



EMPLOYMENT TRIBUNALS

Claimant: Mr R Fray

Respondent: Job Change 2007 (West Midlands) CIC

FINAL HEARING

Heard at: Birmingham

On: 11 to 15 & (deliberations in private) 18 March 2024

Before: Employment Judge Camp
Mr D McIntosh
Mr PJ Simpson

Appearances

For the Claimant: Mr R Powell, counsel

For the Respondent: Mr R Ennis, solicitor

RESERVED JUDGMENT

- (1) The Claimant does not need permission to amend in order to pursue a reasonable adjustments claim relying on section 20(5) of the Equality Act 2010 (“EQA”) – an auxiliary aids claim.
- (2) Any reasonable adjustments complaint being pursued relying on EQA section 20(3) – one based on an alleged “*provision, criterion or practice*” – fails and is dismissed.
- (3) The Respondent was in breach of the duty to make reasonable adjustments by the non-provision, or belated provision, of the following auxiliary aids: a C-Pen Reader; TextHelp AtW version [software] (aka “Read and Write”); Dragon Professional Individual [software]; a wireless headset suitable for Dragon; MindView AT mind mapping software; a laptop with an i5 or Ryzen 5 processor.
- (4) Although the claim that the Respondent was in breach of the duty to make reasonable adjustments as set out in paragraph (3) immediately above was brought after the end of the period of 3 months in EQA section 123(1)(a), it was brought within another period that the Tribunal thinks just and equitable, in accordance with EQA section 123(1)(b). That claim therefore succeeds.

- (5) The Claimant resigned from the Respondent's employment on and with effect on 12 May 2022 and the main reason he resigned was the Respondent's above-mentioned breach of the duty to make reasonable adjustments.
- (6) Auxiliary aids complaints relating to Global Autocorrect software and to a Dictaphone fail on their merits and are dismissed.
- (7) The complaints of direct disability discrimination and of unfavourable treatment under EQA section 15, which relate to the Claimant's alleged constructive dismissal, fail because of time limits.

ORDER:

- (8) Within 28 days of the date this is sent to the them, the parties must write to the Tribunal: confirming that they have agreed remedy, in light of the above Judgment; alternatively, providing their proposals for case management orders, agreed if possible, leading to a future 1 day remedy hearing, together with their dates of unavailability to the end of January 2025.

REASONS

Introduction, background & list of issues

1. The Respondent is a Community Interest Company that, possibly amongst other things, helps people find work. It employed the Claimant as a Careers Adviser from 2 August 2021 until his resignation in May 2022. After going through early conciliation from 10 August to 21 September 2022, he presented his claim form on 18 October 2022. A second claim (case number 1301914/2023) followed in February 2023, but the complaints made in that claim have since been withdrawn and we – this Tribunal – are not concerned with the second claim.
2. The claim – by which, from this point onwards, we mean the first claim – has been amended and part of it has been withdrawn. Putting the amendments to one side for the time being, what was left of it by the end of this hearing was a reasonable adjustments (sections 20 and 21 of the Equality Act 2010 – “EQA”) claim centred on a DWP Access to Work Holistic Workplace Assessment (“Access to Work Report”) on the Claimant dated 12 October 2021. The Claimant is dyslexic, and consequently has and had a disability in accordance with EQA section 6, something the Respondent knew at all relevant times. The Access to Work Report was in the normal format for such things, which we are familiar with. It recommended that the Claimant be provided with various bits of equipment (including computer software), in particular: a C-Pen Reader; TextHelp AtW version [software] (aka “Read and Write”); Global Autocorrect [software]; Dragon Professional Individual [software]; a wireless headset suitable for Dragon; MindView AT mind mapping software; a portable Dictaphone; a laptop with an i5 or Ryzen 5 processor and 8GB of RAM. In the usual way, the Access to Work Report included a quotation for the cost of the recommended equipment and, so long as it was ordered reasonably quickly by the Respondent, from the recommended suppliers, the cost of the equipment would be reimbursed to the

Respondent in full, except for a small amount that the Claimant would himself need to contribute, as it was going to be his equipment.

3. As it appeared to us at the start of this hearing, the gist of the Claimant's case was that this equipment had not been provided with reasonable speed, or in some cases at all; that that was a breach of the duty to make reasonable adjustments; and that he had resigned as a result.
4. Both parties have been legally represented throughout these proceedings. At the first, standard case management preliminary hearing, before Employment Judge Kelly on 13 April 2023, the issues in the case were discussed. In her write-up of that hearing, the Employment Judge produced a list of issues, which we shall refer to as the "List of Issues". The reasonable adjustments claim was put in the List of Issues as a PCP-based (EQA section 20(3); a PCP being a "*provision, criterion or practice*" in accordance with that section) claim rather than as an auxiliary aids (EQA section 20(5)) claim. The Employment Judge made an order that, "*The claims and issues, as discussed at this hearing, are listed in the Case Summary above. If you think the list is wrong or incomplete, you must write to the other side by 11 May 2023. If you do not, the list will be treated as final unless the Tribunal decides otherwise IE You will not be able to rely on anything else in relation to your claim.*" Neither side wrote pursuant to this order to suggest that the reasonable adjustments claim had been put wrongly in the List of Issues.
5. In or after mid-May 2023, further to a direction given by Employment Judge Kelly at the preliminary hearing the previous month, the Claimant made an application to amend. At a further preliminary hearing, on 25 September 2023, that application was partially granted by Employment Judge Hindmarch. What was added to the claim was an allegation that the Claimant had been constructively dismissed and that his constructive dismissal was direct disability discrimination and/or unfavourable treatment because of something arising in consequence of disability, under EQA sections 13 and 15. The "something" said to arise in consequence of disability was, "*The Claimant's ability to function at the correct level due to the Respondent's failure to provide equipment.*" There is no suggestion in Employment Judge Hindmarch's write-up of that hearing that the existing reasonable adjustments claim was not that set out in the List of Issues.
6. Written reasons for Employment Judge Hindmarch's decision on the amendment application were not requested and are therefore not available. There is a time limits issue that potentially arises in relation to the complaints that were added by amendment, in accordance with **Galilee v The Commissioner of Police of The Metropolis** [2017] UKEAT 0207_16_2211. The parties' representatives confirmed to us that to the best of their knowledge and recollection, that issue was not addressed by Employment Judge Hindmarch and that, in particular, she made no decision as to whether in her view the amendment she was giving permission for was or was not substantive and hence whether or not that time limits issue did indeed arise. In the circumstances, it was agreed that we should consider it as part of this decision, and we shall do so.
7. At the start of the hearing, both sides agreed that the issues we had to deal with in relation to reasonable adjustments were as set out in the List of Issues. They also agreed that part of that reasonable adjustments complaint was an allegation

that the Claimant resigned because of the alleged breach of the duty to make reasonable adjustments. However, at the start of the hearing on 13 March 2024 – day 3 – by which time the Claimant’s oral witness evidence had concluded, Claimant’s counsel, Mr Powell, applied to amend the reasonable adjustments claim. This happened just after the Claimant’s indirect discrimination claim and the part of the reasonable adjustments claim relating to the Claimant’s grievance had been withdrawn and consequently dismissed. The amendment sought was to replace the part of it that in the List of Issues concerned the Respondent not providing “*IT equipment as recommended by Access to Work*” with an auxiliary aids claim, such that the issues to be decided by this Tribunal would be as follows:

- 7.1 did the lack of an auxiliary aid, namely the equipment recommended by Access to Work in its report of 12 October 2021, put the Claimant at a substantial disadvantage compared to someone without the Claimant’s disability, in that the Claimant’s ability to undertake his duties was negatively impacted and he was caused stress?
 - 7.2 did the Respondent know or could it reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage?
 - 7.3 would it be reasonable for the Respondent to have to provide the auxiliary aid(s), and if so when?
 - 7.4 did the Respondent fail to provide it/them?
8. It was agreed at that stage that we would consider the amendment application as part of this decision, and we shall do that immediately below.

PCP-based claim

9. We start by looking at the reasonable adjustments claim as it stands, i.e. as set out in the List of Issues. We are starting there because if that claim succeeds then there would be no need for the Claimant to amend it and it would be pointless and therefore not in accordance with the overriding objective for us to grant permission to amend.
10. The reasonable adjustments claim set out in the List of Issues is based on the following alleged PCPs:

The practice of failing to provide the Claimant with: (1) supervision, (2) 1-2-1 sessions, (3) verbal communications instead of written communications and (4) return to work interviews after periods of absence.
11. There are many reasons why that claim is misconceived. The first is that none of these alleged PCPs is put as a general practice that might constitute a PCP as a matter of law (in accordance with **Ishola v Transport for London** [2020] ICR 1204, in particular paragraphs 37 to 39). We remind ourselves that the Claimant has been legally represented throughout and that no attempt has ever been made on the Claimant’s behalf to alter the alleged PCPs as set out by Employment Judge Kelly in her List of Issues, presumably based on discussions with the

Claimant's representative. It is not for us to re-draft the Claimant's claim for him so as to make it sustainable.

