EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mrs S Khan	v	Reed Talent Solutions Limited

Heard at: Leeds (by video link – Kinly Cloud)

On: 28, 29, 30 and 31 January 2025

Before: Employment Judge James
Mr D Eales
Mr Q Shah

Representation

For the Claimant: In person

For the Respondent: Mr K Sonaike, counsel

JUDGMENT

(1) The allegations of failure to make reasonable adjustments (ss20, 21 and s.41(4) Equality Act 2010) are upheld in relation to the following auxiliary aids/services:

a. Grammarly Premium;

b. Dragon Professional Individual v15 with compatible headphones;

c. A Varidesk pro plus 36;

d. Workplace Coping Strategy Training;

e. Roller Mouse wireless;

f. Gold Touch ergonomic keyboard;

g. Adapt 630 Ergonomic Chair with appropriate back rest, neck roller and arm rests.

(2) The allegations of a failure to make reasonable adjustments are not upheld and are dismissed in relation to the following steps:

a. Read Write software;

b. An Irlens Syndrome/Colourimetry Assessment.

REASONS

The issues

1. The agreed issues which the Tribunal had to determine are set out in Annex A.

The proceedings

2. Acas Early Conciliation took place between 9 January and 20 February 2024. The claim form was issued on 17 March 2024. The claimant alleges that the respondent failed to make reasonable adjustments, during her employment.

3. A preliminary hearing for case management purposes took place on 15 August 2024. The issues were identified, this hearing was arranged and related case management orders were made.

The hearing

4. The hearing took place over four days. Evidence and submissions on liability were dealt with on the first three days. It was arranged that on the fourth day, the tribunal would give its decision and reasons. It was agreed that the only remedy issue the Tribunal would determine at the liability stage was whether the failure to make reasonable adjustments, if upheld, resulted in the claimant ending the agency worker relationship with Reed and becoming employed directly by Leeds City Council.

5. The Tribunal heard evidence from the claimant. For the respondent, the Tribunal heard from Paul Leather, Talent Acquisition Specialist; Kayleigh Navarro, Manager of a team of recruitment consultants; and Jenna Williams, Senior Candidate Care Consultant. There was an agreed hearing bundle of 230 pages. A further email was added to the bundle during the hearing, by agreement between the parties.

Findings of fact

6. The respondent is an Employment Agency and an Employment Business, which introduces and supplies candidates to end user clients for permanent and temporary roles.

Disability

7. The claimant has the following medical conditions, which the respondent accepts amounts to a disability for the purposes of the Equality Act 2010: (1) Cervical Radiculopathy, a neurological dysfunction caused by compression and inflammation of the nerve roots in her cervical spine; (2) Osteoarthritis in her spine, hips and other joints including her hands, feet and knees]; (3) long term sciatica on the right side; (4) Dyslexia with Irlen's syndrome.

The 2019 assignment via the respondent

8. In March 2019, the claimant was placed by the respondent in an assignment as a Social Worker with Leeds City Council.

9. On 29 May 2019, an Access to Work (ATW) application which had been made by the claimant in relation to the assignment was approved. The assessment

was carried out for the claimant at her workstation at the Technorth Family Learning Centre. This was a Leeds City Council (LCC) workplace in Chapel Allerton, Leeds.

10. Funding was provided by Access to Work, subject to certain limits. The respondent gave authority to the relevant department to process the order. Between July and August 2019, orders for the equipment were placed by the respondent. During November 2019, the outstanding ATW-funded equipment was provided to the claimant.

11. On 14 November 2019, the respondent submitted a reimbursement claim to DWP for the ATW equipment supplied to the claimant.

Employment with Polaris

12. In November/December 2019, the claimant left the Reed/Leeds City Council assignment to take up employment with Polaris, a private provider of social work services. The only ATW funded equipment she took with her was the chair, since it was tailor-made for her and hence of no use to anyone else. The software etc remained with Leeds.

13. When working with Polaris, the claimant did not have a tailor-made chair to use at home. She worked at home for no more than 1 day per week, sometimes less. When she worked at home, her back pain increased as her chair was not suited to her disability. She took the portable equipment which Polaris provided, such as her laptop, roller-mouse and keyboard, back and forth in a trolley bag when working at home.

Re-engagement with Reed

14. Between 17 November 2022 and 15 January 2023, the claimant was engaged in a second booking with Leeds City Council (LCC), via the respondent, for 18.5 hours per week. Her working hours with Polaris were reduced. The claimant was employed by PayStream, as an 'umbrella' employee. This arrangement had been discussed between the claimant and Sian Rees of the respondent. It was explained that the claimant would receive a higher hourly rate of pay if she worked via an umbrella company; hence her decision to work under this arrangement.

15. Prior to starting work with the Learning Disabilities Team of LCC, the claimant discussed her disabilities and the adjustments she required with Ms Rees. The adjustments included an ergonomic chair, assistive software and other equipment supported by an Access to Work grant. The claimant arranged an assessment with ATW, and emailed Ms Rees on 19 November confirming the date of the appointment. Ms Rees thanked the claimant for '*getting that organised*'.

16. The claimant also completed a confidential work health assessment that she was provided with by the respondent. This confirmed that she had dyslexia, and musculoskeletal issues and that she would need adjustments, including a specialist chair and dyslexia-related software. She consented to an Occupational Health assessment being carried out although none ever was.

Further ATW grant

17. On 28 November 2022 the claimant was assessed by DWP. The claimant told ATW she worked for Reed, but worked at Leeds City Council.

18. On 12 December 2022, the claimant received an ATW grant letter from DWP - the "Reed Grant". This says that her employer is LCC; Paul Leather was named as the person 'at the claimant's workplace' who could be contacted about the claimant's application.

19. Also on 12 December 2022, the respondent received an email from DWP, advising of the ATW grant. The letter confirmed that the following equipment was required:

Item	*Cost / Description*
Adapt 630 Ergonomic Chair	*£1 ,048.68*
Adjustable Tilting Footrest	*£63.44*
Dragon Professional Individual v.15	*£439.99*
3x2 Hours of Technical Training	*£882.00*
Goldtouch Ergonomic Keyboard	*£169. 1 4*
Grammarly Premium	*£180.00*
Irlens Syndrome/Colourimetry Assessment	*£160.01*
Monitor Arm	*£78.00*
RollerMouse Red Wireless	*£411.30*
TextHelp Read and Write	*£498.00*
(3 Year Subscription)	
VariDesk Pro Plus 36	*£400.00*
6 x 2 Hours of Workplace Coping Strategy	
Training (Virtual)	*£1764.00*

The total cost of this support is £6094.56. Access to Work will contribute a maximum of £6094.56…

Once you have received the formal award letter you will be able to order the recommended support. Access to Work are not responsible for purchasing the support

20. Mr Leather asked DWP the same day by email:

Hi Anthony we purchased all this equipment for Saba last time she worked for us. Do we have to do this again. Can you advice where I can get all this from?

21. In an emailed reply to Mr Leather sent on 16 December 2022, Anthony Vincent, an Access to Work Case Manager for DWP, confirmed:

I cannot share the full WPA report due to GDPR and personal details of your employee, however we do encourage the employees to share the full report with the employers. Report has been sent to Ms Saba Khan via post. I have attached a section of the report with suppliers details. You as an employer are not bound in any way for the procurement of all the equipment recommended in the report, in case you are satisfied that sufficient support is already in place. Items listed in the report are recommendations and not an obligation.

