EMPLOYMENT TRIBUNALS

Claimant: **Mr Yasser Mohammed**

Respondent: **Chippenham Specsavers Limited**

Heard at: Bristol (by video – CVP) **On:** 16 to 27 June 2025 (25-27 June, the Tribunal in the absence of the parties)

Before: Employment Judge Livesey
Ms D England
Ms S Maidment

Representation
Claimant: In person
Respondent: Mr Bromige, counsel

JUDGMENT

The Claimant's complaints of discrimination on the grounds of race, religion and/or disability are dismissed.

REASONS

1. The claim

1.1 By a Claim Form dated 11 February 2023, the Claimant brought complaints of unfair dismissal, discrimination on the grounds of religion or belief, race and/or disability and slander and/or defamation. The slander and defamation claims and that of unfair dismissal did not proceed for the reasons set out in paragraphs 40 and 41 of the Case Summary of 24 November 2023 and paragraph 63 of the Case Summary of 14 February 2025.

2. The evidence

2.1 The Claimant gave evidence in support of his witness statement and the supplementary statement which was filed pursuant to paragraph 15 of the Order of 5 June 2025. He also confirmed the contents of his disability impact statement of 2 August 2023 and 19 January 2024 (see pages 65 to

66 and 89 to 91 of the pleadings and witness statement bundle) and adopted the factual matters set out in his exposition of the issues at pages 91 to 101 of the hearing bundle, in accordance with paragraph 16 of the Order of 5 June 2025.

2.2 The Respondent called the following witnesses in the following order;
(i) Mr Boughan; Optometrist and Opthalmic Director;
(ii) Ms Passafaro; former Practice Manager, now Head of Audiology;
(iii) Mr Mogford; Opthalmic Director;
(iv) Ms Hart; former Optical Assistant (now In-Store Trainer);
(v) Ms Tidd; Assistant Manager.

2.3 The following documents were produced;
- Claimant's Closing Submissions; C1;
- 'Final Hearing Bundle'; R1;
- 'Pleadings and Witness Statement Bundle'; R2;
- 'Quantum (remedy) Bundle'; R3;
- 'Cast List'; R4;
- 'Chronology and Key Documents'; R5;
- Respondent's 'List of Admissions' (disputed/agreed issues); R6;
- Respondent's Closing Submissions; R7.

3. The hearing

3.1 The Hearing was conducted by video (CVP) in accordance with the previous case management directions and in order to cater for the disabilities which the Claimant suffered following a spinal operation which had taken place in 2023.

Postponement application

3.2 On Sunday 15 June, at 19:26, the Claimant sent an email to the Tribunal in which he stated that he was ill. He said that he was "*experiencing persistent vomiting, a painful throat, excruciating stomach pains, problems with my bowels, and a noticeable loss of voice*". He said that he was concerned about whether he would have been "*able to communicate effectively at the hearing*". He said that he would still attend if possible, but that he was writing to notify the Tribunal in case it became necessary to request a postponement if his symptoms did not improve.

3.3 On Monday 16 June, whilst the Tribunal was undertaking its reading, the Respondent's representatives wrote to state that, if an application to postpone was made, they would have expected it to have been supported by appropriate medical evidence and that they reserved their position on costs.

3.4 Later on, at 12:15, the Claimant's application for a postponement was made "*on acute severe sickness and on medical grounds*". He stated that he had "*acute gastritis and migraines*" and was experiencing "*persistent vomiting, severe abdominal pain, extreme migraines with visual disturbances, and*

significant partial loss of voice, acute bowel disturbance, fever/chills, fatigue and signs of dehydration". He supplied a fit note which referred to 'acute gastroenteritis symptoms/migraines' and which expired on 23 June. It stated that he was unfit for work. He also supplied a copy of the medicines which he had been prescribed; a combination commonly used to treat migraines, sickness and gastrointestinal issues.

3.5 The Tribunal responded and stated that it had decided to review the position at the beginning of the hearing on the second day, after it had concluded its reading;

"The Fit Note indicates that the Claimant is unfit for work, not a hearing which is to be conducted by video. Whilst the Tribunal appreciates that his condition was acute when he first emailed yesterday evening, given its nature and the fact that he now has medication, the Tribunal considers that it would be reasonable to expect it to improve over the course of 24 hours or so. 36 hours will have passed by the time that the hearing starts tomorrow and the Claimant will be expected to join the hearing and make his application then.

If his condition is still acute at that point, it may be possible to start hearing evidence later in the week…..A complete postponement would be the least desirable option as it is possible that the claim could not be relisted until the Spring of next year, at which point many of the allegations would be 3½ years old."

3.6 At 3:38 am on 17 June, the Claimant wrote again, stating that he remained "*medically unfit to participate today*". He said that he had been vomiting during the night, had a severe migraine and could not concentrate for any length of time. He nevertheless said that he would describe his condition further at 10:00 am.

3.7 The Claimant attended the hearing on video at 10:00 am on Tuesday 17 June. He confirmed that he had seen the GP on Monday and been diagnosed with gastroenteritis. Although he had been signed off as unfit for work for a week, he was not in work. He was prepared to give the Respondent permission to contact his GP directly for confirmation.

3.8 The Respondent opposed a postponement of the case generally or until the second week of its listing after the end of the Fit Note since it would then have become unrealistic to have expected to conclude it within the remaining time. Neither party appeared to wish it to have gone part heard which, in the Tribunal's view, would have been the least desirable option given the multitude of issues and the difficulties in relisting with the number of personnel involved.

3.9 The Respondent said that rule 32 (2) of the Employment Tribunals Procedure Rules was in play. The application to postpone had been made within 7 days of the start of the case and there had been two previous postponements at the Claimant's request within the meaning of rule 32 (3)(b); the postponement of a hearing on 8 February 2024 because he had been an inpatient and further one in respect of the hearing listed on 20

December 2024 because of a urological issue. Under rule 32 (2), there was *only* power to grant a further postponement if there were "*exceptional circumstances*" (rule 32 (3)(c)). The Tribunal did not consider that that high test had been met in the circumstances which prevailed. There was nothing 'exceptional' about the Claimant's illness. It was very unfortunate, but the rules recognised there was a point at which the inconvenience, cost and loss of tribunal resource occasioned by repeated postponements trumped that.

3.10 Every case was allotted a reasonable and proportionate amount of a tribunal's resources. The overriding objective specifically required cases to be dealt with in a way which avoided delay and ensured a proportionate use of resources. *Presidential Guidance* was issued in December 2013 in relation to postponements. It stated, amongst other things, that when a party suggested that they were unable to attend the hearing for medical reasons, "*all medical certificates and supporting medical evidence should be provided in addition to an explanation of the nature of the health condition concerned. Where medical evidence is supplied it should include a statement from the medical practitioner that in their opinion the applicant is unfit to attend the hearing, the prognosis of the condition and an indication of when that state of affairs may cease*".

3.11 In cases of alleged ill-health, a tribunal was entitled to be satisfied that the litigant's inability to attend was genuine, the onus being upon him to prove the need for a postponement. In *Andreou-v-Lord Chancellor's Department* [2002] IRLR 728, CA, the Claimant, who had been unfit to attend work for 2 years, had nevertheless failed to satisfy the tribunal with medical evidence that she was unfit to attend the hearing. The case highlighted the need for medical evidence that dealt with the issue, as stressed in the *Presidential Guidance.*

3.12 Although the Respondent did not doubt the veracity of the Claimant's illness, the Tribunal noted that he was online on Tuesday discussing the position for over 1½ hours without obvious difficulty. No medical evidence, beyond a Fit Note for work and some prescriptions, had been provided. The Tribunal did not consider that they were sufficient to support an adjournment until the second week of the hearing in light of the nature of the condition and the Claimant's apparent abilities at the hearing on Tuesday morning.

3.13 The Tribunal was, however, prepared to give him a further opportunity to recover. A further 24 hours, until 11:00 am on Wednesday 18 June. At that point, it would have been approximately 65 hours after the Claimant's first email on Sunday evening. The hearing was therefore adjourned (but not postponed) until then.

3.14 At 11:00 am on Wednesday 18 June, the Claimant re-joined. Whilst he said that he was not 100% better, he said that he was able to proceed and was happy to do so. He was then cross examined and engaged well in that process.

Adjustments

3.15 Adjustments for the hearing had been discussed at the Preliminary Hearing conducted by Employment Judge Midgley on 5 June 2025 (see paragraph 6 of his Order [P84-5]). The Judge had clearly had in mind the contents of the *Equal Treatment Bench Book* (pages 250-3) when discussing the case and considering the adjustments that might have been appropriate.

3.16 Those adjustments were considered with the Claimant at the start of the hearing again; he clarified that he needed a 10 minute break within every hour and that, ideally, he would take lunch between 12:30 pm and 13:30 pm because medication was usually taken within that period. The hearing was conducted on that basis and the Judge ensured that the Claimant was content with the breaks and where they fell. He was.

3.17 In all other respects, the Claimant had an impressive grasp of the issues in the case and the paperwork. He marshalled his arguments well and put a substantial number of pre-prepared questions to the witnesses.