12. The second problem is that even if we were ourselves to re-draft the PCPs so as to make them allegations of general practice of some kind, the PCPs would not be made out as a matter of fact.
 - 12.1 There's no evidence of any general practice of failing to provide employees with supervisions, or one-to-ones, or return to work interviews after periods of absence.
 - 12.2 The allegation that there was a practice of "*failing to provide the Claimant*" (or anyone else) "*with ... verbal communications*" is almost nonsensical. As one would expect, and as the Claimant conceded during cross-examination, his managers at the Respondent communicated to him with a combination of written and oral communications.
 - 12.3 In relation to one-to-ones, what became clear during the Claimant's oral evidence was that what he meant by the allegation that he did not have one-to-ones was that he did not have formal, face-to-face supervisions or performance reviews. He had lots of meetings with his managers on a one-to-one basis.
 - 12.4 So far as concerns return to work interviews after periods of absence, the Claimant by his own admission had at least one of these.
13. A further problem with the claim in the List of Issues is that there is no substantial evidence to support the notion that any of those alleged PCPs caused the Claimant substantial disadvantage in comparison with persons who are not disabled. His oral evidence in this respect was to the effect that he felt it was bad practice not to have supervisions and not to have a return-to-work interview after every single period of sickness absence, however short. His evidence was not that the lack of supervisions and return to work interviews was somehow worse for him than it would have been for someone else in the same position because of his dyslexia, let alone that these PCPs caused his ability to undertake his duties to be "*negatively impacted*" and "*caused [him] stress*", as alleged in the List of Issues.
14. Finally, the suggested reasonable adjustments set out in the List of Issues (taking into account the withdrawal of the complaint about the Claimant's grievance) – "*provision of a private or quiet working environment*" and "*provision of IT equipment as recommended by Access to Work*" – have no connection with the alleged PCPs. For example, it would be a non-sequitur to say that providing him with a private or quiet working environment or Dragon software would avoid any disadvantage caused by a practice of not having return to work interviews after periods of absence.
15. In conclusion, the claim in the List of Issues is hopeless and bound to fail. This in turn makes the amendment application very important, because without it, there is no viable claim at all. We shall therefore consider that amendment application now.

Aids & equipment claim

16. The Claimant's application is to put forward his reasonable adjustments claim as an auxiliary aids claim under EQA section 20(5) (which we shall refer to as an "aids and equipment" claim) rather than as a PCP-based claim. It is presented as an application to amend, but the first thing we need to consider is whether an amendment application is needed at all.
17. The Claimant only needs permission to amend if the aids and equipment claim is not in the claim form. Lists of issues are important, but they are no more and no less than case management tools. What is written in a list of issues produced by a judge following a preliminary hearing does not in and of itself substantively change what claim is before the Tribunal, namely the one in the claim form. The claim before the Tribunal is only changed by successful applications to amend or by complaints being withdrawn.
18. The factual basis of the proposed aids and equipment claim is set out in the claim form in paragraph 7 of the ET1 particulars of claim, the equipment the Claimant allegedly required being set out at sub-paragraphs a to h. Also set out in the claim form is the fact that the complaint is one of breach of the duty to make reasonable adjustments, relying on section 20 of the EQA. In paragraph 20, it is explicitly stated that, "*The Respondent failed in its duties to make reasonable adjustments for the Claimant as a person with a disability in that ... It failed to provide suitable IT equipment as recommended by Access to Work*". In the context, by "*IT equipment*" in paragraph 20, what was meant must be the equipment set out in paragraphs 7 a to h.
19. A reasonable adjustments claim can be one based on a PCP, can be about premises, or can be about auxiliary aids. The ET1 particulars of claim do not specify which of these three types of reasonable adjustments claim is being made. However, what is in the ET1 particulars of claim looks more like an aids and equipment claim than anything else. It is certainly not a premises claim and there is no mention of any alleged PCP in connection with reasonable adjustments¹. Although the word "*equipment*" is used instead of the words "*auxiliary aids*", even amongst those knowledgeable in employment law, such claims are often referred to as aids and equipment claims rather than as "*auxiliary aids claims*".
20. It follows that the claim in the claim form as it stands is the very aids and equipment claim the Claimant now wishes to pursue. No amendment is necessary in our view; the claim is already there; the Claimant does not need our permission in order to be able to pursue the claim. In those circumstances, if the Respondent was caused difficulties by the fact that it had assumed – understandably and reasonably – that the claim being pursued was the PCP-based one set out in Employment Judge Kelly's List of Issues, this would not prevent the Claimant from being able to pursue it as an aids and equipment claim.
21. We would probably have been sympathetic to an application by the Respondent for a postponement on the basis that it was taken by surprise by the Claimant pursuing an aids and equipment claim and that it needed to gather further

¹ PCPs are mentioned, but in relation to indirect discrimination, not reasonable adjustments.

evidence and take stock. However, it made no such application, whether contingent on our permitting the Claimant to pursue that claim (or deciding, as we have done, that he does not need permission), or otherwise.

22. If the Claimant did need our permission to amend in order to pursue an aids and equipment claim, then we have would have to have applied the overriding objective and the well-known **Selkent** guidelines and decide whether it would be in the interests of justice to allow the amendment. Our decision would be that permission should be given. On any view, it would not be an amendment of substance. It would not even be a 'relabelling-type' amendment. This is not, for example, a case where the claim form specifies a PCP-based reasonable adjustments claim and the Claimant wants to add a non-PCP-based reasonable adjustments claim as well or instead. The amendment would be clarificatory – to confirm what type of reasonable adjustments claim was being made so as to ensure that the important parts of the claim are 'pleaded', in accordance with **Chandok v Tirkey** [2015] ICR 527. It would be the least substantial amendment possible that was nevertheless, technically, required. Because it would not be an amendment application of any substance, no time limits issues would arise in relation to it.
23. So far as concerns the timing and circumstances of the application to amend, it would be fair for the Respondent to say that things are about as bad for the Claimant as they could be. The Claimant has been professionally represented throughout. Through his solicitors, he agreed and confirmed that the reasonable adjustments claim was based on PCPs at and following a preliminary hearing. The Claimant was invited in a case management order to write to the Tribunal within a certain time if he thought the list of issues which had been prepared by the judge was wrong or incomplete and he did not do so in a relevant way. At the second preliminary hearing, the Claimant pursued a number of amendment applications. The applications to amend he made did not include any application to change the reasonable adjustments claim from a PCP-based one to an aids and equipment one. At the start of this final hearing, Claimant's counsel confirmed that the relevant part of the List of Issues was accurate and complete so far as the Claimant was concerned. Counsel did so notwithstanding the Employment Judge's comment at the start of the hearing to the effect that the claim appeared essentially to be an aids and equipment claim. The application to amend did not come until after the Claimant had closed his case. We don't think it is unduly cynical of us to agree with the submissions made by the Respondent's solicitor, Mr Ennis, that the reason for making an amendment application at that stage of the proceedings was the Claimant's legal team realising that in light of the evidence the Claimant had given during cross-examination, a PCP-based claim was unsustainable.
24. However, in the particular circumstances of this case (in this hypothetical scenario where the Claimant needed permission to amend), whether we should give or refuse permission would come down to the balance of prejudice. The prejudice to the Claimant would be obvious. Given our decision is that the aids and equipment claim would succeed, not giving permission to amend would mean that because of what is no more than a pleading error by his solicitors, he would lose a claim he should have won. Against that, it could be argued that as the problem was plainly down to a mistake by his legal team, he wouldn't suffer any great prejudice,

because he would have a remedy in the form of a professional negligence claim. We think, though, the prejudice to him would remain very significant, not least because such a professional negligence claim would almost certainly not be as straightforward in practice as it might appear to be in theory and because even if a professional negligence claim was straightforward or relatively so in practice, it would still require the Claimant to go to considerable time, trouble and (probably) expenditure to achieve a similar outcome to the outcome that would otherwise be achieved by our giving permission to amend and deciding the aids and equipment claim at this final hearing.