22. The Reed Grant says the following in relation to the provision of Dragon. It is noted that there is no mention of a requirement for Dragon compatible headphones to be provided:

> *I suggest Ms Khan receives 1 x Dragon Professional Individual v15. the most recent edition. Dragon is a computer programme that uses speech recognition to tum dictated audio into on-screen text. The software also controls the computer by speech commands. The software's abilities all go towards helping increase the accuracy and efficiency of written work.*
>
> *The professional version of this software also provides the opportunity for Ms Khan to create custom Macros to speed up work on the computer by helping automate commonly used tasks…*

23. Regarding the chair it stated:

> *An Adapt 630 Ergonomic Chair with inflatable lumbar support, memory foam seat and backrest, 4D armrests, and a neck roll style headrest is recommended for Ms Khan for use at the office. This chair is designed to offer comfort and support with good ergonomics, and provides the required support for Ms Khan, with easily adjusted settings to suit her needs. This will help to negate any chance of pain or tenderness when seated.*
>
> *This chair will provide comfortable support for Ms Khan and with the additional features her work posture should improve. minimising the stress and pain caused by the build-up of pressure whilst sat for extended' periods. The lumbar support in particular will allow a more comfortable working environment for Ms .Khan, as It will increase support for the back, neck and shoulders ... This chair will reduce the effects of her condition on her fatigue, concentration and motivation levels, helping her to become a more efficient and productive worker.*
>
> *Recommended Chair Accessories should include:*
>
> *Memory Foam Seat*
>
> *Memory Foam Backrest*
>
> *Lumbar Region Heat Patches •*
>
> *4D Armrests*
>
> *Neckroll*
>
> *Inflatable Lumbar Support*
>
> *Delivery and Installation*

<u>End of employment with Polaris and related ATW grant</u>

24. On 30 December 2022, a further ATW grant letter was sent by DWP to the claimant - the “Polaris grant”. This was separate, since it related to the work she was still carrying out for Polaris for half of the working week.

25. In January 2023, the claimant decided to terminate her employment with Polaris, and work full-time for Leeds City Council, via Reed. Following that decision, and her giving notice, the claimant and her managers at Polaris mutually agreed that ordering the ATW equipment would be impractical and unnecessary, due to her impending departure in early February. The claimant did little further work for Polaris from January 2023 because she had a lot of

accumulated annual leave to take from the Covid-19 pandemic during her notice period.

26. After the claimant started work for Leeds City Council again, the Council downloaded Dragon Version 15 and an equivalent package to the Read Write software they already had on her LCC laptop. She could use the Read and Write equivalent package. She could not however use the Dragon software since she did not have a headset to use with it. The claimant did not specifically raise the lack of headphones with Leeds or Reed at this stage.

27. On 13 January 2023, the claimant emailed the respondent asking for an update on PAYE and her chair. Ms Williams confirmed:

    Paul is following up on the chair and should be reaching out to you.

    Regarding PAYE, I will need you to log on to XMS and update your payroll details.

    Employment by Reed

28. Between 16 January 2023 and around the end of April 2023, the mode of booking was changed. The claimant became a Reed PAYE temporary employee, instead of an employee of the umbrella company PayStream.

29. Ms Khan emailed Ms Williams, asking her to telephone the claimant, on 23 January 2023. On 24 January 2023, Ms Williams told the claimant in an email:

    I have followed up with Paul about the booking and the chair and I will keep on top of him until this is completed.

30. Around this time, the claimant met with Mr Leather and provided him with a copy of the ATW assessment. This was not admitted by Mr Leather; he could not recall whether that had been done or not. On the balance of probabilities, the Tribunal accepts the claimant's evidence on this point. She wanted the adjustments to be carried out, and she gave that document to Mr Leather, in the hope that they would be. The claimant continued to ask Mr Leather about the adjustments.

    Queries about adjustments

31. On 8 March 2023, the claimant started to work for Leeds City Council full-time. She was no longer carrying out any work for Polaris at that time, although the contract with Polaris did not formally came to an end until April.

32. On 18 April 2023, the claimant and Paul Leather agreed that the claimant's ergonomic chair from Polaris, which was now at her home in her garage, would be transferred to the Leeds City Council office. Mr Leather agreed to help her to move that, because he had a larger car. The Tribunal accepts the claimant's evidence that the chair was not ideal, because it had sustained damage over time due to frequent moves and mishandling. She still required a new chair; but having that chair was better than nothing at all.

33. On 21 April 2023, the claimant's chair was moved to the Leeds City Council office where the claimant worked. Unfortunately, the chair was further damaged in transit, rendering the chair virtually unusable.

34. Also on 21 April 2023, the claimant provided Mr Leather with a second copy of the ATW grant which he had again misplaced. The Tribunal notes that she signed a copy of the Leeds City Council Confidentiality Agreement on the

same date which is consistent with her handing that to Mr Leather at the same time, due to the previously signed copy being mislaid.

Employment by SWES

35. Towards the end of April 2023, the employment arrangements changed again. The claimant was no longer a Reed PAYE employee, but an employee of SWES, another umbrella company. An employment contract was signed with SWES on Friday 21 April 2023. It is assumed that the contract commenced after that date, on the basis that SWES would want a signed contract before the claimant's employment commenced.

36. Further, we note that on 25 April, Ms Williams emailed Mr Leather about various workers, including the claimant, in relation to which she stated:

> *Switching to SWES*
>
> *Not submitting timesheet until its switched*
>
> *Chair all got sorted and got the training on time too*
>
> *Wanted pension info, advised her to go to nest*

The reference to training is to personality disorder training that the claimant attended around this time – not to the Workplace Coping Strategy Training.

37. The 25 April email suggests that the claimant's employment with SWES had not commenced by then. The Tribunal finds therefore that the claimant's employment contract with Reed ended between 25 and 30 April 2023.

Umbrella company arrangements

38. The claimant continued to liaise with Reed about various matters after SWES became her employer. She would submit timesheets to Reed, who would then submit them to the end user, LCC. Once Leeds had approved them, Reed sent them back to the claimant, who passed them onto SWES for payment. They had to be approved by Reed/LCC first.

39. A similar process applied to claims for travel expenses. They also had to be approved by Reed, and then sent by the claimant to SWES for payment. She would let Reed know when she was going on holiday, as well as SWES and LCC. It was Reed who had the contractual relationship with Leeds CC, not SWES or any of the other umbrella companies.

40. The advantage for the agency worker of working for an umbrella company, is that they receive a higher hourly rate of pay. The mechanism as to why that is the case does not concern us. The agency worker makes a small payment every month to the umbrella company, for the services provided by the umbrella company. They are in effect providing payroll services only.

41. As far as Reed is concerned, there is no difference in the payment they received from Leeds, whether the claimant was employed by Reed directly, or via an umbrella company. They offer the umbrella company option to agency workers, because that is what their competitors do.

Further communications about required adjustments

42. On 18 May 2023, the claimant sent an email to Jenna Williams about reasonable adjustments. The claimant complained:

I still have had no response to my emails. I am also enquiring what is happening to my disability [reasonable] adjustment equipment, keyboard, roller mouse etc.

43. On 8 June 2023, the claimant emailed Ms Williams to say:

Morning Jenna

There are no time sheets on my XMS for this week please could you add them on today. Also I have not heard back regarding the e-mail trail below I assume that neither you or Paul are gonna respond to this.

