



EMPLOYMENT TRIBUNALS

Claimant: Mr R Bryce

Respondent: Solihull Community Housing Limited

Heard at: Midlands West

On: 4,5,6 March and 6,8,9 May
2025

Before: Employment Judge C Taylor
Mr P Kennedy
Mr R White

REPRESENTATION:

Claimant: In person

Respondent: Mr Wright (Counsel)

RESERVED DECISION AND REASONS

The unanimous judgment of the Tribunal is as follows:

Failure to make reasonable adjustments for disability

1. The complaint of failure to make reasonable adjustments for disability is not well-founded and is dismissed.

REASONS

Background

2. The background facts are largely undisputed and are as follows:

- (i) The claimant saw the online advertisement for the role of part-time Accounts Manager 30 minutes before the deadline for applying. The claimant made, what can be described as an outline application, which lacked substantive detailed responses, ten minutes before the deadline, at 23:50 on 02 April 2023.
- (ii) The claimant contacted the respondent on 03 April 2023 and, following discussions and the involvement of ACAS, the respondent afforded the claimant further time to complete an offline application which he duly did.
- (iii) When submitting his application, the claimant's email stated, "as a reasonable adjustment to safeguard any inaccuracies. Please contact me for clarification on my job application form. Whilst all due diligence has been carefully inputted into the application. There is a small margin that there is something that is missing so I ask to contact me if there is something you need to clarify before making a decision that may not lead to an interview."

- (iv) The respondent did not call the claimant. Their reasoning for this was that they thought that this would disadvantage the other candidates. In evidence the respondent's witnesses stated that there was nothing within the application form which required clarification.
- (v) There were five applicants for the role in total. The claimant's application was considered by the hiring managers, Mr Gilmore and Mr Jones.
- (vi) Mr Jones scored the claimant 8 out of 15 and the other candidates, 7,5,5 and 14. Mr Gilmore gave the claimant a score of 7 and gave the other candidates 4,4,3 and 14. Applicants were required to meet 10 of 15 essential criteria in order to be interviewed.
- (vii) The section of the application form requiring candidates to demonstrate relevant skills and experience stated, "please demonstrate here how you meet the criteria on the person specification giving specific examples to support your answer. You can include knowledge or experience you have gained through paid or unpaid work. This statement will be used to assess whether you will be invited to interview/assessment."

- (viii) The respondent has a PCP in its recruitment and selection process that applicants with a disability who meet all the essential criteria must be offered an interview.

Claims and Issues

3. A list of issues in respect of liability was agreed and is set out in the case management order of 05 July 2024 as follows:

- (i) Did the respondent know or could it have reasonably have been expected to know that the claimant had the disability? From what date?
- (ii) Did the respondent have the following PCPs:
 - A job applicant must evidence in writing that they meet the essential criteria for the job before obtaining an interview.
- (iii) Did the PCP put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that, by reason of his impairments he had communication difficulties which meant he could not necessarily evidence in writing that he met the essential criteria?
- (iv) Did the respondent know or could it have reasonably been expected to know that that the claimant was likely to be placed at the disadvantage?

- (v) What steps could have been taken to avoid the disadvantage? The claimant suggests:
 - Telephoned the claimant to discuss his application and whether he could demonstrate orally the criteria for the post prior to selecting him for an interview.
- (vi) Was it reasonable for the respondent to take those steps and when?
- (vii) Did the respondent take those steps?

Reasonable adjustments during the hearing

4. The following reasonable adjustments were agreed:

- (i) A break of ten minutes every hour;
- (ii) The claimant was reassured that he may seek clarification at any stage by asking for a question to be repeated or re-phrasing it to check understanding;
- (iii) The claimant could take time when considering responses and could inform us if/when he was no longer able to maintain concentration;
- (iv) The claimant was not expected to rely upon his memory alone for details of dates, times, locations and sequences of event.
- (v) Mr Wright was also guided to adjust his cross-examination style by asking single questions, letting the claimant have thinking time to assimilate information and produce a considered response, not

asking the claimant to read though large parts of a document and to comment upon it, asking closed rather than open questions wherever possible.

