EMPLOYMENT TRIBUNALS

Claimant: **Robert Taylor**

Respondent: **Teleperformance Limited**

Heard at: **Plymouth Employment Tribunal (CVP)**

On: **12,13 & 14 May 2025**

Before: **Employment Judge Oldroyd**
Rachael Barratt
Michael Cronin

For the Claimant: **In person**

For the Respondent: **Ms Lundy, Teleperformance Ltd**

Written Reasons

Introduction

1. The Claimant has a disability in the terms provided for by the Equality Act 2010. The Claimant asserts that the Respondent failed to make a reasonable adjustment for him in two respects. Firstly, the Claimant says that the Respondent failed to provide an ergonomic chair for him within a reasonable timescale. Secondly, the Claimant says that the Respondent failed to restore his access to a group Microsoft teams chat channel in order to assist him carry out his employment role.

2. The Respondent denies that the adjustments sought were reasonable.

Reasonable adjustments in respect of this hearing

3. It was noted in a Case Management Order dated 11 October 2024 as follows:

"This timetable is longer than would normally be expected in claims of this type. Additional time has been factored in to enable the claimant

to manage his anxiety and ADHD and to participate in the hearing by having breaks and giving him time to absorb what he has heard. The Tribunal also recognises he may need to get up and move around or move locations to relieve physical discomfort."

4. The Tribunal accommodated these adjustments during this hearing by taking breaks at least every hour or when the Claimant requested them (which he was encouraged to do). The Tribunal also managed the hearing in such a way as to allow the Claimant to attend two medical appointments that coincided with the hearing.

Documents and Evidence

5. The Tribunal was provided with a bundle of documents (the **Bundle**) to which both parties had access as well.

6. The Parties exchanged witness statements very late in the day, on the afternoon of 9 May 2025**.** The Tribunal explored with the parties whether they had been given sufficient time to consider the Statements, which they confirmed they had.

7. The Claimant produced a written Statement and was cross examined on it. The Respondent produced a Statement for Mr Kenney, the Claimant's former line manager and he was cross examined on it. The Tribunal put questions to both parties (with the parties then being able to ask follow up questions if they wished).

8. Mr Kenney was recalled, at the request of the Tribunal, before closing submissions to deal with a further query. Neither party objected to this and both parties had the opportunity to ask additional questions of the witness at this time also.

Background

9. The Respondent provides digital services to third party businesses. It is a very significant enterprise in terms of size with many hundreds of employees.

10. The Claimant was employed by the Respondent as from 20 March 2023 as a customer services agent.

11. The Claimant's role involved providing telephone support to customers applying to His Majesty's Passport Office (**HMPO**) for passports. It was sedentary role. The Claimant was tasked with dealing with calls within an average target time of 6 minutes.

12. The Claimant worked from home and he was managed remotely by the Respondent's Bristol office.

13. The Claimant applied for his role by way of an online application that is dated 16 February 2023. In making the application, the Claimant did not suggest that he had a disability or that he required special assistance of any kind.

14. In fact, the Claimant has a number of health issues and two disabilities (within the meaning of Section 6 Equality Act 2010) relating to this claim, both of which are admitted by the Respondent.

15. Firstly, the Claimant has musculoskeletal issues that arose because (among other things) of the Claimant having had back and hip surgery. This disability means that the Claimant is unable to sit or indeed stand for long periods of time. This is accepted by the Respondent.

16. Secondly, the Claimant has ADHD. Although ADHD had not been medically diagnosed at the relevant time, the Respondent does not dispute that the Claimant is disabled because of it.

17. The Claimant set out the effect of ADHD on him in a 'disability impact statement' (which was not challenged). The Claimant states (among other things) as follows:

    "The main areas that are affected by ADHD are my ability to focus and adapt to change … I must apply myself to remain focused… Two side effects of the ADHD are hyper focusing and also extreme distraction … I struggle when routines are disrupted or changed … the condition can also lead to feelings of being overwhelmed.…

18. The Claimant says that the Respondent failed to make reasonable adjustments in relation to each disability.

19. In respect of his musculoskeletal disability, the Claimant says the Respondent failed to provide him with an ergonomic chair within a reasonable timescale.

20. In terms of his ADHD, the Claimant says that the Respondent removed his access to a group Microsoft Teams chat channel that had been made available to him during his early weeks of his employment.

21. It is convenient to deal with each reasonable adjustment that the Claimant says ought to have been made separately.

The Chair

22. As noted, the Claimant did not disclose his musculoskeletal disability when applying for his role. The Claimant reasonably says that this was because he was unsure as to the precise requirements of the role and the impact of the disability upon it.