44. In around July 2023, the claimant had a conversation with Jenna Williams. The claimant was unhappy about the length of time the adjustments were taking and the effect that was having on her health. She told Ms Williams that she was thinking of going to another agency. She was told by Ms Williams that if she went to another agency, she could not work for Leeds for a period of six months afterwards. The Tribunal notes that when Ms Williams was asked in re-examination whether this was the sort of thing she might have said, Ms Williams stated that she was 'unsure'. The Tribunal would not be surprised if there was something like this in the contractual arrangements between the agency and the end user to avoid workers being 'poached' by competitors and hence finds it probable that such words were said by Ms Williams.

45. On 24 July 2023, the claimant emailed Mr Leather as follows:

In regards to our conversation last week regarding reasonable adjustments can you confirm that items suggested by access to work requested since January have been ordered.

Mr Leather replied:

The wheels are in motion for the adjustments we discussed

46. Between 2 and 3 August 2023, there was an exchange of emails between the claimant and Jenna Williams regarding the processing of the ATW claim. She told the claimant:

I am just working on processing your access to work claim .

Can you please confirm exactly which equipment you are wanting, if you have checked it is compatible with your work computer and what address you need these delivered to.

On 3 August 2023, Ms Williams requested from the claimant a copy of the ATW list, to help identify what needed to be ordered. That was provided on 3 August.

<u>Offer of employment by Leeds City Council</u>

47. Also on 3 August 2023, the claimant received an offer of employment from Leeds City Council. The Tribunal accepts that the reason the claimant applied to Leeds to be employed directly with them, was because she was frustrated due to the lack of progress with the reasonable adjustments. Moving to Leeds City Council meant that she received a lower hourly rate than if she worked via an umbrella company. However, when working directly for the City Council, she would be entitled to sick leave if that was necessary, and to paid holidays, rather than holiday pay being rolled up into her hourly rate. Further, the pension provision would be significantly more valuable.

48. On 4 August 2023, the claimant suggested to the respondent that the ATW grant had expired and asked for the contact details of Jenna Williams' manager. In fact, the grant still had another month to run at that point.

49. On 11 August 2023, Ms Navarro emailed Anthony Vincent of DWP to say:

> *[The] below was sent to one of our consultants back in December, Paul is waiting for the official award letter and I cant see it anywhere in the emails we have been sent. Saba is trying to locate this for us but we are aware the deadline for this to be processed is tomorrow.*
>
> *Are we able to extend the deadline at all as we are aware this should have been picked up a lot sooner than it has and I really don't want Saba to go without the equipment she needs.*
>
> *If you have a copy of the formal award letter I can put the request through to get the equipment ordered ASAP.*

50. The claimant replied the same day, asking '*is this what you need'*. It is not known what the attachment was to that email, if anything, but no further queries were raised with the claimant about it.

51. On 25 August 2023, emails were exchanged between the claimant and Jenna Williams regarding an optician appointment, for the colourimetry test. In the event, the claimant arranged this herself. The claimant was advised to undergo such a test, because the background colour that she required can change over time. The outcome of the test however, was that the claimant's prescription did not need to be changed.

ATW Equipment delivery

52. Between 28 and 30 August 2023, the claimant sent emails chasing the delivery date for the equipment which had been ordered [181].

> *[Could] you please advise at what stage is the equipment ordered by Access to work going to arrive at Technorth. We are almost 9 months on from approval of grant.*
>
> *Not having the correct equipment or reasonable adjustments in place is contributing to pain to m[y] joints which is impacting on my wellbeing.*

53. On 30 August, Joyce Sellars an employee of the respondent confirmed that they would be ordering the ergonomic chair, tilting footrest, ergonomic keyboard, wireless roller mouse, Varidesk and monitor arm. She confirmed Reed was not able to purchase the following items for the reasons given below:

> *- We are out of time to purchase the Ability Smart training recommended (6 X 2 hr Coping Strategy and 3 X 2 hr Technical training). In order to be able to claim this from ATW Saba will have needed to have completed the training, something that is not possible within the timeframe we are working in now.*
>
> *- We cannot purchase the optician's assessment. Jenna has spoken to an optician who can do the assessment but would require use to phone up and make payment to the receptionist over the phone. I have spoken to Gary Walpole and we would not be willing to do this with the company credit card and we would want something tangible for us to pay or reimburse.*

- We cannot purchase Grammarly Premium for another party, Grammarly have confirmed this. If we set up an account on Saba's behalf then our billing details would remain on the account until the subscription is cancelled and this is not something we are willing to do.

54. On 31 August 2023, a purchase order was raised by the respondent for the order of office equipment by Andy Brett, the respondent's Property Service Helpdesk and Facilities Manager.

55. Between 11 September and 18 November 2023 the claimant attended a chiropractor (Chiropractic First).

56. In September 2023, the claimant informed the respondent that the Dragon software had not come with a headset, which was required for her to be able to use it effectively. On 13 September 2023, Ms Williams emailed the claimant as follows:

I have spoken to HR and as we followed the recommendation of A2W completely, we will not be purchasing a headset at this time. However, if this is something you require, you are more [than] welcome to include it on your renewal application.

I apologise for the inconvenience.

57. On 19 September 2023, an estimated delivery date of 9 October 2023 for the ergonomic chair was provided to the claimant. When it arrived, the claimant discovered that it was not the right specification.

58. On 13 October 2023, the claimant raised a complaint that the chair was incorrect and advised that additional parts could not now be ordered. In particular, the chair lacked essential features such as a neck rest, armrests and proper back support.

59. The bundle contains two Teams messages between Andy Brett, and Jenna Williams on 17 October 2023 about the chair. The first message confirmed that the cost of the height adjustable Arms would be £85.21, and the headrest, £77.68. The message read:

We can get these shipped straight to site for you to fit, or we can send them with a technician to fit and we will cover this due to the inconvenience.

A message sent later that afternoon stated:

Hi Jenna, just chased again and escalated this matter. They are speaking to the shippers. I will let you [know] as soon as they come back.

<u>Termination of the Reed assignment with LCC</u>

60. On 17 October 2023 the claimant resigned from the Reed assignment. Her email states:

I will be leaving Reed to work full time with the LD team. My last working week will be week beginning 30th October 2023. My last working day will be 3rd October 2023. [Note, the claimant meant 3 November]

The claimant's booking with Reed duly ended on 3 November 2023.

61. On 2 November 2023, Ms Williams emailed the claimant to say:

The company that supplies the chair has recently advised us that the head rest and arms needed to be ordered separately at an additional cost. As you

are due to move to a permanent contract shortly and the time it takes for this equipment to be ordered we will not be able to get these supplied prior to your contract ending with Reed. Therefore, I would recommend you request this support from the local authority as they will be your employer.

62. The claimant replied:

Thank you. I will advice Access to work that you have not provided equipment therefore should not be paid.

63. On 3 November 2023 the claimant commenced employment with Leeds City Council.

64. On 22 November 2023, the claimant made a complaint to Reed regarding reasonable adjustments. She did not receive a response, other than a brief acknowledgement of her complaint.

Substantial disadvantage

65. It is part of the claimant's case that without the auxiliary aids, she was subjected to a substantial disadvantage compared to non-disabled colleagues.

66. Sitting in an unsuitable chair led to chronic pain, radiating from her neck, back and lower spine, leading to increasing discomfort over a working day. Prolonged poor posture and lack of proper support led to increased stiffness and reduced mobility, making routine tasks more difficult. The chronic pain also affected the claimant's energy levels, leaving her tired and less able to concentrate or perform her duties as effectively as would otherwise have been the case.

