed to secure a trial phone from their mobile phone provider. This was a trial device and was only used in "lab conditions". It was never used freely on the respondent's network and had only been used in a test environment. Mr Robertson had been tasked to work with the trial device to see whether it was possible to configure the device in such a way as to allow the claimant access to the items he required whilst also ensuring the respondent's infrastructure was safe and secure.

76. The respondent's mobile phone provider had required the device to be returned in November 2022. The respondent asked to retain it but that was not possible. The device did not have a full warranty and as it had been used by other users, there were security issues if it were to be used on the respondent's network.

77. As the respondent had identified ways to adjust their processes to make the device workable, a new Apple phone was requested that could be used by the claimant on the respondent's systems. This was obtained around the end of November 2022.

78. While the phone was acquired in November 2022 it was not possible simply to set it up and use it as there were a number of extra tasks Mr Robertson required to undertaken to ensure the phone was ready for use by the claimant. Mr Robertson had completed the tasks by mid December and returned the phone to the respondent who required to complete the redeployment profile and tests to allow the device to be released to the claimant.

79. Mr Robertson had advised the respondent what required to be done to ensure the mobile device could be released to the claimant and safe on the respondent's network. That included finalising the sign on process, the finalising of the deployment profile, approving the device management process and updating the security policy (given the exception that had been devised to allow the claimant to use an Apple device when the respondent's network was exclusively android). It would be necessary for the respondent to reset the device, configure it and test it to ensure it was read for the claimant's use.

80. Between December 2022 and January 2023 the respondent carried out the processes Mr Robertson had advised following his handing the device back to the respondent. It was necessary for the claimant to be able to configure certain parts of the device himself and for the respondent to ensure the device satisfied their protocols.

81. The phone, ready for use, was provided to the claimant on 23 February 2023. It was available on or around 26 January 2023 but the process was paused on 27 January 2023 as the claimant was absent and the claimant did not want the phone immediately upon his return to work.

Claimant given help to complete mandatory training

82. In or around December 2022, the respondent supported the claimant to undertake his mandatory training courses on its LearnNL platform by having an employee read the training material aloud to the claimant.

83. The claimant's line manager had understood that completion of the online training modules was a priority for the claimant and so she worked with the claimant, along with colleagues, to ensure the claimant was able to understand the training materials and complete the relevant tests which he did.

84. The claimant's line manager was keen to ensure adjustments were made that allowed the claimant to carry out the items he wished done. The mandatory training was something the claimant wished to do and the claimant's line

manager worked hard to ensure this was achieved, whilst understanding the other accessibility issues with regard to the laptop and phone were progressing.

Grievance progress

85. On 9 January 2023 the claimant requested a grievance meeting. The claimant recognised that his manager had been fully supportive of him but he was frustrated at the slow pace and that he wanted independence of access, something that ought to have been provided following the mediation. The claimant's grievance was progressed in accordance with the respondent's grievance procedures. The manager dealing with the grievance investigated matters and spoke to the relevant individuals.

Sickness absence

86. The claimant had a period of sickness absence from 26 January 2023 to 17 February 2023. This was due to workplace stress. The difficulties the claimant encountered had caused him to require time away from work.

Stress assessment

87. A Stress in the Workplace Line Manager Assessment took place on 20 February 2023. The claimant believed that his belief that he had inequality of access to IT platforms and systems was causing him extreme stress given the slow pace of change. The claimant's line manager noted that steps had been taken following the formal meetings to identify the key issues and support meetings were being arranged to progress matters. IT specialists were also working on solutions for the claimant.

Return to work discussion

88. A Return to Work discussion took place on 20 February 2023. The claimant was offered mental health support but he did not require such support and consideration would be given to occupational health support. It was noted that a meeting had been arranged to provide the claimant with his mobile phone (as the claimant did not want it on his first day back). The claimant was told

that steps were being taken to ensure he had access to his phone and laptop and that would continue.

Claim lodged

89. The Claim was lodged on 15 March 2023 which related to matters following 22 September 2022 up to 15 March 2023.

Grievance meeting and appeal lodged

90. As part of the respondent's grievance procedure, a meeting took place on 6 April 2023 and the outcome to the grievance was confirmed by letter dated 21 June 2023. At the meeting the claimant had noted the pace of change had been slow and not consistent with the mediation outcome. The senior manager who had been dealing with the claimant's grievance noted that she had required to speak to a number of senior managers to investigate the issues the claimant had raised and she had done so.

91. The letter noted that the mediation outcome had stated dates which were "as soon as possible" with anticipated dates. There was no absolute guarantee on timescales as it depended on it being possible to make the changes. It was noted that there had been regular sessions with Mr Robertson to move matters forward. The claimant had been able to use his personal phone for some matters and steps had been taken to configure an apple device from the respondent and significant measures had been taken to allow the password process to be streamlined for the claimant. IT had been clear that there were no technical issues and the issue had arisen due to the claimant's difficult in accessing passwords and the respondent had worked with the claimant to resolve the issues and provide alternatives. As a result the grievance was dismissed.