23. The Claimant went through an 'on-boarding' process prior to commencing work with the Respondent. During this process, the Claimant says that he orally disclosed his musculoskeletal disability and his need for reasonable adjustments in respect of it. The Claimant also says that during his initial two weeks of training, he alerted his trainers to his musculoskeletal disability.

24. There was no documentary evidence to confirm or contradict the Claimant's account. But this account was not disputed in evidence by the Respondent and we accept it as being accurate.

25. However, although we are satisfied that the Claimant revealed his musculoskeletal disability at this time, we are also satisfied the Claimant did not request an ergonomic chair (the **Chair**) and consequently the Respondent was reasonably not aware of this required adjustment at this early stage.

26. The Claimant's early focus was instead upon being provided with a laptop (as opposed to a desk computer) and a wireless headset as these would allow him to move around more easily and manage his musculoskeletal disability. This is apparent from a Display Screen Equipment Assessment Questionnaire (**DSE**) that was completed by the Claimant on 11 April 2023. The Questionnaire asked the Claimant what he required to achieve "*a suitable set up*" in order to carry out his duties from home. Whilst stating that he suffered from mobility issues, the Claimant answered:

    "A laptop and wireless headset would be perfect for my set up as it would allow me to move around".

27. The Claimant did not suggest that the Chair was required or would assist him. Indeed, in oral evidence, the Claimant accepted that his early focus was not on the Chair.

28. The Claimant was absent from work during the period 20 April 2023 - 1 May 2023 with conjunctivitis.

29. Upon his return and on 2 May 2023, the Claimant underwent an occupational health assessment and a report was produced (the **OH Report**). The OH Report appears to have been commissioned upon the Respondent becoming aware that the Claimant suffered from an

array of health conditions, not limited to musculoskeletal issues. The OH Report duly documented these health conditions in some detail, including the Claimant's musculoskeletal disability (and his ADHD).

30. As a result of the OH Report documenting the Claimant's musculoskeletal disability or else issues that were flagged in the DSE, the Respondent asked the Claimant to attend an online meeting on 5 May 2023 with Posturite. Posturite is an independent business that assesses the workstation requirements of employees and, if required, recommends and supplies appropriate ergonomic aids. Posturite produced a report (the **Posturite Report**) which noted that:

"[Mr Taylor] was reported to be borrowing a chair at home temporarily but this needs to go back shortly … Mr Taylor reported to find work extremely uncomfortable and he regularly needs to change position and stand up to alleviate any symptoms… Mr Taylor therefore finds extended periods of sitting and standing can exacerbate his pains.

Recommendation: Justification office chair with the following adjustments. Seat height, backrest height, back rest angle, seat pan depth, adjustable armrests, neck rest, tilt and tension mechanism. An example of this chair is RH Logic 400 or 220 …"

31. It was the Posturite Report, therefore, that first recommended the Chair. It is certainly clear that this was the first time that the Respondent became aware of the Claimant's potential need for the Chair.

32. Pausing here, the Tribunal has considered whether the Respondent was dilatory in recognising the Claimant's need for the Chair, given that it was aware of the Claimant's musculoskeletal disability as from at least 20 March 2023. We do not consider that the Respondent was dilatory given that:

    32.1 The DSE was completed by 11 April 2023 and so within a reasonable timescale. That did not flag the need for the Chair. Whilst there might have been some delay in organising the DSE there is no suggestion that any delays were willful on the part of the Respondent and they were not so significant as to be deemed unreasonable.

    32.2 The Claimant had not otherwise indicated that he required the Chair. The Claimant was pressing instead, if anything, for other equipment.

    32.3 The Claimant was absent with sickness for period of time at this stage.

33. Upon receipt of the Posturite Report, the Respondent agreed to provide the Chair to the Claimant.

34. Posturite made its recommendation on 5 May 2023 and the Chair was provided to the Claimant on 19 June 2023. The precise reasons for this passage of time are not known and they were not explored in evidence.

35. It is possible that any delay in providing the Chair may in part have been caused by the Claimant embarking upon a further period of sickness absence between 1 and 10 June 2023.

36. During the Claimant's sickness absence that ended on 10 June 2023, the Claimant became line managed by Christopher Kenney. When the Claimant returned to work, he was frustrated that the Chair had still not been delivered to him.

37. The Claimant says that it was Mr Kenney's intervention that led to the delivery of the Chair being expedited, such that the Chair was delivered to the Claimant's home address and assembled by Posturite on 19 June 2023. Mr Kenney dealt with this issue in evidence. Mr Kenney says that he reviewed the Claimant's needs sometime before 10 June 2023 (in anticipation of line managing him), but he did not take any steps to actively chase up the Chair as his understanding was that it was already on order and that it was due to be delivered shortly. We have no reason to dispute this account.

