EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000250/2023

Held at Hearing held in Edinburgh in person on 12, 15, 16, 17, 18 & 19 April 2024 & Tribunal deliberations in chambers on 10 May 2024

Employment Judge McCluskey
Members T Jones
T Lithgow

Mr IIA Latif — **Claimant**
In Person

Sky Subscribers Services Limited — **Respondent**
Represented by:
Ms M McGrady
Solicitor

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous judgment of the Tribunal is that:

1. The complaint unfair dismissal is not well founded and is dismissed.
2. The complaint of discrimination arising from disability is not well founded and is dismissed.
3. The complaints of failure to make reasonable adjustments are not well founded and are dismissed.

REASONS

Introduction & Issues

1. The claimant is making the following complaints: ordinary unfair dismissal, discrimination arising from disability - section 15 Equality Act 2010 (EqA) and failure to comply with the duty to make reasonable adjustments – section 20/21 EqA.

2. The respondent accepted that the claimant was disabled as defined by section 6 EqA at the time of the events that the claim is about. The claimant's disability is dyslexia.

3. At the beginning of the hearing, we clarified with parties the issues which were to be determined by us. These issues were agreed by parties and are set out in the Appendix to this judgment. Both parties had a copy of these issues and referred to them during the hearing. During the hearing the respondent conceded that it had knowledge of the claimant's disability from 23 October 2020. The list of issues was updated accordingly.

4. At the beginning of the hearing, the claimant requested additional time during the hearing to process what was being said. The claimant did not require any specific additional time to be allocated at the outset. Rather he would tell us when he needed additional time as the hearing progressed. This was agreed. Whilst giving evidence the claimant also used a short aide memoire extending to one page with bullet points of his complaints. We saw this in advance. The respondent did not object to the use of this aide memoire.

5. There was a joint file of productions extending to 309 pages and a supplemental file of productions lodged by the respondent extending 20 pages.

6. The claimant gave evidence on his own behalf. Claire Stokes - Customer Experience Leader (dismissing officer), Derek Bernard - Performance

Delivery Manager (appeal manager), Craig Turnbull - Customer Priority Leader and Sandra Dinis – Customer Priority Leader gave evidence on behalf of the respondent.

Findings in fact

7. This judgment does not seek to address every point upon which the parties have disagreed. It only deals with the points which are relevant to the issues the Tribunal must consider, to decide if the claim succeeds or fails. If we have not mentioned a particular point, it does not mean that we have overlooked it. It is simply because it is not relevant to the issues.

8. The respondent is part of the Sky Group which provides news and broadcasting, on demand streaming, broadband and telephone services. The claimant commenced employment with the respondent on 5 November 2018. At the time of his dismissal, he was employed as a Customer Priority Specialist. He had held this post since 2019. He was dismissed on 10 March 2023.

9. The claimant has dyslexia.

First OH report dated 23 October 2020 and Access to Work report dated 12 December 2020

10. On 23 October 2020 the respondent obtained an occupational health report on the claimant (first OH report). The occupational health nurse recommended the following for consideration: a self-referral by the claimant to Access to Work; a 1:1 meeting with the claimant to discuss any specific concerns relating to his role; some flexibility in terms of timescales for completing tasks; flexibility around unplanned break usage.

11. The claimant referred himself to Access to Work, which is operated by the Department for Work & Pensions. On 12 December 2020 Access to Work

wrote to the claimant and the respondent They recommended the following: 27-inch monitor; ClaroRead software; and Claroread full day training. .

12. The claimant had 1:1 meetings with his line manager approximately every fortnight, throughout his employment, including before the first OH report. This was the case for all employees in the contact centre. Twice a month was the minimum requirement for these meetings.

13. From around January 2021 the claimant's line manager was Dawn Rowley.

14. In around January 2021 Ms Rowley told the claimant that the Claroread software was available for him on a desktop in the office. Most employees were still working from home at that time due to the covid-19 pandemic. Some employees were allowed into the respondent's office. The claimant was allowed to work in the office to use the Claroread software on the desktop.

15. The claimant told Ms Rowley that he would not work in the office. He said this was due to family circumstances. His wife was unwell, therefore he needed to help with childcare. He also said he would not work in the office because of travel costs. This was due to the distance between the claimant's home and the office. The claimant continued to work at home until around December 2022.

16. In around January 2021 the claimant told Ms Rowley that he had purchased his own 27-inch monitor to use at home and did not require one to be provided by the respondent. He did not tell Ms Rowley thereafter that he was not using this monitor.

17. In around January 2021 the claimant discussed the recommendations in the first OH report with Ms Rowley. This was in a 1:1 meeting. The claimant told Ms Rowley about the issues he was having in performing his role as set out in the report. He told Ms Rowley that he needed some flexibility in terms of timescales for completing tasks and flexibility around unplanned break usage,

as set out in the report. Ms Rowley told the claimant that he was to "take extra time" and "not worry about it". She told him "Just do the best you can".

18. Ms Rowley remained the claimant's line manager until around February 2022. Thereafter Craig Turnbull, Customer Priority Leader became his line manager.

19. Mr Turnbull received a handover from Ms Rowley in around February 2022. Ms Rowley told Mr Turnbull about the Claroread software recommendation. She told him that the Claroread software was available in the office on a desktop. She told him that that the claimant refused to work in the office. She told him that the software could not be installed on the claimant's work lap top due to compatibility issues.

20. Mr Turnbull checked the position with the respondent's IT department. They told him that the software was non-standard and not compatible with the claimant's work laptop. They told him that there were technical limitations to what could be provided on work laptops at the time. Mr Turnbull discussed this with the claimant. In the period February – June 2022 the respondent's workforce was moving to a hybrid way of working. This meant all employees were expected to work some of their working days in the office. The claimant told Mr Turnbull that he would not work in the office on any working day. He said this was due to family circumstances. His wife was unwell, therefore he needed to help with childcare and because of travel costs. This was due to the distance between the claimant's home and the office. The claimant told Mr Turnbull that he had purchased his own 27-inch monitor to use at home and did not require one to be provided by the respondent.

21. The claimant did not receive any training on the Claroread software as he was not in the office using the software.

22. During the handover in February 2022 Ms Rowley told Mr Turnbull that the claimant had two other adjustments to his role due to dyslexia. She told him

that the claimant had extra time for completing tasks. She told him that the claimant had flexibility around unplanned breaks. She told him that the if the claimant's performance statistics fell below target, he was not to be disciplined. The claimant was not disciplined at any time for his performance statistics.

23. Mr Turnbull discussed these two adjustments with the claimant. The claimant did not tell Mr Turnbull that he thought the adjustments were not in place. The claimant did not tell Mr Turnbull that he was not using the 27-inch monitor he had bought.

24. The claimant continued to work from home until around December 2022. He then returned to working in the office one day a week. He chose to continue working from home on his other working days, due to his family circumstances. This arrangement continued until his dismissal on 10 March 2023.

Second OH report dated 17 October 2022

25. On 17 October 2022 the respondent obtained a second occupational health report on the claimant (second OH report). The occupational health nurse made various recommendations for consideration. Mr Turnbull discussed the recommendations with the claimant.

26. The report recommended additional non-productive time at the end of a call. This was already in place for the claimant from the first OH report by allowing him extra time for completing tasks. Mr Turnbull knew this from Ms Rowley. The claimant was doing this by logging extra time using what the respondent called 'aux codes'.