92. The claimant appealed by email of 7 July 2023 (and that process is understood to be ongoing). The claimant's issue is that while the respondent was working with him, he believed reasonable adjustments had not been made "as agreed or as required by law".

JAWS training

93. The first proper training given to the claimant on JAWS took place on 1 June 2023. This had been due to the time it had taken to identify a suitable keyboard solution. While other solutions had been trialled, ultimately the claimant decided to stick with the keyboard he had and had become familiar with. As Mr Robertson had anticipated, the claimant had become more used to the keystrokes and location of keys as a result of greater use of the product. As a result the claimant had become able to use the laptop by around March 2023 and training had been able to progress in June 2023. Mr Robertson had always indicated that he was able to progress training sooner if needed and had this been requested by the claimant, it would have taken place.

94. Mr Robertson chose to work at the pace set by the claimant and ensure the claimant was comfortable with the system before progressing with training. Mr Robertson considered that by June 2023 it was suitable and consistent with what the claimant wanted (and needed) to commence the JAWS training.

95. Around February 2023 the claimant's preference, at that time, had been to progress the mobile device, which was why JAWS training had not progressed sooner. The focus was in relation to ensuring the claimant had access to the systems required by him to carry out his work. The approach taken was led by what Mr Robertson understood the claimant's needs and desires were. If the claimant had asked for JAWS training even before he had fully familiarise himself with the keyboard (which took until March 2023 to achieve) the training would have been provided.

96. Mr Robertson had been working with the claimant on identifying solutions to both the mobile and laptop devices an examining ways of making the system easier for the claimant. It had not been known if a keyboard solution would be found and so the mobile device issues were being progressed simultaneously. Had a solution not been identified for the keyboard, JAWS may not have been relevant as the claimant would have been using his mobile phone and support worker.

97. By 15 March 2023 the claimant had a functioning and accessible phone and laptop.

Observations on the evidence

98. We found each of the witnesses generally to be credible. They did their best to recollect the position.

99. The claimant naturally was emotional and strongly believed that the respondent had failed to progress matters at a speed and with urgency that was possible. On occasion the claimant would present matters in a negative light with a firm belief that the respondent had not acted with sufficient alacrity. The claimant considered that the tools he were given were akin to “blunt instruments” and as a result he found his motivation reducing. The difficulty with this approach was that in many respects the respondent had in fact sought to be as accommodating as possible and the respondent was In fact devoting considerable time and resources (and often the claimant’s issues would be expedited despite a challenging workload and others requiring support).

100. It was clear that the claimant had not understood quite what was needed “behind the scenes” even to provide what appeared a simple solution. A good example of this was the security key or applications. While a key could be purchased easily or an application could be downloaded within a very short period of time, often there are significant challenges and massive hurdles to be surmounted before such items could be used. The regulated nature of the respondent and highly controlled IT infrastructure presented major obstacles. This was because installing something on one piece of hardware could potentially have massive repercussions elsewhere, whether with regard to the integrity of the entire system or with regard to confidential data and information or with regard to accessibility issues and compatibility issues on local devices or elsewhere. It was therefore necessary for the respondent to spend a great deal of time identifying solutions and then testing the solutions to determine viability in terms of compatibility and support issues.

101. The claimant had experience of a close family member who worked for another local authority. The claimant compared his position to that family member and adopted a negative approach with regard to the respondent,

believing that his experience should be identical to that. That failed to appreciate that the circumstances of the respondent clearly differed to that of the claimant's close family member. Each user is unique and the challenges created require to be dealt with on a case by case basis in light of the particular individual system and network.

102. The claimant was also of the view that his software had not been installed correctly. The Tribunal did not accept that given Mr Robertson's clear evidence and experience. Mr Robertson would have known if that was the case and would have done something about it given the close working relationship and Mr Robertson's unique knowledge of the systems and its users, including the claimant (with whom he worked closely). Mr Robertson was clear that there were no issues with the system.

103. The claimant had also alleged that the issues arose following a migration to Microsoft 365. That was not something Mr Robertson, as a subject matter expert who knew the respondent, the claimant and the system he used, accepted. While that may have been the claimant's belief, the Tribunal accepted Mr Robertson's clear evidence that there were no such issues. There was no doubt there were some issues with the system but these were no different to the issues other users (including users with the same impairment as the clamant). Regrettably IT can be unstable at times and perfection is never achieved.

104. The claimant had developed a reluctance to believe that the support being offered would work and on occasion did not engage fully with the testing process. He assumed that things could not work and would not work and accordingly did not persevere. In fact had the claimant followed the guidance that had been given, and had continued use and practice occurred, it is likely changes would have been forthcoming quicker.