38. Once delivered, the Claimant reported some issues with the Chair and noted that the arm rests were "*wobbly*". Despite this, the Claimant was satisfied with the Chair. The Claimant reported this to Mr Kenney on 19 June 2023.

39. In this claim, the Claimant's criticism of the Respondent is not that that the Chair was defective or unsuitable, but only that he received it on 19 June 2023, some 3 months after he first started to work. It is the delay that is the sole focus of the claim.

<u>Microsoft teams chat channel</u>

40. The Claimant was one of more than 100 individuals who joined the Respondent in anticipation of the number passport applications increasing significantly as the summer months approached. The Respondent refers to this as a "*ramp up*" period.

41. Upon joining the Respondent, the Claimant and other new joiners went through a training process that lasted about 2 weeks. Not all of the new joiners were trained at the same time. Instead, the new

joiners were trained in five separate groups of about 20 over a 6-week period or so.

42. Once a new joiner had completed training, they were placed into a process that Respondent calls "*grad-bay*" for a few weeks and until all the new joiners had been trained. During this period, the new joiner began to have direct telephone contact with passport applicants with a view to answering their varied queries.

43. Some queries were simple to resolve (such as a request to confirm that a passport application had been received). Others were more complicated to resolve (such as a query relating to how to obtain a passport from a foreign location).

44. In order to assist new joiners such as the Claimant to deal with more complicated queries, they had access to a digital database called 'Knowledge Base'. However, Knowledge Base was widely regarded as being imperfect as it was not always easy to find simple answers to more complicated queries, especially during a difficult phone call with a frustrated applicant.

45. To assist new joiners, they all had access to a Microsoft teams chat channel (the **Grad-Bay Channel**) during the grad-bay period. As the Grad-Bay Channel was accessible by of all those who had graduated training its membership eventually comprised 100 or more recent trainees.

46. The Claimant, and other members of the Grad-Bay Channel, were able to post 'on-line' queries raised by applicants to which they did not know the answer whilst themselves speaking to those applicants on the telephone. These more involved queries would then be reviewed by more experienced employees who were specifically tasked with monitoring the Channel and providing immediate answers.

47. However, after the grad-bay period came to an end, the Grad-Bay Channel was closed down and the Claimant no longer had access to it. This would coincide with each new recruit being assigned to a line manager and becoming part of a smaller team 10-20 individuals.

48. The Claimant was not clear in his evidence as to when he lost access to the Grad Bay Channel, but he believed that the Channel was closed whilst he was on sick leave between 1 and 10 June 2023. This coincided with the end of the Respondent's "*ramp up*" recruitment drive and training process and the Claimant becoming line managed by Mr Kenney.

49. The Claimant was unhappy that he no longer had access to the Grad Bay Channel. What the Claimant especially valued was the

instantaneous responses that were provided via the Channel as these assisted him in ensuring that he could resolve more complicated applicant queries within an average time of 6 minutes. In this way, the Claimant made a clear link between the loss of the Grad-Bay Channel and his ability to perform in his role and meet his targets.

50. In evidence, the Claimant did not explain very clearly how the Grad-Bay Channel prevented him from being substantially disadvantaged by his ADHD in comparison to others without ADHD. Indeed, the Claimant's evidence appeared to be that the removal of the Grad Bay Channel had a negative effect on all employees, regardless of whether they had ADHD or not. Hence, in oral evidence the Claimant stated:

"Everyone was furious when [the Grad-Bay Channel] was pulled, No one could handle it".

51. In terms of when the Respondent knew that the Claimant had ADHD, the Tribunal is satisfied that this was on receipt of the OH Report on 3 May 2023 which documented the condition. There was no suggestion in any of the documents or evidence that the Respondent had any prior knowledge of this disability.

52. For its part the Respondent, through Mr Kenney, accepts that the Claimant pressed to have further access to the Grad-Bay Channel upon his return to work on 10 June 2023 and most notably in a Stress Evaluation discussion that took place on 25 August 2023. This document records the Claimant saying as follows:

"Although [Knowledge Base] is good for information, not everything is covered and there are some errors with the information. The [Grad-Bay Channel] was far more helpful but has now been removed...I cannot reach out to my team leader every time as he is very busy as are other team members in the group."

53. Mr Kenney accepted that he could see how restored access to the Grad-Bay Channel might be beneficial to the Claimant as it was obviously beneficial to have a form of instantaneous 'live support'.