25. It is much less clear that (again in this hypothetical scenario) giving the Claimant permission to amend would cause significant prejudice to the Respondent. In submissions, not in so many words but still, Mr Ennis for the Respondent suggested that his advice to his clients and their overall approach to the litigation has been based on the claim as set out in the List of Issues and would likely have been different if the claim had unequivocally been put forward as an aids and equipment claim all along. This was because, on any sensible view, an aids and equipment claim is significantly stronger than the misconceived PCP-based claim. Reading between the lines, what he seems to have meant by this in particular was that the Respondent's approach to settlement negotiations would have been different. In other words, the alleged prejudice caused to the Respondent by the Claimant pursuing a PCP-based claim is the additional legal costs that have been expended as a result of the case being fought to trial rather than – potentially – settled some time before trial. It is, then, an argument that wholly or largely goes to costs (if it goes to anything), rather than being an argument about whether we should give permission to amend.
26. In terms of other alleged prejudice to the Respondent, we accept it is the case that, in theory at least, the Respondent's approaches to disclosure and to the drafting of its witness statements, conceivably even as to the selection of witnesses, would have been different. We are not, though, satisfied that in practice they would have been. The focus of all of the evidence in the case that has been presented to us has been around the recommendations in the Access to Work Report and the alleged non-provision of the aids and equipment recommended in it. In short, the thrust of the case at the Tribunal has been just as it would have been had it always been explicitly presented as an aids and equipment claim: that this equipment was needed to alleviate problems caused to the Claimant because of his disability; and that the Respondent did not provide it in a timely fashion or, in some instances, at all. In any event, it was not argued in submissions on the Respondent's behalf that it has in practice suffered any particular prejudice in this respect.
27. What Mr Ennis on the Respondent's behalf is saying has caused the Respondent prejudice in practice is that had the claim been put forward as an aids and equipment claim, he would have asked significantly more questions in cross-examination of the Claimant on the issue of substantial disadvantage. When pressed by the Tribunal to give more details of this, he appeared to accept that the only things he would have asked more questions about would have been the Dictaphone and the pen reader. We are anyway not satisfied that there would in practice have been any more evidence of substance relating to the non-provision

of a new laptop, new / additional software, or the headset – we cannot think of what could usefully have been asked about these items that was not in fact asked.

28. In relation to the Dictaphone, the Respondent's case was that the Claimant had his own Dictaphone rather than that it had provided him with a new Dictaphone or that the Claimant had had the new recommended Dictaphone all along.
29. So far as concerns the pen reader, although the Respondent's primary case was that the Claimant had that all along, it is still incumbent on the Claimant to prove substantial disadvantage and the Respondent's fall-back position, which it would undoubtedly have cross-examined about had it appreciated that an aids and equipment claim was being pursued, was that even if the Claimant didn't have it until March 2022, or at all, there was no substantial disadvantage.
30. In those circumstances, if the Claimant needed permission to amend, it seems to us that we would undoubtedly grant permission in relation, at least, to everything except for complaints about the Dictaphone and the pen reader. This would mainly be on the basis of lack of prejudice to the Respondent. In relation to the Dictaphone and pen reader, whether we would grant permission to amend would depend on two things: first, whether there is a significant chance that Mr Ennis asking further questions about substantial disadvantage would change the outcome; secondly, in any event, whether, if the Claimant succeeds on his complaints about things other than the Dictaphone and the pen reader, him winning or losing in relation to those two items makes any practical difference to remedy or to anything else of significance. Given our decision on the other parts of the Claimants' claim, we would refuse the Claimant permission to amend in order to pursue a complaint in respect of the Dictaphone and pen reader.
31. In conclusion:
 - 31.1 a PCP-based claim (EQA section 20(3)) as set out in the List of Issues is hopeless;
 - 31.2 to have any reasonable chance of success, the claim needs to be an aids and equipment (EQA section 20(5)) claim;
 - 31.3 the claim as set out in the claim form is in fact an aids and equipment claim and, notwithstanding how the claim is put in the List of Issues, the Claimant does not need permission to amend in order to pursue an aids and equipment claim;
 - 31.4 if the Claimant did need permission to amend in order to pursue an aids and equipment claim, we would give permission in relation to all relevant aids and equipment except for the Dictaphone and pen reader.
32. Accordingly, we shall consider the Claimant's claim purely as an aids and equipment claim. The issues arising in relation to that claim are set out above, in paragraphs 7.1 to 7.4. At the heart of that claim is: whether the Claimant would, but for the provision of the equipment recommended in the Access to Work Report, be put at a substantial disadvantage compared to someone without his disability. There are also time limits issues.

The facts

33. In this section of these Reasons, we shall merely outline the facts. Most of our findings on relevant matters in dispute are made later, from page 14 onwards, in the section headed "*Decision on the issues – substantial disadvantage*" and the sections following that.
34. We refer to the 'cast list' and chronology attached to this decision, from page **Error! Bookmark not defined.**, which are an integral part of it. We had witness statements from all nine of the individuals named in the cast list – the Claimant plus eight witnesses from the Respondent's side – and all of them gave oral evidence before us, apart from a Mr Patel, one of the Respondent's trustees. He was going to give evidence relevant to an argument the Respondent was running to the effect that when he resigned, the Claimant was himself in fundamental breach of contract. That argument was abandoned on day 3 of this hearing. The final hearing file of documents or 'bundle' was 600-odd pages. In the usual way, it was impracticable for us to read every word of every page in the time available and we should be taken to have read only those parts of the bundle to which we were specifically referred in the witness statements and during the hearing.
35. In July 2021, the Claimant was interviewed for and then offered the job with the Respondent. He told the Respondent he was dyslexic and Mr Lovell, HR Manager, noted in an email to Mr Hobson, IT Manager, that he needed "*a very good laptop*" and that he needed "*dyslexic software*" installing on it. The Claimant had access to some old software and it was installed onto the best laptop the Respondent had available, for the Claimant to use when he started work. The laptop was of a lower specification than that later recommended in the Access to Work Report. There is some dispute over what software and other equipment the Claimant had of his own at the start of his employment with the Respondent. An old version of Dragon dictation software was installed on the laptop around late August / early September 2021.
36. The first day of employment was 2 August 2021. The Claimant's previous employer was Wolverhampton City Council and during August 2021 he unsuccessfully tried to persuade them to allow him to use in his new employment software he had been using with them to help in relation to difficulties associated with his dyslexia.
37. In the second half of August and into September 2021, there was some discussion around going to Access to Work. An application to them was submitted in late September 2021 and after some to-ing and fro-ing the assessment was carried out on 12 October 2021. The Report, incorporating a list of recommended aids and equipment and costs based on quotations from specific named suppliers, was sent to Mr Lovell the following day. In discussions directly with Access to Work around this time, the Claimant expressed a desire to pay the small contribution he would have to pay towards the cost of the aids and equipment. Access to Work would reimburse the Respondent for the whole of the rest of the cost.
38. In the meantime, it had been noted by the Respondent's management that the Claimant had been "*struggling*". On or around 14 October 2021: a decision was made to extend the Claimant's probationary period from 3 to 6 months; the

Claimant went off sick, telling a manager, Miss O'Callaghan, that he was suffering from work-related anxiety and panic attacks and that he did not feel supported by his line manager, Miss Ellis. The available performance statistics show the Claimant to have been the worst or one of the worst performers throughout his time with the Respondent. In his previous employment, he had been a 'high-flyer'.

39. The Claimant resumed work on 29 October 2021 and at his return to work meeting on that day told the Respondent that the support he needed was for the equipment to be sorted out. There is a dispute about what happened from early November 2021 to mid-January 2022 in terms of trying to obtain the aids and equipment, but: on 12 November 2022, Mrs Kemp, the Respondent's Chief Executive, emailed Mr Lovell telling him to "*arrange to purchase the necessary and to claim it back*"; other internal Respondent emails from November and December 2021 suggest there were ongoing discussions about the aids and equipment and that nothing had been ordered. We deal with this in more detail below, from paragraph 105.
40. On 17 January 2022, the Claimant emailed Miss Ellis, Mr Hobson, and Mrs Tulloch-Williams (the Finance Manager), "*to see where we are in regards to the equipment and has it been ordered?*". Mrs Tulloch-Williams replied: "*Hi All. Order has been processed. Awaiting for delivery. Will update when confirmed.*"
41. In late January 2022, it became clear that, in fact, nothing had been ordered. It wasn't until on or about 10 February 2022 that an order was finally placed, with a company called Hands Free Computing, which was the supplier suggested in the Access to Work Report for everything except the laptop. Curry's was the recommended supplier of that.
42. There are disputes of fact, dealt with later in these Reasons, about: what was ordered and when; why the laptop was or was not ordered; (to an extent) when things arrived and what arrived; what happened to equipment when it arrived; and whether equipment was passed on to the Claimant, and if so when. For present purposes, it suffices to say that during February and March 2022 all the aids and equipment recommended in the Access to Work Report, apart from a new laptop, were delivered to the Respondent – before 7 March 2022 – and at least some of the software was installed on the Claimant's existing laptop (by which we mean the one provided to him by the Respondent in August 2021).
43. The Claimant, from his point of view, had persistent computer problems, particularly with his laptop running slowly, meaning he could not work with reasonable speed and efficiency. He continued to have difficulties after the new, up-to-date software was installed. The Respondent's case is that the problems the Claimant was having were not down to the laptop being underpowered, but to other things, principally to what could euphemistically be called user error (our phrase; not the Respondent's). In other words, the Respondent's case is that the lack of a more powerful laptop did not put the Claimant to substantial disadvantage in comparison with persons without dyslexia.
44. It is evident from an email sent by Mr Lovell on 24 March 2022 to Mrs Tulloch-Williams that he understood (presumably from the Claimant) that by then the Claimant still did not have "*the equipment that was supposed to be ordered for [him] so that he can do his job*". A similar message was communicated by the

Claimant himself in an email to Miss O’Callaghan, Mrs Tulloch-Williams and Mr Lovell of 30 March 2022.