5. The claimant requested further adjustment that, misunderstandings on his part would not be treated as evasiveness and inconsistencies would not be regarded as indications of untruthfulness. The claimant submitted that the Equal Treatment Bench Book supported such an adjustment. We did not agree to this adjustment which would essentially preclude any adverse assessment of the claimant's evidence being made. We assured the claimant that we would, and indeed we have, taken into account his disabilities and the medical evidence of how these disabilities present when assessing his evidence. The Equal Treatment Bench Book does not support the adjustment sought by the claimant.
6. We were informed that Mrs Duffy is hard of hearing and wears hearing aids. No adjustment was requested in respect of this save for everyone to speak clearly and slowly. There was no objection to this. No issue with Mrs Duffy being able to hear was raised with us during the hearing.

Documents

7. We had before us an agreed bundle of 401 pages, a witness bundle, authorities relied upon by the claimant and the respondent's skeleton argument. Throughout the hearing we were provided with a typed copy of

the notes at pages 131-132 of the bundle, the claimant's application for disclosure of Mrs Duffy's notes, a copy of those notes, the claimant's written submission and skeleton argument, further authorities and an updated schedule of loss.

8. The claimant emailed the Tribunal a copy of the decision *AECOM v Mr Mallon* [2023] EAT 104 after his oral submissions with a request that the Tribunal read the decision. The respondent objected to this further submission. The provision of the decision was not a further submission because it had already been referred to in the claimant's skeleton argument.
9. We have considered all of the documents and evidence even where not explicitly referred to in this decision. We make reference to the evidence and documents only where necessary to explain our decision.

Evidence Heard

10. We heard evidence from the claimant and for the respondent, Mr Gilmore, an Income Collection Team Leader, Mr Jones a Housing Services Manager and Mrs Duffy, HR Adviser. Each witness provided a written statement and was cross-examined.
11. We considered all of the witnesses to be credible and found their evidence to be forthright and consistent with their witness statements.

12. It is accepted by Mrs Duffy that she took notes in advance of her giving evidence. Her evidence on this was that she heard the questions the claimant asked the other witnesses and looked up certain terms such as dyslexia and autism. Her oral evidence was that this was in preparation for her giving evidence and as an aide memoire. When we asked Mrs Duffy about this she stated that she had only taken scrappy notes. This gave the impression of handwritten notes. Mrs Duffy's further evidence was that she only took electronic notes of terms she had looked up on google and that she had provided the entirety of these. We accept this explanation and are satisfied that Mrs Duffy provided all of the notes she took.

13. Both the claimant and Mr Wright supplemented their written submissions and skeleton arguments with oral submissions.

Law

14. Section 20 of the Equality Act 2010 provides:

“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”.

15. Section 21 of the Equality Act 2010 provides:

“(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person”.

16. Section 39 of the Equality Act provides: “(1) An employer (A) must not discriminate against a person (B)— (a) in the arrangements A makes for deciding to whom to offer employment; (b) as to the terms on which A offers B employment; (c) by not offering B employment”.

17. The EHRC Code of Practice is not legally binding, but the Tribunal must consider any part of the Code that is relevant to any questions arising in the proceedings.

18. Paragraph 6.16 of the Code states:

“The purpose of the comparison with people who are not disabled is to establish whether it is because of disability that a particular provision, criterion, practice or physical feature or the absence of an auxiliary aid disadvantages the disabled person in question. Accordingly – and unlike direct or indirect discrimination – under the duty to make adjustments 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”.

19. Paragraph 6.28 of the Code sets out the factors that might be considered in determining whether a step is reasonable:

- whether taking any particular steps would be effective in preventing the substantial disadvantage;
- the practicability of the step; • the financial and other costs of making the adjustment and the extent of any disruption caused; • the extent of the employer’s financial or other resources; • the availability to the

employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and

- the type and size of the employer.”