Timetabling

3.18 The hearing had originally been listed for 10 days on the basis that the Respondent was to have called 8 witnesses and in order to have catered for the Claimant's disabilities and the adjustments considered above. The Respondent ultimately only called 5 witnesses, some of whom had provided short statements, and an initial discussion about the way in which the time might have been used in the hearing resulted agreement to have two days for the Claimant's evidence (after the Tribunal's reading and the lost day through his illness), two days for the Respondent's witnesses, a day for deliberations and a day for Judgment and remedy. The Claimant was able to indicate how many questions he had prepared for each of the Respondent's witnesses and, taking a cautious and generous approach, it appeared that they would have taken not more than seven hours. He was generously allotted two days.

3.19 The Claimant indicated that he wished full written reasons to have been provided. Whilst that obviated the need for the parties to attend at the end of the second week, the provision of a full set of written reasons placed an extra burden on the Tribunal. In addition, once the Claimant had started his cross examination of the respondent's witnesses, it became clear quite quickly that he had significantly underestimated the time which he had felt that he needed. Given the fact that the Tribunal had lost over a day of hearing time at the start because of his illness, it was necessary to be very clear with the parties about how the remaining time was going to have been used since they were understandably keen to have had the judgment provided within the listing.

3.20 That led to further conversation about the timetable and a new one was agreed in which the Claimant was allotted fourteen hours to cross examine the Respondent's 5 witnesses. At the beginning of the 5th day of the hearing

and at the Claimant's request, that time was re-allocated amongst the witnesses. The Judge helped him mark the passing of time with each witness and he then kept within the time allocated.

4. The issues

4.1 Rarely had so much time been absorbed in the preparation of a definitive list of the issues. There had been four Case Management Preliminary Hearings (24 November 2023, 11 June 2024, 14 February and 5 June 2025) and, between each, several applications to amend the claim and/or vary the issues had been made. Employment Judge Midgley had taken great time and effort to produce a definitive list within his Case Summary of 5 June 2025, which included several changes which had been requested by the Claimant, many of a minor nature [P90-103]. That List is appended to these Reasons to facilitate easy cross-referencing with the Tribunal's conclusions.

4.2 At the start of the hearing, the parties confirmed that the issues were as stated, although the following matters served to narrow them further;

- The Respondent admitted knowledge of an impediment from 2 November 2022, but not of disability under paragraphs 6.6 and 8.1 of the List in respect of the claims under ss. 15 and 20, but continued to deny knowledge of substantial disadvantage in respect of the adjustments claims (8.6);
- The Respondent accepted that the store's stairs were a physical feature of its premises (paragraph 8.4 of the List of Issues);
- In the Claimant's closing submissions, he resiled from reliance upon Ms Witt, Ms Tidd and Ms Outlaw as comparators in respect of his claims under s. 13 and sought to rely upon Ms White instead (C1, page 2);
- He also clarified that the substantial disadvantage for PCP3 was the same as those in respect of PCPs1, 2 and 4 (see paragraphs 8.3.1 and 8.3.2).

5. Facts

5.1 The following factual findings were reached on a balance of probabilities. The Tribunal attempted to restrict its findings to matters which were relevant for a determination of the issues.

5.2 Page references cited in these Reasons are to pages within the hearing bundle, R1, unless otherwise stated. Page references to the Pleadings Bundle, R2, are cited thus; [P….].

<u>Evidence generally</u>

5.3 Many of the events which the witnesses were asked to describe had occurred approximately 2½ years earlier and had concerned momentary, verbal interactions which had often not been noted, recorded or reflected in other documentation. The quality of the oral evidence therefore played an important part in the Tribunal's overall assessment of the case.

5.4 We did not consider the Claimant to have been a good historian. We did not consider that he had deliberately given a false account but, where contemporaneous documents did exist, his accounts were often markedly different from them and/or surrounding documents. On some issues, he became really unstuck and had to retract parts of his evidence (for example, paragraph 45 of his witness statement, for example [P111]; see paragraph 5.42 below). His difficulties were often caused by the fact that he had set out a positive case in respect of particular conversations or interactions and, when they had been demonstrated as inaccurate, it called other elements of his account into doubt.

5.5 The Claimant appeared to recognise that he had not given evidence well. In his closing submissions, C1, he said that "*there were times during my cross examination where I was confused and I feel that I didn't answer my questions to the best of my ability.*"

5.6 The way in which he gave his evidence was in contrast to the manner in which he presented his case. He impressed the Tribunal as a bright, intelligent, engaged and well-organised person.

5.7 Many of the incidents were denied by the Respondent. Some were accepted, but not quite in the way in which the Claimant had suggested or remembered them. The Respondent's witnesses couched their statements and gave their evidence in more measured and realistic terms; if they could not remember a particular interaction, they said so and often stated that the comments attributed to them were not ones that they recognised as having been likely.

5.8 Mr Boughan, in particular, impressed us as a witness with a good recall of the events and he answered his questions in a considered and even-handed manner. He also had a good understanding of how issues of disability, particularly dyslexia, could have (and did) arise in the workplace. Ms Passafaro too was very keen to say if or when she could not remember words that may have been used, but nevertheless held her line on the key elements of her evidence.

<u>Introduction</u>

5.9 Specsavers is a well-known high-street optician and audiologist. The Respondent is an independent business which is run by its Directors as a franchise of the Specsavers brand. Its Directors are also shareholders. The Respondent gains support from the wider Specsavers network of support offices. It is overseen by a Specsavers Regional Relationship Manager ('RRM') and it sources guidance from the group on matters such as finance, marketing and HR. On a day-to-day basis, however, it is autonomous.

5.10 There were 50-60 employees in the Chippenham store in 2022, approximately 1/5th of whom were considered to have been non-white or non-British. There were certain individuals who featured in the evidence.

Their 2022 roles and first names (since they had been used in the List of Issues) were;

- Mr Michael (Mike) Thompson, Retail Director (who succeeded by Ms Alice Cole after the Claimant's departure);
- Mr Mogford, Opthalmic Director;
- Mr Gurminder Boughan, Optometrist and Opthalmic Director;
- Mr Gordon King; Opthalmic Director;
- Ms Sarah Passafaro, Dispensing Optician and Practice Manager;
- Ms Donna Tidd, Assistant Manager;
- Ms Rowena Wilson, Dispensing Optician;
- Ms Abi Outlaw, Dispensing Optician;
- Mr David Breed-Orton, Optical Assistant;
- Ms Teigen Witts, Optical Assistant;
- Miss Emma Hart, Optical Assistant;
- Mr Gary Collins, In-Store Trainer;
- Ms Phoebe White, a Pre-Registration Optician.

5.11 The Claimant is a Muslim and a British Asian and was employed from 12 October 2022. He was one of two Pre-Registration Opticians ('Pre Regs') who were employed at around the same time, the other having been Ms White. As a Pre Reg, he was sponsored by the Respondent which was liable for certain training fees which were incurred as he progressed to full qualification [214-6]. It was in the Respondent's benefit for Pre Regs to progress to qualification quickly as they then would have been of more use but, ultimately, their qualification was in dependent upon external assessment. When he started with the Respondent, the Claimant was 22 years old and had experience in the retail, care and food sectors [194-7]. In June 2022, he had obtained a degree in optometry [231].

5.12 The allegations in the case covered a narrow chronological window; the Claimant was only employed for approximately six weeks until 29 November 2022.

<u>Disability and knowledge</u>

5.13 The Claimant relied upon the disabilities of depression, anxiety, dyslexia and back pain/sciatica.

(i) Dyslexia;

The Respondent had admitted dyslexia as a disability at an early stage in the proceedings (its letter of 15 August 2023 [69-70]).

In the Claimant's disability impact statement of 2 August 2023 he said that;

"*In terms of learning, I find it difficult to process large amounts of information in both written and verbal form. It takes me time to process what is being said and what is being asked of me. For example, my organisation skills are poor, I tend to miss judge timings of appointments, tend to get dates mixed up, spend too much time performing one task, If I don't have written step by step instructions, I may ask for help multiple*

times for the same task. This is because I find it much more difficult to process information".

He described his problems as having been worse if he was tired or stressed.

In his witness statement, he further described symptoms of "*brain fog, reduced speed, poor working memory, poor spelling, reduced cognitive processing, mistakes in my work, increased anxiety, spending longer on tasks*" (paragraph 10 [P105]). He also suggested that his dyslexia affected his social interactions with others; he felt that he found it hard to engage with people and was awkward.

During his evidence, the Claimant also indicated that his condition impacted upon how he undertook certain practical tasks like the re-loading of the till roll of receipt paper.

Ms Bull, an Educational Psychologist and Chartered Psychologist, prepared a report on 13 September 2019 [198-211] which indicated that the Claimant had relatively low verbal comprehension skills and 'extremely low' perceptual reasoning abilities. His reading comprehension and spelling were marked at the same level ('extremely low') and all of his other literary skills were low. Although the Claimant had described his disability as dyslexia, Ms Bull more specifically described it as "*Specific Learning Difficulties (SpLD) with features of Dyslexia…with a marked weakness in the area of non-verbal the learning (NLD)*." Skills advice and support was recommended as he embarked upon a course of further learning [201] including a recording device for lectures an additional time in exams [212]. It was no doubt a significant achievement that he attained a first class Bsc honours degree in optometry.