45. It is common ground between the parties that: whatever attempts the Respondent allegedly made to order the new laptop, none was ever received by the Respondent, let alone provided to the Claimant; no one ordered the new laptop between 5 March and 12 May 2022 – the date the Claimant sent an email of resignation.
46. There was a meeting between the Claimant and Mrs Kemp on 14 April 2022. The two of them give slightly different accounts of it, but the potentially important point is that the non-provision of the laptop was discussed at it.
47. The Claimant then went off sick.² There is a dispute as to what was said to and by the Claimant on the morning of 10 May 2022 when he returned to work and, on paper at least, as to whether he resigned as a matter of law by his conduct on that day. However, having considered all of the evidence, it seems to us that the following is indisputable:
 - 47.1 it was communicated to the Claimant, in some way, shape or form, that the new laptop had still not been ordered, which it hadn’t been;
 - 47.2 the Claimant said, potentially to more than one person, something to the effect that he was leaving, in such a way that it was clear he was doing so because he was frustrated and dissatisfied with his work situation, but that it was unclear whether he meant that he was leaving for the day and/or for a further period of sick leave or that he was leaving for good. Even if we were uncritically to accept the whole of the Respondent’s witnesses’ oral evidence about the Claimant’s words and actions on the day, it would not be reasonably arguable that there was an unequivocal resignation by the Claimant before 12 May 2022.
48. The Claimant’s resignation email is dated 11 May 2022, but was sent early the following morning. In the email he gave the following reasons for resigning: *“When I was interviewed for this post it was explicit that certain adjustments and variations namely those of the provision of specialist software to meet my needs and enable me to provide quality services, would be made. ... On Tuesday 10th May, I returned to work after such a bout of ill-health and immediately pursued the missing facilities promised e.g. “Dragon Naturally Speaking” software and a computer capable of running such an application. When no one in the workplace was able to enlighten me as to the whereabouts of these items or able to confirm*

² We understand from the witness evidence and from sick / fit notes at pages 405 to 407 of the bundle that the Claimant was off sick from 19 April 2022 (the Tuesday after Easter) to 9 May 2022. We note that in Claimant’s counsel’s written submissions it is suggested that the Claimant returned from sickness absence on 26 April 2022 and that in what we understood to be an agreed chronology – the one annexed to this decision – the dates of sickness absence are given as 1 to 10 May 2022. We think both of these are incorrect. In any event, it seems to be common ground that the Claimant and Mrs Kemp were not in work together after 14 April 2022.

even if an order had been placed I decided I would have to remove myself from the source of the stress to protect my health and well-being.”

The law

49. There are amendment and ‘pleading’ issues – some of which we have already dealt with – and time limits issues. We have covered and shall cover the relevant law relating to these separately. We have also already referred to relevant legislation and case law when considering and disposing of the PCP-based reasonable adjustments claim. Apart from these matters, this is a claim in relation to which factual rather than legal issues predominate. Our summary of the law will therefore be brief.
50. The relevant legislation is the following parts of the EQA: sections 20(5) and 21(1) and schedule 8, paragraphs 5(5) and 20(1)(b). We also take into account Chapter 6 of the EHRC Code of Practice on Employment (2011). Our understanding of reasonable adjustments claims in general has also been informed by **Griffiths v Secretary of State for Work and Pensions** [2015] EWCA Civ 1265, in particular paragraphs 15 to 21 and 58 to 63.
51. To prove that the Respondent was in breach of the duty to make reasonable adjustments in the circumstances of the present case, the Claimant has to show: that there was some “*auxiliary aid*” (which is broadly defined; and it is not in dispute that everything recommended in the Access to Work Report would fall within that definition) that he could have been provided with; that not having that auxiliary aid meant he was “*likely to be*” (which means could well be) put at a “*substantial*” (which means more than minor or trivial) disadvantage by some aspect of his employment, compared to an employee of the Respondent without dyslexia³; that, at a relevant time, providing him with that auxiliary aid was a reasonable step for the Respondent to have to take. In determining whether it would be reasonable for the Respondent to have to provide the auxiliary aid, it is necessary to consider the Respondent’s position and not just the Claimant’s: see **Lincolnshire Police v Weaver** [2008] UKEAT 0622_07_1903. Even if the Claimant successfully shows all of these things, the Respondent will defeat the claim if it shows that it did not know and could not reasonably have been expected to know that the Claimant was likely to be (again meaning could well be) placed⁴ at that disadvantage.

Decision on the issues – substantial disadvantage

52. In this section of these Reasons and the sections that follow it, we shall decide the factual and legal issues in dispute in roughly chronological order. Apart from time limits, there is in practice only one ‘live’ legal issue: did the lack of the recommended aids and equipment put the Claimant at comparative substantial disadvantage? For reasons we shall explain, if the Claimant succeeds on that issue, he also succeeds on the related question of whether the Respondent knew

³ It is thus not enough that the Claimant should be disadvantaged – that disadvantage has to stem from his dyslexia. We shall refer to this as “comparative substantial disadvantage”.

⁴ It is unclear why the word used in EQA schedule 8, paragraph 20 is “*placed*” when EQA section 20 uses “*put*”, but they clearly mean the same thing in their contexts.

or could reasonably have been expected to know that the Claimant was likely to be placed at that disadvantage.

53. The relevant factual dispute which arises first chronologically is: what equipment did the Claimant have when he started to work for the Respondent?
54. The Respondent's suggestion is (paragraph 16 of the amended Grounds of Resistance): "*During his induction the Claimant was observed to be using a Dictaphone, a pen reader and MindView mind mapping software which he had brought with him.*"
55. The oral evidence of the Respondent's witnesses was nowhere near as clear as this. During cross-examination, Mr Lovell said that at some stage he saw on the Claimant's screen a box with arrows coming out of it, which he assumed was MindView mind mapping software. There was no discernible basis for Mr Lovell to think that that what he saw was indeed MindView mind mapping software. He evidently had no idea what that software would look like on the screen. He even said in his oral evidence that he was not sure what MindView mind mapping software was. It seemed to us that, as with virtually all of the Respondent's witnesses in relation to most issues, it was something that he had unconsciously convinced himself of, because it would support the Respondent's case. We know the Claimant did not have MindView mind mapping software installed because we have a comprehensive list of what was installed, provided by Mr Hobson (a document at page 100 of the bundle).
56. So far as concerns the pen reader, the Claimant's clear and consistent evidence was that he had never used a pen reader and had not, and could not have, brought one with him from his previous job for that reason. When describing in his oral evidence what he thought the Claimant had, Mr Lovell mentioned "*headphones with a mic*", a "*little recorder*", and what (as just explained) he allegedly took to be MindView mind mapping software. He didn't mention the pen reader until prompted to do so by questions from the Employment Judge at the end of his evidence.
57. We are entirely satisfied that the Claimant did not have a pen reader. We think that if he had had it, it would not have featured in the equipment recommended by Access to Work, or at the very least some mention would have been made in their report of the one he had already. We think that the Claimant having one was something else that Mr Lovell convinced himself of during the course of these proceedings.
58. The chronologically next relevant question is: in what way was the Claimant struggling (as the Claimant says he was and as at the time the Respondent perceived him to be)?; and the related questions – why was his probation extended in October 2021 and why did he go off sick in October 2021?
59. It is clear from the contemporaneous documentation that the same reason was behind all of these things. The decision to extend the Claimant's probation was taken by Mr Tim Jones, IAG Executive Manager. It is sad and unfortunate that Mr Jones died in 2022 and was unable to give evidence before us; but the main reason the Respondent has difficulties in relation to this is the paucity of its own

paperwork. It is unsatisfactory and in our experience unusual for someone's probation period to be extended and for no one to have written down the reason why and for HR not to be told the reason why, as the evidence suggests it was not told. The Respondent's poor administration is further illustrated by the fact that there is no clear evidence as to whether the Claimant ever came out of probation before his resignation.

60. Be that as it may, it can clearly be inferred from Mr Jones's email of 14 October 2021 (page 287 of the bundle), asking for HR to record "*all the extra support that he [the Claimant] has had from staff*" and from Miss Ellis's response to that request of the same date (page 288) that what was in their minds was support for the Claimant's dyslexia. The Respondent's suggestion that the Claimant's struggles being referred to were not connected to his dyslexia does not hold water. We also note that by this stage, Miss Ellis had sat down with the Claimant and discussed making an Access to Work application, which can only be because of a perception that the Claimant needed something from Access to Work, and the only reason the Claimant might have needed something from Access to Work would be his dyslexia.
61. When at the return-to-work meeting on 29 October 2021 the Claimant said that what he needed was for his equipment to be sorted out, he has to have meant for the Respondent to order and provide the aids and equipment recommended in the Access to Work Report.
62. A connected question of fact is what Mr Dytor, Training Manager, observed of the Claimant's work when he sat in with him in December of 2021. (The reason Mr Dytor sat with him was to provide support). Mr Dytor recorded that the Claimant's interactions with clients were excellent, but Mr Dytor did not, by his own admission, check the Claimant's written work. The individuals who at any time checked the Claimant's written work in any significant way were Mr Jones and someone named Stephen Morris, two people from whom no witness evidence was called.
63. That brings us on to another question of fact: how relatively good or bad were the Claimant's performance figures?; and what is their significance? Consistently, month after month, the Claimant was at or near the bottom of the table or spreadsheet that was produced and distributed in which everyone's performance figures were set out, which was labelled a "*Performance Spreadsheet*". The Respondent's case is that the Claimant's failure to meet targets was not to any extent an indication that he was under-performing. It is true that no one ever took the Claimant to task for missing targets. However, we do not accept the Respondent's case, which is essentially that the targets were meaningless and that someone who always missed them was not performing worse than someone who always met them. We note that when the performance table/spreadsheet was distributed each month, it was accompanied by an email such as that sent by Mr Dytor dated 30 November 2021 (page 328 of the bundle), which included the following: "*Here[']s final performance for November and we went over target for the month.*" There is credibly only one reason targets are set and figures are included in a spreadsheet calling itself a "*Performance Spreadsheet*": it is a way of measuring performance. The Claimant went from being an award-winning high-performer in his previous job to, with the Respondent, one of the poorest performers and someone who had to have his targets reduced and his probation

period extended. The Respondent has not satisfied us that this was down to differences between what the two jobs entailed.

