



Case Number: 2215439/2023

THE EMPLOYMENT TRIBUNAL

SITTING AT:
BEFORE:
MEMBERS

**LONDON CENTRAL
EMPLOYMENT JUDGE ELLIOTT
MR A ADOLPHUS
MS G CARPENTER**

BETWEEN:

Ms S Streadwick

Claimant

AND

Capita Business Services Ltd

Respondent

ON: 7, 8, 9 April and 18 June 2025
(18 June 2024 In Chambers)

Appearances:

For the Claimant: In person

For the Respondent: Mr C Davies, counsel

RESERVED JUDGMENT

The unanimous Judgment of the Tribunal is that the claims for disability discrimination fail and are dismissed.

REASONS

1. By a claim form presented on 12 October 2023, the claimant Ms Serena Streadwick brings claims of disability discrimination, for discrimination arising from disability and failure to make reasonable adjustments.
2. The claimant worked for the respondent from 14 November 2022 to 9 May 2023 as a Revenues and Benefits Officer, Apprentice Level 3.

This remote hearing

3. The hearing was a remote public hearing, conducted using the cloud

video platform (CVP) under Rule 46. On 4 April 2025 the hearing was converted from an in-person hearing to a CVP hearing.

4. In accordance with Rule 46, the tribunal ensured that members of the public could attend and observe the hearing. This was done via a notice published on Courtserve.net. No members of the public attended.
5. The parties were able to hear what the tribunal heard and see the witnesses as seen by the tribunal. From a technical perspective, there were no difficulties of any substance.
6. The participants were told that it was an offence for them to record the proceedings.
7. Each of the witnesses, who were all in different locations, had access to the relevant written materials. We were satisfied that none of the witnesses was being coached or assisted by any unseen third party while giving their evidence.

The procedural background

8. The full merits hearing in this case was originally listed for 2 – 4 October 2024. It was postponed by Employment Judge Baty on the respondent's application with no objection from the claimant. There were two preliminary hearings, the first on 18 March 2024 and the second on 12 July 2024. The first preliminary hearing was listed for 11 January 2024. It was postponed on the application of the claimant.

The claimant's postponement application

9. On 2 April 2025 the claimant made a postponement application in respect of this final hearing. This application was refused by Employment Judge Woodhead and the parties were notified on 4 April 2025. The grounds for that application were that the claimant sought further disclosure and that her application for Legal Aid was "*still under review and this needs to be finalised to assign legal representation*". The claimant said that without legal counsel she was concerned that she would not be able to adequately represent herself. The claimant did not mention in that application that she sought the postponement because of her disability. Judge Woodhead refused the application and informed the parties that they should prepare for trial and any application for disclosure could be made at the start of the hearing.
10. The claimant renewed her application for a postponement at the start of this hearing. The application is dealt with in a separate Order made on 7 April 2025. It was the unanimous decision of this tribunal that the application to postpone the full merits hearing was refused.

The issues

11. The issues were identified at a Case Management Hearing before Employment Judge Adkin on 18 March 2024. The issue of whether the claimant was a disabled person was determined by consent at a hearing on 12 July 2024 before Employment Judge J Burns. It was declared that the claimant was disabled at the relevant time by reason of anxiety and depression only.
12. The remaining issues were set out in Judge Adkin's Order of 18 March 2024 and were confirmed with the parties at the outset of this hearing, as follows:

Discrimination arising from disability -section 15 Equality Act 2010 (EqA)

13. Did the respondent treat the claimant unfavourably by dismissing her? It is admitted that the claimant was dismissed, that this was unfavourable treatment. The respondent's position is that the claimant was dismissed for poor performance, in particular the low output of work she produced.
14. Did the claimant failing to meet the respondent's targets for completion of tasks within the required time targets, arise in consequence of her disability?
15. Did the respondent dismiss the claimant because of her failure to meet the respondent's targets for completion?
16. Was the dismissal a proportionate means of achieving a legitimate aim? The respondent says that its aims (as set out in its Amended Grounds of Resistance of 9 April 2024) were:
 - a. Ensuring that the work was processed in an efficient manner; and/or
 - b. Doing so whilst ensuring an equitable and reasonable distribution of work among staff in the business unit.
17. The Tribunal will decide in particular:
 - a. was dismissal an appropriate and reasonably necessary way to achieve those aims;
 - b. could something less discriminatory have been done instead?
 - c. how should the needs of the claimant and the respondent be balanced?

Failure to make reasonable adjustments - sections 20 & 21 EqA

18. A "PCP" is a provision, criterion or practice. Did the respondent have

the following PCP of: requiring tasks to be completed within a prescribed time target. The respondent admits that it required tasks to be completed within a prescribed time target (Amended Grounds of Resistance paragraph 15) so the application of the PCP was admitted.

19. Did the PCP put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that she was dismissed?
20. Did the lack of an auxiliary aid, namely software packages (i) Claro Read, (ii) Dragon Professional, and/or (iii) Mind Manager, put the claimant at a substantial disadvantage compared to someone without her disability, in that these would have allowed her to complete tasks within the prescribed time targets?
21. Did the respondent know, or could it reasonably have been expected to know, that the claimant was likely to be placed at the disadvantage?
22. What steps could have been taken to avoid the disadvantage? The claimant suggests that she should have been provided with software packages (i) Claro Read, (ii) Dragon Professional, and/or (iii) Mind Manager.
23. Was it reasonable for the respondent to have to take those steps and when?
24. Did the respondent fail to take those steps?