20. A PCP is a provision, criterion or practice that puts a disabled person at a substantial disadvantage in relation to a non-disabled person. If a PCP is applied and places the disabled person at that substantial disadvantage, then the prospective employer or employer must take reasonable steps to ensure the disabled person is not disadvantaged because of the PCP. Substantial means more than minor or trivial.

21. The Claimant must prove the PCP was applied to him and caused a substantial disadvantage, *Bethnal Green & Shoreditch Educational Trust -v- Dippenaar* UKEAT/0064/17. The Claimant must also show not only that the duty to make reasonable adjustments has arisen, but also to identify a reasonable adjustment that could have been made as per *Elias P in Project Management Institute -v-Latif* [2007] IRLR 579. The question of whether the proposed steps were reasonable must be determined objectively by the Tribunal as per *Smooth -vChurchills Stairlifts plc* [2006] ICR 524.

22. Further it is correct to say a Tribunal must be satisfied that the disadvantage would not equally arise in the case of someone without the Claimant’s disability, see *Newcastle upon Tyne Hospitals NHS Trust v*

Bagley UKEAT/0417/11 although the Claimant does not need to show that disadvantage arises because of his disability: Sheikholeslami v University of Edinburgh UKEAT/0014/17.

23. The question of whether and to what extent the step would be effective to avoid the disadvantage is an important one to weigh in the balance: Secretary of State for Work & Pensions (Job Centre Plus) v Higgins [2014] ICR, EAT. 37. In Paulley v FirstGroup plc [2014] EWCA Civ 1573, CA, per Lewison LJ at [44], adding at [45]: “This is not a threshold test. The prospects of success in achieving the desired objective are to be weighed in the balance against the cost and difficulty of making the adjustment.”

24. In assessment/job application cases it would not be reasonable to require an employer to remove a PCP that, if removed, would deprive the assessment of its value. In the Government Legal Service v Brookes UKEAT/0302/16 [36- 40], per Kerr J; ruling that the ET had been entitled to find that decision-making skills could be assessed by short narrative answers rather than multi-choice answers; that the Tribunal had correctly distinguished Lowe; and that the Tribunal had been entitled to find that balancing the disadvantage against the steps required to implement a different written (i.e. narrative answer) test, it would be a reasonable adjustment.

Discussion and findings

25. The respondent has accepted that the claimant has a disability within the meaning of s6 of the Equality Act.
26. The respondent did not dispute that there was the contended for PCP which was applied to the claimant.
27. The next question is therefore whether the claimant, by reason of his impairments, had communication difficulties such that he could not necessarily evidence in writing that he met the essential criteria and whether the PCP of requiring evidence in writing therefore put him at a substantial disadvantage compared to someone without his disability.

Medical evidence

28. The claimant relies upon a number of medical reports;
- (i) an educational psychologist's report dated 24 June 1997;
 - (ii) an assessment for diagnosis of Asperger Syndrome dated 07 November 2008.
 - (iii) An email from the Adult ADHD and Autism Service dated 21 January which states that the claimant has an existing diagnosis of ASD which would not become out of date.
 - (iv) An individual cognitive profile dated 12 February 2020;
 - (v) A psychiatric report dated 17 November 2023.

29. We have considered all of the medical evidence in detail and also note the particular paragraphs relied upon by the claimant in his oral submissions. We accept that supporting medical evidence is not required to show substantial disadvantage. We have taken account of all of the evidence on this issue including the claimant's written and oral evidence and assessed that evidence in the round to reach our findings.
30. The respondent submits that there is a clear absence of medical evidence to support the claimant's contentions in respect of his written communication skills.
31. Considering the 1997 report. This report was prepared when the claimant was aged 11 years and 9 months. Whilst we accept that the claimant's diagnoses are lifelong and will not become out of date, we do not accept that the impact of the claimant's diagnoses is static. The claimant states in his impact statement that most children improve as they grow up, but social and communication difficulties usually persist. We find that the probative value of this report in respect of the impact of the claimant's impairments upon his written communication skills is limited due to its age.
32. That report notes that the claimant found it difficult to express himself fluently in written form, however the report relates this to spelling difficulties, the claimant writing simplistically to make use of words he