67. The lack of the Dragon and other assistive software meant that the claimant had to type instead, causing her fingers to become stiff. The claimant makes more spelling and grammatical mistakes as a result of dyslexia and was slower typing, meaning she was less efficient, again leading to her becoming more stressed than would otherwise have been the case. The Grammarly Premium software would have assisted the claimant to make less grammatical mistakes and to be less stressed.

68. The Irlens adapted glasses are necessary for the claimant to wear, otherwise she feels sick and words merge together. The claimant suffers from ocular migraines, and the frequency of those migraines increased, from one every few months, to weekly or so, because the claimant did not have the right back and neck support.

Time limits

69. The claimant has taken one previous Employment Tribunal claim, for race discrimination, in 2002.

70. Following her assignment with Reed ending, she raised a complaint, but she never received a formal response to that, save for an acknowledgement. She commenced Acas early conciliation on 9 January 2024.

71. The claimant told the Tribunal she was not aware whether there was a time limit for contacting Acas. The claimant could not remember, when asked at this hearing, what she knew about time limits and when. She thought that when she spoke with Acas, she was advised that the claim had to be submitted within three months less one day.

72. The claimant subsequently sought some legal advice. She struggled to find somebody to work on a no win no fee basis. She received that legal advice around the time she started Acas early conciliation.

73. The claimant joined a trade union in February 2023. When she approached them for advice in August 2023, she was told that because the issue had first arisen prior to her joining the trade union, they could not provide legal advice. Her written submissions assert that because the respondent continued to fail to make reasonable adjustments, that failure was a continuing act.

Relevant law

74. Section 20 Equality Act 2010 states:

> *(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.*
>
> *(2) The duty comprises the following three requirements.*
>
> *(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.*
>
> *(4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.*
>
> *(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid….*
>
> *(11) A reference in this section, section 21 or 22 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service….*
>
> *(13) The applicable Schedule is, in relation to the Part of this Act specified in the first column of the Table, the Schedule specified in the second column. [Note: the Table confirms that Schedule 8 applies to Part 5 (work)].*

75. Sections 41(4) to (7) Equality Act 2010 provide:

> ***41 Contract workers***
>
> *(4) A duty to make reasonable adjustments applies to a principal (as well as to the employer of a contract worker).*
>
> *(5) A "principal" is a person who makes work available for an individual who is—*

(a) employed by another person, and

(b) supplied by that other person in furtherance of a contract to which the principal is a party (whether or not that other person is a party to it).

(6) "Contract work" is work such as is mentioned in subsection (5).

(7) A "contract worker" is an individual supplied to a principal in furtherance of a contract such as is mentioned in subsection (5)(b).

76. *According to Harveys Encyclopaedia:*

*The predecessor provisions to **EqA 2010 s 41** required the worker to be contracted to the agency which had contracted to supply the worker to the principal. This appeared to mean that if there was an additional legal person in the chain of contracts, the provisions would not apply. Since it is quite common for an agency worker to set up their own limited company and for that company to contract with the agency, this was a potential loophole. Those facts occurred in MHC Consulting Services Ltd v Tansell **[2000] IRLR 387**, **[2000] ICR 789**, and the Court of Appeal closed the loophole by a purposive construction to ensure that the end-user was held responsible as a principal for the discrimination which allegedly emanated from it, irrespective of the contractual complexities under which services were provided to it. This brave construction is no longer needed since the current provision, **EqA 2010 s 41(5)**, is so drafted as to remove the requirement for the person with whom the worker contracts to be the same person as the one who contracts with the principal*.

77. Section 55(6) of the Equality Act 2010, provides that an employment service provider is under a duty to make reasonable adjustments.

78. S.56 defines what an employment service provider is for the purposes of s.55. S.56(2)(e) provides that the provision of an employment service includes: '*the provision of a service for supplying employers with persons to do work'*. The respondent accepts that it is an employment service provider for the purposes of sections 55 and 56.

79. S.83(2) Provides:

(2) 'Employment' means—

(a) employment under a contract of employment, a contract of apprenticeship or a contract personally to do work;

80. **Schedule 8** applies where a duty to make reasonable adjustments is imposed on A by Part 5 of the Act (work). Paragraph 2(3) of Schedule 8 provides:

in relation to the first and third requirements, a relevant matter is any matter specified in the first column of the applicable table in part two of the schedule.

81. Paragraph 2(5) provides:

if two or more persons are subject to a duty to make reasonable adjustments in relation to the same interested disabled person, each of them must comply with the duty so far as it is reasonable for each of them to do so.

82. Paragraph 3(1) provides:

This paragraph applies if a duty to make reasonable adjustments is imposed on A by section 55 (except where the employment service which A provides is the provision of vocational training…) [ET note; this is not a vocational training case]).

83. Paragraph 3(3) provides:

In relation to each requirement, the relevant matter is the employment service which A provides.

84. Paragraph 5 sets out the relevant provisions in relation to employers. The applicable 'relevant matter' is 'Employment by A', and the description of the disabled person is: 'An Employee of A's'. 'Employment' (and hence, 'employee') must have the meaning provided by s.83.

85. Paragraphs 5(2) and (5) provide:

(2) Where A is the employer of a disabled contract worker (B), A must comply with the first, second and third requirements on each occasion when B is supplied to a principal to do contract work. …

(5) In relation to the third requirement (as it applies for the purposes of sub-paragraph (2))—

(a) the reference in section 20(5) to being put at a substantial disadvantage is a reference to being likely to be put at a substantial disadvantage that is the same or similar in the case of each of the principals referred to in sub-paragraph (3)(a), and

(b) the requirement imposed on A is a requirement to take such steps as it would be reasonable for A to have to take if A were the person to whom B was supplied.

86. The Equality Act 2010 code of Practice on Employment states at paragraph 11.11:

The employer of a disabled contract worker is also under a duty to make reasonable adjustments where the contract worker is likely to be substantially disadvantaged by:

Sch 8, para 5(2)–(5)

- *a provision, criterion or practice applied by or on behalf of all or most of the principals to whom the contract worker is or might be supplied, and where the disadvantage is the same or similar in the case of each principal;*
- *a physical feature of the premises occupied by each of the principals to whom the contract worker is or might be supplied, and where the disadvantage is the same or similar in the case of each principal; or*
- *the non-provision of an auxiliary aid which would cause substantial disadvantage, and that disadvantage would be the same or similar in the case of all or most of the principals to whom the contract worker might be supplied.*

***Example:** A blind secretary is employed by a temping agency which supplies her to other organisations for secretarial work. Her ability to access standard computer equipment places her at a substantial disadvantage at*

the offices of all or most of the principals to whom she might be supplied. The agency provides her with an adapted portable computer and Braille keyboard, by way of reasonable adjustments.

87. The EHRC Code confirms at paragraph 11.57 that under the Act, an employment service provider has a duty to make reasonable adjustments, except when providing a vocational service. The duty to make reasonable adjustments is said to be an anticipatory duty. The following example is given:

A woman who has dyslexia finds it difficult to fill in an employment agencies registration form. An employee of the agency helps her to fill it in. This could be a reasonable adjustment for the employer to make.

Time limits - Equality Act 2010 claims

88. The relevant parts of section 123 EA 2010 provide:

(1) 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.

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

89. Therefore, where a claim is presented outside the primary limitation period, i.e. the relevant three months, the tribunal may still have jurisdiction if the claim was brought within such other period as the employment tribunal thinks just and equitable.