Witnesses and documents

25. There was an electronic bundle of 460 pages. The respondent produced a cast list and chronology which was not agreed with the claimant.
26. The tribunal heard from the claimant.
27. For the respondent the tribunal heard from two witnesses: (i) Mr Thye Wareham, Operations Manager and claimant's line manager to 13 February 2023 and (ii) Ms Sophie Hussain, Team Leader and claimant's line manager from 13 February 2023 until termination of employment.
28. We had a Skeleton Argument from the respondent to which counsel spoke plus an authorities bundle.
29. In the bundle there was a "*timeline*" document which we were told was created "*after the event*" and was not contemporaneous (pages 429-440). It embedded various messages and emails. The

respondent said that the originals, save for one document dated 1 February 2023 which they arranged to be sent to the tribunal, were already included within the bundle. The claimant objected to the “*timeline*” document. The respondent said that because the originals were in the bundle, they did not need to rely on it. In those circumstances we agreed not to take account of the timeline document.

30. The claimant disclosed three new documents at 09:15 on the morning of day 3 of this hearing. This was after the close of the evidence and 45 minutes prior to submissions. The respondent decided to take a pragmatic approach and did not object to the introduction of the documents.
31. All submissions and authorities referred to were fully considered, whether or not expressly referred to below.

Findings of fact

32. The claimant started work for the respondent on 14 November 2022 as a Revenues and Benefits Officer, Apprentice, Level 3 and was employed until her dismissal on 9 May 2023. The claimant’s offer letter was dated 25 October 2022 (bundle page 93). The role was fully remote, she worked from home. Normal working hours were 37.5 per week from 9am to 5:30pm Monday to Friday and included 1 day per week on a course of study.
33. The respondent is part of the Capita Group, which is an outsourcing company that helps its clients run their businesses more efficiently. In this case their client was a Local Authority. The respondent says that the claimant was dismissed for poor performance, namely low work output, thus failing to pass her probationary period.
34. The claimant’s work involved administrative tasks in the processing of Council Tax. This included working on applications for single person discount and the administration around home moves. The claimant worked with 3 screens which allowed her to have different pieces of information open at the same time. The respondent said this was simple work. The claimant disagreed.
35. The claimant was subject to a 6-month probationary period (contract, bundle page 97).
36. The Apprenticeship Scheme offered by the respondent gives employees the opportunity to study for a business qualification at Corndel College which is done alongside their work for the respondent. It was done via an online platform and the claimant began this in January 2023. It was a mix of independent study and on-line workshops.

The claimant's duties and targets

37. It is agreed that the claimant was subject to performance targets. They were based on (i) effectiveness in terms of the percentage of working hours during which they were logged on to the system and performing tasks and (ii) the number of tasks completed per day. For new apprentices the effectiveness target started at 20% and increased to 75%. The target number of tasks per day was 30.

The disability relied upon

38. In her ET1 (box 8.2 details of case) the claimant referred to having a learning disability. At the hearing before Employment Judge J Burns on 12 July 2024 the claimant confirmed that she did not rely on a learning disability but upon anxiety and depression. This was confirmed in the Judgment by consent of 12 July 2024.
39. When the claimant was recruited she disclosed, in answer to the question "*Do you consider yourself to have a disability?*," a physical impairment to her leg. She did not rely in these proceedings on the leg condition (page 456). The respondent provided specialist equipment to accommodate the leg condition, including an ergonomic chair, a foot-rest and a leg rest (page 117).
40. The claimant signed a health declaration on 4 November 2022 in which she answered "No" to the following questions (page 455):
- *Does your health stop you from fully participating in general day-to-day activities both at work and at home?*
 - *Are you aware of any medical condition or inherited disorder which may prevent you from fulfilling your contract of employment now or in the foreseeable future?*
 - *Are you taking any form of prescribed medication on a continuous or regular basis?*
 - *Are there any workplace adjustments or adaptations that may need consideration to assist you in the workplace to do your work?*
41. The statement provides a declaration that the information was true and that the claimant had not withheld any material fact (page 456). The claimant said that at the time she completed the health declaration she considered the answers to be true. There was no mention of having slow processing speeds, any need for assistive technology or any mental health issue.
42. The claimant accepts that prior to January 2023 she made no disclosure of any mental health impairment.
43. The claimant completed a Safety and Health Automated Platform for

Employees, known as a “SHAPE” assessment. It is a web-based application to assess the needs of employees working with Display Screen Equipment. The assessment was done on 5 January 2023 (page 119). She did not disclose any mental health impairment in the SHAPE assessment which included an assessment of the technology she used. It said that she spent 100% of her day performing desk-based duties processing claims alongside online meetings (page 121).

Training

44. The claimant underwent Council Tax training dealing with the legislative scheme and the practical tasks in the job. The learning team signed her off as capable of doing the job. The work includes ensuring Council Tax payers’ details are properly recorded and up to date so that accurate Council Tax bills can be issued.
45. The letters the claimant prepared are based on templates so the apprentice does not need to draft the whole letter. They insert a new postal address and request a date the person vacated the household. The claimant told her manager Mr Wareham that she was familiar with Microsoft Word and did not have any concerns about completing this sort of task.
46. In checking the information was up to date it involved asking questions such as: *“please confirm the date that X moved in”* or *“please provide a forwarding address”*. The name and address of the recipient of the letter auto-populates such that the claimant did not need to add this information manually. We find that it was not a job that required any substantial amount of reading of documents.