27. The report recommended regular and frequent breaks to help the claimant manage any fatigue. The respondent already had in place a system of regular and frequent planned breaks for all employees, including the claimant. These

scheduled breaks were recorded on the daily adherence reports for the claimant. These breaks were not taken by the claimant. The claimant himself chose not to do so. He saved up his planned breaks and took them at the end of his shift. During the disciplinary process the claimant told the respondent this was because of family circumstances. His wife was unwell and became tired at the end of the day. He saved up his breaks until the end of the shift to help with childcare.

28. The report recommended additional unplanned break allowance. This was already in place for the claimant from the first OH report. He had discussed this with Ms Rowley who had told him to take the time he needed. The claimant chose not to take additional unplanned breaks. Further, he saved up his planned break allowance until the end of shift. He took all his breaks at the end of his shift, to finish early.

29. The report recommended an increase in call duration if the claimant needed to read information while on an active call. This was already in place for the claimant from the first OH report by allowing him extra time for completing tasks. Mr Turnbull knew this from Ms Rowley. The claimant was not monitored for the time he took on customer calls. Mr Turnbull also accepted that the calls could be lengthy to try to ensure that the customer's issues were resolved.

30. The report recommended workplace instructions or changes to be provided using voice memos or team calls verbally, as well as in writing. This was already in place. The respondent already communicated department instructions or changes, such as changes to business processes, by way of Teams meetings, for all employees. These were also communicated by line managers to staff individually in the 1:1s, for all employees. Mr Turnbull discussed with the claimant how he accessed materials and guidance used by call centre staff to support customers on calls. Mr Turnbull reminded the claimant to speak to the various colleagues who ran the department support network. Their role was to support the department. They could discuss the

various options available to the claimant to help him to reach a solution for the customer. The claimant chose not to do so.

31. The report recommended text to speech software / coloured backgrounds – Read and Write Gold. The report said that the OH nurse would arrange for this to be provided.

32. The report recommended speech to text software – Dragon Naturally Speaking. The report said that the OH nurse would arrange for this to be provided.

33. The report recommended Spell Check software – Grammarly. The report said that the OH nurse would arrange for this to be provided,

34. The report recommended a 27-inch monitor to support reading tasks. The report said that the OH nurse would arrange for this to be provided. Around that time the claimant told Mr Turnbull that the 27-inch monitor he had previously purchased was not working.

35. On around 17 October 2022 the OH nurse ordered the software packages she had recommended and a 27-inch monitor. On around 30 November 2022 an administrative error was identified which meant the order had not been placed successfully. The order was made again. Ms Sandra Dinis, a manager in the claimant's team, was proactively chasing up the order of the software and the monitor until the claimant received both. She kept the claimant informed of what she was doing.

36. On around 19 January 2023, the claimant received an email confirming that the software packages were available for installation on his work laptop. The email confirmed that he would be contacted to arrange installation. The software was installed in around late February 2023.

37. On around 30 January 2023, the claimant received an email confirming that the monitor had been despatched by the supplier to the claimant's home. Due to delivery delays the claimant received the monitor on around 9 March 2023.

Disciplinary procedure

38. On 11 May 2022 the claimant received a final written warning for misconduct for breach of the respondent's Contact Centre Guiding Principles. The warning stated that it would remain live for 12 months and that any further recurrence of unacceptable conduct could result in further disciplinary action. The claimant did not appeal the decision.

39. The respondent's Contact Centre Guiding Principles is a policy which all employees are required to follow when dealing with customers in the contact centre.

40. On 5 and 26 February 2023, the claimant attended investigation meetings with Nicol Duncan - Customer Priority Leader. The meetings were to investigate further potential breaches of the Contact Centre Guiding Principles by the claimant.

41. During the investigation the claimant was informed of the allegations about customer calls. The claimant was given the respondent's analytics reports for these calls and his notes on the customer files at the time. He acknowledged that for some calls, call backs were not made when his notes said that he had made them. He acknowledged that for some calls, he had made no notes at all.

42. The claimant was informed of the allegations about his use of breaks at the end of his shifts. He was given the respondent's adherence reports which showed when he had taken his breaks. He acknowledged that for the days in question he had not taken breaks at the scheduled times throughout his shift

or taken any breaks at all during the day. Instead, he had taken them all at the end of his shift.

43. On 3 March 2023 the respondent wrote to the claimant to invite him to attend a disciplinary hearing. The letter stated that the allegations against him were a. Breach of the Contact Centre Guiding Principles for poor customer service, specifically failing to call customers back and leaving either no notes or inaccurate notes. The specific calls were identified; and b. Breach of the Contact Centre Guiding Principles for failure to be here for our customers, specifically aux abuse for not taking breaks at the scheduled time and taking them at the end of the shift. The specific dates were identified.

44. The invite letter included a copy of the notes from the investigation meetings, the investigation documentation which had been discussed with the claimant during the investigation meetings and a copy of the Contact Centre Guiding Principles. The invite letter told the claimant that one outcome of the disciplinary hearing could be his dismissal.

45. On 10 March 2023 the claimant attended a disciplinary hearing chaired by Claire Stokes - Customer Experience Leader. The claimant was accompanied by his trade union representative, Ian Kilgallon.

46. At the beginning of the hearing the claimant told Ms Stokes that the respondent had obtained two occupational health reports about the claimant's dyslexia condition. Ms Stokes adjourned to obtain and read these reports.

47. During the hearing the allegations against the claimant were discussed.

48. The claimant was unable to provide an explanation why he had not called the customers back on the cases where he had left a note saying he had done so. The claimant was unable to provide an explanation why he had left no notes on some cases. The claimant said he knew and understood the correct

processes and the Contact Centre Guiding Principles for calling customers back and adding notes. He said he knew about internal support tools and networks, including speaking to colleagues in the customer support networks to help resolve customer issues.

49. The claimant said he sometimes took his breaks at the end of his shift instead of the times they were scheduled. He said this was for family reasons, to help with childcare as his wife was unwell. He said he took his breaks at this time without approval from a manager.

50. The claimant said he did not need regular and frequent breaks as recommended in the second OH report as he did exercise at his desk, so he didn't get tired.

51. The claimant said he did not have the right support or tools to do his job. Ms Stokes discussed this with him. The claimant was unable to provide any explanation about what he meant by this. He was unable to provide any explanation about how his dyslexia resulted in him leaving a note saying he had called customers back when he had not or leaving no note at all.

52. Ms Stokes adjourned the hearing to consider what the claimant had said. After the adjournment Ms Stokes informed the claimant that he was dismissed for misconduct.

53. Ms Stokes decided that taking all his breaks at the end of his shift without authorisation was misconduct. The claimant had acknowledged that his dyslexia did not prevent him from taking his breaks throughout the day at the scheduled times, but rather he did so for family reasons. He had already received a final written warning for the same misconduct in May 2022.

54. Ms Stokes decided that the claimant did have the right support and tools in place to do his job. She decided that the Claroread software had been available in the office and that the claimant could have accessed it there. The

claimant told her that he had purchased a 27-inch monitor himself in around January 2021 and told his manager he would claim back the cost. The claimant did not tell the respondent in January 2021 that the monitor was not working. He had only told the respondent when a 27-inch monitor was being ordered at the time of the second OH report.

55. Ms Stokes decided that the claimant had confirmed he knew and understood the correct processes to follow and the internal tools and support networks available to him. He had the right tools and support available to him. The claimant had followed the correct processes on other calls (page 259). She decided that not calling customers back on the cases where he had left a note saying he had done so and leaving either no notes or inaccurate notes was misconduct.