90. In *British Coal Corporation v Keeble 1997 IRLR 336* the EAT said that the discretion to extend time requires the tribunal to consider the prejudice which each party would suffer as the result of the decision to be made and also to have regard to all the circumstances of the case and in particular, inter alia, to:

- *the length of and reasons for the delay;*
- *the extent to which the cogency of the evidence is likely to be affected by the delay;*
- *the extent to which the party sued had cooperated with any requests for information;*
- *the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action;*

- *the steps taken by the plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action.*

91. It is for the claimant to satisfy the tribunal that it is just and equitable to extend the time limit and the tribunal has a wide discretion. There is no presumption that the Tribunal should exercise that discretion in favour of the claimant. The onus is on a claimant to show to the tribunal that theirs is a case in which the time limit should be disapplied (see *Robertson v Bexley Community Centre [2003] IRLR 434*, at para 25:

> *It also of importance to note that the time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule.*

92. This case is often quoted by those arguing against time being extended. Noting that practice, HHJ Judge Tayler stated in *Jones v Secretary of State for Health and Social Care [2023] EAT(*Note: it is understood that the EWCA recently upheld the EAT's decision and the following is still applicable*)*:

> *31. The propositions of law for which* ***Robertson*** *is authority are that the Employment Tribunal has a wide discretion to extend time on just and equitable grounds and that appellate courts should be slow to interfere. The comments of Auld LJ relate to the employment law context in which time limits are relatively short and makes the uncontroversial point that time limits should be complied with. But that is in the context of the wide discretion permitting an extension of time on just and equitable grounds.*
>
> *32. In* ***Chief Constable of Lincolnshire Police v Caston [2009] EWCA Civ 1298****, [2009] IRLR 327 Wall LJ stated:*
>
> > 24 Mr Rose placed much reliance on paragraph 25 of Auld LJ's judgment …
> >
> > This paragraph has, in turn, been latched onto by commentators as offering 'guidance' as to how the judgment under the "just and equitable" provisions of the Race Relations Act and DDA fall to be exercised. In my judgment, however, it is, in essence, an elegant repetition of well established principles relating to the exercise of a judicial discretion. **What the case does, in my judgment, is to emphasise the wide discretion which the ET has** – see the dictum of Gibson LJ cited above – and articulate the **limited basis upon which the EAT and the court can interfere**. [emphasis added by HHJ Tayler]
>
> *33. Sedley LJ stated:*
>
> > 30. I agree with Mr Justice Underhill and Lord Justice Wall that the EJ's decision, while it could have been (and, had it been reserved, no doubt would have been) a great deal better expressed, was not vitiated by any error of law.

> 31 **In particular, there is no principle of law which dictates how generously or sparingly the power to enlarge time is to be exercised**. **In certain fields (the lodging of notices of appeal at the EAT is a well-known example), policy has led to a consistently sparing use of the power. That has not happened, and ought not to happen, in relation to the power to enlarge the time for bringing ET proceedings, and Auld LJ is not to be read as having said in Robertson that it either had or should. He was drawing attention to the fact that limitation is not at large**: there are statutory time limits which will shut out an otherwise valid claim unless the claimant can displace them. [emphasis added by HHJ Tayler]

34. *Longmore LJ agreed, and added, pithily:*

> I agree and would only reiterate the importance that should be attached to the EJ's discretion. Appeals to the EAT should be rare; appeals to this court from a refusal to set aside the decision of the EJ should be rarer. Allowing such appeals should be rarer still.

35. *Without meaning any disrespect to Auld LJ, there might be much to be said for Employment Tribunals focusing rather less on the comments in* ***Robertson*** *that time limits in the Employment Tribunal are "exercised strictly" and an extension of time is the "exception rather than the rule"; and rather more on some of the other Court of Appeal authorities, such as the concise summary by Leggatt LJ in* ***Abertawe Bro Morgannwg University Local Health Board v Morgan*** *[2018] EWCA Civ 640, [2018] ICR 1194 at paragraph 17-19:*

> 17 The board's other grounds of appeal all seek to challenge the decisions of the employment tribunal that it was just and equitable to extend the time for bringing (a) the claim based on a failure to make adjustments and (b) the claim alleging harassment by Ms Keighan. Before turning to those grounds, the following points may be noted about the power of a tribunal to allow proceedings to be brought within such period as it thinks just and equitable pursuant to section 123 of the Equality Act 2010.
>
> 18 First, it is plain from the language used ("such other period as the employment tribunal thinks just and equitable") that Parliament has chosen to give the employment tribunal the widest possible discretion. Unlike section 33 of the Limitation Act 1980, section 123(1) of the Equality Act 2010 does not specify any list of factors to which the tribunal is instructed to have regard, and it would be wrong in these circumstances to put a gloss on the words of the provision or to interpret it as if it contains such a list. Thus, although it has been suggested that it may be useful for a tribunal in exercising its discretion to consider the list of factors specified in section 33(3) of the Limitation Act 1980 (see British Coal Corpn v Keeble **[1997] IRLR 336**), the Court of Appeal has made it clear that the tribunal is not required to go through such a list, the only requirement being that it does not leave a significant factor out of account: see Southwark London Borough Council v Afolabi **[2003] ICR 800**, para 33. The

> position is analogous to that where a court or tribunal is exercising the similarly worded discretion to extend the time for bringing proceedings under section 7(5) of the Human Rights Act 1998: see Dunn v Parole Board **[2009] 1 WLR 728**, paras 30–32, 43, 48 and Rabone v Pennine Care NHS Trust (INQUEST intervening) **[2012] 2 AC 72**, para 75.
>
> 19 That said, factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh).

93. As set out by the Court of Appeal in *Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23*, 15 January 2021:

> *The best approach for a tribunal in considering the exercise of the discretion under section 123 (1) (b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular (as Holland J notes) "the length of, and the reasons for, the delay"*

Failures to do something

94. Section 123(3)(b) of the EqA 2010 provides that a failure to do something is to be treated as occurring when the person in question decided on it, and s 123(4)(a)-(b) then says that in the absence of evidence to the contrary, a person is to be taken to decide on failure to do something either when they do an act inconsistent with doing it or, where there is no inconsistent act, 'on the expiry of the period in which [the person in question] might reasonably have been expected to do it.' The provision places the onus on a claimant to decide when something should have been done about an omission, and to bring his claim within three months of that date. This provision can be particularly important where the complaint is one made by a disabled person that there had been a failure to make reasonable adjustments under the EqA 2010 s 20. In a case brought under the DDA 1995**,** the Court of Appeal in *Kingston Upon Hull City Council v Matuszowicz [2009] EWCA Civ 22, [2009] IRLR 288, [2009] ICR 1170* confirmed that a failure to make a reasonable adjustment is not a continuing act, so this is not a situation where time does not begin to run. This is so whether the omission to adjust was a deliberate failure – the result of a decision not to make the adjustment – or was an inadvertent omission.

95. There is an important softening of the apparent harshness of this rule. The question of the date on which the employer can reasonably be expected to have done the act which they failed to do is to be assessed from the perspective of the claimant. In *Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640***,** *[2018] IRLR 1050*, Leggatt LJ held that time would begin to run at the point in time when it had, or ought to have, become clear to the claimant that her employer was not complying with its duty to make reasonable adjustments. This is an objective test, not just what the claimant subjectively thought, but is to be assessed on the basis of what it would be reasonable for the claimant to conclude on facts known, or which ought reasonably to have been known, by the claimant at the relevant time

(*Fernandes v Department of Work and Pensions [2023] EAT 114, [2023] IRLR 967; Abertawe*).