54. However, Mr Kenney's view (adopted by the Respondent) was that, although he did explore with his own line manager whether the Grad-Bay Channel could be restored, there were good reasons why it was not reasonable to do so. These reasons were summarised in Mr Kenney's written and oral evidence. There are six such reasons which we set out in turn:

54.1 Although the Claimant did not have access to the Grad-Bay Channel, he immediately became a member of a different Microsoft teams group chat channel operated by Mr Kenney and his team. This was a smaller teams channel which extended to about 20 individuals, many of whom were very experienced.

In his Statement, Mr Kenney stated:

"There were a lot of tenured agents in my team- a lot of heavily experienced staff. I had my own chat for my own team, which the Claimant was part of. The Claimant was able to help others, and he could also get answers of the more tenured agents in the team if he did have any questions. He didn't have as wide a net for support (as the Grad-Bay chat), but he was always able to get any answers from others in my own team."

Whilst this teams channel did not provide 'live support', the Bundle contains examples of the Claimant using this channel and receiving answers to queries in a matter of 2- 4 minutes. This is a short period of time, but we do note that this must be seen in the context of the Claimant having to complete calls within a target time 6 minutes on average.

54.2 Whilst Mr Kenney accepted that the Grad-Bay Channel was useful for new 'graduates' (in terms of speed of response in particular), it had drawbacks. Notably, because the Channel serviced a large cohort of recent 'graduates', it was sometimes overwhelmed with queries that could be missed. Mr Kenney's smaller channel was not affected by this drawback.

54.3 There was a significant cost to the Grad-Bay Channel in that the queries posted to it were responded to by dedicated individuals that the Respondent had to divert away from other essential duties. The Respondent required these individuals to carry out 'the day job' of answering calls and dealing with applicant queries as the busier summer months approached. In his Statement, Mr Kenney put it this way:

"If we were to implement a wider group-chat with lots of people in it e.g. the grad-bay chat, this includes more designated floor support. i.e. we need to take customer services advisors off their own roles to support this chat."

Mr Kenney further explained in his oral evidence that if resource was diverted for the purpose of manning the Grad-Bay Channel, then that risked the Respondent failing to meet targets set by its client, (HMPO) which in turn gave rise to the risk of contractual penalties or the loss of a valuable contract.

54.4 Mr Kenney noted that he did not detect that other employee shared the Claimant's enthusiasm for the Grad-Bay Channel, with the consequence that it would not be of wider benefit to the Respondent's business were it to be restored. Mr Kenney stated:

"Following the Claimant's sickness absence, I had looked into reinstating a grad-bay style group-chat but there was nobody within the team needing it."

The reality was that were the Channel restored it would be for the Claimant's sole benefit but at a significant cost.

54.5 The Claimant did have access to other resources as well. Notably, the Claimant was able to resolve complicated queries by accessing Knowledge Base. Mr Kenney accepted that Knowledge Base was not especially intuitive and that it required experience to use it effectively. But it was a tool that was available to the Claimant and his use of it would become more effective as he became more experienced in his role.

54.6 There was no suggestion that the Claimant's performance was affected by the loss of the Grad-Bay Channel. In fact, Mr Kenney described the Claimant as an outstanding performer who did not need access to the Channel to improve his performance. The Claimant's performance was, in the view of Mr Kenney, excellent already.

55. The consequence of this was that the Claimant's access to the Grad-Bay Channel was not restored.

Subsequent events

56. Having set out the key events relating to the Chair and the Grad-Bay Channel, it is now convenient to set out subsequent events that culminated in the Claimant resigning from his role. These subsequent events are not directly relevant to the claim but are set out for completeness.

57. On 16 October 2023, the Claimant suffered from a prolapsed disc and this was to lead him to being absent from work for a significant period and until 7 June 2024.

58. Welfare meetings took place with the Claimant on 28 November 2023, 18 December 2023, and 29 February 2024. The Claimant did not mention the Grad-Bay Channel at this time (or the Chair), though the focus of these meetings was on other issues.

59. The Claimant returned to work on 7 June 2024 and undertook a 'return to work interview'. The Claimant's need for the Grad-Bay Channel was not mentioned again, though this may have been because the Respondent had made its position on the subject clear. This claim had been commenced by this stage, in any event.