(ii) Depression and anxiety;

The Respondent admitted disability on 26 January 2024 [112].

The Claimant's medical notes revealed a history of mental illness stretching back to 2008, with anxiety and a depressive disorder first referred to in 2021. He had numerous attendances in 2022 until June, when there were no further attendances until the end of November for that reason [406-9]. Much of the other medical evidence which had been produced post-dated his employment.

In his disability impact statement, he stated that he had been diagnosed with anxiety and depression in 2019 for which he took medication. He stated that he was 'often tearful, on the edge and panicky', which was worse in busy environments. He often felt tired, which impacted upon his performance at work and concentration.

(iii) Spinal condition/sciatica;

Although it had made no direct concession that the Claimant's spinal condition was also disability, the Respondent invited the Tribunal to find as such (see paragraph 25 of the Amended Grounds of Resistance [P54]).

The evidence that was produced verified a long-term condition relating to disc degeneration and prolapses/protrusions at T7-8, T8-9 and L5-S1, but it was necessary to examine just how that manifested itself in the 6 week period of the Claimant's employment.

The contemporaneous GP notes recorded sciatica as early as January 2021 [424] but did not reflect any significant symptoms within the relevant timeframe [416-7] and he had failed to attend for physiotherapy in September 2022, although he had been prescribed anti-inflammatory medication.

As to other evidence around that time, Dr Walton's letter of 27 May 2023 [502-3] identified spinal disc protrusions at several levels and other pathological signs, but did not discuss the symptoms that were then experienced. By July, Doctor Shaikh's letter of 14 July 2023 spoke of "*lumbar chronic backache*" which had been "*ongoing for 12 months*", but his symptom level was also not discussed [414]. Subsequently, the Claimant was described as having "*anterior cord syndrome*" (Dr Liu's letter of 30 January 2024 [501]) which had, by then, necessitated a period of in-patient rehabilitation.

The Claimant's evidence about the start of his symptoms was inconsistent; he said that it had either been in 2020 [90] or 2021 [65]. In his impact statements he said that the symptoms *then* (in August 2023 and January 2024) affected his walking, using stairs, standing for lengthy periods and his ability to dress and/or bend. He did not expressly state what his condition had been in October or November 2022.

5.14 The Respondent had consistently denied knowledge of disability (most recently, in paragraph 26 of the Amended Grounds of Resistance [P54]), but some concessions were made at the start of the hearing; it was accepted that it had knowledge of the impairments from 2 November email [287-9], but not of disability or substantial disadvantage (see paragraph 4.2 above).

5.15 The Claimant alleged that he had highlighted the adjustments that he needed for his dyslexia and mental health at interview (paragraph 15 of his statement [P106]). The interview notes, however, reflected no such comments or disclosures [493-500], specifically at [498-9] and Mr Boughan stated that those disclosures had not been made. There was nothing within his CV which referred to them either [195-7] and he accepted that he did not share the contents of Ms Bull's 2019 report at any time, despite the Respondent's policies which encouraged the sharing of such information in order for employees to gain appropriate support ([177] and [183]).

5.16 On balance and in light of the contemporaneous interview notes, we did not consider it probable that the Claimant had referred to any of his disabilities at interview. The WhatsApp messages around his start date might have reflected adjustments if they had been sought. They did not. He subsequently disclosed his reluctance to discuss such matters openly [287].

5.17 Once into his employment, the Claimant also alleged that he raised issues around adjustments and his disabilities on 18 October in conversation with Ms Passafaro. In that regard, see paragraphs 5.31-5.33 below.

5.18 He undoubtedly did mention them on 2 November [287-9]; he wrote an email in which he drew their attention to certain "*health conditions*". He self-described the letter as the moment when he was *then* 'notifying employer of my disabilities' (on the front page), implying that it was the first notification, albeit that, in the second paragraph on [288], he suggested that he believed there had been previous notifications.

5.19 During his subsequent conversation with Mr Boughan on 3 November about the email the day before, he accepted in evidence that he had not referred back to the Respondent's supposed knowledge of his disabilities from the interview or elsewhere. We have set out our findings in relation to the conversation with Mr Boughan in more detail below (see paragraphs 5.44-5.49).

<u>Pre-Registration Opticians, training and the Claimant's initial conduct and performance</u>

5.20 As a Pre Reg, the Claimant was able to develop to gain his full qualification in a working optician's environment. He was assigned a Primary Supervisor, Mr Boughan, who provided day to day guidance and was his primary point of contact. He was able to practice what he had learnt at university and achieve a level of competence so that he could have undertaken a range of different procedures and tests on the public independently. The ultimate goal was for him to have progressed to non-supervised, autonomous working. External college accessors periodically visited the store to review Pre Regs' progress.

5.21 It was the Respondent's case that there were "*issues with the Claimant's behaviour and performance from the outset*" (paragraph 6 of the Amended Grounds of Resistance [P50]). He had not got off to the best of starts when he missed the second day of his induction training and then had been unwell on the first two days of his anticipated start [368]. He had started behind his contemporary, Ms White, by a couple of weeks [246-7 and 477-8]. He confirmed in evidence that his initial illness had not been disability related. His frequent comparisons to the treatment of Ms White were explained by the Respondent on the basis that she had more experience and had developed further because of her earlier start. The documents clearly indicated that her work had been impressive [241].

5.22 The Respondent considered that the Claimant appeared to rush at tasks in his training. Whilst he was very keen to have been signed off as competent in many aspects of the role, he was unable to satisfy his supervisors that he had achieved the necessary standard. Some examples were seen through the evidence (see later below) but it led Mr Boughan to lose trust in him quite quickly (paragraph 19 of his statement [P140]). He pointed out that it was not a training or developmental issue, but a behavioural one;

"*If someone in a Pre Reg role is not the fastest or best at a procedure then that's a training issue, if they can't do something then it is a development need. Those can be fixed. But if, as the Claimant was, they are pretending that that they are able to do something or not doing something we have asked of them then that puts a real strain on any ongoing relationship.*" (paragraph 21 [P140])

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5.23 The Claimant alleged that Mr Breed-Orton spoke to him in a loud and aggressive manner and referred to his size by saying "*I can tell why you're taking up most of the space*." He claimed that he entered his 'personal space' and said "*instead of just standing there, just move.*" The Claimant complained about his conduct in a WhatsApp message to Mr Thompson and asked how he might have made a formal complaint.

5.24 He did not then suggest that Mr Breed-Orton had been racist [339]. When asked why he considered that the events had been linked to his race during his evidence, he said that he had been the only person of colour of the shop floor at the time and that the 'hidden context' had been his race.

5.25 The Respondent did not admit the alleged interaction. Mr Breed-Orton was no longer in the business, but surrounding evidence appeared to support the Claimant's account and we considered it likely that the event had occurred as alleged. It did not appear to have been an unusual allegation to have been made against Mr Breed-Orton. Others had had similar experiences [291-3].

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5.26 At the start of the day, the Claimant alleged that he spoke to Mr Thompson and Ms Passafaro about Mr Breed-Orton's conduct the day before (paragraphs 24-7 of his statement [P108]). Ms Passafaro noted the conversation, which the Claimant signed [256-8]. Again, there was no suggestion that the interaction had had anything to do with any protected characteristic. Ms Passafaro and Mr Thompson then addressed a number of concerns with Mr Breed-Orton including, in vague terms, the Claimant's concern (he had had not wanted to have been named) [291-3].

5.27 Later that day, The Claimant alleged that there was a discussion between him and Ms Tidd about his ability to dispense glasses to customers on his own. In its Amended Response, the Respondent's case was that Ms Tidd had told him that he had not been signed off as competent to do the task. He then asked to be signed off nevertheless and, after she had refused, he was later seen trying to dispense and had to be reminded not to (paragraph 8 [P66]). During her evidence, Ms Tidd could not recall those events specifically. It was not up to her to have signed off Pre Regs but she recognised that he was not then competent to have dispensed himself, without supervision.

5.28 The Claimant also alleged that, whilst holding a clipboard which had been provided to him by another optometrist, Ms Tidd took it from him on more than one occasion (she was alleged to have 'snatched' it) and said "*I do not think you're capable of dispensing*" and "*I have told you once, you are not allowed to dispense*". Further interactions followed and he said that she made disparaging remarks about him to Ms Witts, laughed about him with Ms Outlaw and was then prevented from taking his lunch break away from the store. He accepted in evidence that, when he raised the issue subsequently, he did not allege that his treatment had been on the grounds of race.

5.29 Ms Tidd did not recognise the type of behaviour described by the Claimant. She had said in her statement that she did not remember the incident specifically, but considered that what had been described was the behaviour of a 'child in a playground' (paragraph 9 [P154]). She was much firmer in evidence and we had difficulty accepting that Ms Tidd, who appeared to us as a polite, straightforward and quiet lady with 20 years' experience with the Respondent, would ever have engaged in the type of conduct alleged. She also firmly denied that he had been prevented from leaving the store for his lunch and/or that he was made to do work that others were not required to. Staff were not paid over their lunch breaks and were free to take them wherever they had wanted. We accepted her evidence.