96. The effect of s 123(4)(b), as the Court of Appeal recognised in *Matuszowicz,* 'Is to give the employer an interest in asserting that it could reasonably have been expected to act sooner, perhaps much sooner, than it did, and the employee in asserting the contrary. Both contentions will demand a measure of poker-faced insincerity which only a lawyer could understand or a casuist forgive' (Sedley LJ at [38]). Given this analysis, it is unsurprising that the CA in that case (see at [38]) in effect invited tribunals to look generously at their power to extend time on the just and equitable basis when such points arise. In addition, the approach authorised in *Abertawe* and *Fernandes*, of looking at questions of when the employer could reasonably be expected to have acted from the perspective of the claimant, should assist claimants facing a time bar argument of this kind.

97. Note that the date on which the duty to make a reasonable adjustment arises may not be the same as the date on which the failure to comply with the duty can be said to have begun. This was noted by Leggatt LJ in *Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640, [2018] IRLR 1050*, who pointed out that if time began to run when the employer's duty to make adjustments first arose, a claimant might be unfairly prejudiced, for example if they reasonably believe that the employer was taking steps to seek to address the relevant disadvantage, when in fact the employer was doing nothing at all. This, said the court, was the 'mischief' being addressed by s 123(4).

98. Fernandes v DWP [2023] IRLR 967. Para 16:

> *The principles set out in the existing authorities amount to the following propositions:*
>
> *a. The duty to make an adjustment, under the statutory scheme, arises as soon as there is a substantial disadvantage to the disabled employee from a PCP (presuming the knowledge requirements are met) and failure to make the adjustment is a breach of the duty once it becomes reasonable for the employer to <u>have</u> to make the adjustment.*
>
> *b. Where the employer is under a duty to make an adjustment, however, limitation may not begin to run from the date of breach but at a later notional date. As is the case where the employer is under a duty to make an adjustment and omits to do so there will be a notional date where time begins to run whether the same omission continues or not.*
>
> *c. That notional date will accrue if the employer does an act inconsistent with complying with the duty.*
>
> *d. If the employer does not act inconsistently with the duty the notional date will accrue at a stage where it would be reasonable for the employee to conclude that the employer will not comply, based on the facts known to the employee.*

Conclusions

99. In arriving at the following conclusions on the issues before the Tribunal, the law has been applied to the facts found above. The Tribunal does not repeat

every single fact, in order to keep these reasons to a manageable length. The issues are dealt with in turn.

100. In reaching our conclusions, we have considered the burden of proof under the Equality Act 2010. In one instance, this has assisted the claimant, as discussed below. The sub-headings below refer to the allegations under each date in the ET1.

Employment status and the reasonable adjustments duty

Was the claimant in the employment of the respondent within the meaning of section 83(2) of the Equality Act 2010 and if so when; and/or was she a contract worker for the purposes of s.41 Equality Act 2010 and if so when? Alternatively, was the respondent under a duty to make reasonable adjustments as an employment services provider, pursuant to s.55(6) Equality Act 2010?

101. We have not found the task of applying the relevant provisions of the Equality Act in this case an easy one. Having carefully considered how all of the relevant provisions interact, we have concluded that the provisions should be applied to the circumstances raised by the claimant's case as follows.

102. The claimant was 'in employment' for the purposes of s.83(2) with the respondent between the middle of January and the end of April 2023, a period of about three and a half months. There are specific provisions dealing with contract workers, and with employment service providers. Given those specific provisions, we do not consider it would be reasonable to find that the claimant was 'in employment' for the purposes of section 83, during the periods when she was working via an umbrella company. For the period between November 2022 and January 2023, when the claimant was employed by PayStream, her employer for s.83(2) purposes was PayStream. During the period from the end of April 2023, to the end of her agency relationship with Reed on 3 November 2023, the claimant was 'in employment' with SWES.

103. Section 41(4) means that the duty to make reasonable adjustments applied to Leeds City Council, as the claimant's Principal, throughout her assignment with them. In addition, the duty to make reasonable adjustments applied to PayStream, Reed, and SWES, during the respective periods when the claimant was their employee. The duty on those respective employers may well have differed, depending on the nature of the employment relationship, as discussed below. In this case, we are concerned mainly with the duty to make reasonable adjustments which the respondent Reed was under, between January and April 2023.

104. Section 55 applied to the working relationship between the claimant and the respondent when the respondent was not her employer; but during that period, the duty to make reasonable adjustments extended only to the respondent's work as a service provider (Schedule 8, para 3(3)).

105. The Tribunal notes that theoretically, SWES as the claimant's employer from the end of April until the beginning of November 2023, could potentially have been liable to make those reasonable adjustments recommended by ATW. However, it is likely that the duty to make those adjustments would be much less than in relation to the Principal Leeds City Council, in a case like this where the umbrella company employer was in effect simply providing payroll services and nothing else. The duty may differ between that type of employer

and the Principal, when it came to the issue of cost. In any event, whilst these are matters of interest, when considering where the duty may lie and the extent of it, in the current case the claimant has chosen to take her claim against the respondent Reed only.

Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

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

106. The tribunal concludes the respondent did, from the date the assignment started in November 2022. The claimant had worked for Reed previously and reasonable adjustments had previously been arranged.

Did the lack of the auxiliary aids listed at 3.4.1 to 3.1.9 below, put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that:

carrying out desk work in a sitting position without the necessary support for the claimant's neck and back and other joints, without appropriate equipment and software, exacerbates the symptoms suffered by the claimant including joint/back pain, headaches, pins and needles in the arms, and blurred vision. This leads to the claimant working less efficiently than non-disabled colleagues, which in turn results in her becoming stressed; CWS3.2

the claimant's fingers become stiff if she has to type, instead of using Dragon software;

further, due to dyslexia, the claimant makes more spelling and grammatical mistakes than colleagues without that disability; and the claimant is slower typing, meaning she is less efficient than non-disabled colleagues. This results in her becoming stressed; CWS3.1

if the claimant does not wear Irlens glasses she feels sick and words merge together;

the claimant is prone to suffer more regular ocular migraines if she does not have the right equipment for her neck; and/ or the correct Irlens' glasses?

107. We refer to the findings of fact above. These substantial disadvantages are made out on the whole, with the notable exception of the high-lighted words above. Nevertheless, the Tribunal is satisfied that substantial disadvantage has still been established on the facts as found.

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

108. Yes. The claimant was in discussions with Ms Rees from November 2022 onwards. The list of equipment recommended by ATW was sent to Mr Leather on 12 December 2022. The detailed ATW assessment was provided to Mr Leather by the claimant in January 2023. He was therefore on notice of substantial disadvantage; or would have been expected to know of the disadvantage, had he arranged a meeting with the claimant in order to discuss the items set out on that list and consider the report provided to him by the claimant.

What steps could have been taken to avoid the disadvantages?

109. The Tribunal concludes that all of the steps identified are either auxiliary aids or auxiliary services. In any event, counsel accepted that even if the steps arose from PCPs applied by the respondent, those could have been readily identified if necessary. The Tribunal therefore proceeds on the assumption that the steps below are auxiliary aids/auxiliary services. Had it been necessary to identify PCPs, the Tribunal is satisfied that it would have been possible to do so and that the outcome would have been the same.

110. The steps identified by the claimant are:

    Grammarly Premium to assist with the claimant's dyslexia; the claimant says this was never provided

111. The Tribunal notes the email from Joy Sellars referred to in the findings of fact, suggesting this could not be provided by the respondent. However, there is no direct evidence regrading that; nor how the provision of Grammarly Premium diffed from the provision of Dragon software. The burden of proof provisions apply and the respondent has not proven that the provision of Grammarly Premium was not feasible. Therefore the Tribunal concludes that this was a reasonable step. As to who was responsible and when, see below.