105. The claimant's agent had conceded in the course of the Hearing that some of the key issues in this case had arisen because the claimant had understood the outcome of the mediation was that the steps would be taken within the timescale that had been set out. He had not appreciated that the respondent

required to assess the practicability of matters (and that in fact significant "behind the scenes" issues arose even from seemingly straightforward adjustments). That misunderstanding affected the claimant's view and resulted in him believing that the time that was being taken was too slow and contrary to what had been agreed. In fact the respondent was progressing as quickly as they could given the number of people involved and the complexity of the issues arising given the nature of the changes being made.

106. The evidence from Mr Robertson was compelling. The Tribunal found Mr Robertson to be a true subject matter expert and the Tribunal had no hesitation in accepting his evidence. Mr Robertson was able to impartially set out the issues and explain the issues that arose. Mr Robertson was objective (in the sense of his focus was purely in relation to the IT issues and not either party) and he was able to fully explain the challenges that had occurred and how these were identified together with this direct experience of the claimant, the respondent and the respective systems (and in comparison to others both within and outwith the respondent). In the event of any conflict in evidence, the Tribunal preferred the evidence of Mr Robertson whose evidence was important in reaching a decision in this case.

107. An example of a conflict in evidence that was resolved by carefully considering what Mr Robertson said related to the position regarding the claimant's assertion that the JAWS software installed on his machine was not working properly. Mr Robertson was clear that this was not correct and the Tribunal preferred Mr Robertson's position. Mr Robertson was an expert in the use of JAWS, knew how it worked on the claimant's machine and was able to compare and contrast the claimant's software and its operability with that used by others in the same position as the claimant. He had seen the claimant's system and had experience of the issues the claimant encountered but those issues were normal issues and not indicative of a system that did not work. The claimant had stated in evidence that he believed Mr Robertson would fully understand his position and be able to set it out (given their long standing working relationship and Mr Robertson's knowledge of the claimant). Mr Robertson did so but his evidence flatly contradicted the claimant's

position. Mr Robertson was cogent and clear in his approach with regard to the claimant's position and the Tribunal preferred Mr Robertson's evidence.

108. The Tribunal also preferred Mr Robertson's position with regard to the finalising of the mobile phone and found his evidence clear with regard to what had to be done and why it was more likely than not that the mobile phone was not in fact ready for the claimant until January 2023. The input of the members of the Tribunal as an industrial jury was key in resolving this dispute having considered the evidence led before the Tribunal. While Ms Heron and Ms Hughes gave evidence that they believed the device was ready for the claimant in December 2022 the Tribunal considered that the issues raised by Mr Robertson and his clear belief that the processes took until January 2023 to complete was more likely than not to be the case given his expert knowledge and close connection to the issues. This was not a phone with which the respondent was familiar but was something with which Mr Robertson knew about. He was clear in what remained outstanding in terms of the respondent and clearly knew how long such processes would take and the other matters on which the respondent and its teams were working in terms of accessibility and system support. It was more likely than not that Ms Heron and Ms Hughes were mistaken as to their belief that the phone was ready to be issued to the claimant in December 2022 given the steps Mr Robertson knew the respondent still required to undertake and the likely time. The phone may have appeared to have been ready (and that may have been what Ms Hughes and Ms Heron assumed) but the evidence on balance is consistent with what Mr Robertson said that the phone was ready in January 2023 when the claimant was advised. The IT team was not working in isolation and had a number of other projects and issues, of which the claimant was but one, albeit the claimant's IT and support issues were expedited.

109. The claimants' line manager was clear and candid. She had done her best to accommodate the claimant and she was surprised and disappointed that the claimant was unhappy at the speed things were occurring. In fact things were progressing at significant pace given the amount of work required to be

carried out behind the scenes, the number of issues arising and the resources available.

110. Ms Heron and Ms Hughes both gave evidence in a clear and candid fashion. While there was some confusion as to when the mobile phone was ready for the claimant's use, the Tribunal was able to use Mr Robertson's clear recollection as to what was needed and expert view as to the time likely to be required to complete such processes to resolve the factual issue. Ms Hughes had noted that she understood when the phone was ready attempts were made to set up a session to discuss the issues arising with the phone, which she thought was December time. It was more likely than not that this related to the claimant's configuration of the phone. There was no evidence from the claimant that he had been told the phone was ready in December and it was more likely than not that the claimant would have been told about the phone being ready as soon as it was ready (given the steps the claimant would need to take to personalise the phone). Mr Robertson had opined that it was likely to take until at least the end of the year for the phone to be ready. Taking a step back and viewing all the evidence the Tribunal concluded it was more likely than not the phone was ready in January 2023 when the claimant was told about it and there was no unreasonable delay.