5.30 It was accepted that the Claimant complained about his earlier conversations with Ms Tidd to Ms Passafaro and we considered likely that he was then suggesting that he ought to have been able to dispense himself without supervision. It was also agreed that race was not mentioned.

5.31 It was the Claimant's case that he then asked Ms Passafaro for support with his dyslexia and was told that she could not provide what he had wanted; written instructions for tasks, changes to the nature or speed of learning or changes to the paper colour or font size used on the shopfloor. She was alleged to have said "*it is white paper for everyone*". She was also allegedly critical of his approach to training; she described the number of questions that he asked as having been "*highly inappropriate*", that training was "*not a spoon feeding environment*" and she encouraged him to 'walk before we could run' (paragraph 35 of his witness statement [P110]).

5.32 Ms Passafaro could not remember any conversation about Ms Tidd or that the Claimant had disclosed his dyslexia to her at that point and/or, specifically, that he had asked for adjustments (paper colours, slower training, quieter environments or otherwise). As with Mr Boughan later, she said that she could easily have accommodated a request around paper colours or overlays *if* they had been made, but they were not. She said this in evidence;

> "*I would always ask if there was something I could do to help. We had a severely dyslexic Pre Reg who made her condition known. She had every assistance. Communication is key. If I was not told that there were issues because of your disability, I would not have known.*"

It was accepted that she was likely to have said something like 'let's walk before we can run' because it reflected her view of his approach to training at the time. There was good evidence that he was trying to get certified as quickly as possible, for example, the evidence of him checking with his university as to how he could have achieved competence [268]. She denied the other comments attributed to her, beyond agreeing that she may have said that there were no written instructions for many of the tasks on the shop floor, because that was the case. She described it as mostly 'show and tell'.

5.33 We preferred the Respondent's account here. Ms Passafaro's evidence reflected so much of the rest of the Respondent's case; that the Claimant had wanted to go more quickly and was seeking to cut corners.

Ms Outlaw (November 2022)

5.34 The Claimant alleged that Ms Outlaw saw that the till paper had been loaded incorrectly one day and asked who the 'thick moron' was who had done it, knowing it to have been the Claimant. He then admitted that it had been him and he attributed the mistake to a feature of his dyslexia. She laughed, but did not help him to do it correctly. He further complained that she had declined his request to supervise him whilst he performed focimetry work (measuring the specifications of glasses) and rejected a request for him to join a supervision session because he 'took too long'.

5.35 The Respondent did not call Ms Outlaw to give evidence but there was good evidence that she *had* supervised him [301-4], which he accepted. The Claimant did not deny that he was slow at focimetry. He attributed his difficulties to problems with numbers caused by his dyslexia.

5.36 On 1 November, the Claimant had another day of illness absence. He said in evidence that it had been caused by anxiety. He had had a previous day of absence on 24 October, but could not remember its cause [368].

2 November 2022

5.37 The Claimant was asked to discuss his progress with Ms Passafaro and Mr Thompson, without any pre-warning. Ms Passafaro referred to it as 'in the moment feedback'.

5.38 The Respondent said that the discussion had been convened in order to address concerns about his initial progress and the absences that he had had (4 days in his first 3 weeks). Their impression had been that he had not been taking on board his colleagues' advice, had been doing things his own way and had been rude. He was told that a significant improvement in his attitude was required and that a further review was to have taken place in four weeks. Mr Thompson asked him whether he understood the Respondent's concerns and how he would have described his own progress. The Claimant provided limited feedback in both respects.

5.39 The Claimant alleged that Mr Thompson raised his voice during the discussion, which caused him to be upset and cry. He claimed that he was threatened that any further sickness absence would have led to his dismissal. He said that he had asked for a notetaker during the meeting, which was refused.

5.40 The Respondent produced handwritten minutes of the meeting [282-5] which the Claimant disputed. Ms Passafaro said that she had made the notes during the conversation and, whilst it was unfortunate that the document had not been shared with him earlier, the Tribunal had no reason to believe that they had been constructed subsequently as a cosmetic attempt to reinvent what had happened. They were considered to have been a fair reflection of the salient points and they clearly supported the Respondent's position.

5.41 The Claimant was told that his attitude was 'not where it should have been', that he was 'not listening to colleagues' and 'doing it his own way'. He was told that the team were very supportive but that, if he did not show respect back, it was unlikely that that support would have been so easily found. He was told that a "*marked improvement*" was needed in his attitude and that they were to have met again in four weeks. The notes then read as follows;

"*We need to see a marked change in your attitude….*
If you have not improved your contract may be terminated. It may be terminated before if you show poor behaviour before" [284]

Later on, towards the end [285];

"*MT; Can you help me understand what's going on?*
YM; No
MT; Balls in your court".

5.42 The Claimant's evidence was, in part, markedly at odds with the notes. For example, he strongly resisted the assertion that there was to have been a review in four weeks, but had clearly been noted [284]. Further, he had stated that he had not been aware that any notes had been kept until disclosure (paragraph 45 [P111]). In evidence, however, not only did he concede that he had been aware that Ms Passafaro had been keeping notes, but he said that he had actually *asked* her for them afterwards, which she had refused. He had to accept that his witness statement, therefore, had been incorrect. Those issues significantly undermined his overall credibility and, again, we preferred the Respondent's account.

5.43 Later in the evening on 2 November, the Claimant sent an email in which he complained that he had had no notice of the meeting, that the conversation had been one-sided, that it had been "*inappropriate to the point at which I was not able to respond*" and that he had been 'gaslighted' [287-9]. He also said that he had a "*learning disability*" and other "*health conditions*"; that he was dyslexic, suffered with sciatica, anxiety and depression. He asked what adjustments were to have been put in place to better support him. He then stated that he would only discuss such issues in the future by email and that he did not like discussing doing so in front of others.

5.44 Mr Boughan spoke to the Claimant about his email to Mr Thompson the previous evening. The Claimant claimed that he discussed the reasonable adjustments that he needed at length; additional 1:1 training and supervision, training at a slower speed, written instructions, anti-glare screen protection and the reduced need for him to go up and down stairs (paragraph 52 of his witness statement [P113]). He asserted that Mr Boughan was going to have considered those requests. Mr Boughan also allegedly said that it would have made his Pre Reg year difficult if the Claimant only communicated by email. He said that Mr Thompson was the nicest of the directors and that, if he had a problem with him, he was likely to have had a problem with the others. The implication that the Claimant took from that was that he was not getting on with other staff members and that that was going to lead to difficulties. He said that, when he raised issues around the confidentiality of reported matters, he was told "*Yasser, this is Specsavers*", implying that he should have had no expectation of privacy.

5.45 Mr Boughan's account of this important discussion was very different. He said that he had been keen to impress upon the Claimant that reasons for an absence needed to have been understood so that he could have been properly supported. He reassured him that the store was a supportive environment and stated that, in terms of his training, the plan was for him to have progressed to carrying out eye tests on colleagues before moving to the public. It was accepted that he had suggested that good communication was vital and that face to face discussion was the best means of achieving it and emailing may have made things more difficult but, if the Claimant wanted to email or to have had any particular conversation recorded, that would have been fine. It was also accepted that Mr Boughan had tried to impress upon him that Mr Thompson was a reasonable manager, but certainly not in the manner alleged. He denied suggesting that the Respondent was not good at maintaining confidentiality. Overall, he felt that the meeting had been positive and much of it was reflected in his subsequent email [294-5].

5.46 In terms of disabilities and/or adjustments, Mr Boughan stated that he had asked if the Claimant had required any additional support or adjustments in relation to the impairments referred to in the email from the previous evening. The Claimant said not (see paragraphs 40-4 of the Amended Grounds of Resistance [P57]). Mr Boughan's evidence on that issue was examined closely; he specifically denied that the Claimant disclosed any particular needs associated with any disability when he asked about them directly. He sensed that the Claimant was trying to re-direct the conversation back to what he had needed to achieve in order to have been signed off in his competencies. Spell-checking software, anti-glare screen protectors and/or a reduced need for him to have gone up and down the stairs were not raised and were not discussed at all. *Had* he been asked, as with Ms Passafaro on 18 October, he made it clear that some of those things could have been easily achieved; spellchecking software was readily

available and the store had coloured overlays for patients who needed them. Indeed, the Respondent had a machine designed to determine the best colour paper to use for people who struggled with white.

5.47 Mr Boughan's following email of 5 November [294-5], which the Claimant did not come back on or challenge, simply did not capture the type of conversation that the Claimant had asserted had taken place. In our judgment, it corroborated Mr Boughan's position; it seemed to reflect an attempt on his part to probe the issues raised on 2 November and reticence on the Claimant's part, but with Mr Boughan clearly leaving the door open for more information to have been given and shared if the Claimant had wanted to;

> "*I again explained the importance of us being aware of any existing medical conditions as these may impact the support you require from us both in and out of the store. You said you felt uncomfortable at the time of the conversation with Sarah and Mike discussing these, so I told you that you can tell us 1-2-1 or via email/message if you feel more comfortable letting us know this way.*"

5.48 Mr Boughan did not think that an OH referral had been appropriate or necessary at that stage. Because their conversation had so positive, he said that he had confidence in their next steps. He had been keen to have a new start and he sought to "*draw a line under miscommunications and start afresh"* [294-5].