60. The Claimant resigned on 5 July 2024 for reasons that were not (directly at least) related to the absence of the Grad-Bay Channel (or the Chair). This seems clear from the terms of the Claimant's resignation e-mail which reads as follows:

    "I write to you today to inform you that I have made the difficult decision to tender my resignation from the role of Customer Service Advisor. With everything going on, and the reports and signing of documents, plus the reduced hours, it is all too stressful for me. I almost feel more stressed now than I felt when I was working full time hours. I feel like I am under a lot of pressure at present within the role, I also feel this is only adding to your workload which I understand could be frustrating for you. As you are aware, my time with Teleperformance has been challenging and eventful, and it has taken quite a long time for me to find stability within the role, but I just feel that it is not the right role for me at this time. If I had have had you as a manager in the first instance, I feel I would have been better supported and would have progressed in my role as I wouldn't have had to take as much time off but such is life! Through the whole process you have encouraged me to come back, you have told me to come back and mentioned how good my stats were. But as you say, health comes first!"

61. The Claimant commenced this claim, before his resignation, by way of ET1 dated 27 December 2023.

The Claimant's Application to amend the List of Issues

62. The legal issues that the Tribunal must determine were set out in a list of issues which were set out in a Case Management Order dated 11 October 2024 (the **CMO**). At that time, the Claimant is recorded as

having confirmed that his complaints centered on the Chair and the Grad- Bay Channel only.

63. Whilst the Claimant's ET1 referenced other complaints, the CMO confirms that these were provided by way of context and that the purpose of this was to "*tell his journey*".

64. The CMO provides, at paragraph 14, that if the Claimant disagreed with the issues identified in the CMO then he should contact the Tribunal by 31 January 2025 and that, if he did not, the list of issues would be treated as final "*unless the Tribunal decides otherwise*".

65. The list of issues was discussed with the parties at the outset of this hearing. It was confirmed by both parties that there were two issues for the Tribunal to consider:

    65.1 Did the Respondent breach its duty to make a reasonable adjustment by not providing the Chair within a reasonable timescale; and

    65.2 Did the Respondent breach its duty to make a reasonable adjustment by not restoring the Claimant's access to the Grad-Bay Channel.

66. After evidence had been concluded and at the end of the first day of the hearing but before closing submissions, the Claimant suggested that his claim had been overly narrowed by the CMO and that he wished to the bring additional claims. To this end the Claimant wished to claim that the Respondent also failed to make reasonable adjustments on account of its alleged delay in providing a laptop, wireless headset, docking station, keyboard, mouse and multiple screens (the **Additional Equipment).** These were issues that were referenced to some degree in ET1 but which the CMO suggested had been set out for context only. These issues had not been explored in the oral evidence.

67. The Claimant was informed at this time that he would need to make an application pursuant to Rule 30 of the *Employment Procedure Tribunal Rules* (the **Rules**) to amend the list of issues and that he should consider, overnight, if he wished to do so.

68. The Claimant proceeded to make an oral Application on the morning of the second day of the hearing, immediately before closing arguments were due to be heard.

69. The Respondent opposed the Application. In a nutshell, the Respondent argued that it had prepared its defence on the basis that the claim focused only on the Chair and the Grad-Bay Channel. The

Respondent noted that it had not adduced all the evidence that it might wish to deploy in respect of the Additional Equipment allegations.

70. The Tribunal adjourned the hearing for a short while to allow the Respondent to investigate whether it could collate the evidence it required to be able to set out its position on the Additional Equipment. After the short adjournment, the Respondent confirmed that, whilst it had some information (and indeed some information relating to the Additional Equipment already appeared in the Bundle), it did not have all the information it required and it also was unable to discuss matters with at least one relevant witness (who was no longer employed by the Respondent).

71. The Tribunal retired to consider the Application.

72. In considering the Application, the Tribunal had regard to the Overriding Objective set out at Rule 3 of the Rules. In summary, Rule 3 requires the Tribunal to deal with cases fairly and justly. The Tribunal must endeavor to place parties on an equal footing, deal with cases in a way which is proportionate, avoid delay and save expense.

73. It was recognised that, were the Application to be refused, then the Claimant would be denied the chance to advance a claim in relation to the Additional Equipment that might succeed and which was important to him. Despite this, the Tribunal refused the Application for two core reasons.

74. Firstly, it was clear that it was impossible to fairly deal with claims relating to the Additional Equipment during the hearing as listed. The Respondent had not disclosed (or searched for) all of its documents relating to the Additional Equipment and had also not proofed or provided statements from relevant witnesses. It would be unfair to expect the Respondent to undertake these tasks during the hearing as listed and it would probably not be possible for the Respondent to do so in any event.

75. Secondly, the only feasible way to deal with the any claim relating to the Additional Equipment would be to adjourn the present hearing and then give directions for additional disclosure and witness evidence with a view to relisting the hearing for at least 2 or even 3 days at some point in the future. This would lead to a very significant delay and expense. Indeed, the Claimant himself indicated that he was unwilling to see the hearing being adjourned because of the delay it would cause.