Concerns about performance

47. Early in the claimant’s employment, Mr Wareham noticed that she was not meeting expectations. Concerns were also raised by the College about her performance on the course. We saw an email of 25 January 2023 from Ms Janine Garcia, Professional Development Expert at the College to Ms Alison Jenkinson, Emerging Talent Programme Lead at the respondent and the person responsible for apprenticeships (page 442). Ms Garcia said that on College days the claimant struggled to make a 09:30 start and had to join from her car which was not ideal. This was because she was doing the school run with her daughter. The claimant said sometimes she joined from the car and sometimes she joined while walking home, as in her view all she needed to do was to listen to the teacher and she did not have to speak.
48. We saw Teams messages between the claimant and Mr Wareham on 24 January 2023. He said: *“Serena I need to book in a call to you to chat about working hours. This is partly on me as I didn’t realise*

how late you finished some days. As there isn't support after 17:30 we need to look at the hours and come up with a plan". The claimant said she finished late to *"make up my time from the school run"* (page 126).

49. On 24 January 2023 the Council Tax Team Leader sent an email to Mr Wareham regarding a report on work done by apprentices on that date. It showed 3 other apprentices who had done 31, 20 and 19 tasks that day and the claimant having only done 2 tasks. The daily target was 30. The claimant had spent 1 hour 13 minutes on one single person's Council Tax discount and the Team Leader said it was not necessary to spend that amount of time. It was noted that the claimant had also taken 1 hour 40 mins for lunch (page 441). The claimant said there were times when she forgot to remove her status of *"lunch"* and said it *"could have been one of those days"*.
50. Around 30 January 2023 there were further messages between the claimant and Mr Wareham (page 127). She said for example that she would *"look when I am back from the school run"* and that she was helping a colleague. We find that the claimant understood the job sufficiently to provide help to her colleagues.
51. In a message on 30 January 2023 Mr Wareham asked how often her mum could look after her daughter in February. He asked how she could work when she had to *"watch a dependent when you are the only adult at home?"* The claimant said sometimes she had her 4 year old daughter on her own with no other adult present but said her daughter was *"very self-sufficient"*. She said: *"the only issue is my mum is 67 almost 68 and she will struggle with my daughter everyday"*. She said that her mother did much of the childcare but accepted that this was not all the time.
52. On 1 February 2023 Ms Jenkinson sent an email to the claimant asking her to complete her course work. Ms Garcia had raised concerns that the claimant was significantly behind in her College work and *"doesn't appear to be using her study day allocated for her apprenticeship work"*. There was concern that the claimant could not attend lessons at 09:30 because she was still in the car. Ms Garcia asked if Ms Jenkinson knew the reason for this as they wanted to *"get her back on track"*. (email introduced separately on day 1).
53. Ms Jenkinson replied that she had a 1:1 meeting with the claimant on 31 January 2023. The claimant's oral evidence was that it was in that meeting she disclosed to Ms Jenkinson her need for reasonable adjustments and also asked for adjustments to her working hours. Ms Jenkinson's reply to Ms Garcia made no reference to the claimant mentioning any health condition. The focus was on the childcare issue.
54. The claimant said that in the meeting on 31 January 2023 she told

Ms Jenkinson about her diagnosis of anxiety and depression and that she had been given assisted technology in the past. We make our findings on this below.

The request for assistive technology

55. On 1 February 2023 Ms Jenkinson emailed HR as follows (page 136):

"During a 121 this week with Serena Streadwick she asked whether Capita could supply her with assistive tech. to help her to process information. She stated that she has a diagnosis around slower processing and received assistive tech to help with this at a previous job.

I know that Access-to-work can help with kit for dyslexia but not sure what else can be sourced..."

56. On 9 February 2023 Mr Wareham raised two points with HR (page 175): (i) that the claimant had told him about a diagnosis of "slower processing" and had received assistive technology at a previous job and (ii) she had asked about revising her hours because of childcare responsibilities.

Claro Read

57. Mr Wareham told HR that the claimant had asked for the software called Claro Read, which reads on-screen text out loud plus Mindmanager for her College work. In a Teams message on 3 May 2023 she said (page 186).

"I believe the assistive tech that would help is the 'Claro Read' i mentioned before, but Professional Individual V16, I don't see myself using the rest I mentioned. Thanks"

58. We find based on the claimant saying on 3 May that she "[didn't] see [her]self using the rest", that Mindmanager was not something she needed. We find she ruled out Mindmanager.

59. In a Teams message on 23 February 2023 Mr Wareham asked if the claimant had used assistive technology in other jobs or just at University. She replied: "just at uni" (page 182). The claimant said that Claro Read was the main one she wanted; it would "assist her greatly".

Read Aloud

60. The claimant agreed that she had Microsoft Word and Outlook on the laptop issued by the respondent. She was also working with a personal laptop that had Microsoft. The respondent's case is that Microsoft has a function called Read Aloud which would do what was necessary. The claimant said her laptop did not have it and she did

not know it existed.