5.49 A further point on credibility to the Claimant's detriment concerned a training issue. He had asserted that Mr Boughan had instructed him to complete all of the OCT and PCD training modules by the following Monday, which would have been 7 November. It was the Respondent's case that the Claimant needed to have completed his OCT training before he could have seen members of the public, which it was keen to see achieved, but Mr Boughan's email of 5 November clearly asked him to complete the OCT elements by the end of *that* week (i.e. by 11 November). It was clear that he had not completed them by 7 November by his own admission [309].

<u>9 November 2022</u>

5.50 The Claimant said that he had asked Miss Hart to check some of his pricings. He was told that he had made some mistakes. He alleged that she had rolled her eyes as she spoke to him with an 'aggressive tone' and that he was then told to clean 20 to 25 glasses frames (paragraphs 61 to 62 of his witness statement [P115]), implying it to have been some form of punishment.

5.51 Miss Hart denied the essential elements of that complaint, albeit that she could not remember if he had been informed that some of his work had been incorrect. She strongly denied eye rolling or aggression.

5.52 We preferred the Respondent's account of this interaction. Miss Hart was a straightforward and disarmingly frank witness.

5.53 It was not entirely clear which incidents the Claimant had in mind on 11 November when he then asked for copies of some of the Respondent's policies [307], but they appeared to have been two incidents concerning Ms Tidd and one involving Miss Hart ([319] and [366]). It was noteworthy, again, that no allegations of discrimination formed part of his concern.

5.54 The Claimant said in evidence that he had assumed that Miss Hart had known about his disability. He had made that assumption because, he said, Mr Collins had known about it because he had told him and Mr Collins was Miss Hart's fiancé. The Claimant had not said that in his witness statement. Mr Collins had not been mentioned and, indeed, he accepted in cross examination that his case was that he had only told Ms Passafaro, Mr Thompson and Mr Boughan before 9 November.

5.55 Miss Hart told us that she had become aware of the Claimant's disabilities in the last few weeks before the hearing for the first time. Her assertion was not challenged by the Claimant in evidence and we saw no reason to doubt it. She was not asked what she may have gleaned from Mr Collins.

<u>Week commencing Monday 14 November 2022</u>

5.56 The Claimant alleged that Mr Boughan informed him on a number of occasions that his spelling was poor; that he circled words identifying inaccuracies and asked why he could not spell them. He suggested that, if such mistakes continued, his college assessors would not accept his paperwork. He was encouraged to 'try to learn the spelling of words' by making a note of his mistakes. He also alleged that Mr Boughan came back to him on some of the adjustments that had previously been raised and that he was told that some were not possible or necessary; it was not possible to install spellchecking software and it not necessary to use antiglare screen protectors because adjustments could have been made to a screen's brightness.

5.57 Again, the Respondent's evidence was preferred on this issue. As to the spelling issue, at that stage the Claimant was only testing other staff members and was not assessing members of the public and/or writing referral letter or reports. Mr Boughan agreed that the Claimant's use of words was discussed, but not in relation to basic spelling and grammar issues, but in relation to his apparent lack of knowledge and understanding of medical or optical terms, conditions and diagnoses which were regularly used as part of his role. An error or misdescription could have been extremely important. Mr Boughan did not doubt that he may have highlighted potential problems with such issues in the eyes of his external college assessors, but he strongly refuted the suggestion that spelling or grammar mistakes *per se* had ever been an issue. He considered that many people were poor spellers and said that the Respondent "*had multiple clinicians who are dyslexic*" (paragraph 37 of his statement [P143]).

5.58 As to adjustments, Mr Boughan denied that the Claimant was told that certain adjustments had not been possible and/or were necessary. That conversation simply did not occur.

5.59 On 15 November, the Claimant alleged that Mr Boughan pointed out more spelling mistakes and accused him of rushing. He was told again that he would only be permitted to test members of the public when he was comfortable with his ability to provide accurate records without grammatical or spelling errors. The Claimant also alleged that similar things were said to him on 22 November (see, further, below). Again, we accepted that the issues had been around the use of incorrect terms, conditions or diagnoses, that the Claimant had been appearing to rush and that he was encouraged (as with other Pre Regs) to make a list of commonly used diagnostic terms and optical words, which Mr Boughan had accepted.

<u>21 November 2022</u>

5.60 The Claimant alleged that Mr Boughan had asked him if he could change his shift pattern so that he could have taken Tuesdays off, not Fridays. The Claimant said that he had had Fridays off so that he could have attended Jummah prayers. He said that he was told that, if he did not agree to the change, he would have had less opportunity to test patients and he felt pressured to do so and to provide an "*immediate response*" (paragraph 83 of his statement [P120]). He also alleged that he was told that there was nowhere within the store premises that he could have used to pray on Fridays quietly and privately.

5.61 During his evidence the Claimant accepted, however, that Mr Boughan did not seek to change his shifts to cover Fridays *because* of his religion. Knowing that he was a Muslim, he said that he would have known that it would have been a problem. He accepted the stated reason for the change; his increased exposure to patients and supervision. As it turned out, the shifts did not change before his dismissal.

5.62 Mr Boughan accepted that he had asked the Claimant if he was prepared to swap his days and work on Fridays so as to have enabled him to have had more supervision since there then would have been more experienced colleagues present on his work days. This had been raised as a result of the Claimant's concerns about the volumes of work that he had been doing whilst supervised. He denied that any pressure had been brought to bear or that he, or anyone, had ever been forced to change a shift. The Claimant had initially wanted time to think about it, but then confirmed that he was happy to change. No 'immediate response' had been requested, nor was one provided.

5.63 Although Mr Boughan was aware of the Claimant's faith, it was denied that there was any discussion around Friday prayers and/or the use of a room on Fridays. Had there been, Mr Boughan considered that such a request could easily have been accommodated. He had supervised other Muslim staff in the past for whom similar accommodations had been made. There

are 5 Muslims who work at the store at present. Some do not observe Friday prayers, some do and facilities are provided at work for them to pray, and others have been given shifts to avoid Friday working.

22 November 2022

5.64 The Claimant alleged that Mr Boughan said that he was not able to test patients and that he had no confidence in his abilities. He was instructed to work on the shop floor.

5.65 Mr Boughan denied the conversation and the Respondent pointed to the fact that the Claimant had recognised the need for him to have been on the shop floor [331], rather than it having been a quasi-disciplinary sanction or direction.

5.66 The Tribunal concluded that the Respondent's account resonated with so much of the other evidence; that it had concern about the Claimant's approach to his learning and that he was not considered suitable to have been let loose on the public at that stage.

23 November 2022

5.67 The Claimant alleged that Mr Boughan told him that Head Office did not normally deal with complaints from Pre Regs and that they ought to have been resolved internally. He had also complained that Ms Outlaw and Ms Tidd had been happy to supervise Ms White, but not him. Mr Boughan told him that that was not true and that he should have been patient.

5.68 Mr Boughan confirmed that it was usual practice for complaints to have been dealt with internally by a Pre Reg's line manager or, if it had to be escalated, by the Directors. The franchisor did not normally have a role in such things. He, however, denied that the Claimant's evidence in relation to Ms Outlaw and Ms Tidd. Ms Tidd was not a clinician and would not have supervised Pre Regs. It was that account which was again preferred.

28 November 2022

5.69 Mr Mogford, one of the Directors, was assessing the Claimant's competency in keratometry on 28 November, which he subsequently signed him off for. During their interactions, the Claimant alleged that he had raised the difficulties that he had with Ms Tidd allocating work to Ms White and not him. He said that Mr Mogford addressed him in "*a loud authoritative voice*" and said "*Yasser, let's not go there*" (paragraph 103 [P123]). He said that that increased his anxiety, but accepted in evidence that the event had not been an *effect* of it or any other disability. He said that Mr Mogford's anger had been because of his frustration that he had wanted to raise a complaint against Ms Tidd.

5.70 Mr Mogford accepted that the Claimant raised the concern, but denied raising his voice. He had been frustrated that he was having to explain to

the Claimant that the team were there to help him, that he had chosen to raise the issue in front of others and not privately, that he had done so whilst Mr Mogford had been delivering training and that Ms Tidd's supervision of Ms White was not comparable.

5.71 Again, we found that the Claimant had probably exaggerated what had happened here and that Mr Mogford's account had the ring of truth. We could appreciate a level of exasperation that such an issue had been raised in front of others and whilst he had been intending to deal with a technical training issue. The treatment of Ms White was innocently explained on the basis that she was further ahead in her training so that Ms Tidd had been asking her to do different things. We did not consider that Mr Mogford raised his voice in a hostile manner. He may have been direct.

29 November 2022

5.72 The Claimant complained that he asked to shadow the contact lens department for a day, which was refused by Mr Boughan. He further complained that he was told that it could have taken up to 4 months for him to have been permitted to conduct tests on patients, depending upon his working days and his ability to write legible records.