64. That brings us to a document dated 9 March 2022 (page 382) which the Respondent has made much of and which records an assessment of one of the Claimant's meetings with a client. He scored a "*strong 2*", which was apparently an above-average score. The following day, a Quality Office Administrator called Karen Foster told the Claimant that spot checks had been done on documents the Claimant had to produce called CSAPs and three out of the four of the Claimant's CSAPs were "*compliant*". There is other evidence of positive feedback too.
65. In highlighting and placing such reliance on this evidence, the Respondent rather misses the point. Everyone agrees the Claimant was excellent face-to-face with the Respondent's clients. He is not suggesting that was a problem for him, connected with dyslexia or otherwise. The Claimant also accepts that he was able to do the paperwork he was required to do adequately. The problem he had was that he could not do it efficiently, and he was having to come in early and work late and at weekends in order to keep on top of it, to the detriment of his home life and of his mental health. It was not put to him in cross-examination that he was not working like this. The fact that he was working like this and still falling well short of his targets suggests there was a real problem. That problem is essentially the substantial disadvantage he relies on.
66. Another suggestion made by the Respondent is that the problems the Claimant was having were down to his lack of computer skills and to the CRM [computer] system the Respondent used running slowly. We do not accept that explanation. Problems with CRM affected everyone – and there is no evidence that everyone was having to work mornings, evenings and weekends as the Claimant was, and everyone was not missing targets as the Claimant was. So far as concerns lack of computer skills, we are not satisfied that the Claimant's skills were so bad in comparison to those of his peers that this would account for his inability to work efficiently, nor are we satisfied that, to the extent he had difficulties others did not, that this was accounted for by something other than his dyslexia. If it really was uniquely bad computer skills that was the issue, this would be an indictment of the Respondent's training of the Claimant. The Respondent is not blaming or relying on that.
67. All the findings we have just made feed into the question of whether the lack of particular aids and equipment recommended in the Access to Work Report caused the Claimant substantial disadvantage in comparison with persons who are not disabled.
68. The Respondent accepted during the hearing that the Claimant needed a computer with various bits of software on it to assist him because of his dyslexia. However, the extent of that concession is unclear. For example, the Respondent was still, at least on paper, saying that the Claimant did not even need Dragon software, because he managed for about six weeks without it at the beginning of his employment.
69. Our starting point is that the Claimant did not go to Access to Work, and the Respondent did not support him going, on an idle whim. The reason he went was,

we find, that he was struggling. It was those same struggles that caused him to become ill and led to his probation period being extended.

70. Access to Work produced their report. It was a report prepared by someone who is an expert in what aids and equipment those with disabilities need and would benefit from. It was a bespoke report relating specifically to the Claimant, prepared by someone who had spoken to him at some length. It identified disadvantages the Claimant experienced and what aids and equipment would overcome them.
71. We have just used the phrase "*aids and equipment those with disabilities need*". The gist of the Respondent's case is that the Claimant did not **need** any of the items recommended in the Access to Work Report. That may be right, in that the Claimant was able to carry out his work without them. But the problem the Claimant had – the comparative substantial disadvantage he was put to because of his dyslexia – and which aids and equipment were being recommended to address, was the inability to work reasonably quickly and efficiently, within his designated working hours, leading to him becoming stressed.
72. The Access to Work Report is itself evidence of substantial disadvantage. We accept it does not prove beyond reasonable doubt that if the Claimant were provided with particular software or a particular piece of equipment this would alleviate the difficulties the Claimant had. But in relation to equipment that was not provided or used, it is impossible to say with certainty what would have happened had it been provided and used. We give considerable weight to the opinions of the Access to Work assessor, who is the only individual from whom we have any evidence at all who has relevant expertise in relation to what we are dealing with.

Specific items – Dictaphone

73. The problem with the Claimant's claim in relation to the Dictaphone is that he already had a Dictaphone. The Access to Work Report explains why he would benefit from having a Dictaphone, but not what additional benefit he would gain by having a new one versus just having his existing one. The Claimant himself gave no evidence to the effect that his existing Dictaphone was not able to do particular useful things that the Dictaphone recommended by Access to Work would do. In relation to this, the Claimant has failed to discharge the burden of proof which is on him. His claim in respect of the Dictaphone therefore fails.

Wireless headset

74. A critical aspect of what was recommended in terms of a wireless headset was that it would be noise-cancelling. The Respondent gave evidence that the Claimant already had earphones, but no evidence to contradict the Claimant's evidence that what he had was not noise-cancelling.
75. There has been lots of evidence about the levels of noise in this workplace. It seems to us that there must at the very least have been quite a lot of background noise because – due to Covid – doors and windows to offices were left open. The levels of noise do not have to be unusually bad or unreasonable in order to cause the Claimant difficulties. Based on what is in the Access to Work Report, supported by the Claimant's own witness evidence, due to dyslexia he was

unusually sensitive to background noise. That is the essence of his claim about the wireless headset. The noise-cancelling headphones would help with that.

76. We are therefore satisfied that the lack of noise-cancelling headphones put the Claimant to comparative substantial disadvantage. So far as concerns whether the Respondent knew or could reasonably have been expected to know that the Claimant was likely to be placed at that disadvantage, the Claimant did not have to tell the Respondent in terms precisely what the substantial disadvantage was and that it was caused by the lack of the recommended aids and equipment in order for the Respondent to have knowledge. But he came fairly close to doing exactly that at his return to work interview on 29 October 2021 when he told his manager that the support he needed on his return was for the equipment to be sorted out. In any event, the Respondent needed only to read and digest the Access to Work Report and/or have a proper conversation with the Claimant about it in order to have sufficient knowledge. Put crudely: it was all in the Access to Work Report. We are not satisfied that, in so far as the Respondent did not actually know, it could not reasonably have been expected to know.
77. What has just been set out about knowledge of disadvantage applies to all of the aids and equipment and will not in these Reasons be repeated in relation to each item.

Pen reader

78. We note what is said in the Access to Work Report (page 3, recommendation A) in relation to this. The pen reader would be doing for the Claimant the same job as text-to-speech software (the recommended software TextHelp AtW Version / Read and Write), but hard-copy rather than electronic documents. The recommendation is made to help the Claimant “*work more efficiently with hard copy*”. Because the Claimant was never provided with a pen reader, and has never used one, we cannot say definitively that a pen reader would have helped him, although we note that text-to-speech software was on the evidence useful – indeed almost essential – to him. On balance, we are satisfied that not having this caused him a problem associated with his dyslexia, namely having to read things if in hard copy for himself rather than having them read to him, which put him at a substantial disadvantage in comparison with persons who are not disabled. The disadvantage was, once again, lack of efficiency, leading to work struggles and stress.

Software

79. We begin with the one bit of software that we have found the Claimant did not have in any version before it was provided through Access to Work: MindView mind mapping software.
80. Briefly, we have no good reason to go behind what is said about this in the Access to Work Report (page 5, recommendation F), to which we refer, namely that, in

summary, the Claimant faced a particular difficulty – or substantial disadvantage – because of his dyslexia⁵, to which this piece of software was a solution.