    Dragon Professional Individual v15 – this was on the claimant's case part delivered in Sept/October 2024 but because Dragon software compatible headphones were not provided at the same time, it did not work

112. The Tribunal concludes that this was a reasonable adjustment and that by the end of February 2024 this would have been provided if the respondent had acted reasonably promptly. Assuming no headphones were provided, it would have been a simple matter to sort out, the cost being about £35 to £40, as Mr Sonaike suggested to the claimant in cross examination.

    Read Write Software – the claimant says this was not provided until Sept /October 2024.

113. The claimant had the equivalent from January 2023 which she was able to use. See the findings of fact above. Therefore this was not a reasonable step.

    An Irlens Syndrome/Colourimetry Assessment – the claimant says this was never organised for her

114. The Tribunal concludes that this was not a reasonable step on the facts of this case. When the test was carried out, the claimant's prescription did not need to be changed. She therefore had the necessary tinted glasses throughout and was not suffering the substantial disadvantage relied on in relation to this auxiliary aid/service, assuming it could be classed as one at all.

    A Varidesk pro plus 36 desk – the claimant says this was never delivered

115. The Tribunal concludes that that this was a reasonable step and it was never delivered. The claimant did not have access to such a desk until about January 2024, after the assignment with Reed had ended and she moved from Technorth to a different office.

    Workplace Coping Strategy Training – the claimant says this was never provided

116. This was never provided and it was a reasonable step.

Roller Mouse wireless – the claimant says this was not delivered until Sept/October 2024.

117. The Tribunal concludes that this was a reasonable step and it was not provided until September/October 2024.

Gold touch Ergonomic keyboard – the claimant says this was not delivered until Sept/October 2024

118. The Tribunal concludes that this was a reasonable step and it was not provided until September/October 2024.

Adapt 630 Ergonomic Chair – the claimant says that this was provided in September/October 2024 but was not fit for purpose because it did not have armrests or a neck rest and the back of the chair was too small.

119. The Tribunal concludes that this was a reasonable step. The Polaris chair was no longer fit for purpose by the time it was delivered to the Technorth office and a new chair was still required. Further, that chair was not available for the claimant's use in Leeds, until after it had been delivered to her home address in April.

Was it reasonable for the respondent to have to take those steps and if so when? The claimant says that the step should have been taken by the end of March 2023 at the latest; or in her witness statement at 4.78, 6 weeks from mid-January 2023.

120. The tribunal has noted the evidence given before the Employment Tribunal by some of the respondent's witnesses. For example, Mr Leather accepted that the respondent was required to make the adjustments. When asked whether he agreed in hindsight that the respondent had not followed their own policies and protocols in putting reasonable adjustments in place, Mr Leather agreed; adding that if the situation arose in future, the ATW assessment would be sent to Occupational Health and they would liaise with HR and Reed to ensure the grant was sorted in a timely manner.

121. Ms Navarro agreed there was a delay in providing the adjustments and that they should have been put in place between January and April 2023.

122. Those frank and understandable admissions are not of course the end of the matter, as Mr Sonaike rightly argued in closing submissions. The Tribunal still has to be satisfied that it was reasonable for this respondent to take those steps and if so when they should have been carried out. Whilst the evidence just referred to does not help the respondent's case, it is not the end of the matter; the Tribunal accepts that.

123. Nevertheless, the Tribunal has concluded that if the respondent had acted in a timely fashion, by the end of March 2023, all of the adjustments could have been put in place. In arriving at that conclusion, the Tribunal notes what happened from August 2023 onwards, when the respondent finally started to make proper efforts to provide the necessary equipment. Within 6 to 10 weeks, most of the equipment had been delivered/was in place.

124. As for whether it was reasonable for this respondent to make the adjustments we conclude that it was. DWP, through ATW, was going to pay for all of the equipment. In those circumstances, the respondent should have made them. Were it Reed footing the bill, these adjustments may or may not have been reasonable – that would have been an arguable point - but that is not this case.

On facts of this case, with the adjustments being funded entirely by ATW, they were reasonable steps. Further, paying £35 to £40 for a pair of headphones to use with the Dragon software would have been a reasonable adjustment, even if Reed had to foot the bill for those.

Did the respondent fail to take those steps?

125. We conclude that the respondent did fail to take those steps. We note that the headset might not have been delivered with the Dragon V.15 software. But if it arrived in February, the claimant would have raised that and it would have been a cheap and simple issue for the respondent to resolve.

Time limits

126. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 10 October 2023 may not have been brought in time.

Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

Was Acas Early Conciliation commenced within three months of the act to which the complaint relates?

127. This is a case of a failure to do something rather than there being a specific act or acts. We note the reference in the case of *Fernandes* to 'the notional date' by which a claimant would reasonably assume that the failure to make adjustments had taken place. In the unusual circumstances of this case however, we conclude that the notional date cannot extend beyond the end of April 2023 when the claimant's employment contract with Reed ended.

128. Acas Early Conciliation was not commenced until 9 January 2024. About 8.5 months after the employment relationship ended, and therefore, strictly speaking, about 5.5 months later than it should have been.

If applicable, was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

129. Not applicable – it was submitted within one month of Acas Early Conciliation ending and in normal circumstances that would not be a problem.

If not, was there conduct extending over a period?

130. That concept does not apply to a failure to make a reasonable adjustment and in any event the duty cannot have extended beyond the date the employment relationship ended.

In relation to any failure to do something, when did the respondent decide not to do that something; alternatively when did the respondent do an act inconsistent with doing that something; or if there was no inconsistent act, by what date might the respondent reasonably have been expected to do it?

131. See above.

Was Acas Early Conciliation commenced within three months of the end of that period/decision/inconsistent act/date?

132. See above, no.

If applicable, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period/decision/inconsistent act/date?

133. Not applicable, see above

If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

Why were the complaints not made to the Tribunal in time?

134. The Tribunal concludes that the claim was not made in time because the claimant did not know that Reed was not legally responsible, under the Equality Act 2010, from the end of April. The members of the employment tribunal have over 70 years employment law experience between them, but none have ever come across this issue before. As noted above, it took a considerable amount of mental effort to arrive at the interpretation of these legal provisions that we have been able to do so. In our judgement, the claimant can be forgiven for not realising that the time limit in this reasonable adjustments case actually ran from the end of April.

135. Further, it is clear from the claimant's submissions that, as many professional representatives used to believe, prior to the decision in *Matuszowicz*, the concept of a continuing act applied to reasonable adjustments cases. She is mistaken in that regard; but again that mistake, by a litigant in person, is an understandable one to make.

136. This is particularly so, where at no time did the respondent say to the claimant that they were no longer responsible for carrying out the adjustments. Presumably, they were not aware of the legal position that we have set out above. Otherwise they would have advised the claimant to speak to Leeds or SWES, since Reed were no longer legally responsible.

137. Indeed, far from the respondent representing to the claimant that they were no longer responsible, after the claimant's employer became SWES from April 2023 onwards, the relevant staff represented to the claimant that steps were being taken to put the adjustments in place.

In any event, is it just and equitable in all the circumstances to extend time?

138. The Tribunal concludes that the claimant should have know about the three month time limit. She is clearly an intelligent person, has a Masters degree, and had submitted a claim previously. It would have been easy for her to have found out about the three month time limit.