61. The claimant shared her screen with Mr Wareham and he could not initially locate Read Aloud. He investigated and found it located under the Review tab on Word rather than under the Home tab. Mr Wareham said he had a further conversation with the claimant, with Ms Hussain present and they told her where to find it. This was consistent with evidence in Ms Hussain's statement (paragraph 20) although she could not remember the date of the conversation. We find that Mr Wareham and Ms Hussain told the claimant where to find the Read Aloud function.
62. The claimant said she did not look to see whether the laptop had Read Aloud. We find on a balance of probabilities that it did have Read Aloud as it is standard functionality on Outlook and Word. We also find that the laptop provided to the claimant had a dictate function, which is also standard functionality on Outlook and Word. It was not Dragon, the brand the claimant mentioned, but there was a dictation function.
63. The claimant said Claro Read can highlight any text on a screen and she said this was not something that Read Aloud could do. She said that Council taxpayers would sometimes attach documents to provide evidence, for example a tenancy agreement which was PDF and could not be used with Read Aloud. We find based on the respondent's evidence, that the claimant was not required to read documents in any depth, such as a tenancy agreement. The information she had to check was basic, normally found on the front page of a tenancy agreement, such as a name, address and date of taking up the tenancy. She did not need to go into the detailed terms of any tenancy.
64. Mr Wareham and Ms Jenkinson investigated whether they could assist with providing Claro Read. They encouraged the claimant to make an application to Access to Work and to re-do her SHAPE Assessment (mentioned above). On 26 April 2023 the claimant notified Mr Wareham on 26 April 2023 she had completed the SHAPE assessment (page 205).
65. It was put to Mr Wareham that he had already made up his mind and he did not intend to provide the software she wanted. Mr Wareham denied this but said he believed Read Aloud was sufficient. We find that the investigations he made about Claro Read was not, as the claimant suggested, confirmation that the respondent would provide it.

Ms Hussain as line manager

66. Ms Hussain became the claimant's line manager from 13 February 2023. There was a period of handover and overlap between the Ms

Hussain and Mr Wareham. Mr Wareham became Mr Hussain's manager so he remained in the picture.

67. Ms Hussain held weekly 1:1 meetings with the claimant. The claimant's low level of performance was discussed in each of these meetings so we find that the claimant knew where she was falling short and what she needed to do to improve.
68. Ms Hussain told the tribunal about the nature of the claimant's tasks, which were predominantly around Council tax payers moving home and the single person's discount. A typical task for an apprentice is to check that the address for the resident is correct and if not, to update it. This is usually done by cutting and pasting the correct address from one document to another. Template letters are used so there is no significant drafting of correspondence. For many of the apprentices, although not the claimant, it is their first office-based job, so they deliberately keep the tasks straightforward to help them to integrate. We find, as the respondent said, that this was straightforward work. These were initial tasks at entry level and apprenticeship grade with the intention that they would become more complex as the job went on.
69. Ms Hussain's evidence (statement paragraph 35a) is that the role did not require the reading, writing or processing of any significant amount of information. It involved address checking, cutting and pasting information from one document to another and correspondence based on template letters and using dropdown menus. We find that these were straightforward and not complex tasks.

The claimant's productivity

70. Ms Hussain produced a productivity chart covering her period of line management of the claimant from 13 February 2024 to 1 May 2023 (page 243). It showed an effectiveness target starting at 20% and moving up to 75%. The table is set out below (A/L = Annual leave).

<u>Week</u>	<u>Effectivness</u>	<u>Target</u>	<u>Work vol</u>	<u>Comments</u>
13/02/2023	25.69%	20%	54	
20/02/2023	31.02%	30%	54	
27/02/2023	20.28%	40%	40	
06/03/2023	20.19%	50%	14	A/L 2 days
13/03/2023	21.77%	60%	63	
20/03/2023	23.03%	65%	16	
27/03/2023	31.20%	65%	63	
03/04/2023	20.39%	65%	24	A/L Half week
10/04/2023		75%		A/L
17/04/2023	35.87%	75%	19	
24/04/2023	38.10%	75%	92	
01/05/2023	31.74%	75%	74	

71. The claimant's initial effectiveness was 25.69% and at no time increased beyond 38.1%. "*Work vol*" shows the number of tasks completed in the week. The claimant's work volume in that period, excluding any weeks in which she had annual leave, was often around 55 to 65 tasks per week, but was sometimes as low as 16 - 19 tasks. The highest two weeks were 92 and 74 tasks. The daily target was 30 tasks, so the weekly target was 150. Even adjusting for one day on her College work, the claimant was still not meeting her targets.
72. In their 1:1 meetings, Ms Hussain printed off the statistics and went through them with the claimant. We saw an example (page 239) for the work done on 3 May 2023, which Ms Hussain described as a typical day for the claimant. On that day the claimant was logged in for 5 hours. She did 2.2 hours work but should have been available for a 7.5 hour day. Ms Hussain said that this was quite typical for the claimant. Ms Hussain said based on the statistics she had, that the claimant could at times do in 2-3 minutes, tasks for which the respondent allocated 8 minutes.
73. Mr Wareham's evidence was the same, that when looking at the claimant's productivity, he noticed that there was lost time and gaps in the day when the claimant did not appear to be working.

Steps taken

74. On 2 March 2023 HR asked Mr Wareham to contact IT to see what they could offer. He did this on 7 March to see what software could be obtained to help the claimant. The log of the call to IT said (page 150):

"Hi, are you able to advise what software we can obtain to help this user? Serena has used this software previously. No formal diagnosis but it was done at university. slow processing. Claro read = used most, Highlighting text and read back. Mindjet mindmanager = would be good for Aptem [College] work".