5.73 Mr Boughan flatly denied that a 4 month timeframe had been discussed. He had no idea where such a period had come from and did not recognise it as training timescale. Further, there was no reason for the Claimant *not* to have shadowed in the contact lens department if he had wanted to. We accepted Mr Boughan's evidence.

5.74 The Respondent's case was that the Claimant had complained again on the 29th that he was competent to carry out tasks and that he should have been signed off for them and was being held back. The Claimant made the legitimate point that paragraph 60 of the Amended Response [P78] was not reflected in Mr Boughan's own statement in respect of the events that day [P143]. Mr Boughan said that the Claimant's request to 'just sign him off', which he had considered to have been dishonest and which would have opened both of them up to significant risk, may not have necessarily occurred on that day but that the Claimant had repeatedly made that request ('little and often') and had wanted to "*rush ahead to do stuff that he was not ready to*."

5.75 A similar example concerned an issue which had first arisen on 14 November when Ms Wilson, a Dispensing Optician, had raised a concern when the Claimant had asked her to sign off the focimetry element of his training. He was given a pair of varifocals to measure and she considered that the information which he recorded was entirely incorrect. Ms Wilson provided personal supervision and guidance and was concerned about his inability to use the equipment correctly, his attempt to persuade her to sign him off and the implication that she had been too 'tough' when she refused ([311] and [328]).

5.76 He asked her to sign him off again on 17 November. Once he had informed her that he had not carried out any further practice within the previous two days, she again declined. A few days later, on the 21st, she provided him with an opportunity to dispense glasses to a customer. He did not carry out any detailed measurements but, in her view, tweaked the measurements that she had already put onto the system just a little in order to give the impression that he had done so. A further attempt to get signed off was made on 24 November when he informed her that he had 'done enough' on varifocals. Again, she asked him to complete a number of tasks and, again, he failed to do them and she refused to sign him off.

5.77 Ms Wilson's interactions were recorded either on the day or within days of the events and the Tribunal considered that her notes were detailed, full and reflective of others' experiences ([311], [328] and [335-6]). They were echoed in Ms Outlaw's experiences too [316] and some of Ms Passafaro's [267].

5.78 The Claimant largely denied the interactions, but his main concern was that none of the concerns had been shared with him at the time. He believed that some of the accounts had simply been made up (her assertions about his demands to have been signed off, for example), but accepted that there was truth in other parts.

Dismissal

5.79 As a result of the concerns, a decision was taken to dismiss the Claimant. There was evidence that his position had been discussed between the Directors well before the 29th [315]. They were particularly concerned about his determination to have been signed off to do work that he had not demonstrated sufficient capability in and the trust issues which flowed from it. The decision crystalised on the morning of 29 November [355] and was further explained by Mr Boughan during his evidence. He was very clear that it had nothing to do with any problems that may have been perceived from his stated impairments; "*I did not consider that trying to rush through a qualification year was related to any alleged disability*". As Mr Mogford succinctly put it, he was dismissed for his "*attitude and behaviour*" but the decision was primarily driven by Mr Boughan, the Claimant's supervisor.

5.80 A meeting was convened at the end of the day when he was informed by Ms Passafaro and Mr Boughan of his dismissal with immediate effect because his 'behaviours did not fit with the values of the business'. He was thanked for the work that he had done and was paid four weeks' salary in lieu of notice. Ms Passafaro kept a short, handwritten note of the discussion [357-8]. He asked for additional reasons to have been provided and they were, in a subsequent letter of 30 November [364].

5.81 The Claimant complained that his request to have somebody write down what was being discussed was refused. He further complained that he was asked to leave the building and that, if he had not, he was threatened with the possibility of the police having been called.

5.82 The Respondent denied that the Claimant was *refused* the opportunity to write his own notes during the meeting and/or to be represented. Ms Passafaro stated that pens and paper had been readily available in the room had he wished to use them. He asked for neither. It was further denied that any threat was made in relation to the police. Ms Passafaro seemed somewhat bemused by the allegation and we could see why. In the circumstances, it appeared wholly unlikely and we accepted her evidence.

5.83 Whilst the Claimant did not have 2 years' service, notice of a dismissal meeting and the opportunity to have been accompanied might have been things which a holistic and sympathetic employer ought to have considered. Although not cross examined about it, it seemed that what Mr Boughan did may not have been in accordance with the HR advice that he had received (the entry time at 17:43 on 17 November [353]). During their evidence, both he and Ms Passafaro accepted the desirability of handling matters differently in the future.

5.84 The Claimant wrote an appeal letter on 5 December in which he did not allege that he had been treated unfavourably for any reason related to his religion. He did mention indirect race discrimination and he made allegations in relation to alleged disability discrimination, but referred to his dyslexia/'learning disability' only [376-7]. His appeal was not responded to because, as Mr Boughan said, the Claimant had already contacted ACAS and HR advised that no reply was necessary.

6. Relevant legal tests

Direct discrimination (s.13 Equality Act)

6.1 Several of the Claimant's claims were brought under s. 13 of the Equality Act 2010:

> "*A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.*"

6.2 The protected characteristics relied upon were race, religion and disability.

6.3 The comparison that we had to make under s. 13 was that which was set out within s. 23 (1):

> "*On a comparison of cases for the purposes of sections 13, 14 or 19, there must be no material difference between the circumstances relating to each case.*"

6.4 We approached the case by applying the test in *Igen-v-Wong* [2005] EWCA Civ 142 to the Equality Act's provisions concerning the burden of proof, s. 136 (2) and (3).

6.5 In order to trigger the reversal of the burden, it needed to be shown by the Claimant, either directly or by reasonable inference, that a prohibited factor may or could have been the reason for the treatment alleged. It was not

necessary to demonstrate that the only inference which could have been drawn was a discriminatory one (*Pnaiser-v-NHS England* [2016] IRLR 170). More than a difference in treatment or status and a difference in protected characteristic needed to be shown before the burden would shift. The evidence needed to have been of a different quality, but a claimant did not need to have to find positive evidence that the treatment had been on the alleged prohibited ground; evidence from which reasonable inferences could be drawn might suffice. Unreasonable treatment of itself was generally of little helpful relevance when considering the test. The treatment ought to have been connected to the protected characteristic. What we were looking for was whether there was evidence from which we could conclude, either directly or by reasonable inference, that the Claimant had been treated less favourably than others not of his race, religion or disability, because of his race, religion or disability. Unexplained, unreasonable conduct, as in *Law Society-v-Bahl* [2003] IRLR 640, was not, of itself, enough.

6.6 The test within s. 136 encouraged us to ignore the Respondent's explanation for any poor treatment until the second stage of the exercise. We were permitted to take into account its factual evidence at the first stage, but ignore explanations or evidence as to motive within it (see *Madarassy-v-Nomura International plc* [2007] EWCA Civ 33 and *Osoba-v-Chief Constable of Hertfordshire* [2013] EqLR 1072). At that second stage, the Respondent's task would always have been somewhat dependent upon the strength of the inference that fell to be rebutted (*Network Rail-v-Griffiths-Henry* [2006] IRLR 856, EAT). That was an analytical process, not an evidential one.

6.7 In situations where the burden did shift, a respondent needed to show that the treatment was "*in no sense whatsoever*" because of the protected characteristic (*Igen*). We needed to find cogent evidence in support of the Respondent's non-discriminatory explanation for the treatment focussing, as suggested in *Bennett-v-MiTAC Europe Ltd* [2022] IRLR 25, on the mind of the putative discriminator.

6.8 If we had made clear findings of fact in relation to what had been allegedly discriminatory conduct, the reverse burden within the Act may have had little practical effect (per Lord Hope in *Hewage-v-Grampian Health Board* [2012] UKSC 37, at paragraph 32). Similarly, in a case in which the act or treatment was inherently discriminatory, the reverse burden would not apply.

6.9 When dealing with a multitude of discrimination allegations, a tribunal was permitted to go beyond the first stage of the burden of proof test and step back to look at the issue holistically and look at 'the reasons why' something happened (see *Fraser-v-Leicester University* UKEAT/0155/13/DM). In *Shamoon-v-Royal Ulster Constabulary* [2003] UKHL 11, the House of Lords considered that, in an appropriate case, it might have been appropriate to

consider 'the reason why' something happened first, even before addressing the treatment itself.

6.10 As to the treatment, we had to remember that the legislation did not protect against unfavourable treatment per se but *less* favourable treatment. Whether the treatment was less favourable was an objective question. Unreasonable treatment could not, of itself, found an inference of discrimination, but the worse the treatment, particularly if unexplained, the more possible it may have been for such an inference to have been drawn (*Law Society-v-Bahl* [2004] EWCA Civ 1070).

6.11 We reminded ourselves of Sedley LJ's well known judgment in the case of *Anya-v-University of Oxford* [2001] ICR 847 which encouraged reasoned conclusions to be reached from factual findings, unless they had been rendered otiose by those findings. A single finding in respect of credibility did not, it was said, necessarily make other issues otiose.