56. Ms Stokes informed the claimant that as he already had a final written warning on his file for misconduct, he would be dismissed with 4 weeks' pay in lieu of notice. The final written warning had been issued following a disciplinary hearing where the claimant had been given an opportunity to be accompanied and where he had been given a right of appeal. Ms Stokes noted that the conduct which was the subject of the final written warning included failing to call a customer back and taking all scheduled breaks at the end of his shift, without authorisation. These were two of the same matters for which the claimant was again facing disciplinary action.

57. Ms Stokes considered any mitigation offered by the claimant. She decided that he had not offered mitigation. He understood and could adhere to the Contact Centre Guiding Principles. He knew when he was scheduled to take his breaks throughout the day. He could have sought permission from his line manager to take breaks at the end of his shift but had not done so.

58. Ms Stokes decided that the impact of not calling customers back and leaving inaccurate or no notes had a serious negative impact on the customer journey and the respondent's brand. Customer Priority Specialists such as the

claimant were already dealing with very dissatisfied customers of the respondent. The conduct of the claimant risked making them even more dissatisfied with the service they were receiving.

59. On 16 March 2023 Ms Stokes wrote to the claimant. She confirmed his dismissal on 10 March 2023 with a payment in lieu of notice. She confirmed the reasons for his dismissal. The letter advised the claimant of his right to appeal.

60. On 10 March 2023 the claimant appealed the decision to dismiss him. On 24 May 2023 the claimant attended an appeal hearing with Derek Bernard – Performance Delivery Manager. The claimant was accompanied by his trade union representative, Ian Kilgallon. The claimant was given an opportunity to discuss his appeal points in the hearing. Mr Bernard was more senior than Ms Stokes. Mr Bernard had not previously been involved in the claimant's dismissal.

61. On 12 February 2024 Mr Bernard wrote to the claimant with the outcome of the disciplinary appeal hearing. Mr Bernard addressed each of the appeal points raised by the claimant in his outcome letter. The decision to dismiss the claimant was upheld.

Observations on the evidence

62. We have only made findings of fact in relation to matters which are relevant to the legal issues to be decided.

63. The standard of proof is on balance of probabilities. This means that if we consider that, on the evidence, the occurrence of an event was more likely than not, then we are satisfied that the event in fact occurred.

64. We found the respondent's witnesses to be credible and reliable. They did their best assist the tribunal and their testimony was consistent with the

documentary evidence. The claimant in his evidence adopted a position that none of the recommendations in either of the two occupational health reports or the Access to Work report had been implemented by the respondent at all. This did not bear out in the documentary evidence or in the claimant's own evidence, both in chief and in cross-examination or in the evidence of the respondent's witnesses.

65. There was a conflict in the evidence about whether the recommendations in the first OH report and the Access to Work report had been implemented by the respondent.

66. We did not hear from Ms Rowley who was the claimant's line manager around the time of these reports and for a period of over a year afterwards. We heard from Mr Turnbull who took over as the claimant's line manager in around February 2022. Mr Turnbull's evidence, which we accepted, was that he had a handover from Ms Rowley when she told him that the claimant had extra time for completing tasks and flexibility around unplanned breaks. She told him that if the claimant's performance statistics fell below target this was not to be addressed. Mr Turnbull's evidence was that he discussed these adjustments with the claimant and understood from that discussion that that they were in place.

67. Mr Turnbull's evidence, which we accepted, was that the claimant did not tell him that he thought he did not have extra time for completing tasks or flexibility around unplanned breaks and that he did not tell him that he was not using the 27-inch monitor he had bought

68. The claimant said in evidence that he was 'almost begging' his line managers for everything in the reports on a weekly basis but was being ignored. This did not accord with Mr Turnbull's evidence, as above. This also did not accord with the claimant's own earlier evidence that he discussed with Ms Rowley that he needed more time and flexibility around unplanned breaks. To which

she said that he was to “take extra time” and “not worry about it” and “Just do the best you can”.

69. It would have been helpful if the respondent had documented these conversations with the claimant. Nevertheless, we were satisfied on balance that the conversations did take place between the claimant and Ms Rowley and between the claimant and Mr Turnbull and that these two adjustments were in place. It was more likely than not that they would have been discussed and implemented given the claimant had 1:1s with his line manager on a fortnightly basis.

70. The other recommendation in the first OH report was about a 1.1 support meeting about the claimant’s role. The claimant met around fortnightly with his line manager for 1:1 support meetings about his role. This was the evidence of both the claimant and the respondent’s witnesses, and we are satisfied that such meetings did take place.

71. There was a conflict in the evidence about the reason why the claimant took his scheduled breaks at the end of his shift. The contemporaneous documentary evidence showed that throughout the disciplinary process, the claimant said that the reason he took all his breaks at the end of his shift was for family childcare reasons. He did not dispute that was what he said. In evidence the claimant said that the real reason he took all his breaks at the end of his shift was to help with management of his dyslexia. His evidence was that he had not said this at any time throughout the disciplinary process as he was stressed and said the first thing that came into his mind. We did not accept this evidence. We did not find his position credible. He had numerous opportunities at the investigation, disciplinary and appeal stages to explain this but had not done so. We concluded that the reason he took his breaks at the end of his shift was for family childcare reasons as set out in the documentary evidence.

72. There was conflict in the evidence about whether the claimant had a 27-inch monitor as recommended in the Access to Work report. The claimant's evidence was that he ordered a monitor himself following the recommendation in the Access to Work report. He told the respondent this at the time and that he would claim back the cost. Then days after he ordered it, he told the respondent that it was incompatible with his laptop. The respondent's position was that the claimant had not told them that 27-inch monitor he ordered in January 2021 was incompatible at that time or subsequently.

73. We preferred the evidence of the respondent's witnesses in relation to the provision of a 27-inch monitor in January 2021. We noted that in the contemporaneous disciplinary documentation the claimant refers on various occasions to not having the Claroread software because this was only available in the office. He does not refer to not having a monitor or of telling the respondent that he did not have a monitor in around January 2021. We concluded that on balance if that is something which the claimant had told the respondent in January 2021, the respondent would have taken steps to order a monitor for him. We concluded that the respondent's understanding from around January 2021 was that the claimant had a 27-inch monitor.

Relevant law

Unfair dismissal

74. Section 94 Employment Rights Act 1996 (ERA) provides that an employee has the right not to be unfairly dismissed.

75. Section 98 ERA sets out that for a dismissal to be fair, the employer must show the reason for the dismissal and that it is one of the potentially fair reasons set out in section 98 (1) or (2) of ERA.

76. A reason relating to the conduct of the employee is one of the potentially fair reasons for dismissal (section 98(2)(b) of ERA).

77. In terms of section 98(4) ERA, if the tribunal is satisfied that the respondent has established a potentially fair reason for dismissal, it must then determine the question of whether the dismissal was fair or unfair having regard to the matters set out in section 98(4) (a) and (b): whether taking into account the size and administrative resources of the employer, it acted reasonably or unreasonably in treating the reason as a sufficient reason for dismissing the employee and the equity and substantial merits of the case.

78. Once it is established that the claimant was dismissed for a potentially fair reason relating to conduct the test of the substantive fairness outlined in ***British Home Stores Limited v Burchell*** 1978 IRLR 380 is relevant to the question of whether it was reasonable for the respondent to treat that reason as sufficient to justify dismissal.