76. In refusing the Application, the Tribunal also took account of the fact that the Claimant had been on notice of the list of issues since 11

October 2024 and he had every opportunity to apply to amend it at an earlier stage, but he did not do so. The Claimant did not put forward any explanation to account for this.

77. Although the Application was refused, the Tribunal did indicate to the Claimant that there was no objection to him referring to the Additional Equipment during his closing submissions to provide context and, as the CMO put it, to "*tell his journey*".

The Law

78. The duty to make reasonable adjustments for a person affected by a disability set out in Section 20 & 21 of the Equality Act 2010 (the **Act**).

79. Section 29(5) of the Act provides that the duty applies to employers.

80. The duty arises, pursuant to Section 20, in three specified circumstances, and where a persons affected by disability is placed at "*substantial disadvantage*" in comparison to persons who are not disabled.

81. One of the specified circumstances in which the duty to make reasonable adjustment arises is where substantial disadvantage is the result of the absence of an auxiliary aid. This is dealt with at Section 20(5) of the Act and it is this circumstance that is relevant and to this claim.

82. An auxiliary aid is defined widely by S20(11) of the Act. It encompasses both technological aids and also services. It is not disputed that both the Chair and the Grad-Bay Teams Channel are such aids.

83. Substantial disadvantage is defined at Section 212(1) of the Act as being something "*more than minor or trivial*". It is not a burdensome threshold to meet; but this does not mean that every disability requires an adjustment. Something more is required.

84. It is important to not make generalised assumptions about the nature of the disadvantage as opposed to correlating the alleged disadvantage with a claimant's particular disability. There must be a link between the disadvantage and the disability (albeit this in not a causation question). In *Sheikholeslami v University of Edinburgh [2018] IRLR 1090)* Simler J summarised the position as follows:

"The purpose of the comparison exercise with people who are not disabled is to test whether the [absence of an auxiliary aid] has the effect of producing the relevant disadvantage as between those who

are and those who are not disabled, and whether what causes the disadvantage is the [absence of an auxiliary aid]. That is not a causation question. For this reason also, there is no requirement to identify a comparator or comparator group whose circumstances are the same or nearly the same as the disabled person's circumstances…The fact that both groups are treated equally and that both may suffer a disadvantage in consequence does not eliminate the claim. Both groups might be disadvantaged but the [absence of an auxiliary aid] may bite harder on the disabled or a group of disabled people than it does on those without disability. Whether there is a substantial disadvantage as a result of the application of [the absence of an auxiliary aid] in a particular case is a question of fact assessed on an objective basis and measured by comparison with what the position would be if the disabled person in question did not have a disability."

85. Where the duty to make reasonable adjustments arises, the employer must take such steps as are reasonable to avoid the disadvantage (or, in the case of Section 20(5) of the Act, to provide the auxiliary aid).

86. What amounts to reasonable steps to alleviate any substantial disadvantage is not identified by the Act. However, Paragraph 6.28 of the *Equality and Human Rights Commission's Statutory Code of Practice on Employment* identifies the factors relevant to whether an adjustment is objectively reasonable or not. These include the extent to which an adjustment is likely to be effective, the financial and other costs of making the adjustment and the extent of any disruption caused, the extent of the employer's financial resources, the availability of financial or other assistance and the type and size of the employer.

87. In terms of timescale, the obligation is to implement any adjustments within a reasonable timescale (*Ministry of Defence -v- Cummins [2015] 2 WLUK 598*).

88. The duty to make an adjustment does not arise if the employer does not know, or could not reasonably know, of the disability of the claimant and also the substantial disadvantage that is the subject of complaint (para 20(1) Schedule 8 of the Act). The burden to establish an absence of knowledge rests on the employer.

89. The burden of proof provisions set out at Section 136 of the Act apply to any claim that the duty to provide reasonable adjustments has been breached. Assuming the Claimant establishes disability and the employer fails to establish it had no knowledge of that, the Claimant must prove facts from which it can be reasonably inferred, absent explanation, that the duty to provide reasonable adjustments has

been breached. The burden then shifts to the employer to prove it had no knowledge of substantial disadvantage or by showing the adjustment was not reasonable (*Project Management Institute v Latif [2007] IRLR 579, EAT).*

Conclusions: The Chair

90. Conclusions on the issue of whether the Respondent failed to make a reasonable adjustment by providing the Claimant with the Chair within a reasonable timescale rest on the answers to four questions that we deal with in turn:

90.1 Did the Respondent know that the Claimant had a musculoskeletal disability and from when?

We have found that the Respondent was aware of the Claimant's musculoskeletal disability as from the point he joined the Respondent. The Claimant raised it during his on-boarding and also during his training.