Discrimination arising from disability (s. 15)

6.12 When considering a complaint under s. 15 of the Act, we had to consider whether the employee was "*treated unfavourably because of something arising in consequence of his disability*". There needed to have been, first, '*something'* which arose in consequence of the disability, which was an objective question and, secondly, unfavourable treatment which was suffered because of that '*something*' (*Basildon and Thurrock NHS-v-Weerasinghe* UKEAT/0397/14). That second question was subjective, in the sense that it required us to examine the employer's mind in order to establish whether the treatment had been by reason of its attitude or reaction to the '*something*' (*Dunn-v-Secretary of State for Justice* [2019] IRLR 298, CA). Although an employer must have had knowledge (actual or imputed) of the disability, there was no requirement for it to have been aware that the relevant '*something*' had arisen from the disability (*City of York-v-Grosset* 2018] IRLR 746, CA).

6.13 Although there needed to have been some causal connection between the '*something*' and the disability, it only needed to have been loose and there might have been several links in the causative chain (*Hall-v-Chief Constable of West Yorkshire Police* UKEAT/0057/15 and *iForce Ltd-v-Wood* UKEAT/0167/18/DA). It need not have been the only reason for the treatment; it must have been a significant cause, in the sense of 'more than trivial' (*Pnaiser-v-NHS England* [2016] IRLR 170 and *Bodis-v-Lindfield Christian Care Home Ltd* [2024] EAT 65), but the statutory wording ('in consequence') imported a looser test than 'caused by' (*Sheikholeslami-v-University of Edinburgh* UKEATS/0014/17 and *Scott-v-Kenton Schools Academy Trust* UKEAT/0031/19/DA).

6.14 In *IPC Media-v-Millar* [2013] IRLR 707, the EAT stressed the need to focus upon the mind of the putative discriminator. Whether conscious or unconscious, the motive for the unfavourable treatment claim needed to have been "*something arising in consequence of*" the employee's disability.

6.15 No comparator was needed under s. 15. '*Unfavourable*' treatment did not equate to '*less favourable treatment*' or '*detriment*'. It had to be measured objectively and required a tribunal to consider whether a claimant had been subjected to something that was adverse rather than something that was beneficial. The test was not met simply because a claimant thought that the treatment could have been more advantageous (*Williams-v-Trustees of Swansea University Pension and Assurance Scheme* [2019] ICR 230, SC).

6.16 We approached the case by applying the test in *Igen v Wong* [2005] EWCA Civ 142 to the Equality Act's provisions concerning the burden of proof, s. 136 (2) and (3) also (see above).

Harassment (s. 26)

6.17 Not only did the conduct have to have been 'unwanted' in order to have amounted to harassment, but it also had to have been 'related to' a protected characteristic, which was a broader test than the 'because of' or the 'on the grounds of' tests in other parts of the Act (EHRC Code paragraph 7.9 and *Bakkali-v-Greater Manchester Buses* [2018] UKEAT/0176/17). In *Tees Esk Wear Valleys NHS Foundation Trust-v-Aslam* [2020] IRLR 495, the EAT pointed out that there had to be "*some feature or features of the factual matrix identified by the Tribunal, which properly* [led] *it to the conclusion that the conduct in question* [was] *related to the particular characteristic in question..*". In *Carozzi-v-University of Hertfordshire* [2024] EAT 169, it was said that the term 'related to' was designed to have a relatively broad meaning and that s. 26 was "*designed to be pragmatic, balancing the interests of employees against those of their employer and colleagues who may be accused of harassment.*".

6.18 As to causation, we reminded ourselves of the test set out in the case of *Pemberton-v-Inwood* [2018] EWCA Civ 564. In order to decide whether any conduct falling within sub-paragraph (1) (a) had either of the prescribed effects under sub-paragraph (1) (b), a tribunal had to consider *both* whether the victim perceived the conduct as having had the relevant effect (the subjective question) *and* (by reason of sub-section (4) (c)) whether it was reasonable for the conduct to have been regarded as having had that effect (the objective question). The relevance of the subjective question was that, if the Claimant had not perceived the conduct to have had the relevant effect, then the conduct should not be found to have had that effect. The relevance of the objective question was that, if it was not reasonable for the conduct to have been regarded as having had that effect, then it should not be found to have done so. A tribunal also had to take into account all of the other circumstances (s. 26 (4)(b)).

6.19 It was important to remember that the words in the statute imported treatment of a particularly bad nature. The judgment in *Carozzi*, above, was of assistance;

> "*Employers and employees can be expected to take greater care in how they speak and behave at work than they might in their social life. While it is in no-one's interest that colleagues should constantly be walking on egg-shells, it is also important that proper protection is provided against violation of dignity at work.*"

6.20 Employees were expected to have at least some degree of robustness. It was said in *Grant-v-HM Land Registry* [2011] IRLR 748, CA that "*Tribunals must not cheapen the significance of these words. They are important to prevent less trivial acts causing minor upset being caught by the concept of harassment.*" See, also, similar dicta from the EAT in *Betsi Cadwaladr Health Board-v-Hughes* UKEAT/0179/13/JOJ.

Reasonable adjustments

6.21 In our examination of the claims under ss. 20 and 21, we bore in mind the guidance in the case of *Environment Agency-v-Rowan* [2008] IRLR 20 in relation to the correct manner to approach the sections.

6.22 First, we had to identify whether and to what extent the Respondent had applied provisions, criteria and/or practices (the 'PCPs'). Those words were to have been given their ordinary English meaning. They did not equate to 'act' or 'decision'. In the context of defining a PCP, a 'practice' generally required a sense of continuum. Although it did not need to have been applied before or applied to everyone, a claimant had to demonstrate that it would have been applied or that it was capable of broad application. It was akin to an expectation which applied to other employees or was repeated (*Ahmed-v-DWP* [2022] EAT 107. A PCP connoted a state of affairs and one off, isolated acts relating to the Claimant alone were unlikely to satisfy that test unless they were capable of having had broader application (*Nottingham City Transport-v-Harvey* [2013] Eq LR 4, *Gan Menachem Hendon Ltd-v-De Groen* [2019] ICR 1023 and *Ishola-v-Transport for London* [2020] EWCA Civ 112).

6.23 In relation to the second limb of the test, it was not sufficient that the disadvantage was merely some disadvantage when viewed generally. It needed to have been one which was substantial when viewed in comparison with persons who were not disabled and that test was an objective one (*Copal Castings-v-Hinton* [2005] UKEAT 0903/04 and *Sheikholeslami-v-University of Edinburgh* [2018] 1090, EAT).

6.24 Further, in terms of the adjustments themselves, it was necessary for them to have been both reasonable and to have operated so as to have avoided the disadvantage. There did not have to have been a certainty that the disadvantage would have been removed or alleviated by the adjustment. A real prospect that it would have had that effect would have been sufficient

(*Romec-v-Rudham* UKEAT/0067/07 and *Leeds Teaching Hospital NHS Trust-v-Foster* [2011] EqLR 1075).

6.25 It can have been reasonable for an employer to have made an adjustment even if a claimant did not suggest it. That underlined the importance for an employer to have consulted with a claimant and to have made appropriate enquiries/assessments. However, at the stage when a claim was brought it was incumbent on a claimant to identify the adjustments which he said should reasonably have been made. That was made clear by the EAT in *Project Management Institute-v-Latif* [2007] IRLR 579 (paragraphs 54 and 55).

6.26 When considering this element of the case, we referred to the statutory Code of Practice and, specifically, paragraph 6 relating to the duties under ss. 20 and 21.

Knowledge (ss. 13 and 15 (2) and Schedule 8, paragraph 20)

6.27 A lack of knowledge of the Claimant's disabilities potentially impacted upon all elements of the claim brought on the basis of that protected characteristic.

6.28 Under ss. 15 and 20, simple ignorance itself was not a defence. We had to ask whether the Respondent knew or ought reasonably to have known that the Claimant was disabled. In relation to the second part of that test, we had to consider whether, in light of *Gallop-v-Newport City Council* [2014] IRLR 211 and *Donelien-v-Liberata UK Ltd* [2018] IRLR 535, the employer could reasonably have been expected to have known of the disabilities. We had to consider whether the Respondent ought reasonably to have asked more questions on the basis of what it already knew and we had in mind Lady Smith's Judgment in the case of *Alam-v-Department for Work and Pensions* [2009] UKEAT/0242/09, paragraphs 15 – 20 in that respect.

6.29 If a Tribunal concluded that an employer could reasonably have made more enquiries, it must also have considered what the result of those enquiries was likely to have been. In *A Ltd-v-Z* UKEAT/0273/18/BA, it was determined that the claimant would have concealed the true facts about her mental health condition if further enquiries had been made and therefore the employer succeeded in the knowledge defence even though it had not made those enquiries.

6.30 In *Gallacher-v-Abellio Scotrail Ltd* UKEATS/0027/19/SS, the Claimant was away from work for seven weeks as a result of a combination of sickness and annual leave. At a subsequent meeting, an agreed phased return was discussed, but there was no discussion about the fact that she was menopausal and depressed. Although she had provided some information to her manager about her conditions, there was no details of any substantial disadvantage that she had suffered by reason of her disability, its effects on her day-to-day activities or the longevity of the conditions for the purposes of s. 6. The Employment Appeal Tribunal upheld the decision that

Respondent had not had knowledge under s. 15. In *McMahon-v-Rothwell & Evans LLP and anor* ET No. 2410998/2019, a similar conclusion was reached in circumstances where an employee had downplayed her symptoms for fear that she might have been considered unreliable.