75. We find that the condition that Mr Wareham knew about was that of "*slow processing*". His call log to IT, following a discussion with the claimant, made no mention of anxiety and depression.
76. On 21 March 2023 the claimant messaged Mr Wareham (page 161) to tell him that she had been assaulted, had been to A&E and was "*a bit upset*". She suggested that saying she was "*a bit upset*" disclosed her condition of anxiety and depression. We find that anyone who has just been assaulted is likely, at the very least, to be "*a bit upset*" and this did not give the respondent knowledge of her condition of anxiety and depression.
77. On Thursday 30 March 2023, a day when the claimant was meant to

be doing her College work, Ms Garcia emailed Ms Jenkinson to say she had not logged on. The email was sent at 2:30pm. Ms Garcia said that the claimant had logged on the previous night at 8:22pm but had not logged on at all on 30 March. The claimant said she had obtained the questions she needed when she logged on the night before. The claimant had other commitments which were preventing her from performing well in the job.

Probation meeting 31 March 2023

78. On 31 March 2023 the claimant had a probation meeting with Ms Hussain. She said she could not recall this meeting, but did not deny it. We find on Ms Hussain's evidence that the meeting took place and Ms Hussain told the claimant that her effectiveness was too low and she was not keeping up with her coursework.
79. The productivity chart produced by Ms Hussain showed that in the week before the meeting of 31 March 2023, the claimant had completed only 16 tasks in the week. This was 23% of target. The claimant attributed this in evidence to her anxiety and depression. The claimant did not recall, but did not deny, that Ms Hussain told her in that meeting that she had to improve her performance. We find that Ms Hussain did tell the claimant she had to improve. It was a key part of the meeting. The claimant accepted that in that meeting she did not mention anxiety or depression, but says that she did mention her request for the software.
80. The claimant's performance improved in the following week. She carried out 63 tasks in the week of 27 March 2023 which was 31% of target. It was put to the claimant that she was able to improve without the software. We find that it was unlikely that the software would have made a significant difference to enable her to meet her targets. The difficulty was the other demands on her time.
81. On 26 April Ms Garcia again emailed Ms Jenkinson saying that the claimant was behind with her College Work (page 447). The claimant was not happy to sign off her quarterly review for her College Work, because she disagreed with some of the facts.
82. In a Teams message on 3 May 2023 (page 185) the claimant asked Mr Wareham if she could reduce her hours for childcare reasons, so she could finish at 3pm instead of 5:30pm. They also discussed assistive technology. The claimant said that what would help was Claro Read. She also raised for the first time a request for Dragon Professional, a dictation app (page 186).
83. As we have found above, the claimant already had access to a dictate function as part of the Microsoft package. We find that this was an adjustment already made by the respondent.

The probation meeting of 5 May 2023

84. There was a further probation meeting with Ms Hussain on 5 May 2023 in which Ms Hussain told the claimant that she was going to fail her probation due to low output and her low targets. The claimant agreed in evidence that she did not mention anxiety and depression in that meeting.
85. The decision to terminate the claimant's employment was made by Ms Hussain in discussion with Mr Wareham. Ms Hussain was the ultimate and sole decision maker.
86. At 11:28 on 5 May, the claimant sent a message to Mr Wareham, in response to the news that she was going to fail her probation (page 186) saying:

"Hi Thye, although I'm upset i understand the decision, just wanted to say thank you for the opportunity and assistance you have given me, i wish you all the best, i am logging off now, bye x"

87. The claimant said she intended this to be a professional message, but it was not meant to indicate that she agreed with the decision.

The decision to dismiss

88. The decision to dismiss was made by Ms Hussain with guidance from Mr Wareham. He was concerned about two things; (i) the lack of efficiency in getting tasks done and (ii) lost time, meaning gaps in the day when the claimant did not appear to be working.
89. The claimant's task target was 75% of 30 per day and they had reduced it to 60%. The standard progression at the end of probation was for the target to go to 80% and then to 90%. Mr Wareham knew the claimant was well below target. He advised Ms Hussain to consider whether she thought the claimant could reach target and whether the probationary period should be extended. He said if Ms Hussain thought the claimant could not reach target, *"that would be her answer"*.
90. Mr Wareham said the claimant's work was at billing level which is basic and not like recovery of arrears of Council Tax which is more complicated. The claimant may have received attachments to emails from Council tax payers, but she did not need to read those documents in any detail. Mr Wareham doubted that the claimant would receive attachments with more than 10% of the emails she received.
91. The termination letter was dated 9 May 2023 (page 210) in which Ms Hussain said:

“Unfortunately, you have been unable to demonstrate the required improvements despite additional support we put in place, and I must now inform you that your employment with the company will be terminated with effect from Today, 09/05/23 on the grounds of unsatisfactory performance during the probationary period”.

92. We find that the reason for dismissal was poor performance.

93. The claimant responded by email (page 211) saying that she made a request for assistive technology to support her in her apprenticeship telling Ms Hussain that she had *“learning difficulties”*. She did not mention anxiety and depression.

94. Also on 5 May, the claimant emailed Ms Hussain saying:

“.... it was both work and apprentice side, I had a meeting with Thye in February / March and I explained that cases take me slightly longer as I have to keep re-reading the emails as well as my replies to clients. This also was the same for my apprentice work. I advised of software that would significantly help me, mostly the 'ClaroRead'. I also advised that I can read, but the software would help me process the information faster.”