79. When applying the ***Burchell*** test, the tribunal should consider three issues: a. whether the employer genuinely believed that the employee was guilty of misconduct; b. did the employer have in its mind reasonable grounds on which to sustain that belief and c. at the stage at which the employer formed the belief on those grounds had the employer carried out as much investigation into the matter as was reasonable in the circumstances?

80. The ultimate test in determining the application at section 98(4) ERA is whether the dismissal fell within the "band of reasonable responses", a test which reflects the fact that inevitably there may be different decisions reached by different employers in the same circumstances (see ***British Leyland (UK Limited) v Swift*** 1981 IRLR 91).

81. In applying section 98(4) ERA, the tribunal must not substitute its own view of the matter for that of the employer but must apply an objective test of whether the dismissal was in the circumstances within the range of reasonable responses open to a reasonable employer (see ***Iceland Frozen Foods Limited v Jones*** [1982] IRLR 439, ***Post Office v Foley*** and ***HSBC Bank plc (formerly Midland Bank plc) v Madden*** [2000] IRLR 827CA).

82. There is always an area of discretion within which a respondent may decide on a range of disciplinary sanctions all of which might be considered

reasonable. It is not for the tribunal to ask whether a lesser sanction would have been reasonable but whether or not the dismissal was reasonable (see ***Boys & Girls Welfare Society v McDonald*** [1996] IRLR 129).

Disability discrimination

83. Section 15 EqA provides as follows:*15 Discrimination arising from disability (1) A person (A) discriminates against a disabled person (B) if—(a)A treats B unfavourably because of something arising in consequence of B's disability, and (b)A cannot show that the treatment is a proportionate means of achieving a legitimate aim*.

84. Sections 20 and 21 EqA provide as follows: "*20 Duty to make adjustments(1)Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.(2)The duty comprises the following three requirements.(3)The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage....*"

85. *"21 Failure to comply with duty (1)A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.(2)A discriminates against a disabled person if A fails to comply with that duty in relation to that person...."*

86. Section 39 EqA provides as follows: "39 *Employees and applicants … (2) An employer (A) must not discriminate against an employee of A's (B)— (a) as to B's terms of employment; (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service; (c) by dismissing B; (d) by subjecting B to any other detriment. …*"

87. Section 123 (1) EqA provides as follows: "*Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of – (a) the period of 3 months starting with the date of the act to which the complaint relates, or (b) such other period as the employment tribunal thinks just and equitable*". For the purposes of this section (a) conduct extending over a period is to be treated as done at the end of the period.

88. Section 136 EqA provides as follows: "1*36 Burden of proof If there are facts from which the tribunal could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned the tribunal must hold that the contravention occurred. But this provision does not apply if A shows that A did not contravene the provision*."

89. Section 212 EqA provides as follows: ""*212 General Interpretation In this Act - ….'substantial' means more than minor or trivia*l".

90. Schedule 8 EqA paragraph 20 provides as follows: "*Part 3 Limitations on the Duty 20 Lack of knowledge of disability, etc.(1) A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know—... (b) [in any case referred to in Part 2 of this Schedule] that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement."*

91. Guidance on how section 15 EqA should be applied was given by the EAT in ***Pnaiser v NHS England*** [2016] IRLR 170, EAT. In that case it was highlighted that 'arising in consequence of' could describe a range of causal links and there may be more than one link. It is a question of fact whether something can properly be said to arise in consequence of disability. The 'something' that causes the unfavourable treatment need not be the main or sole reason but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

92. There is no need for the alleged discriminator to know that the 'something' that causes the treatment arises in consequence of disability. The requirement for knowledge is of the disability only (***City of York Council v Grosset*** [2018] ICR 1492, CA).

93. The EAT held in ***Sheikholeslami v University of Edinburgh*** [2018] IRLR 1090 that: 'the approach to s 15 Equality Act 2010 is now well established and not in dispute on this appeal. In short, this provision requires an investigation of two distinct causative issues: (i) did A treat B unfavourably because of an (identified) something? and (ii) did that something arise in consequence of B's disability? The first issue involves an examination of the putative discriminator's state of mind to determine what consciously or unconsciously was the reason for any unfavourable treatment found. If the "something" was a more than trivial part of the reason for unfavourable treatment, then stage (i) is satisfied. The second issue is a question of objective fact for an employment tribunal to decide, in light of the evidence.'

94. The burden is on the respondent to prove objective justification. To be proportionate, a measure has to be both an appropriate means of achieving the legitimate aim and reasonably necessary in order to do so (***Homer v Chief Constable of West Yorkshire Police*** [2012] IRLR 601).

95. Guidance on a complaint as to reasonable adjustments was provided by the EAT in ***Royal Bank of Scotland v Ashton*** [2011] ICR 632 and in ***Newham Sixth Form College v Sanders*** [2014] EWCA Civ 734, and ***Smith v Churchill's Stair Lifts plc*** [2005] EWCA Civ 1220 both at the Court of Appeal. These cases were in relation to the predecessor provision in the Disability Act 1995. Their application to the 2010 Act was confirmed by the EAT in ***Muzi-Mabaso v HMRC*** UKEAT/0353/14. The guidance given in ***Environment Agency v Rowan*** [2008] IRLR 20 remains valid, being that to make a finding of failure to make reasonable adjustments there must be identification of, relevant for the present case: (a) the provision, criteria or

practice applied by or on behalf of the respondent; and (b) the nature and extent of the substantial disadvantage suffered by the claimant.

96. The nature of the duty under sections 20 and 21 was explained by the EAT in ***Carranza v General Dynamics Information Technology Ltd*** [2015] IRLR 43 as follows: "*The Equality Act 2010 now defines two forms of prohibited conduct which are unique to the protected characteristic of disability. The first is discrimination arising out of disability: section 15 of the Act. The second is the duty to make adjustments: sections 20–21 of the Act. The focus of these provisions is different…… Sections 20–21 are focused on affirmative action: if it is reasonable for the employer to have to do so, it will be required to take a step or steps to avoid substantial disadvantage*."

97. There is a two-stage process in applying the burden of proof provisions in discrimination cases, which may be relevant to the issue of whether the respondents applied a PCP to the claimant, as explained in the authorities of ***Igen v Wong*** [2005] IRLR 258 and ***Madarassy v Nomura International Plc*** [2007] IRLR 246, both from the Court of Appeal. The claimant must first establish a first base or prima facie case by reference to the facts made out. If he does so, the burden of proof shifts to the respondent at the second stage. If the second stage is reached and the respondent's explanation is inadequate, it is necessary for the tribunal to conclude that the claimant's allegation in this regard is to be upheld. If the explanation is adequate, that conclusion is not reached.

Submissions

98. The claimant and Ms McGrady both provided written submissions to us and made oral submissions in support of these. We carefully considered the submissions of both parties during our deliberations. We have dealt with the points made in submissions, where relevant, when setting out the facts, the law and the application of the law to those facts in reaching our decision. It

should not be taken that a submission was not considered because it is not part of the discussion and decision recorded.

Discussion and decision

Unfair dismissal

Reason for dismissal

99. The first issue is what was the reason for dismissal? For the reasons below, we found that the reason for dismissal was misconduct for (i) failing to call customers back and leaving either no notes or inaccurate notes on calls and (ii) not taking breaks at the scheduled times and taking them at the end of the shift.