81. We move on to the bits of software that the Claimant did have before Access to Work provided up-to-date versions.
82. In relation to Global Autocorrect, we have no evidence at all as to what was wrong with the older versions of the software that were installed on the laptop the Claimant had from shortly after he started with the Respondent. All of the evidence he gave was about Dragon and Read and Write⁶, which we shall come onto in a moment. The Claimant has failed to satisfy us that lack of up-to-date Global Autocorrect software caused him substantial disadvantage and his claim in respect of this fails.
83. As to Read and Write and Dragon, we know that the versions of these bits of software that the Claimant had been using from 2021 were, respectively, from 2016 and 2015.
84. The legal question is whether the difference between the up to date (presumably 2020 or 2021) versions of the software recommended and ultimately provided and the 2015 / 2016 software the Claimant already had was sufficient to mean that not providing the former put the Claimant to a more than minor or trivial disadvantage in comparison with persons who are not disabled.
85. We know that computer hardware and software advances significantly in a short space of time. We would expect significant improvements to have been made in these pieces of software over the course of the 5 years or so from 2015/2016 to 2020/2021. We know from our own experience that the older a piece of software is, the more likely it is to have problems in terms of compatibility with newer versions of operating systems and other software, security, stability, and with software manufacturers stopping providing support and updates. Those problems would likely manifest themselves by the software running slowly and inefficiently. Given all this, we are on balance satisfied that the absence of up-to-date software would put the Claimant at a substantial disadvantage, notwithstanding the fact that he already had similar software, albeit versions which were 5-or-so years old. Similarly, given that what we have said about the problems with older pieces of software is common knowledge amongst those with moderate non-specialist IT knowledge and experience, we are not satisfied that the Respondent could not

⁵ The Claimant, “*can find managing situations where he has to combine complex tasks/information from multiple sources, or focusing on tasks and preparing to work through tasks in linear formats challenging as he can be inhibited by symptoms of his dyslexia, it can take him longer to complete the tasks which are required for his work.*”

⁶ We assume that what was referred to throughout this hearing as “Read and Write” software is what is referred to in the Access to Work Report as “*TextHelp AtW Version*”. We make that assumption because if they aren’t the same then there would have been no reason for Read and Write software to be mentioned at all, as it doesn’t feature in the Access to Work Report and wouldn’t be part of the claim. Also, the Respondent’s order with the company Hands Free Computing dated 10 February 2022 refers to a piece of software ordered as “*Texthelp Read&Write Access to Work*”.

reasonably have been expected to know that the Claimant was likely to be placed at that disadvantage.

Laptop

86. Turning, then, to the laptop, the position here is similar to that with the software. The issue is: did the lack of a laptop with an i-5 or Ryzen 5 processor cause the Claimant comparative substantial disadvantage, given that he already had a laptop with a Ryzen 3 processor?
87. Putting that issue in more concrete terms, we have already found that the Claimant needed various bits of software, and logically those bits of software needed to run with reasonable speed and efficiency. There are therefore two key questions for us: did the Claimant's existing computer run reasonably fast and efficiently?; if not, was this due to the lack of a Ryzen 5 processor?
88. On those questions we have various bits of evidence.
89. We have the Claimant's own evidence that from his subjective point of view the laptop he had was not running with reasonable speed and efficiency.
90. There is the information in the Access to Work Report, which suggests that a less powerful computer than the one recommended (with an i-5 or Ryzen 5 processor) "*may struggle to run all the assistive technology software packages*". The Respondent has highlighted the fact that the existing laptop was at or above the minimum specification required to run the software, but it does not follow that it could run all of the software it needed to run at the same time reasonably quickly and efficiently.
91. Mr Hobson's evidence was that when he and subordinates looked at the Claimant's computer, they were unable to replicate the problems the Claimant was having. However, under cross-examination, Mr Hobson conceded that when testing the computer, he was not using it in the way the Claimant would have been using it, e.g. using various pieces of software, including Dragon, intensively and at the same time.
92. Mr Hobson also gave evidence, which to an extent contradicted what he was saying about not being able to replicate problems, that the problems the Claimant was having with the speed the existing laptop was working at were down to the Claimant having too many programs and other things open and running on his laptop at the same time. A particular thing Mr Hobson referred to in relation to this was that the Claimant had his Read and Write software "*running all the time in the background and was the largest CPU usage*". He didn't seem to appreciate that the Claimant needed to have that running all the time in the background, because Read and Write took care of the Claimant's punctuation and grammar and would read electronic documents back to him. (Given this, and given that it was one of the pieces of software that the Claimant asked to have installed on the laptop provided to him when he started with the Respondent, it is most unlikely that the Claimant would have said, as Mr Hobson alleged he had, that he never used Read and Write when working for his previous employer. We think Mr Hobson must be mistaken about this).

93. We also note that Mr Hobson was vague about when he examined the Claimant's laptop to see whether there was a problem with it running slow.
94. We are not satisfied that after the point in time when the new software was installed – around 30 March 2023 – or at any other relevant time Mr Hobson or anyone else tested the functioning of the laptop so as to replicate the way in which the Claimant was and would be using it.
95. Common sense tells us that it would require more processing power to run the newer versions of the software that were installed at the end of March 2023 than the older versions. We note that in the week or so after they were installed, the Claimant seems to have been having more problems with the laptop than beforehand.
96. Mr Hobson says in his statement, "*All of the software installed and ran with no problems... Based on the specifications for the software the laptop which he already has was entirely adequate.*" We don't doubt that that is true, but if and only if the laptop was being used in the way in which someone who did not need to run all the assistive technology software the Claimant ran would use it.
97. We also bear in mind that it is commonplace for people who are not IT experts, as Mr Hobson presumably is, to use their computers in a sub-optimal way. Allowance has to be made for that. We have already rejected the notion that the Claimant was uniquely bad at IT and that the problems he was having were down to that. There is no evidence that others were having anything like the same kind of problems the Claimant was having, even though he had one of the best laptops the Respondent had available. Something was clearly causing his computer to have problems that others did not have. On the balance of probabilities, we find that it was him having to run various bits of processor-hungry software in the background to assist with his dyslexia that others were not running.
98. Mr Hobson realistically accepted that a computer with a 2020 / 2021 Ryzen 5 processor would run faster than one with a 2020 / 2021 Ryzen 3 processor. We are satisfied that there would be a significant improvement in the speed and efficiency at which the Claimant's software was operating, had he been provided with a laptop with a Ryzen 5 processor; and that the lack of such laptop was causing him a more than minor or trivial disadvantage in comparison with those without dyslexia.
99. On the question of knowledge of substantial disadvantage, the Respondent has once again failed to satisfy us that it did not know and could not reasonably have been expected to know that the Claimant was likely to be put to the disadvantage in question. We repeat that the Access to Work Report itself stated that a laptop with below the recommended specification "*may struggle to run all the assistive technology software packages*" and that Mr Hobson, and the Respondent more generally, failed sufficiently to understand and take into account the Claimant's need to run multiple processor-hungry pieces of software at the same time.
100. So far as concerns the Respondent's point that the Claimant had access to a desktop computer with a more powerful processor, we accept the Claimant's evidence that he would, from time to time, want and need to work in areas other

than his designated office and want and need to work from home. A desktop was therefore not adequate for his needs. We also note that the Respondent accepted before he even started work that he needed the laptop and does not seem ever to have suggested to the Claimant that he should use a desktop instead, or to have made any attempt to install the relevant software on the desktop in the Claimant's office.

Was it reasonable to provide the aids and equipment?

101. The next legal issue is: was it reasonable for the Respondent to have to provide the aids and equipment in relation to which we have found in the Claimant's favour on the issue of substantial disadvantage; and if so when?
102. The Access to Work Report arrived with the Respondent on 12 October 2021. The Claimant was then off sick from 14 October 2021. We accept it was reasonable for the Respondent to want to have a discussion with the Claimant about the Access to Work Report and its recommendations before attempting to implement them and therefore for the Respondent to wait until the Claimant came back from sickness absence. However, what we would have expected the Respondent as a reasonable employer to do would have been to have all necessary discussions about the Access to Work Report with the Claimant at the back to work meeting itself. This is particularly so given the Claimant's request at that meeting that the Respondent should sort out his equipment, which we have already mentioned.
103. On the evidence, there is no discernible reason why the equipment was not ordered within a matter of days of the 29 October 2021 back to work meeting. The delay is substantially unexplained by the Respondent.
104. There is a period of delay that we can see from the contemporaneous documents from 29 October 2021 to 12 November 2021. The significance of 12 November 2021 is that that was the date on which Mrs Kemp responded to an email from Mr Lovell of the previous day in which Mr Lovell mentioned an email he had received from Access to Work of the 11 November 2021 (see page 305 of the bundle). This is the email from Mrs Kemp in which she stated that Mr Lovell should speak with the Claimant "*and arrange to purchase the necessary and to claim it back*". We do not know from the evidence why the Respondent apparently did nothing with the Access to Work report until 11 / 12 November 2021.
105. After 12 November 2021, it seems that Mr Hobson was being asked to look at the cost of equipment. We can see this from, amongst other things, an email he sent on 24 November 2021 which appears at page 324 of the bundle. He apparently had difficulties with the forms for claiming the money for the equipment back from Access to Work. If the delay was down to either of those things, they do not provide the Respondent with a reasonable excuse. The Respondent had been told that the net cost to it of the equipment would be nil, so we have no idea why Mr Hobson and the Respondent were worrying about the cost. The Respondent is not suggesting that it did not have enough cash in the bank to pay up-front, or anything like that. It could not claim the money back until it had placed the order, so problems with the forms for claiming money back would not reasonably prevent it from placing the order in the first place.