95. Once again there was no mention of anxiety and depression.

Knowledge of disability

96. The claimant agrees that she did not disclose her disability of anxiety and depression on recruitment. She said the first time she raised it was with Ms Jenkinson on 31 January 2023.

97. We find that there was nothing in writing to the respondent at any point disclosing anxiety and depression. On 26 April 2023 the claimant requested a fit note from her GP (page 417) in which she asked the doctor to sign her off for 3 months with anxiety and depression and leg pain. The medical records show that the fit note was issued (page 355). The claimant agreed and we find, that she did not submit this certificate to anyone at the respondent.

98. The claimant accepted that she did not disclose her disability to Ms Hussain. Her oral evidence was that she informed Mr Wareham and Ms Jenkinson, but the *“main disclosure was to Alison”* ie Ms Jenkinson.

99. The claimant said at the end of oral evidence and for the first time in these proceedings, that in December 2022 she told Mr Wareham that she had anxiety and depression during a conversation asking for time off for a PIP assessment. Mr Wareham recalled the claimant asking for the time off. He understood it to be in connection with her leg condition. Mr Wareham refuted that the claimant told him that she

had anxiety and depression, either in December 2022 or at all.

100. Mr Wareham said the first time he knew that the claimant had anxiety and depression, was in October 2024 in the course of these proceedings, when he was told about it by the respondent's legal team.
101. We find on a balance of probabilities that the claimant did not inform Mr Wareham either in December 2022 or at any point during her employment. Knowledge of disability was an important part of her case and the alleged disclosure in December 2022 was not included in her ET1 or her witness statement and was raised for the first time at the end of her evidence. The claimant did not mention it in any of her correspondence with Mr Wareham and we found his denial of the conversation convincing.
102. We have considered whether the claimant disclosed this condition to Ms Jenkinson. We did not hear from Ms Jenkinson but we had email correspondence dated 1 February 2023 being the day after the meeting when the claimant said she disclosed it. Ms Jenkinson's email to HR (page 136) said she had a 1:1 with the claimant when she *"stated that she has a diagnosis around slower processing and received assistive tech to help with this at a previous job"*. Ms Jenkinson sent an email on the same day to Ms Garcia (document introduced on day 1) about the claimant's performance issues on the course. Neither email made any mention of anxiety and depression. The claimant said that this was a *"mistake"* on Ms Jenkinson's part.
103. Ms Jenkinson is an experienced HR professional. We find that her contemporaneous recollection the day after the meeting is more likely to be accurate than the claimant's recollection two years later. We find on a balance of probabilities that the claimant did not inform Ms Jenkinson that she had anxiety and depression. She informed her, as noted by Ms Jenkinson in her email, that she had *"slower processing"*.
104. We find that the respondent did not have knowledge of the disability of anxiety and depression. They had knowledge of other conditions, but these were not the disabilities relied upon in these proceedings.
105. We have also considered whether they could reasonably have been expected to know that the claimant had anxiety and depression. We find that there was nothing to put them on notice to this condition. They were aware that the claimant had medical conditions, such as a leg condition and that she had a slower processing speed. There was also mention of a learning disability. The respondent knew that the claimant had medical issues and that she had difficulty with her work, but there was nothing to show them or to indicate to them that the disability in question was anxiety and depression.

Did the claimant's slower processing speed arise from her disability?

106. The claimant does not rely on having a diagnosis of a lower processing speed. She relied upon having anxiety and depression and said that the lower processing speed arose from this. The claimant gave oral evidence about this, in answer to questions from the tribunal. She said that her condition fluctuates, some days she feels OK and other days she feels down and depressed which affects her concentration, which in turn affects her when dealing with emails and documents. She said when she was stressed and not fully concentrating, she would have to keep re-reading documents. She said it was worse for her under timed conditions.

107. There was almost 170 pages of medical documents in the bundle (pages 255-422). The tribunal had no medical evidence to support a causal link between the claimant's anxiety and depression and her failure to meet the targets for completion of her work. In submissions the claimant took the tribunal to a letter from a Clinical Psychologist dated October 2011 (page 271) which said that she "*suffers from generalized anxiety, low self-esteem and depression, which interferes with her functioning on a recurrent basis*". This letter was written 12 years before the material time and is very general in terms of "*interferes with her functioning*" without identifying what aspects of functioning were involved.

108. We agree with the respondent's submission that we had no evidence to support a causal link between the claimant's anxiety and depression and her failure to meet the respondent's targets. The letter of October 2011 is significantly out of date and does not say that the claimant's processing speeds were affected. The medical records showed other conditions and we were unable to make the causal link between anxiety and depression and the lower processing speed or the ability to meet the work targets.

109. This leads us to find that the failure to meet the respondent's targets did not arise from the claimant's disability of anxiety and depression. We did not have the evidence to support such a finding.

Was the claimant placed at a substantial disadvantage

110. The PCP of requiring tasks to be completed within a prescribed time target was admitted.

111. We have considered whether the requirement to do the task in a certain time put the claimant at a substantial disadvantage compared with persons who do not have anxiety and depression. We find that anxiety and depression can manifest itself in different ways and we did not have the evidence to show that the claimant was placed at a substantial disadvantage in comparison with persons who do not have anxiety and depression. The claimant did not show the causal

link. There was also another factor in play which was that the claimant had other demands on her time, related to childcare, which was giving her difficulty in meeting her work targets.