Misconduct investigation

100. The next question is the three stages in the ***BHS v Burchell*** case. First, did the respondent reasonably believe that the claimant committed the misconduct of (i) failing to call customers back and leaving either no notes or inaccurate notes on calls and (ii) not taking breaks at the scheduled times and taking them at the end of the shift. We found that they did.

101. Second, was that belief held on reasonable grounds? We found that it was. The claimant had admitted at the investigation meeting and at the disciplinary hearing that he had not called customers back when his notes said that he had. He admitted that he had left no notes or inaccurate notes about call backs. This was supported by the respondent's analytics reports for calls and the claimant's notes on the customer files at the time. These showed that call backs were not made and that there were no notes or inaccurate notes about call backs. He admitted that he had not taken breaks at the scheduled times and took them at the end of the shift. This was supported by the respondent's adherence reports. All the documentation

had been provided to the claimant at the investigation and disciplinary hearing stages.

102. Third, was there a fair and reasonable investigation? We found that there was. The respondent held an investigation meeting with the claimant. At the meeting the claimant was told of the allegations against him and provided with all the supporting documentation. He was given an opportunity to respond to the allegations. The claimant admitted that he had not called customers back when his notes said that he had. He admitted that he had left no notes or inaccurate notes about call backs. He admitted that he had not taken breaks at the scheduled times and took them at the end of his shift.

Procedure generally

103. As regards procedure generally, we found that the dismissal procedure followed was reasonable. The respondent carried out an investigation meeting with the claimant, as set out above. The claimant was then invited in writing to a disciplinary hearing. The letter inviting him to the meeting set out the allegations against him, enclosed the supporting documentation provided to him previously and told him that one outcome of the hearing could be his dismissal from employment. The letter also told the claimant that he could bring a representative to the meeting.

104. At the disciplinary hearing the claimant and his representative were given an opportunity to present his case to the respondent. The respondent adjourned the hearing to consider the claimant's case before reaching a decision. After the adjournment the claimant was informed of the outcome of his case, namely that he was to be dismissed. He was provided with reasons for his dismissal.

105. Ms Stokes decided that taking all his breaks at the end of his shift without authorisation was misconduct. He had already received a final written warning for the same misconduct in May 2022. The claimant had acknowledged that his dyslexia did not prevent him from taking his breaks throughout the day at the scheduled times, but rather he did so for family reasons.

106. Ms Stokes considered that the claimant had confirmed he knew and understood the correct processes to follow and the internal tools and support networks available. She considered that the claimant had followed the correct processes on other calls (page 259).

107. She considered that the Claroread software had been available in the office and that the claimant could have accessed it there. She considered that the claimant had told his manager that he had purchased a 27-inch monitor himself in around January 2021. She decided, based on what the claimant said, that not using the software or the monitor would not have prevented him from calling customers back or leaving no notes or inaccurate notes about call backs. She decided that the claimant had the proper tools and support to carry out his role. She decided that not calling customers back on the cases where he had left a note saying he had done so and leaving either no notes or inaccurate notes was misconduct.

108. The respondent wrote to the claimant to confirm his dismissal with notice. The dismissal letter confirmed the claimant's right of appeal.

109. The claimant appealed against his dismissal. The claimant attended an appeal hearing. He was accompanied by his trade union representative. The appeal manager was more senior than the dismissing manager. The appeal manager had not previously been involved in the claimant's dismissal. Each of the grounds of appeal were considered by the appeal manager, Mr Bernard. Mr Bernard wrote to the claimant with the outcome of the appeal.

Mr Bernard addressed each of the appeal points raised by the claimant in his outcome letter. The decision to dismiss the claimant was upheld.

110. As regards the appeal procedure, we found that Mr Bernard followed a reasonable appeal procedure, before reaching his decision to uphold the dismissal.

Sanction

111. Finally, the question is whether dismissal was a fair sanction. Could a reasonable employer have decided to dismiss for (i) failing to call customers back and leaving either no notes or inaccurate notes on calls and (ii) not taking breaks at the scheduled times and taking them at the end of the shift. We found that they could.

112. The claimant already had a live final written warning for misconduct. The claimant had been found to have committed further misconduct.

113. We were satisfied that in considering whether to dismiss, Ms Stokes had considered alternatives to dismissal. Ms Stokes considered that the claimant was on a live final written warning for conduct matters. We noted that the final written warning had been issued following a disciplinary hearing where the claimant had been given an opportunity to be accompanied and where he had been given a right of appeal. The conduct which was the subject of the final written warning included failing to call a customer back and taking all scheduled breaks at the end of his shift, without authorisation. These were two of the same matters for which the claimant was again facing disciplinary action. The claimant was aware from the final written warning that further misconduct could lead to further disciplinary action under the respondent's conduct policy.

114. Ms Stokes also considered the impact of the claimant's conduct on the respondent's business. She decided that the impact of not calling customers

back and leaving inaccurate or no notes had a serious negative impact on the customer journey and the respondent's brand. Customer Priority Specialists such as the claimant were already dealing with dissatisfied customers of the respondent. The conduct of the claimant risked making them even more dissatisfied with the service they were receiving from the respondent. Ms Stokes concluded that dismissal was an appropriate sanction.

115. We have set out above that we were satisfied the respondent had shown the reason for the claimant's dismissal was conduct. We also set out above our conclusion that Ms Stokes had reasonable grounds upon which to sustain her belief in the claimant's misconduct. We reminded ourselves that the question we must ask ourselves is not whether we would have dismissed the claimant. We must ask whether the respondent's decision to dismiss the claimant fell within the band of reasonable responses which a reasonable employer might have adopted (***Iceland Frozen Foods Ltd v Jones*** 1983 ICR 17). We decided that, in the circumstances of this case, the respondent's decision to dismiss the claimant fell within the band of reasonable responses which a reasonable employer might have adopted. The dismissal was fair.

116. We therefore dismiss the claim for unfair dismissal.

Disability discrimination

Failure to comply with duty to make reasonable adjustments

117. A claim of failure to make reasonable adjustments requires that a provision, criterion or practice, or a physical feature, or the absence of an auxiliary aid put the claimant at a substantial disadvantage compared with people not sharing his disability, and that it would be reasonable for the respondent to make an adjustment which would wholly or partly alleviate the disadvantage. The respondent must have known or reasonably been

expected to know about the disability and the disadvantage caused at the time the adjustment allegedly should have been made. Knowledge, in this regard, is not limited to actual knowledge but extends to constructive knowledge (i.e. what the respondent ought reasonably to have known).

118. The claimant's disability is dyslexia.

119. The claimant relies on several PCPs which he says put him at a substantial disadvantage compared with people not sharing his disability. The PCPs relied upon are as follows: not allowing additional non-productive time at the end of a call; not allowing regular and frequent breaks; not allowing additional unplanned break allowance; not allowing an increase in call duration; not providing instructions for using voice memos or team calls verbally; not providing training on using Claroread software; and not providing a 1:1 support meeting about his role.

120. The claimant also relies on the absence of auxiliary aids which he says put him at a substantial disadvantage compared with people not sharing his disability. The auxiliary aids relied upon are as follows: 27-inch monitor; Claroread software; Text to speech software / coloured backgrounds – Read and Write Gold; speech to text software – Dragon Naturally Speaking; and spell check software – Grammarly.

121. The claimant says that each of the PCPs applied and the absence of each of the auxiliary aids placed him at a substantial disadvantage compared to someone without the claimant's disability, in that it was more challenging to carry out his role.