111. There was a clear desire by the respondent to work with the claimant and secure for him a workable solution. There were no adjustments that were refused without proper and full consideration. Cost was never a barrier to progressing and the respondent did all within its powers to progress the adjustments needed with due regard to the importance to the claimant of equality whilst balancing the essential requirement to maintain security and the integrity of the system.

Law

112. Section 39(5) of the Equality Act 2010 provides that a duty to make reasonable adjustments applies to an employer. Further provisions about that duty appear in Section 20, Section 21 and Schedule 8.

113. Section 20 creates the duty to make reasonable adjustments. The relevant provision in this case was the third requirement which states: "(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."

114. Para 6.13 of the Equality and Human Rights Commission Code of Practice states than an auxiliary aid is "something which provides support or assistance to a disabled person. It can include provision of a specialist piece of equipment such as an adapted keyboard or text to speech software. Auxiliary aids include auxiliary services for example provision of a sign language interpreter or a support worker".

115. The importance of a Tribunal going through each of the constituent parts of section 20 was emphasised by the Employment Appeal Tribunal in **Environment Agency v Rowan 2008** ICR 218 and reinforced in **Royal Bank of Scotland v Ashton** 2011 ICR 632.

116. For the duty to arise, the employee must be subjected to "substantial disadvantage in comparison to a person who is not disabled". Substantial means more than minor or trivial.

117. The obligation to take such steps as it is reasonable to have to take to avoid the disadvantage is one in respect of which the Equality and Human Rights Code of Practice provides considerable assistance, not least the passages beginning at paragraph 6.23 onwards. A list of factors which might be taken into account appears at paragraph 6.28 and includes whether the step would be effective in preventing the substantial disadvantage, the practicability of the step, the financial and other costs of making the adjustment and the extent of any disruption caused, the extent of the employer's financial or other resources and the type and size of the employer.

118. Paragraph 6.29 makes clear that ultimately the test of the reasonableness of any step is an objective one depending on the circumstances of the case.

Examples of reasonable adjustments in practice appear from paragraph 6.32 onwards.

119. In **Linsley v HMRC** UKEAT/0150/18/JOJ the Employment Appeal Tribunal noted (at paragraph 38) that: "*For any given disadvantage there may be a number of adjustments that could be made, each of which might individually be reasonable. One could, of course, also have a situation where a number of adjustments are made, each one being inadequate in isolation but the cumulative effect of which is that the adjustment, overall, is reasonable. An employer is not required to select the best or most reasonable of a selection of reasonable adjustments, nor is it required to make the adjustment that is preferred by the disabled person. The test of reasonableness is an objective one: see the case of* ***Smith v Churchill's Stairlifts PLC*** *[2005] EWCA Civ 1220 at [44], in which it is said that, "So long as the particular adjustment selected by the employer is reasonable it will have discharged its duty*"."

Submissions

120. Both parties made detailed written submissions which were supplemented orally with both parties making relevant submissions in relation to each other's submissions. We have taken into account the full submissions from the parties and refer to these, as appropriate, below.

Decision and discussion

121. The Tribunal spent a considerable period of time considering the evidence that had been led and the submissions made by both parties which were fully taken into account. Although the submissions are not reproduced in full they were fully taken into account and are on the Tribunal file. Having considered the evidence led, the Tribunal was able to reach a unanimous view. We shall deal with each issue in turn, so far as relevant.

Security key

122. The first issue was whether the lack of an auxiliary aid, namely security key, put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that he was unable to access the respondent's

systems and whether it was reasonable to have provided this (or considered it sooner).

123. The claimant's position was that the security key issue had been raised a potentially good option to facilitate access to the systems in September 2022. It ought to have been investigated at that stage given the absence of any other viable options up to February 2023 and all options on the table should have been explored. While it was accepted that the key would not work with the phone, the position with the laptop had not been absolutely finalised and further work was needed. Had the consideration commenced sooner, the outcome would have been arrived at earlier.

124. The respondent's agent argued that the context is important and the issues should not be seen in a vacuum. Ms Hughes had made it clear that each of the requests by the claimant (and for the claimant's benefit) were all considered. Financial issues were never a bar to progress and the respondent had sought to accommodate each of the claimant's requests as best they could.

125. There was, however, a process that was undertaken dealing with the matters on the facts as they arose. The first stage was to seek to reduce the length and complexity of the password. Windows Hello was then explored but that did not work. Another way of accessing the system was explored, namely CBA but that did not work.

126. The security key was explored but did not work in respect of the phone but the password situation had been resolved. By this stage, namely March 2023, access to both devices had been resolved and the phone had been accelerated. The respondent was of the view there was accordingly no substantial disadvantage and the respondent had acted reasonably.

Decision as to security key

127. The Tribunal considered the evidence carefully. Mr Robertson's evidence with regard to the key was extremely important and the Tribunal accepted his evidence in its entirety. While the key was "a good option" Mr Robertson's

position was that the key was of no greater benefit to the claimant to access the systems than the reduced password that had been secured by the respondent. In some ways use of the key would be more challenging given the requirement for a password and the requirement to ensure proper use of biometrics. That was the same position for both the laptop and mobile telephone, even if compatibility issues were resolved for both items.