knows how to spell, and stilted style and grammar. This report records difficulties with the mechanics of writing such as spelling, grammar and a stilted style. For this reason the report recommended a focus upon the content of the claimant's written work rather than the style. Nothing in the report supports the contention that the claimant cannot express himself in writing, rather that the style of that expression may be not be fluent.

33. The assessment for a diagnosis of Asperger Syndrome does not specifically address the claimant's written communication skills. The assessment notes, in respect of speech and language, that the claimant can be overly formal in his choice of words. We consider that this relates to verbal and not written communication. However, even if it did relate to written communication, it again, relates to style and not content.

34. Considering the individual cognitive profile, this details strengths and weaknesses of the claimant and possible adjustments he may need in the workplace. The profile addresses social and communication skills, executive functioning and the claimant's sensory profile. In respect of communication preferences, the claimant reported no significant challenges. The profile details that the claimant finds email communication very easy, he never finds the content of emails confusing and is often comfortable answering email. This is the only reference to

written communication within the profile. The profile does not support the contention that the claimant is not able to express himself in writing.

35. The purpose of the 2023 psychiatric report was, as set out in paragraph 6 of the report, to assess the claimant's litigation capacity and the extent and impact of his disabilities. The report states, as relied upon by the claimant in his oral submissions, that the claimant can find it difficult to read between the lines, and interpret what others say. Paragraph 186 of the report records the claimant reporting difficulty with application forms and tending to misinterpret information. This does not relate to the contended substantial disadvantage, that the claimant cannot evidence in writing. The claimant is not asserting that he misinterpreted any information, but that he could not do what was required.

36. The report concludes that the claimant struggles to think in abstract terms, has a rigid thought process and a tendency to misunderstand verbal communication. The report concludes that the impact of the claimant's impairment relates to his ability to interact with others, form relationships, deal with change and stressful circumstances and read social situations. The report records that individuals with autism do not automatically understand what is implied by written communication. Again this relates to a comprehension difficulty when written communication is indirect i.e. implied. This does

not support the contention that the claimant has difficulty expressing himself in writing. Again, the claimant makes no suggestion that he could not understand what was being asked of him when the application form asked for specific examples, but that he was not able to evidence those examples in writing.

General objective evidence

37. We have considered the more general evidence provided in respect of difficulties encountered by those with the same diagnoses as the claimant. The bundle contains a NHS document entitled, reasonable adjustments at work for autistic people. That document states that autistic people will appreciate clear, concise expectations and instructions. There is a document from the Liverpool Asperger Team which states that people with Asperger syndrome may not take much notice of the person they are speaking to and may sound over precise or over literal. The final document is entitled, what to do when interviewing an autistic person for a job. This document states that you can help an autistic person by asking specific questions that require specific details, examples and certain types of information. It seems that this is what the application form required when it asked for specific examples relevant to the person specification.

Claimant's direct evidence

38. We have considered the direct evidence of the claimant on his written communication skills. The claimant stated on the application form that he has excellent written communication skills. The claimant's impact statement focuses upon the claimant's difficulties with social interaction and restrictive and repetitive behaviour, interests and activities. The claimant also sets out difficulties with executive functioning resulting in an impaired ability to read numbers or words which has a knock-on effect upon external communication.
39. The claimant's explanation of how the requirement to explain how he met the criteria in writing impacted upon him has changed. In his email requesting reasonable adjustments, the claimant referred to a small margin that something is missing, In his particulars of claim the claimant refers to spelling mistakes or other minor errors, in his witness statement the claimant refers to problems with social communication, memory and social imagination.
40. In his oral evidence the claimant stated that he should have been given the opportunity to correct minor errors or spelling mistakes and to bottom out any miscommunication and that he writes slower and thinks slower. We note that spelling and grammatical errors did not form part of the marking criteria and that the claimant, as he requested, was afforded an extra day to complete the application form which would have addressed any slower thinking or writing.