90.2 Did the absence of the Chair place the Claimant at a substantial disadvantage compared to others without the disability?

This was not disputed by the Respondent. We are satisfied in any event that the fact that the Claimant was unable to sit for extended periods of time placed him at a substantial disadvantage compared to those without the relevant disability given the Claimant's role was a sedentary one.

90.3 Did the Respondent know or should it have known that the Claimant would be placed at substantial disadvantage and from when?

Although the Claimant raised his musculoskeletal disability with the Respondent at the outset, it reasonably only came to appreciate that the absence of the Chair would put him at a disadvantage once its purchase had been recommended by Posturite on or about 5 May 2023.

Prior to that, we have found that the Claimant did not himself request the Chair and he had been suggesting that reasonable adjustments in the form of a laptop and also a wireless headset would meet his needs.

90.4 Did the Respondent take reasonable steps to avoid the disadvantage by providing the Claimant with the Chair within a reasonable timeframe?

We are satisfied that that the Respondent provided the Chair within a reasonable timeframe.

To this end we have found that the Respondent first became aware of the need for the Chair on 5 May 2023, following the Posturite Report. The Chair was provided to the Claimant just over 6 weeks later.

Given the Respondent had to consider the Posturite Report, place an order and then organise and await delivery, we do not find the passage of this 6-week period to be unreasonable when viewed objectively. This view is reinforced by the fact that:

a. During this 6-week period, other adjustments (seen by the Claimant to be more pressing, based on his answers in the DSE) had been made (including the provision of a laptop and wireless headset).

b. The Chair was not a common or garden auxiliary aid that could be easily purchased. It was a specialist ergonomic Chair that was provided and assembled by a third party, Posturite. The Respondent did not have total control over the process.

c. We have not seen any evidence that the Claimant was otherwise pressing for the Chair. Indeed, as the Posturite Report stated, the Claimant was borrowing a chair which seemed suitable for his needs pending delivery of the Chair.

d. The Claimant was also absent from work for certain periods of time during this period.

Indeed, even if we had found that the Respondent ought to have identified the need for the Chair at a much earlier stage (ie at the outset of his employment), we still would not have considered the delivery of it on 19 June 2023 to have been unreasonable, viewed objectively, for the reasons set out above.

91. Because the Respondent provided the Chair within a reasonable timescale, this aspect of the claim must fail.

Analysis: The Grad-Bay Channel

92. As far as the removal of the Grad-Bay Channel from the Claimant is concerned, we shall again consider this issue by reference to 4 pertinent questions.

    92.1 Did the Respondent know that the Claimant had ADHD and from when?

    It is clear to us that the Respondent was only made aware of the Claimant's ADHD once it received the OH Report on or about 3 May 2023. There is no record in the documents of the Claimant referring to his ADHD at an earlier stage and the Claimant did not suggest otherwise in evidence.

    In any event, it is worth noting that the Grad-Bay Channel was not removed from the Claimant until about 10 June 2023 (by which time the Respondent was aware of the Claimant's ADHD).

    92.2 Did the absence of the Grad Bay Channel place the Claimant at a substantial disadvantage compared to others without ADHD?

    We are satisfied that the removal of the Grad-Bay Channel put the Claimant at substantial disadvantage in the sense that the disadvantage was more than trivial. This is consistent with the Claimant's view (which we accept) that the Channel was helpful to him. It is also consistent with Mr Kenney's frank acceptance that the Grad-Bay Channel was a beneficial tool.

    It must also be established, though, that the Grad-Bay Channel put the Claimant at a disadvantage when compared to those without ADHD.

    Although the Claimant himself accepted that the restoration of the Grad-Bay Channel would have been universally beneficial, that does not mean the Claimant cannot show he was disadvantaged in comparison to those without ADHD. In accordance with *Sheikholeslami*, it is necessary to consider whether the absence of the Grad-Bay Channel "*bit harder*" on the Claimant because of his ADHD.

    On balance, we are satisfied that the Claimant has established that he was comparatively disadvantaged. This is because the Claimant's ADHD involved him having issues with focus (including hyperfocus) as well as being more susceptible to being overwhelmed by emotions. This in turn meant that the Claimant was likely to require more

support than those without ADHD. The Grad-Bay Channel was such a means of support.