128. In other words there was no substantial disadvantage with regard to accessing the respondent's systems that provision of the aid of the key would remove. The issue had already been resolved and the claimant was already able to access the systems.

129. The Tribunal found that the respondent's agent's submission had merit. The issue required to be viewed in context as to what was happening, when and why. While the issue of the key was initially raised in September 2002, that was in essence a passing remark, noting that there was a potential good solution which was raised at a time when matters were being viewed generally and all solutions were being considered. There were equally other solutions. At that time the respondent (and indeed the claimant) were focussing on other matters and they key was not an issue that either party understood was important. (It had not featured at all in the agreement as to the key adjustments following the mediation for example).

130. The approach the respondent took was to explore different ways to allow the claimant access to the systems. The respondent dealt with each matter in a reasonable and fair way, trying in earnest to identify a solution that worked for the claimant. It was simply not possible (nor reasonable) to try every solution at the same time. There was a limit to the time and resources available to identify solutions. On occasions two or three of the respondent's relatively small IT team were dedicating large amounts of time to work with Mr Robertson and the claimant to identify solutions. On occasion hours would be devoted to looking at issues and seeking solutions. While this may not have been something the claimant saw, it was clear significant work was being done behind the scenes to adjust the respondent's processes to facilitate him the same access all employees had. There was a limit, however, to the

resources the respondent had and could fairly and reasonably devote to this important issue.

131. By March 2023 the claimant had secured reasonable and independent access to both his mobile phone and his laptop. It was not reasonable to have sought to expedite the security key in circumstances whereby the other solutions were being considered. Had any of the other solutions worked, there would have been no need for the key. And in fact another solution was identified and it worked. While an outcome with regard to the key would have been reached sooner had this been looked at sooner, other options were being considered and those options were equally important if not more so than the key. Ultimately another solution was identified.

132. In any event the Tribunal was satisfied from Mr Robertson's evidence that the key was not in fact a reasonable step to have removed the disadvantage the claimant suffered since it was in part more difficult to use to gain access to the systems than the reduction of the password, the measure that was ultimately successful. The security key, as the claimant's agent contended, was a potentially reasonable adjustment, but as matters developed it became clear that a better solution had been identified and implemented within such a period that was reasonable.

133. The Tribunal considered each of the factors in the Code in determining whether what the claimant contended as a step was reasonable.

134. The Tribunal was not satisfied that providing the security key would be effective in preventing the substantial disadvantage. This is because the key itself was likely to create barriers not dissimilar to those which already existed, including the requirement for some form of keyboard input password. It also created new barriers, including ensuring the correct location and angle to allow biometric data to be taken (whether by way of photo or finger print).

135. With regard to the practicability of the step, the security key did not work with the mobile device. The position was not clear with regard to the laptop. It did not work with the laptop and further work was required. The other options

being investigated, namely the reduced password access, were more practicable on the facts of this case.

136. The financial and other costs of making the adjustment were not as much a barrier. The cost of the key itself was not an issue but the issue was the cost "behind the scenes" of investigating the matter, testing and trying to make sure there were not unintended consequences if this change was made to the system, allowing access to the system in a new way. Those costs were not (and never have been) unsurmountable. The key is still a matter under consideration, albeit not prioritised given the solution that was found.

137. There would be some disruption caused given it would take the IT staff away from their other tasks but this is not a major issue.

138. The Tribunal also took into account the extent of the employer's financial or other resources and the type and size of the employer. These allowed the key to be considered but the adjustment to the password was a solution that was more reasonable on the facts having carried out the balancing exercise. It would not have been a reasonable step for the respondent to have progressed the security key at an earlier stage than what happened in this case nor to have prioritised the matter.

JAWS software

139. The next issue was whether the lack of an auxiliary aid, namely JAWS software on his laptop, put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that he was unable to access the respondent's systems and that this should have been working.

140. The claimant's position was that while Mr Robertson did not perceive there to be any issues with JAWS, he had at least experienced one example of the system crashing when working with the claimant and as a result that ought to be sufficient to infer there were serious issues with the JAWS system *vis a vis* the claimant.

141. The respondent's position was that Mr Robertson did not recognise the issues the claimant said he had encountered at the Tribunal. The issues the claimant

raised during this hearing had not been raised by the claimant to him at the time and if there were issues it was likely other users would have encountered them too and that had not been the case. It was argued the claimant had a working JAWS system and the issues he encountered were no different to others.