41. The claimant did not accept in his oral evidence that thinking and writing slower were not the same as problems with social communication, memory and social imagination.
42. The claimant gave oral evidence that completing the application form required social imagination because, first he has to remember an account and then put it into context, he has to interpret the question, match the previous experience to the scenario, think of that social situation and how that ties in with previous experience.
43. It was put to the claimant that being asked if he has good written communication skills is not related to a social situation. The claimant disagreed.
44. We asked the claimant to clarify what a lack of social imagination means to him, because our understanding is that social imagination is the ability to understand and predict the thoughts, feelings and actions of others. The claimant responded that it is broader than that, it is a problem with memory, he may not be able to recount a scenario on the spot there and then. To creatively think of something. In addition to his other impairments, he is unable to create social imagination on the spot. Unfamiliar memories may take time.

45. We note that there has been a finding in a previous claim (case number 1031717/2022), that the claimant would have difficulty being able to provide examples of skills on the spot, however this is not what the claimant was required to do by the respondent. The application was written and not a face to face interview.
46. The claimant stated in the application form that he has excellent communication skills. When cross examined on this point the claimant stated that it is standard practice for anyone applying for a job to make the best application they can. The claimant also gave evidence that he believes that he has good written communication skills but that he also has a disability which hampers those skills. The claimant gave oral evidence that he has excellent written communication skills in comparison to others, but that he also has a disability. His disability appears, and he won't see it and it affects his communication skills.
47. The claimant also gave oral evidence agreeing that his witness statement and disability impact statement written for these proceedings, were perfectly well written and that, in order to write those documents he had to draw upon knowledge and experience and memories of things that had happened. The claimant accepted that he is an experienced litigator and that he would have to produce similar

documents detailing complaints and his recollections of situations in litigation.

48. We have observed throughout the hearing and in the documents prepared for the hearing that the claimant does indeed have excellent written communication skills. The claimant has ably demonstrated his ability to appropriately recall facts, experiences, and scenarios to best demonstrate the points he wishes to make. We note that, for his Rule 3 (10) hearing on 23 October 2024 the claimant prepared his own initial grounds of appeal and written skeleton argument. HHJ Auerbach “found the submission, both in writing and orally to be very clear and articulate and helpful.” The claimant, within these proceedings, expressed a preference for written over oral submissions.

49. Considering the evidence in the round, the claimant’s own direct evidence does not support that he has difficulties with written communication skills. His oral evidence and assertion within the application form is that he was excellent written communication skills. The claimant’s specific medical evidence is not supportive of him having difficulties with written communication skills. The most concrete reference to this is in the 1997 report which, given its age, is of limited probative value, and only highlights issues of style rather than content. The general objective evidence does not support the contented substantial disadvantage and neither do our observations of the claimant’s pleadings and how he has conducted litigation.

50. We do not accept that social imagination is the same as recalling examples. The claimant relies upon GLS V Ms T Brookes UKEAT/0302/16/RN. There was medical evidence in that case that the claimant lacked social imagination and would have difficulties in imaginative and counterfactual-factual reasoning in hypothetical scenarios thus, the PCP requiring the claimant to sit a multiple choice situational judgement test placed her at a personal disadvantage.
51. This was an entirely different situation to the claimant being asked to recall examples of events from his own life. That did not require social imagination.
52. Further, there is no medical evidence before us that the claimant himself has either problems with social imagination or memory as in the ability to recall events, rather than working memory within the context of executive functioning. There is also extremely limited evidence of the claimant having difficulties with written communication at all.
53. We therefore find that the PCP did not put the claimant at a substantial disadvantage in comparison with those who are not disabled.

Approved by:
Employment Judge Taylor
11 June 2025