112. The respondent submitted and we agree that the claimant is an intelligent and capable person who represented herself well in this tribunal.

The adjustments made

113. Two adjustments were made for the claimant. The first was to lower her performance target from the standard 75% during probation, to 60%. The claimant remained a long way behind target, at no point exceeding 38.1%.
114. The second was to provide her with Read Aloud and Dictate on her laptop, which she accepts she never tried and in terms of Read Aloud had never looked for. Mr Wareham's evidence was that this would do the job. He said the claimant requested certain branded software but they provided similar functionality, so in his view the necessary adjustment was made.
115. We find that the respondent did make such adjustments as were reasonable to have to make to avoid the disadvantage in terms of the claimant's processing speed. They gave her a lower target, designed to help her with her work speed. It is reasonable and a legitimate aim for the respondent to have performance targets as they need to perform their obligations under their contract with their Local Authority client. We find that it was not reasonable or proportionate to reduce the target any lower than they did as this would affect service standards.
116. We have made findings that the tasks were not complex and if there were occasional tasks that were more difficult, they were few. We find that if the claimant had used Read Aloud and the dictate function, it would have removed the disadvantage in terms of the speed of work. We have found above that the claimant was not required to read documents in any depth such that Claro Read would be needed.
117. We find that the provision of Read Aloud and Dictate was the step that it was reasonable for the respondent to have to take to avoid the disadvantage.

Findings on proportionate means of achieving a legitimate aim

118. The respondent says that they dismissed the claimant as a proportionate means of achieving their legitimate aims of (i) ensuring that work was processed in an efficient manner and (ii) doing so whilst ensuring an equitable and reasonable distribution of work amongst their staff.

119. We find that these were legitimate aims for the respondent to process work efficiently and to distribute the work fairly amongst their staff. They had to meet the contractual requirements of their client and distribute the work fairly amongst the team.

120. We find that the respondent had balanced the needs of the claimant alongside their legitimate aims, by reducing her targets and giving her an opportunity to improve through the 1:1 meetings with Ms Hussain. It was apparent to the respondent that the claimant was so far below target that she was not going to reach the required standard within a reasonable time frame.

The relevant law

Discrimination arising from disability – section 15 EqA

121. Discrimination arising from disability is found in section 15 Equality Act 2010:

(1) A person (A) discriminates against a disabled person (B) if –

(a) A treats B unfavourably because of something arising in consequence of B's disability and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim,

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

122. The approach to be taken in section 15 claims is set out in ***Pnaiser v NHS England 2016 IRLR 170 (EAT)*** by Simler P at paragraph 31. This case also addresses the burden of proof in section 15 cases. Under section 136, once a claimant has proved facts from which a tribunal could conclude that an unlawful act of discrimination has taken place, the burden shifts to the respondent to provide a non-discriminatory explanation. In order to prove a prima facie case of discrimination and shift the burden to the employer, the claimant needs to show:

- a. that he or she has been subjected to unfavourable treatment;
- b. that he or she is disabled and that the employer had actual or constructive knowledge of this;
- c. a link between the disability and the 'something' that is said to be the ground for the unfavourable treatment;
- d. some evidence from which it can be inferred that the 'something' was the reason for the treatment.

123. If the prima facie case is established and the burden shifts, the employer can defeat the claim by proving either:
- a. that the reason or reasons for the unfavourable treatment was not in fact the 'something' that is relied upon as arising in consequence of the claimant's disability; or
 - b. that the treatment, although meted out because of something arising in consequence of the disability, was justified as a proportionate means of achieving a legitimate aim.
124. The something that causes the unfavourable treatment need not be the main or sole reason but must have at least a significant or more than trivial influence on the unfavourable treatment and so amount to an effective reason for or cause of it (judgment paragraph 31b).
125. The employer may show under section 15(1)(b) that the treatment of the claimant was a proportionate means of achieving a legitimate aim. The EAT in ***Birmingham City Council v Lawrence EAT/0182/16*** said that justification of the treatment requires there to be an objective balance between the discriminatory effect and the reasonable needs of the employer (judgment paragraph 11).

Failure to make reasonable adjustments – sections 20 & 21 EqA

126. The duty to make reasonable adjustments is found under section 20 EqA. The duty comprises three requirements. Subsection (3) is as follows:

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.

127. Section 20 subsection (5) says:

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.

128. The EAT in ***Royal Bank of Scotland v Ashton 2011 ICR 632*** said that so far as reasonable adjustments are concerned, the focus of the tribunal is an objective one. The focus is on the practical result of the measures which can be taken and not upon the process of reasoning by which a possible adjustment was considered. In relation to the substantial disadvantage, the EAT held that the tribunal has to be satisfied that there is a PCP that places the disabled person not simply at some disadvantage viewed generally, but at a disadvantage that was substantial viewed in comparison with persons who were not disabled.

129. This case was considered by the Court of Appeal in **Griffiths v Secretary of State for Work and Pensions 2015 EWCA Civ** on the comparison issue. Elias LJ held that it is wrong to hold that the section 20 duty is not engaged because a policy is applied to equally to everyone. The duty arises once there is evidence that the arrangements placed the disabled person at a disadvantage because of his disability.

130. Under section 21 of the Equality Act a failure to comply with section 20 is a failure to make reasonable adjustments. Section 21(2) provides that “*A discriminates against a disabled person if A fails to comply with that duty in relation to that disabled person*”.