The Grad-Bay Channel, which was accepted by the Respondent to be a beneficial tool, allowed the Claimant to manage his role more efficiently and this would have played at least some role in assisting the Claimant to manage these aspects of his ADHD more effectively. This in turn would have met the Claimant's primary concern which was to satisfy himself that he was meeting his performance targets.

The Respondent did not suggest in evidence or closing that the Claimant was not substantially disadvantaged in this way.

92.3 Did the Respondent know or should it have known that the Claimant would be placed at substantial disadvantage by the removal of the Grad-Bay Channel?

We are satisfied that Respondent was aware that the removal of the Grad-Bay Channel placed the Claimant at substantial disadvantage. This flows from Mr Kenney's acceptance of the fact that the Channel was a beneficial tool (and that he did at least explore its restoration for this reason) and also the fact that the Claimant repeatedly told Mr Kenney that he found it a helpful tool.

92.4 Was it reasonable for the Respondent to have refused the Claimant's request to reinstate the Grad-Bay Channel?

We are satisfied that, viewed objectively, the Respondent acted reasonably by not restoring the Grad-Bay Channel for the reasons given by Mr Kenney in evidence. In summary:

a. The Claimant had access to other tools and support that were, in our view, very effective. The Claimant had access to Knowledge Base but, more crucially, he was a member of Mr Kenney's teams channel. The evidence (especially the examples of the team chats that are in the Bundle) demonstrate that the Claimant was an active and effective user of that Channel and that the Claimant derived real and tangible benefit from it. The Claimant also had access to a supportive line manager, Mr Kenney. Mr Kenney struck us as being a diligent and supportive manager. Whilst

he was no doubt a busy man and not always available to provide instant answers to more complicated queries, he struck us as an effective line manager who was committed to ensuring that the Claimant had appropriate support in place.

Further, it is to be remembered that the Claimant was new in his role but his experience would be increasing day by day, and with that, his need for the Grad-Bay Channel would be diminishing as well.

b. It was simply not feasible to restore access to the Grad-Bay Channel given that the Respondent did not have the resource required to provide the 'live support' that came with it and that the Claimant craved. That resource was required to meet the demands placed on the Respondent by an increasing number of calls as the busier summer months approached and the number of passport applications increased. Restoring the Channel (which usually only operated in less busy times when the Respondent was in its 'ramp up' phase) would have presented real challenges and risk to the Respondent. We accept that the Respondent had to balance the wishes of the Claimant against its wider business need to service HMPO and thereby avoid contractual penalties and the loss of a valuable contract.

c. We accept the evidence of Mr Kenney that there was not a wider demand within the Respondent for the restoration of the Grad-Bay Channel. That being the case, dedicating precious resource to the Channel, which was at risk of being underused, would not have benefited the Respondent at large and was very likely to have been inefficient and costly.

d. The Grad-Bay Channel was not as effective a tool as the Claimant believed it to be. As Mr Kenney noted, the fact that it could be accessed by many individuals could mean that it was, at times, overwhelmed and important queries were not responded to promptly. We therefore do not consider that the Channel would have markedly alleviated the disadvantage, which is the subject

of complaint, if at all. This is particularly the case given the Claimant did have access to other means of support. This finding is not inconsistent with the finding that the absence of the Channel put the Claimant at a disadvantage given this is a low threshold.

e. There is no suggestion that the Claimant's performance was affected by the loss of the Grad-Bay Channel. Mr Kenney was at pains to stress in his evidence that the Claimant was a highly effective employee in terms of his performance. This again suggests the restoration of the Channel would not have alleviated any disadvantage. Whilst the focus must be on whether the restoration of the Grad-Bay Channel would have alleviated the disadvantage resulting from the Claimant's ADHD (as opposed to improving the Claimant's performance), it is to be noted that Claimant himself links his disadvantage with his ability to perform effectively in his role.

f. This is not a case where the Respondent did not explore the possibility of implementing the adjustment. It is clear that the restoration of the Grad-Bay Channel was carefully considered by Mr Kenney and the Respondent.

In reaching our view we have, of course, considered the fact that the Respondent is a very large enterprise with significant resources. Nonetheless, we have balanced the marginal additional benefit to the Claimant of the restoration of the Grad-Bay Chanel against the significant burden on the Respondent and find that the Respondent's decision not to restore the Channel was reasonable.

93. For these reasons the Claimant's claim must fail.

Employment Judge Oldroyd

Dated 27 May 2025

Sent to the parties on

28 May 2025

By Mr J McCormick

For the Tribunal

Reasons

Reasons for the decision having been given orally at the hearing, written reasons will not be provided unless a written request is received from either party within 14 days of the sending of this record of the decision.

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