106. By 9 December 2021, as appears from an email at page 333 of the bundle, Mr Hobson was still concerning himself with the cost of the equipment and choice of suppliers, for no good reason.
107. Mrs Tulloch-Williams gave confused and contradictory evidence about what she was doing in relation to the equipment in late 2021 / early 2022. She suggested she had in fact placed an order for the laptop and everything else with the company Hands Free Computing in November 2021. However, she had previously suggested that she had sought to order the laptop from Curry's in December 2021, but they had said that they didn't have one available and to try again in 2 to 3 weeks. To explain why she didn't 'try again in 2 to 3 weeks', she said that she went off sick; and that she had left others to chase Curry's; and that they had done so and had also tried to obtain the laptop from other internet sources, without success, in or around early January 2022.
108. When the contradiction between, on the one hand, her saying she had ordered everything, including the laptop, from Hands Free in November 2021 and, on the other, that she and others had attempted to order the laptop from Curry's and elsewhere in December 2021 and January 2022 was highlighted to her, she suggested that she had in fact contacted Curry's **before** she placed the order with Hands Free, something she continued to insist she had done in November 2021. She was unable to explain how her evidence about her going off sick in December 2021 and getting others to chase Curry's and try to obtain the laptop from other internet sources in January 2022 fitted with her, in November 2021, attempting to order the laptop from Curry's and then having placed an order with Hands Free.
109. In any event, it is clear beyond any doubt that Mrs Tulloch-Williams did not place an order with Hands Free or anyone else in November 2021. Had she done so, there would be order forms and other paperwork connected with the order. The notion that the Respondent would have placed a £2,000-plus order entirely by phone without anything in writing, in circumstances where they were intending to claim the money back from Access to Work and would need paperwork in order to do that, is fanciful. Moreover, it would make no sense for Mr Hobson to be sending to Mrs Tulloch-Williams the email of 9 December 2021 (page 333 of the bundle, referred to in paragraph 106 above) if by then she had already placed an order.
110. We also note Mr Hobson's evidence about the document that appears at pages 330 to 332 of the bundle. Mr Hobson described it as a "*running record*" of activities he was involved in and as a "*task list*". It records that on 9 December 2021, Mr Hobson "*finally sat down with Ronny [the Claimant] and sent email to Bernet [Mrs Tulloch-Williams]. 14-12-21 spoke to Bernet, she will get Kristina [a subordinate] to buy.*" This, again, strongly suggests that, contrary to her recollection, Mrs Tulloch-Williams had not, in fact, ordered the laptop in November 2021.
111. The delay from early December 2021 into January 2022 is at least partly explained by the fact that Mrs Tulloch-Williams had evidently convinced herself, by the time we get up to January 2022, that she had placed an order – even though, manifestly, she had not done so: see the email of 17 January 2022 in which she told the Claimant and others that the "*order has been processed*". Although that explains some of the delay, it does not excuse it or provide a good reason for it.

112. It may well be that a lot of the reason for the delay was that both Mrs Kemp and Mrs Tulloch-Williams were ill in late 2021 and early 2022. But that does not make the Respondent's corporate failure to order and then provide the equipment reasonable.
113. On the face of the contemporaneous documents, it was not until 24 January 2022 that Mrs Tulloch-Williams realised that she hadn't placed an order at all. After then, there was further unexplained delay to 10 February 2022, when an order was finally placed.
114. Pausing there, Mrs Tulloch-Williams had suggested that the laptop was ordered from Hands Free Computing a second time, together with all the other equipment. This would have been on or around 10 February 2022. However, we think she is once again mistaken about this. Hands Free do not provide computers. They were not listed as a supplier of computers in the Access to Work Report. We can see what was quoted for and ordered by the Respondent in early February 2022 from Hands Free and it does not include a laptop. Mrs Tulloch-Williams delegated the placing of the order to a colleague, so she would not necessarily herself know precisely what had been ordered. It appears that she again convinced herself that it had been ordered from Hands Free, despite there being no objective basis for her to think that. The paperwork is clear. The software arrived first, around 15 / 16 February 2022. The equipment arrived in or around late February 2022. The equipment that arrived did not, of course, include the laptop, because it had not been ordered.
115. By 5 March 2022 at the latest, everyone knew that the laptop was not arriving and would need to be ordered from someone other than Hands Free Computing.
116. We find that the laptop was never in fact ordered and we have been provided with no good reason why it was never ordered.
117. We do not know why the software was not installed until about 6 weeks after it arrived.
118. There are two relevant factual matters that we need to deal with in connection with the equipment. The first is: what happened to it after it arrived in or around late February 2022.
119. Before witnesses gave their oral evidence, the Respondent had given no specific evidence at all about if and when the equipment arrived and what happened to it.
120. Mr Hobson's oral evidence was that when it arrived he put it in "*the cupboard*", which seems, in fact, to be a small storage room. According to the note he made in his 'running record' document (bundle page 331) on 31 March 2022, which was the day after a different laptop had been stolen from the Respondent in a break-in, he "*Double Checked we have everything except Laptop*". In his oral evidence, he confirmed that by "*everything*" what he meant was the equipment ordered from Hands Free and he said that his double-checking must have involved checking in the 'cupboard'.
121. Mrs O'Callaghan gave evidence that on 14 March 2022, she had taken from the cupboard a package containing, at least, the headphones and the Dictaphone and

had given them to the Claimant. We don't think this is correct. There was no hint of this evidence in Mrs O'Callaghan's witness statement, in the Respondent's Grounds of Resistance, or amended Grounds of Resistance, or in any other document or piece of written evidence. If true, her evidence would be capable of corroboration by Mrs Tulloch-Williams (who gave her evidence before Mrs O'Callaghan did and who Mrs O'Callaghan in her oral evidence said she spoke to about the equipment on 14 March 2022), and Mrs Tulloch-Williams gave no evidence at all about it. It is also difficult to reconcile Mrs O'Callaghan's evidence with Mr Hobson's evidence that on 31 March 2022 he had checked and confirmed to his satisfaction that everything except the laptop had arrived on 31 March 2022.

122. Mrs O'Callaghan's evidence was also in our view materially inconsistent with the following contemporaneous emails that we mentioned earlier: an email from Mr Lovell to Mrs Tulloch-Williams of the 24 March 2022: *"I am a little concerned about the equipment that was supposed to be ordered for Ronny so that he could do his job. Do you know what is happening with it?"*; an email exchange on 30 March 2022 between the Claimant and Mrs Tulloch-Williams in which the Claimant wrote, *"I am just checking on the progress of my laptop and the outstanding equipment. I am finding my job very stressful as I do not have the correct equipment. I've been waiting for quite some time"*, to which Mrs Tulloch-Williams replied, *"I will get back to you on this ... I will get to you as soon as I can."* If the Claimant already had part of the equipment, he would surely not have written that email of 30 March 2022 and had Mrs Tulloch-Williams been spoken to by Mrs O'Callaghan about the equipment on 14 March 2022, she would have replied to Mr Lovell and told him about her conversation with Mrs O'Callaghan and would not have replied to the Claimant's email as she did.
123. In conclusion on this point, we are not satisfied that the Claimant was ever provided with equipment other than the laptop.
124. In our view, in the above circumstances, had the Respondent acted reasonably, the laptop, equipment and software would have been provided to the Claimant by the end of November 2021 at the latest. There were no real financial, practical or other problems stopping or even making it difficult for the Respondent to provide everything then. All the Respondent needed to do was, in or around early November 2021, order it from the suppliers suggested in the Access to Work Report. The process could hardly have been more straightforward, was explained in the paperwork provided to the Respondent by Access to Work, and if the Respondent needed further information, they were given the contact details of the relevant Access to Work advisor. The Respondent is not suggesting that at the time it disagreed with anything in the Access to Work Report, or anything like that, and it would have had no legitimate basis for doing so. We could almost turn it around and ask, rhetorically: why wouldn't anyone in the Respondent's position order and provide the aids and equipment? It would perhaps be rather harsh to attribute the Respondent's failure to order and provide it in 2021 purely to oversight and lack of competence, but it would be fair to say that we have found no good reason for it in the evidence put before us.
125. Given our decision that all of the aids and equipment should have been provided in late 2021, the particular reasons why the laptop was not provided between

5 March 2022 and the end of the Claimant's employment don't really matter. Nevertheless, it may be helpful for us to address that issue.