131. In deciding whether an employer has failed to make reasonable adjustments, as set out by the EAT in **Environment Agency v Rowan 2007 IRLR 20**, the tribunal must identify.

(a) *the provision, criterion or practice applied by or on behalf of an employer, or;*

(b) *the physical feature of premises occupied by the employer;*

(c) *the identity of non-disabled comparators (where appropriate); and*

(d) *the nature and extent of the substantial disadvantage suffered by the claimant.*

132. Paragraph 6.28 of the EHRC Employment Statutory Code provides the following non-exhaustive list of factors which are relevant to determining what is a reasonable step for an employer to have to take: 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. The Code does not impose legal obligations. Tribunals must take into account any part of the code that appears to them to be relevant to any questions arising in the proceedings.

133. On the burden of proof, the EAT in **Project Management Institute v Latif 2007 IRLR 579** (Elias P as he then was) held that the claimant must not only establish that the duty to make reasonable adjustments has arisen, but also that there are facts from which it could reasonably be inferred, absent an explanation, that it has been breached. Demonstrating that there is an arrangement causing a substantial disadvantage engages the duty, but it provides no basis on which it could properly be inferred that there is a breach of that duty. There

must be evidence of some apparently reasonable adjustment which could be made. It is necessary for the respondent to understand the broad nature of the adjustment proposed and to be given sufficient detail to enable him to engage with the question of whether it could reasonably be achieved or not.

134. In relation to knowledge of disability, knowledge of the disadvantage and reasonable adjustments Schedule 8 paragraph 20(1)(b) of the Equality Act provides:

(1) A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know -that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement.

135. In ***Newham Sixth Form College v Saunders 2014 EWCA Civ 734*** the Court of Appeal (Laws LJ) said in relation to knowledge of the substantial disadvantage: *"[the] nature and extent of the disadvantage, the employer's knowledge of it and the reasonableness of the proposed adjustment necessarily run together. An employer cannot ... make an objective assessment of the reasonableness of proposed adjustments unless he appreciates the nature and extent of the substantial disadvantage imposed upon the employee by the PCP"* (judgment paragraph 14).

Conclusions

Knowledge of disability

136. First and foremost, the claims fail under both headings (sections 15 and 20 EqA) because the respondent did not have knowledge of the disability relied upon. For discrimination arising from disability, under section 15(2) Equality Act the respondent does not discriminate if it did not know, and could not reasonably have been expected to have known, that the claimant had the disability. Our finding of fact is that they did not know and could not reasonably have been expected to know that the claimant had anxiety and depression.

137. For the reasonable adjustments claim the duty to make reasonable adjustments does not arise if the respondent does not know and cannot reasonably have been expected to know that the claimant has a disability and is likely to be put at the substantial disadvantage in comparison with persons who do not share her disability.

138. The same findings of fact apply such that we have found that the respondent did not have knowledge of the disability relied upon and could not be expected to have known that the claimant was placed at the disadvantage. As such, the duty to make reasonable adjustments did not arise.

139. For those reasons alone, the claims fail. If we are wrong about this,

we went on to make findings of fact on the other matters and our conclusions on these are below.

Discrimination arising from disability

140. The respondent admits that the claimant was dismissed and that this was unfavourable treatment. As we have found, the reason for dismissal was poor performance based on low work output. The claimant says that her low output was due to her slow processing speed and that this was something arising in consequence of her disability.

141. Our finding above is that we had insufficient evidence to find that the slow processing speed arose from anxiety and depression which means that this claim fails. Even if the claimant had shown that her slow processing speed arose from a proven disability, there was the additional factor she did not meet her work commitments because of other demands on her time, in particular childcare responsibilities.

142. We have also considered, if we were wrong about this, whether dismissal was a proportionate means of achieving a legitimate aim.

143. We have found above that it was a legitimate aim for the respondent to have performance targets because they were obliged to perform their obligations under the contract with their client and distribute the work fairly amongst their staff. They had already reduced the target for the claimant and given her time to improve. Our finding is that dismissal was a proportionate means of achieving their legitimate aims.

Reasonable adjustments

144. The respondent admitted applying the PCP of requiring tasks to be completed within a prescribed time target.

145. We have been unable to find that it put her at a substantial disadvantage compared with persons who do not share her disability.

146. We have also found in any event that the adjustments made by the respondent were reasonable. We have found that the respondent provided text to speech software, Read Aloud, which on our finding was sufficient to avoid the disadvantage the claimant relied upon. It was not the software she wanted, but we have found that for the straightforward tasks that the job involved, it was a reasonable adjustment. The claimant was not required to read in depth into documents sent to her by Council Tax payers. Most of the information she needed was likely to be found on the front page, such as a name, address and date of tenancy.

147. The respondent provided a dictate function with Microsoft Word

and although it was not the product named by the claimant, being Dragon dictate, it provided similar functionality. The claimant admitted that she did not try to use it.

148. We have found based on the claimant's email of 3 May 2023 that she ruled out any requirement for Mindmanager.

149. We find that even if the claimant had been given the adjustments that she wanted, she would still not have passed her probation. She had other commitments which meant that she did not give the necessary time to the job and there were gaps in her working day when she was unable to give her full time and attention to the work.

150. For the above reasons, the claims fail and are dismissed.

Employment Judge Elliott
Date: 18 June 2025

Judgment sent to the parties and entered in the Register on: **24 June 2025**

_____ for the Tribunal