Decision as to JAWS software

142. The Tribunal had sympathy with the claimant who was clearly experiencing some difficulties with the systems. However, the Tribunal fully accepted Mr Robertson's evidence. Mr Robertson had full knowledge of the JAWS software not only from the claimant's perspective but from the perspective of other users (some of whom were in an identical position to that of the claimant) and also from a developer's perspective, having direct contact with those who write and update the relevant software.

143. While the claimant had some issues, the issues he encountered were not such as to make the software inoperable. The issues the claimant had with regard to accessing his devices were not issues with regard to JAWS but rather accessibility issues with regard to the password and access functions. Those accessibility issues required to be overcome before JAWS was capable of being used. The respondent did all that was reasonable in seeking to ensure the claimant's access issues were resolved.

144. Some of the challenges that arose in this case were because the claimant was comparing his issues with those of a close family member who had similar needs to his but who worked for a different local authority. The challenge was, however, that the person whom the claimant compared himself with worked for another employer which had a different IT system. The respondent had a carefully crafted IT system. The respondent made significant efforts to adjust its approaches and create exceptions to allow the claimant to access the systems with technology with which he was familiar.

145. The claimant had also regrettably adopted the view that if matters did not work immediately they were unlikely to work. As a result the claimant adopted a negative approach to how the systems worked. That led him to reduce the

amount of time he spent practising and engaging with the systems. The claimant spent little time using the systems he had been provided which would eventually have resolved the issues (as they in fact did).

146. Mr Robertson made it clear that the more the software and hardware was used, the easier use became. That was due to authentication processes normalising and familiarity becoming established (both from a user and a system's perspective). Had the claimant spent more time working on the system, it is more likely than not that the system would have worked in a more seamless way.

147. On balance the Tribunal accepted the evidence of Mr Robertson in contrast to that of the claimant and in the event of conflict was prepared to accept Mr Robertson's position. The Tribunal did not accept the claimant's assertion that JAWS had not been installed properly or that it was not working properly on his machine. The Tribunal considered had that been the case Mr Robertson would have been aware of it and he would have taken remedial action. The Tribunal was satisfied the claimant was given software that was accessible and operable. To that extent the respondent had provided an auxiliary aid to overcome the disadvantage in this regard and had done so within such a time that was reasonable.

148. The Tribunal considered each of the factors in the Code in determining whether what the claimant contended as a step was reasonable. In this matter the Tribunal was satisfied that the software the respondent provided to the claimant was working. While there were some issues there was nothing specifically the respondent could do to overcome those "nuances". The respondent had already ensured Mr Robertson was available to be contacted by the claimant or his line manager during business hours or during the meetings. If the claimant had a specific issue with the software he could arrange for Mr Robertson to be contacted (or his support worker or line manager could be asked to assist). The claimant also had the built in screen reader if there was a major fault.

149. There was nothing specific by way of adjustment the respondent could do in this regard. They had dealt with accessibility to the system and could not have done anything else which would have been reasonable to have expedited that on the facts. They provided the claimant with a workable JAWS programme and support to deal with issues arising. There was nothing else that could be done to prevent the substantial disadvantage. No other steps would have been practicable (and nothing specific has been suggested by the claimant other than providing an "accessible and workable JAWS programme" (which the Tribunal has found was provided). Finance and resources was no barrier in this regard.

150. The respondent had not failed to provide an auxiliary aid as contended by the claimant in this regard.

JAWS training

151. The next issue was whether the lack of an auxiliary aid, namely suitable training on JAWS at an earlier stage, put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that he was unable to access the respondent's systems.

152. The claimant's agent argued that it was reasonable for the JAWS training to have commenced even although the claimant was unable to access his system (on which the training was carried out). It was the claimant's position that help could have been given to the claimant to access the system sooner than June to allow the JAWS training to take place.

153. The respondent's agent argued that the claimant wanted independence. He had experience of JAWS already having used it privately and was concerned that training was covering things he already knew and he wanted to work on his own yet at the same time he was arguing that training with Mr Robertson should have been provided sooner. In any event it was argued that training was provided and was carried out within a reasonable time given the context.

Decision on JAWS training

154. The Tribunal carefully considered the claimant's evidence and submissions in this regard. The test is one of reasonableness and not a counsel of perfection. In a perfect world IT equipment works all the time and users are trained to use all functionality. That is not the real world.

155. In this case the Tribunal preferred the evidence of Mr Robertson. His position was that training was always available if the claimant sought it. The claimant had the opportunity to speak with Mr Robertson during business hours on any working day (as he had his own line manager). The claimant met with Mr Robertson regularly. The training was provided when Mr Robertson believed it was possible to engage meaningfully with the systems to make the training relevant and worthwhile.

156. If the claimant believed that he was unable to access the systems, even if he could have been given assistance to do so, the claimant was unlikely to be able to practise and engage with what he had learned (given the claimant's reluctance to practise). The claimant had demonstrated a reluctance to spend his own time (or to devote time) to practising and using the system. It would not have been reasonable to have expedited the training at a time when there were serious concerns about the claimant accessing the respondent's systems in light of the context.