122. To be a substantial disadvantage, the particular disadvantage must be more than minor or trivial.

123. We considered each of the PCPs in turn. We then considered each of the auxiliary aids in turn.

Not allowing additional non-productive time at the end of a call

124. We accepted that prior to the respondent's receipt of the first OH report the claimant was not allowed additional non-productive time at the end of a call. This was because the respondent did not know and could not reasonably be expected to know that the claimant had dyslexia. We accepted that prior to 23 October 2020 this PCP was applied to the claimant. We accepted that this put the claimant at a substantial disadvantage in that it was more challenging for him to carry out his role. We accepted that the respondent knew of this substantial disadvantage on around 23 October 2020, the date of the first OH report. This is because the report recommended flexibility in terms of timescales for completing tasks.

125. Having been placed at a substantial disadvantage by the PCP applied, did the respondent fail to take any step that it was reasonable to have to take to avoid the disadvantage? The step identified by the claimant following the first OH report is allowing him flexibility in timescales for completing tasks. We concluded that it was reasonable for the respondent to have to take that step.

126. We concluded that the respondent had taken the step identified by the claimant of allowing him flexibility in timescales for completing tasks and had done so within a reasonable period. We concluded that the step was implemented by the respondent by around end January 2021. The claimant's evidence was that when Ms Rowley became his line manager around this time, she had discussed the first OH report with him. The claimant's evidence was that he told Ms Rowley about the issues he was having in performing his role as set out in the first OH report. He told Ms Rowley that he needed more time and unplanned breaks, as set out in the report. Ms Rowley told the claimant that he was to take extra time and "not worry about it". She told him "Just do the best you can". Mr Turnbull knew

about this adjustment when he took over as his line manager as Ms Rowley told him. Mr Turnbull continued to allow non-productive time at the end of calls.

Not allowing regular and frequent breaks

127. The second OH report is dated 17 October 2022. The claimant asserts that a PCP of not allowing regular and frequent breaks was applied to him. He asserts that this put him at a substantial disadvantage in that it was more challenging for him to carry out his role. He asserts that the respondent knew or ought to have known of this substantial disadvantage on or around the date of the second OH report. This is because the report recommended allowing him "regular and frequent breaks to help him manage any fatigue he may experience due to his dyslexia".

128. We concluded that there was no PCP applied to the claimant of not allowing regular and frequent breaks. We accepted the evidence of Mr Turnbull and Ms Stokes, as supported by the adherence reports from the disciplinary procedure. These showed that the claimant had been scheduled for regular and frequent breaks but chose not to take them. Rather, on some days he used all his break allowances as the end of his shift.

Not allowing additional unplanned break allowance

129. We accepted that prior to the respondent's receipt of the first OH report the claimant was not allowed additional unplanned break allowance. This was because the respondent did not know that the claimant had dyslexia. We accepted that prior to 23 October 2020 this PCP was applied to the claimant. We accepted that this put the claimant at a substantial disadvantage in that it was more challenging for him to carry out his role. We accepted that the respondent knew of this substantial disadvantage on

around 23 October 2020, the date of the first OH report for the reasons given above.

130. Having been placed at a substantial disadvantage by the PCP applied, did the respondent fail to take any step that it was reasonable to have to take to avoid the disadvantage? The step identified by the claimant following the first OH report is allowing him flexibility around unplanned break usage. We concluded that it was reasonable for the respondent to have to take that step.

131. We concluded that the respondent had taken the step identified by the claimant of allowing him flexibility around unplanned break usage and had done so within a reasonable period. We concluded that the step was implemented by the respondent by around end January 2021. The claimant's evidence was that when Ms Rowley became his line manager around this time, she had discussed the first OH report with him. The claimant's evidence was that he told Ms Rowley about the issues he was having in performing his role as set out in the first OH report. He told Ms Rowley that he needed more time and unplanned breaks, as set out in the report. Ms Rowley told the claimant that he was to "take extra time" and "not worry about it". She told him "Just do the best you can". Mr Turnbull knew about this adjustment when he took over as his line manager as Ms Rowley told him. Mr Turnbull continued to allow flexibility around unplanned break usage, if the claimant wished to take it.

Not allowing an increase in call duration

132. The claimant asserts that a PCP of not allowing an increase in call duration was applied to him. He asserts that this put him at a substantial disadvantage in that it was more challenging for him to carry out his role. He asserts that the respondent knew or ought to have known of this substantial disadvantage on or around the date of the second OH report.

This is because the report recommended an increase in call duration if the claimant needed to read information while on an active call.

133. We concluded that there was no PCP applied to the claimant of not allowing an increase in call duration at the time of the second OH report. Ms Rowley had told the claimant in January 2021 that he was to take the extra time and not worry about it. We accepted the evidence of Mr Turnbull and Ms Dinis that the claimant was not monitored for time he took whilst on active calls. They understood that the calls could take a long time, to try to ensure that the customer's issues were resolved.

Not providing instructions for using voice memos or team calls verbally

134. The claimant asserts that a PCP of not providing instructions for using voice memos or team calls verbally, was applied to him. He asserts that this put him at a substantial disadvantage in that it was more challenging for him to carry out his role. He asserts that the respondent knew or ought to have known of this substantial disadvantage on or around the date of the second OH report. This is because the report recommended considering if workplace instructions could be provided using voice memos or teams calls verbally as well as in writing.

135. We concluded that there was no PCP applied to the claimant of not providing instructions for using voice memos or team calls verbally at the time of the second OH report. We accepted the evidence of Mr Turnbull and Ms Dinis that the respondent already communicated department wide instructions or changes, such as changes to business processes, by way of Teams meetings. They were also communicated by line managers to staff individually in the 1:1s. Mr Turnbull discussed with the claimant how he accessed materials and guidance used by call centre staff to support the customers with the issues they had. Mr Turnbull told the claimant to speak to the colleagues who ran the department support network. Their role was to support the department. They could discuss the various options

available to the claimant to help him to reach a solution for the customer. The claimant chose not to do so. We concluded that that claimant had access to workplace instructions verbally as well as in writing.

Not providing training on using Claroread software

136. The claimant asserts that a PCP of not providing training on Claroread software was applied to him. He asserts that this put him at a substantial disadvantage in that it was more challenging for him to carry out his role. He asserts that the respondent knew or ought to have known of this substantial disadvantage from the date of the Access to Work report on 12 December 2020. This is because the report recommended Claroread software and training on the software.

137. We concluded that there was no PCP applied to the claimant of not providing training on using Claroread software. This was because the claimant had refused to come into the office to use the Claroread software. The PCP would only apply once he was using the Claroread software.

Not providing 1:1 support meeting about role

138. In the claimant's team all employees had 1.1's with their line managers approximately fortnightly. The claimant's evidence was that when Ms Rowley became his line manager in around January 2021, she discussed the first OH report with him. The claimant's evidence was that he told Ms Rowley about the issues he was having in performing his role as set out in the first OH report. His evidence was that Ms Rowley told the claimant that he was to "take extra time" and "not worry about it". She told him "Just do the best you can".

139. We concluded that there was no PCP applied to the claimant of not providing a 1:1 support meeting about the role. Rather, there had been a

1:1 support meetings with the claimant about his role throughout his employment, ncluding before the first OH report.