139. However, on the facts of this case, it was reasonable for the claimant to think that time limits did not start to run until the end of the agency worker relationship with Reed. After her employment contract with Reed came to an end, nothing changed, save for who paid her wages into her bank account and provided her with payslips; and the extra admin regarding her timesheets and holidays due to the extra legal person in the chain.

140. It was, the Tribunal concludes, reasonable for the claimant to assume that Reed was still legally responsible for the adjustments after April 2023 and therefore that time continued until her employment relationship ended.

141. Although the claimant was a member of a trade union, they would not advise her regarding these employment related matters because the problem started

before the claimant became a member. It is for entirely understandable reasons that trade unions have such a rule.

142. In the circumstances we conclude that it is just and equitable to extend time. The tribunal therefore has jurisdiction to hear this claim and her claims succeeds in relation to all of the steps save for in relation to 3.4.3 (Read and Write software) and 3.4.4. (the colourimetry test).

143. In making that decision, the tribunal has noted the difficulties that the respondent's witnesses had recollecting some of the matters but to live in cross-examination. However, much of the evidence was corroborated by contemporaneous documents. Further, as noted above, a failure to make a reasonable adjustment is an omission, and it was the omissions of the respondent that this Tribunal were mainly concerned with.

Casual link – failure to make adjustments and the decision to end the agency relationship?

144. The Tribunal concludes that there is a direct causal link between the failure to make reasonable adjustments and the claimant's decision to terminate the agency relationship. The Tribunal is satisfied that had the adjustments been put in place by the end of March the claimant would have continued to work under those arrangements. The Tribunal has found as a fact that it was because the adjustments have not been put in place, and still were not in place by July 2023, that the claimant sought employment directly with Leeds City Council.

145. It is of course true that by July 2023, the respondent was not strictly speaking liable to make those adjustments any more, even though they were still taking responsibility to ensure that, albeit slowly, they were implemented. The Tribunal has however found that the respondent should have made those adjustments whilst the claimant was their employee; and in any event, well before the end of that employment relationship which finished towards the end of April 2023. There is therefore a direct causal link between the failure, and the claimant's decision to work directly for Leeds City Council. Put another way, had the adjustments been put in place at the relevant time, the claimant would have been content to stay working as an agency social worker after April 2023, because the adjustments were in place.

146. The Tribunal is reinforced in this conclusion on the causal link, because the panel is satisfied that there was no financial benefit to the claimant working directly for Leeds. To the contrary, there was a financial detriment, although we note that the extent of that detriment is very much a dispute in relation the remaining remedy issues. The sole reason for the claimant becoming a permanent employee of Leeds City Council was because the adjustments that Reed should have put in place were not implemented.

Employment Judge James
North East Region

Dated 11 February 2025

Sent to the parties on:
13 February 2025

For the Tribunals Office

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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/

ANNEX A – LIST OF ISSUES

1. **Employment status**

   1.1 Was the claimant in the employment of the respondent within the meaning of section 83(2) of the Equality Act 2010 and if so when; and/or was she a contract worker for the purposes of s.41 Equality Act 2010 and if so when?

2. **Disability**

   2.1 Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:

      2.1.1 Did the claimant have a physical or mental impairment? The claimant relies on the following: (1) Cervical Radiculopathy, a neurological dysfunction caused by compression and inflammation of the nerve roots in the claimant's cervical spine; (2) Osteoarthritis in the claimant's spine, hips and other joints including her hands, feet and knees]; (3) long term sciatica on the right side; (4) Dyslexia with Irlen's syndrome?

      2.1.2 Did the impairments have a substantial adverse effect on the claimant's ability to carry out day-to-day activities?

      2.1.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

      2.1.4 Would the impairment have had a substantial adverse effect on the claimant's ability to carry out day-to-day activities without the treatment or other measures?

      2.1.5 Were the effects of the impairment long-term? The Tribunal will decide:

         2.1.5.1 did they last at least 12 months, or were they likely to last at least 12 months?

         2.1.5.2 if not, were they likely to recur?

3. **Reasonable Adjustments (Equality Act 2010 sections 20 & 21)**

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

   3.2 Did the lack of the auxiliary aids/[/auxiliary services] listed at 3.4.1 to 3.1.9 below, put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that:

      3.2.1 carrying out desk work in a sitting position without the necessary support for the claimant's neck and back and other joints, without appropriate equipment and software, exacerbates the symptoms suffered by the claimant including joint/back pain, headaches, pins and needles in the arms, and blurred vision. This leads to the claimant

working less efficiently than non-disabled colleagues, which in turn results in her becoming stressed;

3.2.2 the claimant's fingers become stiff if she has to type, instead of using Dragon software;

3.2.3 further, due to dyslexia, the claimant makes more spelling and grammatical mistakes than colleagues without that disability; and the claimant is slower typing, meaning she is less efficient than non-disabled colleagues. This results in her becoming stressed;

3.2.4 if the claimant does not wear Irlens glasses she feels sick and words merge together;

3.2.5 the claimant is prone to suffer more regular ocular migraines if she does not have the right equipment for her neck; and/ or the correct Irlens' glasses?

3.3 Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at these disadvantages?

3.4 What steps could have been taken to avoid the disadvantages? The claimant suggests:

3.4.1 Grammarly Premium to assist with the claimant's dyslexia; the claimant says this was never provided.

3.4.2 Dragon Professional Individual v15 – this was on the claimant's case part delivered in Sept/October 2024 but Dragon software compatible headphones were not provided at the same time so it did not work.

3.4.3 Read Write software – the claimant says this was not provided until Sept/October 2024.

3.4.4 An Irlens Syndrome/Colourimetry Assessment – the claimant says this was never organised for her.

3.4.5 A Varidesk pro plus 36 desk – the claimant says this was never delivered.

3.4.6 Workplace Coping Strategy Training – the claimant says this was never provided.

3.4.7 Roller Mouse wireless – the claimant says this was not delivered until Sept/October 2024.

3.4.8 Gold touch Ergonomic keyboard – the claimant says this was not delivered until Sept/October 2024

3.4.9 Adapt 630 Ergonomic Chair – the claimant says that this was provided in September/October 2024 but was not fit for purpose because it did not have armrests or a neck rest and the back of the chair was too small.

3.5 Was it reasonable for the respondent to have to take those steps and if so when? The claimant says that the step should have been taken by the end of March 2023 at the latest.

3.6 Did the respondent fail to take those steps?

4. **Time limits**

4.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 10 October 2023 may not have been brought in time.

4.2 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

4.2.1 Was Acas Early Conciliation commenced within three months of the act to which the complaint relates?

4.2.2 If applicable, was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

4.2.3 If not, was there conduct extending over a period?

4.2.4 In relation to any failure to do something, when did the respondent decide not to do that something; alternatively when did the respondent do an act inconsistent with doing that something; or if there was no inconsistent act, by what date might the respondent reasonably have been expected to do it?

4.2.5 Was Acas Early Conciliation commenced within three months of the end of that period/decision/inconsistent act/date?

4.2.6 If applicable, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period/decision/inconsistent act/date?

4.2.7 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

4.2.7.1 Why were the complaints not made to the Tribunal in time?

4.2.7.2 In any event, is it just and equitable in all the circumstances to extend time?

5. **Remedy for discrimination**

5.1 What financial loss has the discrimination caused the claimant?

5.2 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

5.3 If not, for what period of loss should the claimant be compensated?

5.4 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

5.5 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

5.6 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

5.7 Should interest be awarded? How much?