157. There was a possibility at one point that instead of using the laptop at all the claimant may have been using his mobile phone (with his support worker using the system as required). On that basis JAWS training would have been superfluous and unnecessary. It was reasonable to see how the keyboard issue developed before progressing the training.

158. The key issue for the claimant up to March 2023 was to secure independent access to the respondent's systems. Focus had switched to the mobile phone when it appeared laptop access was going to be challenging (and the claimant had a preference to use the mobile phone). The respondent had adjusted their system to ensure the claimant was able to use a mobile phone with which he was familiar and invested time and effort in adjusting their systems to ensure the device worked. It is also relevant to note that the claimant had a line

manager and support worker who were able to assist the claimant in accessing the system.

159. Mr Robertson's decision to hold off JAWS training until the claimant was comfortable accessing his laptop was sensible and reasonable. It would not have been reasonable to have expedited the training when the claimant was still unable to properly access the system and it was not clear if that challenge was going to be overcome. JAWS was required to operate the laptop and as soon as the claimant felt comfortable using the laptop the training was progressed.

160. The Tribunal considered each of the factors in the Code in determining whether what the claimant contended as a step was reasonable.

161. The Tribunal was not satisfied that providing the training at an earlier stage would be effective in preventing the substantial disadvantage. This is because the training would only assist the claimant in using JAWS. If he was unable to use JAWS (because he said he was unable to access the system via the keyboard) there would be little benefit in providing training on something that the claimant was not going to routinely use. The whole point of the training was to equip the claimant with the skills to allow him to keep using the programme in a work context. As the claimant was not using JAWS at the time, providing training on JAWS would have been of limited use and Mr Robertson's decision to delay training until it was clear that the access issue was resolved made complete sense.

162. With regard to the practicability of the step, Mr Robertson had indicated training would proceed at a pace dictated by the claimant. There was no reason the training could not have been progressed sooner but it was not something Mr Robertson considered had to be progressed given the claimant's position at that time. That was a reasonable conclusion to reach.

163. The financial and other costs of making the adjustment were no barrier and there would be no disruption. The size and resources all would have supported training but in reality there were other more pressing matters to

consider and in the absence of those issues being resolved, it was possible the focus would be on the mobile device only (which did not involve JAWS).

164. In all the circumstances it would not have been reasonable for the training to have been introduced at an earlier time than when it was progressed in light of the context.

Working mobile phone

165. The next issue was whether the lack of an auxiliary aid, namely a working iphone, put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that he was unable to access the respondent's systems and that the phone should have been provided sooner.

166. The claimant's position was that a working phone should have been provided sooner than January 2023 as it ought to have been ready in December 2022. Had the phone been provided sooner it was possible that the claimant's sickness absence could have been avoided.

167. The respondent's position was that Mr Robertson understood further work required to be done when he returned the phone in December. He understood that was undertaken and the phone was then issued following completion of the work (and the claimant's absence). The other witnesses were not clear as to precisely when the phone was given to the claimant and what happened in the interim.

168. The respondent's agent argued that even if there was a delay, that was a number of weeks, and should be seen in context of the other issues and what was being done and at the time of year. Any disadvantage occasioned by such a delay was, in context, minor or trivial.

Decision on phone

169. The Tribunal considered both submissions and the evidence carefully. Given the time that had passed it was clear that there was a lack of clarity as to witness recollection. The Tribunal was satisfied from the evidence that the mobile phone was delivered to the claimant within a reasonable time.

170. On the facts found by the Tribunal, the Tribunal was satisfied that the respondent had carried out the steps Mr Robertson believed were being undertaken. Mr Robertson was clearly more familiar with the processes and requirements than Ms Heron and Ms Hughes (who, the Tribunal found, were mistaken in their belief that the phone was ready to be provided to the claimant in December 2022). Mr Robertson was clear in his belief as to what required to be done and what was done and the time needed for the relevant processes. His evidence was clear that there were processes to be undertaken that resulted in the phone not being available for the claimant until January. At no stage was there any suggestion from Mr Robertson that what had happened was unreasonable or inconsistent with what he understood the position to be.

171. Mr Heron and Ms Hughes believed that the respondent had carried out all the work needed to allow the phone to be released to the claimant in December but there was no explanation as to, if that was correct, what happened to the phone in the interim. That was an important omission and there was nothing to suggest the respondent had simply ignored the matter, given they fully understood how important a working phone was for the claimant and given the considerable investment and steps taken to that point to secure the phone and configure it. It was more likely than not that Ms Hughes and Ms Heron had not appreciated the work that remained outstanding, even if they had thought the phone was ready in December 2022.