27-inch monitor

140. The claimant complains that he was not provided with a 27-inch monitor until the day before his dismissal. He asserts that he was placed at a substantial disadvantage in that it was more challenging for him to carry out his role without a 27-inch monitor. He asserts that this put him at a substantial disadvantage in that it was more challenging for him to carry out his role. He asserts that the respondent knew or ought to have known of this substantial disadvantage from the date of the Access to Work report on 12 December 2020. We agree that the respondent knew or ought to have known of the substantial disadvantage from that date This is because the report recommended a 27-inch monitor.

141. We did not accept the claimant's assertion that there was a failure to provide a monitor after the Access to Work report was obtained. The claimant's evidence was that he had purchased a 27 inch monitor himself in around January 2021 and told his manager he would claim back the cost. We did not accept the claimant's evidence that he had told his manager a few days later that the monitor was incompatible with his laptop. On balance we concluded that if this was something the claimant had told the respondent it is likely that the respondent would have taken steps to purchase a monitor. The respondent had engaged in obtaining the Claroread software in the office for the claimant in response to the Access to Work report. Mr Turnbull had engaged in the recommendations from the Access to Work report in about February 2022 when he checked the position about obtaining the Claroread software on the claimant's laptop. He had told the claimant about doing this. If the provision of the monitor was outstanding, we concluded that the claimant would likely have told Mr Turnbull this. We concluded that he did not tell Mr Turnbull this. We were satisfied that the respondent was entitled to conclude that it had complied

with the recommendation in the Access to Work report as the claimant had told them he had bought his own 27-inch monitor and would claim back the costs.

142. The claimant also asserts that after the second OH report there was a failure to provide a 27-inch monitor which was recommended in that report.

143. We did not accept the claimant's assertion that there was a failure to provide a 27-inch monitor following the second OH report. We were satisfied that the respondent had ordered the monitor on around 17 October 2022. We were satisfied that Ms Dinis was proactively chasing up the monitor when an administrative error was identified in the ordering process. We were satisfied that she did so until the claimant received the monitor delivered to his home on around 9 March 2023. Throughout that period Ms Dinis was communicating with the claimant. At no time did the respondent indicate that it would not provide the monitor following the second OH report.

Claroread software

144. The claimant complains that he was not provided with Claroread software. He asserts that he was placed at a substantial disadvantage in that it was more challenging for him to carry out his role without Claroread software. He asserts that this put him at a substantial disadvantage in that it was more challenging for him to carry out his role. He asserts that the respondent knew or ought to have known of this substantial disadvantage from the date of the Access to Work report on 12 December 2020. We agree that the respondent knew or ought to have known of the substantial disadvantage from that date. This is because the report recommended Claroread software.

145. We did not accept the claimant's complaint that there was a failure to provide Claroread software. We were satisfied that the respondent was

entitled to conclude that it had complied with the recommendation in the Access to Work report to provide Claroread software as it was available for the claimant to use in the office. The respondent had confirmed that the claimant could attend the office for work from around the end of January 2021. The Claroread software was not available on the laptop used by the claimant. The claimant had told the respondent that he would not attend the office because his wife was unwell, he needed to help with childcare and because of travel costs between his home and the office. These were all reasons unrelated to his condition of dyslexia. In around February 2022 when Mr Turnbull became the claimant's line manager, he checked the position again. The software was still unavailable on the claimant's laptop. The claimant's family and home circumstances had not changed. The claimant said again that he would not come into the office.

Text to speech software / coloured backgrounds – Read and Write Gold

146. The claimant complains that he was not provided with text to speech software / coloured backgrounds – Read and Write Gold. He asserted that this ought to have been provided within 1-2 weeks of the second OH report, that is by around 31 October 2022, as the claimant asserted. He asserts that he was placed at a substantial disadvantage in that it was more challenging for him to carry out his role without this software. He asserts that this put him at a substantial disadvantage in that it was more challenging for him to carry out his role. He asserts that the respondent knew or ought to have known of the substantial disadvantage from the date of the second OH report. We agree that the respondent knew or ought to have known of the substantial disadvantage from that date This is because the report recommended text to speech software / coloured backgrounds – Read and Write Gold.

147. We did not accept the claimant's complaint that there was a failure to provide this software as it had not been provided by around 31 October 2022, as the claimant asserted. We were satisfied that the respondent had

ordered the software on around 17 October 2022. This was software which could be downloaded on a laptop. We were satisfied that Ms Dinis was proactively chasing up the software when an administrative error was identified in the ordering process. We were satisfied that she did so until the claimant had received the software and it had been installed on his laptop around late February 2023. Throughout that period Ms Dinis was communicating with the claimant. At no time did the respondent indicate that it would not provide the software following the second OH report.

Speech to text software – Dragon Naturally Speaking

148. The claimant complains that he was not provided with speech to text software – Dragon Naturally Speaking. He asserted that this ought to have been provided within 1-2 weeks of the second OH report, that is by around 31 October 2022. He asserts that he was placed at a substantial disadvantage in that it was more challenging for him to carry out his role without this software. He asserts that the respondent knew or ought to have known of the substantial disadvantage from the date of the second OH report. We agree that the respondent knew or ought to have known of the substantial disadvantage from that date. This is because the report recommended speech to text software – Dragon Naturally Speaking.

149. We did not accept the claimant's complaint that there was a failure to provide this software as it had not been provided by around 31 October 2022. We were satisfied that the respondent had ordered the software on around 17 October 2022. This was software which could be downloaded on a laptop. We were satisfied that Ms Dinis was proactively chasing up the software when an administrative error was identified in the ordering process. We were satisfied that she did so until the claimant had received the software and it had been installed on his laptop around late February 2023. Throughout that period Ms Dinis was communicating with the claimant. At no time did the respondent indicate that it would not provide the software following the second OH report.

Spell check software – Grammarly

150. The claimant complains that he was not provided with spell check software – Grammarly. He asserted that this ought to have been provided within 1-2 weeks of the second OH report, that is by around 31 October 2022. He asserts that he was placed at a substantial disadvantage in that it was more challenging for him to carry out his role without this software. He asserts that the respondent knew or ought to have known of the substantial disadvantage from the date of the second OH report. We agree that the respondent knew or ought to have known of the substantial disadvantage from that date. This is because the report recommended speech to text software – Dragon Naturally Speaking.

151. We did not accept the claimant's complaint that there was a failure to provide this software as it had not been provided by around 31 October 2022, as asserted by the claimant. We were satisfied that the respondent had ordered the software on around 17 October 2022. This was software which could be downloaded on a laptop. We were satisfied that Ms Dinis was proactively chasing up the software when an administrative error was identified in the ordering process. We were satisfied that she did so until the claimant had received the software and it had been installed on his laptop around late February 2023. Throughout that period Ms Dinis was communicating with the claimant. At no time did the respondent indicate that it would not provide the software following the second OH report.

152. We therefore dismiss all of the complaints of failure to comply with the duty to make reasonable adjustments.

Discrimination arising from disability

153. For a complaint under section 15 EqA to succeed it must be shown that the claimant was unfavourably treated by reason of 'something' arising in

connection with his disability. If a valid complaint is provisionally made out, the respondent in question may be able to argue that the treatment is justified by being a proportionate means of achieving a legitimate aim. If it can do so the treatment will not be unlawful.

154. "Unfavourable treatment" is not defined in EqA but the EHRC Employment Code states at para. 5.7 that it means that a disabled person "must have been put at a disadvantage'.

155. The act relied upon by the claimant for his discrimination arising from disability complaint is his dismissal on 10 March 2023. We were satisfied that that the claimant's dismissal is 'unfavourable treatment'.