126. Everyone agrees that at least part of the reason why the laptop wasn't provided between 5 March 2022 and the end of the Claimant's employment was the Respondent's concern as to who would own it. We don't understand why this was a concern in March / April / May 2022 when it hadn't been a concern in November of 2021; and in any event, the Respondent had no good reason at all to think that it might end up owning a laptop obtained at no net cost to it; and if this was a concern, the Respondent could – and if acting reasonably would – have cleared the matter up by having a two-minute phone call with Access to Work.
127. The second reason put forward by the Respondent for not providing the laptop after 5 March 2022 was that the Claimant was supposedly saying that he would not, or might not, make, or could not afford to make, his contribution towards the purchase price of the equipment. Again, it is unclear why this was suddenly an issue in March to May 2022 when it apparently hadn't been previously. We do not accept Mrs Kemp's evidence about what the Claimant was supposedly saying. There is clear written evidence dating from as early as the 14 October 2021 (see page 282 of the bundle) of the Claimant's wish to pay the contribution and no documentary evidence at all suggesting that the Claimant had changed his mind. When cross-examined about this, Mrs Kemp said that she had not herself heard the Claimant say he would not pay. She suggested she had been told this by Mrs Tulloch-Williams, but Mrs Tulloch-Williams did not give corroborating evidence about it.
128. The third reason put forward by the Respondent for not providing the laptop between 5 March 2022 and the end of the Claimant's employment was a suggestion that the Respondent needed to check with the Claimant that a laptop they had sourced from Amazon was up to the specification. That evidence was given for the first time by Mrs Kemp in her oral evidence. We do not think it is accurate. On the basis of what she herself (with assistance from her solicitors) wrote in her witness statement, she had sourced "*an alternative with comparable specification... on Amazon*" and the problem was a concern "*that the Claimant had not agreed to pay his contribution and also seemed to be under the impression that the laptop would belong to him and not to Job Change*".
129. We think the true reason the Amazon laptop was not purchased emerged during cross-examination. Mrs Kemp had heard a rumour that the Claimant was looking for a new job and she and the Respondent were concerned that he would leave his employment, taking the new laptop with him. This was an unfounded, unreasonable and illegitimate concern for them to have, not least because, as we have said, the Respondent had no reasonable basis for thinking that it might end up owning a laptop which would in the end have been wholly paid for by Access to Work and the Claimant.
130. In conclusion, the Respondent was in breach of the duty to make reasonable adjustments, in that it failed to provide to the Claimant within a reasonable time – or, in most cases, at all – aids and equipment that it was reasonable for it to have to provide and the lack of which put the Claimant to a substantial disadvantage in comparison with persons who are not disabled.

Time limits

131. Given the date the claim form was presented and the dates of early conciliation, all complaints about something that happened before 11 May 2022 are potentially out of time. In relation to a reasonable adjustments claim, the time limit does not – or not necessarily – run from when the Respondent was first in breach of the duty to make reasonable adjustments, which in the present case (see paragraph 124 above) would be November / December 2021. Instead, it runs against the Claimant from the point when he ought reasonably to have concluded that the Respondent would not comply with its duty to make reasonable adjustments, based on the facts known to the Claimant at the time.⁷
132. The Respondent's position on time limits is not entirely clear to us, but we think it is that if there was a breach of the duty to make reasonable adjustments, time started to run against the Claimant in April 2022. Whether or not that is indeed the Respondent's position, our view is that time did not start to run until 10 May 2022, and therefore that the claim form was presented just one day late.
133. Up to the Claimant going off sick, in April to May 2022, the Respondent was continually promising him the necessary equipment would be provided and giving him the impression that it was coming. There was a meeting on 14 April 2022 between him and Mrs Kemp at which the situation vis-à-vis the laptop – the Claimant's priority – was discussed and at which she raised with him her misplaced concern about the ownership of the laptop. She told him she would investigate the situation further and would get back to him upon their return from the Easter break (Easter Day was 17 April that year), on or shortly after the 19th. In other words, she did not at that stage suggest to the Claimant that the laptop was not going to be provided. On the contrary, the impression she gave to him was that any difficulties would quickly be resolved. Unfortunately, the Claimant then went off sick and there was no further discussion between the two of them before the Claimant resigned. It was not until 10 May 2022 that a reasonable person in the Claimant's position should have concluded – and the Claimant himself did conclude – that the Respondent was not going to comply with its duty to make reasonable adjustments. This is because it was on that day that the Claimant was told that the laptop had still not even been ordered.
134. We therefore have to decide whether it would be "*just and equitable*" to permit the claim to proceed even though the Claimant began the early conciliation process 3 months and one day after 10 May 2022, in accordance with EQA section 123(1)(b). In relation to this, we have sought to apply the law as summarised in paragraphs 9 to 16 of the EAT's (HH Judge Peter Clark's) decision in **Rathakrishnan v Pizza Express (Restaurants) Ltd** [2016] ICR 283.
135. Although no particular explanation for the delay in bringing the claim – good, bad, or indifferent – has been provided, the period of delay is just a single day. This is a strong claim, the situation being that but for time limits it would succeed. Were we to refuse to extend time, the prejudice to the Claimant would be very considerable indeed. No prejudice at all has been caused to the Respondent by

⁷ The relevant law is helpfully summarised by HH Judge Beard in the EAT in **Fernandes v Department for Work and Pensions** [2023] EAT 114, at paragraphs 11 to 16.

the very slight delay in starting the early conciliation process. In all the circumstances, we think it would be just and equitable to permit the claim to proceed.

Complaints about dismissal

136. We would only consider the complaints about the Claimant's alleged constructive dismissal on their merits were we to decide that the Tribunal had jurisdiction to hear them notwithstanding time limits. The question we therefore have to ask ourselves is whether the amendments to the claim made in September 2023 by which these complaints were added were substantive amendments to which time limits issues would apply in accordance with **Galilee**; and if they were, how those time limits issues should be resolved.
137. We shall deal with this briefly because although, for reasons that will become clear in a moment, we have decided this question against the Claimant, it makes no practical difference to him in terms of potential remedy.
138. It is virtually inarguable that the direct discrimination and EQA section 15 claims about dismissal were in the claim form all along. The claim form Particulars of Claim, prepared by solicitors, was clear that the complaints being made were, first, reasonable adjustments and, secondly, indirect discrimination (alternatively discrimination under section 15) in relation to supervisions, one-to-ones and return to work interviews. The word "dismissal", or any hint of a claim based on an allegation of constructive dismissal, are absent. The highest it could be put in the Claimant's favour is that an employment lawyer reading paragraph 16 of the Particulars of Claim (which includes, amongst other things, a reference to "*the final straw*") would say that the Claimant was probably implying he had been constructively dismissed. Hinting in a claim form drafted by solicitors – who would be expected to refer to constructive dismissal in terms if that was being alleged and explicitly to set out any complaint about it being made – that the Claimant has been constructively dismissed is a world away from making a specific Tribunal complaint about an alleged constructive dismissal in that claim form. This is particularly so when what **was** articulated in the claim form was an allegation that the Claimant's resignation was a direct response to the failure to provide aids and equipment, something about which the Claimant was making a claim. Given that that allegation and that aids and equipment claim were being made, any complaint specifically about an alleged constructive dismissal was unnecessary and superfluous, as we shall explain.
139. Plainly, then, it was an amendment that needed to be made and for which the Claimant needed permission if he wanted to pursue such a claim.
140. Equally plainly in our view, this was a substantive amendment. It is true that the Claimant's argument that he was constructively dismissed is based on allegations of fact made in the original claim form Particulars of Claim. In particular, it is based on assertion that he resigned in response to a failure to provide equipment that breached the duty to make reasonable adjustments. Nevertheless: the complaints added by amendment in September 2023 are separate and distinct from the reasonable adjustments claim in the claim form; they have different component parts, meaning there are different things that must be proved, e.g. less favourable

treatment, that the reason for the treatment was the protected characteristic of disability, the existence of a “*something*” arising in consequence of disability, and a causal connection between that something and the unfavourable treatment in question; they accrue at different times – on the effective date of termination, which could in any given case be weeks or even months after the alleged fundamental breach of contract relied on in relation to the allegation of constructive dismissal.

141. What this means, in accordance with **Galilee** and **Sheikholeslami v University of Edinburgh** [2018] UKEAT 0014_17_0510, is that time limits apply to these complaints about dismissal as if a claim form containing those complaints had been presented to the Tribunal on the date when the application to amend was made. We aren't sure precisely when the application to amend was made, but it was over a year after the termination of the Claimant's employment.
142. The question is therefore whether it would be just and equitable under EQA section 123 to extend time in relation to the complaints to that extent. The Claimant has failed to satisfy us that it would be. Given that the primary time limit is 3 months, an extension of time of 9 months plus is significant. There is no discernible reason why these complaints were not included in the original claim form other than oversight by the Claimant's solicitors. Most importantly, the Claimant in practice suffers no prejudice whatsoever if we decline to extend time. This is because the reasonable adjustments claim has succeeded and the main reason for the Claimant's resignation was indubitably the breach of the duty to make reasonable adjustments. Any losses the Claimant has suffered as a result of his resignation therefore flow directly from the breach of the duty to make reasonable adjustments, meaning it would make no difference to the Claimant in terms of remedy, or in any other meaningful way, for us to permit the complaints about alleged constructive dismissal to proceed.

Summary & conclusion

143. The reasonable adjustments claim based on the failure to provide equipment as recommended in the Access to Work Report therefore succeeds, apart from in relation to the Dictaphone (see paragraph 73 above) and Global Autocorrect software (see paragraph 82 above).
144. The complaints of direct discrimination and of unfavourable treatment under EQA section 15 about the Claimant's alleged constructive dismissal fail because of time limits (see paragraphs 140 to 142 above)

Employment Judge Camp

12/06/2024