172. Mr Robertson was also clear that provision of the phone to the claimant was a priority. This was shared by the respondent. There was no reason why the respondent would not issue the phone to the claimant as soon as it was ready and there was no reason provided to suggest that was so. The respondent understood the importance of providing a working phone to the claimant, having spent months working with the claimant and Mr Robertson to secure the phone and laptop and work on ensuring the systems were safe and working.

173. On the balance of probabilities the Tribunal concluded that it was more likely than not that the respondent provided the working phone to the claimant as

soon as it was reasonable to do so, namely once the relevant "behind the scenes" checks had been completed. Those were checks that were not visible to the claimant but it was clear that significant work was being undertaken behind the scenes by various individuals to ensure the phone was capable of working on the respondent's systems and their relevant protocols were refined to progress it. It was more likely than not that Mr Robertson's belief as to what was happening was correct and was what happened, in that the phone was being worked upon by the respondent and was likely to take a number of weeks such that the phone was ready to be given to the claimant mid to late January 2023 when it was given to the claimant, upon conclusion of the background work. The suggestion that the phone was ready in December 2022 and yet not given to the claimant in the context of this case and given the other actions of the respondent was not credible nor likely to be the case.

174. The Tribunal considered each of the factors in the Code in determining whether what the claimant contended as a step was reasonable.

175. In this matter the Tribunal was satisfied the phone was provided within a reasonable period of time once all the internal checks were completed. The Tribunal (and the respondent) recognised that providing a working mobile phone was an important step to remove the disadvantage the claimant suffered. That was why such time and effort had been expended in providing the device, adjusting the policy to allow the claimant to use an apple product (the only person in the respondent's employment who could use such a product to access their services in such a manner) and why so many staff were working on the phone.

176. The Tribunal carefully considered the conflict in evidence with regard to what specifically happened with the phone and its readiness for the claimant. The Tribunal reached a decision based on all the evidence before it having assessed the oral and documentary evidence and having reached a decision on the balance of probabilities. It was more likely than not that the phone was provided to the claimant once the testing and policy processes had been completed and once it was ready to be given to the claimant (and not delayed). Any delay would have been minor or trivial given the context and

timing. This occurred in December and January when Christmas holidays and annual leave was taken reducing the number of working days of those involved to progress matters.

177. The phone was therefore provided when practicable. Significant resources had been expensed in purchasing the handset and in the background research, testing and steps taken to configure the phone and ensure it worked within the respondent's systems. Cost was never a barrier to accommodating the claimant's requirements. The Tribunal also took into account the extent of the employer's financial or other resources and the type and size of the employer. These allowed the phone to be purchased and the respondent's systems adjusted to facilitate the claimant access to the device. It is also relevant to consider that there were other projects and issues on which the IT team were working and although the claimant's issues were expedited, the claimant was not the only individual who required significant IT support.

178. In all the circumstances the respondent provided the phone within a period that was reasonable and it would not have been reasonable to have done so sooner on the facts found by the Tribunal.

Summary

179. In reaching its decision with regard to each of the auxiliary aids relied upon by the claimant, the Tribunal balanced the requirements of the claimant with the needs of the respondent. The Tribunal took account of the provisions of the Equality and Human Rights Commission Code of practice in carrying out the balancing exercise in deciding the reasonableness of the provision. The Tribunal carefully considered all the evidence that was led and reached a decision based on the evidence and the factual context which was important given the issues arising in this case. It was important not to look at matters in a vacuum.

180. Having assessed each of the steps advanced by the claimant and having considered the evidence as a whole the Tribunal was satisfied that the respondent had taken all steps that were reasonable to remove the disadvantage relied upon. The respondent had also taken such steps within

a reasonable period of time. There were no other steps the Tribunal considered should have been made and the Tribunal was satisfied it would not have been reasonable on the facts for the respondent to have done what it did sooner than when the respondent acted from the facts before this Tribunal.

181. Many of the issues in this case arose as a result of the mediation outcome which led the claimant to believe the steps would be taken within the time periods fixed. While the times stated were not absolute, that was in essence the claimant's belief. He judged what occurred against the outcome that he had understood. That was unfortunate and not the fault of either party. This arose as a result of a misunderstanding between the claimant and respondent and regrettably led to the claimant's belief that the pace of change was too slow.

182. The claimant had not been aware as to precisely what was being done by the respondent's team to support him and provide him with workable solutions. That was because, naturally, a significant amount of work was being carried out by individuals unknown to the claimant (whether in the IT department or otherwise). The respondent has invested considerable funds, time and energy to identify possible solutions and ways in which these can be adapted and configured to work within the respondent's strict security requirement and protocols.

183. The claimant recognised during the Hearing this factor and it is hoped that the parties can continue to work together in a collegiate way to identify workable solutions and allow the claimant to continue to flourish in a role that he clearly enjoys in which he is self evidently successful.

Employment Judge: **D Hoey**
Date of Judgment: **17 August 2023**
Entered in register: **21 August 2023**
and copied to parties