156. The 'something' arising in consequence of the claimant's disability upon which he relies in relation to his dismissal is the claimant's breach of the respondent's policies. The claimant was dismissed for breach of the respondent's Contact Centre Guiding Principles, which is a policy of the respondent.

157. We considered next whether the "something", namely the breach of the respondent's Contact Centre Guiding Principles, arose in consequence of the claimant's disability of dyslexia. It was held in ***Pnaiser*** that whether something can properly be said to arise in consequence of disability is a question of fact in each case. It is an objective question, unrelated to the subjective thought processes of the respondent, and there is no requirement that the respondent should be aware that the reason for treatment arose in consequence of disability.

158. We concluded that the claimant had acknowledged throughout the disciplinary procedure that his dyslexia did not prevent him from taking his breaks throughout the day at the scheduled times. Rather he did so for family reasons. We did not accept the claimant's assertion at this hearing that his dyslexia was the reason why he took all his breaks at the end of

the day. This had not been mentioned by him at any stage to his employer. Beyond a simple assertion to this effect at the hearing, he gave no detailed evidence as to why he now said this was the case. It was in fact contrary to the recommendations about breaks in the OH reports upon which he sought to rely.

159. We concluded that the claimant had confirmed during the disciplinary procedure that he knew and understood the correct processes to follow and the internal tools and support networks available. We were satisfied that the claimant had followed the correct processes on other calls, as Ms Stokes had found (page 259). At the disciplinary hearing the claimant was unable to say why failing to call customers back when he said he had done so or leaving no notes arose from his dyslexia. The claimant did not lead any evidence at this hearing as to why a note by him saying that he had called a customer back when he had not done so or leaving no note at all (in breach of the Contact Centre Guiding Principles) arose in consequence of his disability.

160. We concluded that claimant had not established a prima facie case of discrimination by reference to the facts made out such that the burden of proof shifted to the respondent.

161. For these reasons we concluded that the 'something' alleged could not be shown by the claimant to have arisen from his disability. There is therefore no requirement for us to consider the third and fourth parts of the test in ***Pnaiser***.

162. We therefore dismiss the complaint of discrimination arising from disability.

Time bar

163. The claimant submitted his claim to the tribunal on 31 May 2023. His section 15 EqA complaint is an allegation of discriminatory dismissal. The

date of dismissal was 10 March 2023. The ordinary limitation period ended on 9 June 2023. ACAS early conciliation took place between 20 April 2023 and 26 May 2023. The complaint under section 15 EqA is in time. It follows that the complaint of ordinary unfair dismissal is also in time.

164. As ACAS early conciliation started on 20 April 2023, any complaints which predate 21 January 2023 are out of time. The complaints about failure to comply with the duty to make reasonable adjustments as set out in the recommendations of the first OH report on 23 October 2020 and the Access to Work report on 12 December 2020 are potentially out of time by over two years.

165. The complaints about failure to comply with the duty to make reasonable adjustments as set out in the recommendations of the second OH report on 17 October 2022 are also potentially out of time. The claimant in evidence said that he expected the respondent to have implemented the recommendations in the second OH report by around 31 October 2022, but the respondent had not done so. We have found as above that the recommendations in the second OH report were either already in place or were in place by late February 2023 and by 9 March 2023 and that it was reasonable for the respondent to comply with the duty by those dates.

166. Given our conclusion that the respondent has not failed to comply with the duty to make reasonable adjustments we have determined that it is not necessary to consider the various questions of time bar which arise

Conclusion

167. Having concluded that each of the complaints is not well- founded, there is no requirement for us to consider remedy. The claimant's claim is dismissed.

J McCluskey

Employment Judge: J McCluskey

Date of Judgment: 28 May 2024

JUDGMENT SENT TO THE PARTIES ON: 29/05/2024

Notes

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here: https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

APPENDIX 1

Jurisdiction

1. Does the Tribunal have jurisdiction to consider the claimant's claims of disability discrimination?

2. If the discrimination claim is out of time, is it just and equitable for the claim to be admitted late or and in the alternative did the discrimination form part of a continuing act which would mean the claims are in time

Unfair dismissal

3. What was the reason for the claimant's dismissal, and was it one of the potentially fair reasons for dismissal in section 98 of the ERA 1996?
    1. The respondent relies on conduct as the potentially fair reason for dismissal.
4. Did the respondent have reasonable grounds for a belief in guilt?

5. Was that belief formed following a reasonable investigation?

6. Did dismissal fall within the band of reasonable responses?

Failure to make reasonable adjustments (Sections 20 and 21 of the Equality Act 2010)

7. Did the respondent know, or could it reasonably have been expected to know, that the claimant had the disability? From what date? The respondent says from 23 October 2020.

8. Did the respondent apply a PCP? The PCPs identified are:
    1. Not allowing additional non-productive time at the end of a call;
    2. Not allowing regular and frequent breaks
    3. Not allowing additional unplanned break allowance
    4. Not allowing an increase in call duration
    5. Not providing instructions for using voice memos or team calls verbally
    6. Not providing training on using Claroread software
    7. Not providing 1:1 support meeting about role

9. Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability? The claimant says it was more challenging to carry out his role.

10. Did the lack of the following auxiliary aids put the claimant at a substantial disadvantage compared to someone without the claimant's disability? The claimant says it was more challenging to carry out his role.

    1. 27-inch monitor
    2. Claroread software
    3. Text to speech software / coloured backgrounds – Read and Write Gold
    4. Speech to text software – Dragon Naturally Speaking
    5. Spell Check software – Grammarly

11. Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

12. What steps could have been taken to avoid the disadvantage? The claimant suggests:

    1. Recommendations made by Access to Work dated 12 December 2020:
        - 27 inch monitor;
        - Claroread software
        - Training on using the software

    2. Adjustments recommended in the Occupational Health Report dated 23 October 2020:
        - 1:1 meeting to discuss any specific concerns about role;
        - Flexibility in timescales for completing tasks
        - Flexibility around unplanned break usage

3. Adjustments recommended in the Occupational Health Report dated 17 October 2022:
    - Additional non-productive time at the end of a call to ensure he has made notes correctly;
    - Regular and frequent breaks to help him manage any fatigue;
    - Additional unplanned break allowance;
    - An increase in call duration if he needs to read information while on an active call;
    - Workplace instructions or changes to be provided using voice memos or team calls verbally as well as in writing;
    - Text to speech software / coloured backgrounds – Read and Write Gold
    - Speech to text software – Dragon Naturally Speaking
    - Spell Check software – Grammarly
    - 27-inch monitor to support reading tasks

13. Was it reasonable for the respondent to have to take those steps and when?

14. Did the respondent fail to take those steps?

Discrimination arising from disability

15. Did the respondent treat the claimant unfavourably by dismissing the claimant?

16. Did the following things arise in consequence of the claimant's disability:
    1. breach of the respondent's policies

17. Was the unfavourable treatment because of any of those things?

18. Was the treatment a proportionate means of achieving a legitimate aim?

19. The Tribunal will decide in particular:
    1. was the treatment an appropriate and reasonably necessary way to achieve those aims;
    2. could something less discriminatory have been done instead;
    3. how should the needs of the claimant and the respondent be balanced?

20. Did the respondent know, or could it reasonably have been expected to know that the claimant had the disability? From what date?

Employment Judge: **McCluskey**
Date of Judgment: **28 May 2024**
Entered in register: **29 May 2024**
and copied to parties