6.31 The Code suggested that "*Employers should consider whether a worker has a disability even where one has not been formally disclosed, as, for example, not all workers who meet the definition of disability may think of themselves as a "disabled person*"" (para 5.14). The Code gave an example, at paragraph 5.15, of where a sudden deterioration in an employee's time-keeping and performance and a change in behaviour should have alerted an employer to the possibility that they were connected to a disability which should have led it to explore the reason for the changes and whether the difficulties were because of something arising in consequence of a disability, in that example, depression.

6.32 Further, paragraph 6.19 of the Code reads as follows:

> "*The employer must, however, do all they can reasonably be expected to do to find out whether this is the case. What is reasonable will depend upon the circumstances. This is an objective assessment. When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially.*
> *Example: A worker who deals with customers by phone at a call centre has depression which sometimes causes her to cry at work. She has difficulty dealing with customer enquiries when the symptoms of her depression are severe. It is likely to be reasonable for the employer to discuss with the worker whether her crying is connected to a disability and whether a reasonable adjustment could be made to her working arrangements.*"

6.33 Knowledge on the part of a person employed by the respondent was likely to be imputed to the respondent. It will either be actual knowledge, or knowledge which ought reasonably to have been transmitted to the appropriate person. Accordingly, the existence of a so-called 'knowledge defence' made it crucial to identify as precisely as possible what the alleged unfavourable treatment was, who decided upon it, and when it was said to have occurred.

6.34 Under s. 15, a respondent could not claim ignorance in respect of the causal link between the 'something arising' and the disability and benefit from the defence (*City of York Council-v-Grosset* [2018] EWCA Civ 1105). The defence related to the Claimant's possession of the disability, not other elements of the test and an employer could not, for example, readily claim ignorance of the fact that the Claimant's actions had arisen in consequence of his/her disability.

6.35 Under Schedule 8, paragraph 20, in relation to s. 20, the test was conjunctive; the employer must have known about the disability *and* that the claimant was likely to have been placed at the substantial disadvantage claimed (see *Wilcox-v-Birmingham CAB Services* [2011] EqLR 810). An employer will therefore have the requisite knowledge if it knew of the

disability (or ought reasonably to have done (*McCubbin-v-Perth and Kinross Council* UKEATS/0025/13)) and its consequences.

6.36 If an employer was found to have had constructive, rather than actual, knowledge of the disability, it was still entitled to rely upon any adjustments taken unwittingly or to argue that, even if it had considered what adjustments might have been possible, it would have concluded that there were none (*British Gas-v-McCaull* [2001] IRLR 60). That was because the test was always an objective one.

6.37 In the case of direct disability discrimination, the discriminator had to know of the existence of the protected characteristic to have been able to have treated that person less favourably by reason of their possession of it (*Morgan-v-Armadillo Managed Services Ltd* [2012] UKEAT/057/12/RN and *CLIFS-v-Reynolds* [2015] IRLR 562). The discriminator did not need to know that the person necessarily qualified under s. 6, as long as they were motivated by a set of facts that met that definition.

6.38 Under s. 26, there was no such requirement (see paragraph 18 of the Respondent's closing submissions, R7).

7. Conclusions

Disability

7.1 The Respondent had admitted the disabilities of dyslexia and anxiety and depression and had not resisted a finding in respect of the Claimant's spinal condition (see paragraph 5.13 above). For the avoidance of doubt, the Tribunal was satisfied that the Claimant was disabled by virtue of that condition too, although the precise date upon which it represented a substantial interference in his normal day-to-day activities was not easy to discern for the reasons set out in paragraph 5.13 (iii). Given that he had been referred for physiotherapy, was taking anti-inflammatory medication and had been suffering from some symptoms since 2020 or 2021, it was reasonable to conclude that the evidence as a whole supported the further finding of disability in that respect.

Knowledge of disability

7.2 As a result of the factual findings that were made, there was no evidence from which the Respondent knew or ought reasonably to have known of the Claimant's disability prior to 2 November. We had specifically found that there had been no disclosures at interview, on 18 October to Ms Passafaro as had been alleged and/or on 2 November. He had been given the perfect opportunity on that occasion, but had failed to take it [285].

7.3 In the Claimant's email on 2 November, he referred to his dyslexia, a "*learning disability*" and the "*health conditions"* of sciatica, anxiety and depression [287-9]. The Respondent conceded that it was aware that the

Claimant had those impediments, but it continued to deny knowledge of disability for the purposes of ss. 13, 15, 20 and/or 26.

7.4 What specifically concerned us was whether, following the email, the Respondent ought then to have asked more questions than it did and/or delved deeper on or after the conversation on 3 November. We accepted, however, that Mr Boughan had tried to address each condition with the Claimant on that day. We considered that the Claimant had not been at all forthcoming and had seemed far more concerned about what he needed to have achieved in order to get signed off in his competencies. That was when he might have engaged about his needs; he might have disclosed Ms Bull's report or discussed what it had enabled him to obtain at University. He might have asked for an Occupational Health referral. He might have referred to specific, tangible adjustments but, in our assessment of the evidence, none of that happened. Mr Boughan's email of 5 November seemed to reflect his reticence, but also left the door open [294-5]. It was an opportunity which the Claimant did not take, as on the day before [285].

7.5 Following the case of *Alam*, we had to consider what more the Respondent ought reasonably to have done to discover more about the Claimant's impairments than it then knew. Mr Boughan did what he was supposed to have done at the time in our judgment; he asked the right questions and, when not answered, he left the door open for the Claimant to have come back to him. He did enough. In a perfect world, he might have *insisted* upon an OH referral but, in the context of such issues having never been raised before and at a positive meeting in which it was felt that there had been a resetting of relationships and goals, that would have been a counsel of perfection. To say otherwise would have been to judge the Respondent's actions with the 20/20 vision provided by hindsight in our judgment.

7.6 Accordingly, the Respondent did not have knowledge of the Claimant's disabilities within the meaning of the Act from 2 or 3 November, or at any stage thereafter.

7.7 As with the factual findings, the Tribunal approached its task by addressing each chronological event and the claims which arose from it.

<u>17 October 2022</u>

7.8 The events on this occasion gave rise to allegations of direct discrimination and harassment on the grounds of and/or related to race (paragraphs 2.2.1 and 3.1.1 of the List of Issues).

7.9 In our judgment, there were no features of these allegations which suggested the involvement of any element of race ([P14], [256-8] and [339]). The comments had related to his size or weight.

7.10 The Claimant alleged that he noticed that he had been the only person of colour on the shop floor. He felt that the 'hidden context' had been one of race. A difference in treatment and a difference in protected characteristic

did not, by and of itself, indicate discrimination and the evidence suggested that Mr Breed-Orton had behaved in a similar manner with others [291-3]. There was no evidence upon which we could have properly inferred or concluded that what he had said had been motivated by the Claimant's race and/or was related to race in any way, nor had the Claimant alleged as such at the time.

18 October 2022

7.11 The first event on this day, concerning Ms Tidd, gave rise to an allegations of direct race discrimination (2.2.2) and race related harassment (3.1.1).

7.12 We did not accept the thrust of the Claimant's factual allegations against Ms Tidd but, even if we had, there were no features of the evidence, nor did the Claimant properly explain, why or how this interaction was related to or motivated by his race. We did not accept it as an allegation under either ss. 13 or 26.

7.13 There was a further allegation of direct discrimination on the grounds of disability in relation to Ms Passafaro which arose on that day (5.1.1). In evidence, he clarified that it had allegedly concerned his dyslexia.

7.14 Having rejected the thrust of the Claimant's evidence here about the conversation regarding alleged adjustments, we did not accept the suggestion that there had been direct discrimination on the grounds of disability. The comments which we did accept had probably been made ('show and tell' and 'let's walk before we can run'), in context, had nothing to do with the Claimant's dyslexia. Rather, they descriptive of the nature of a Pre Reg's experience and reflected the concern about his keenness to have been signed off before he had demonstrated his competence to undertake tasks.

November 2022

7.15 There were undated allegations of discrimination arising from disability in relation to Ms Outlaw (paragraph 6.1.4).

7.16 There were elements of the allegations here which resonated in Ms Bull's report (6.1.4.1 and 6.1.4.3). During his evidence, the Claimant said that his dyslexia affected his processing skills (6.2.1). He said that he was slow at focimetry too as he was easily confused when he processed the numbers involved in that work.

7.17 Had there been any evidence that Ms Outlaw had known of his disability, these allegations may well have had more success, but, even if it could have been shown that Mr Boughan, Mr Thompson and/or Ms Passafaro had had constructive knowledge, there was no evidence to suggest that it had filtered to those on the shopfloor, like Ms Outlaw. The Claimant did not suggest so.

2 November 2022

7.18 This meeting gave rise to allegations of direct discrimination on the grounds of disability (5.1.2) and discrimination arising from disability (6.1.1).

7.19 In evidence, the Claimant said that the meeting had 'given rise to' anxiety and was linked to disability as a result. The acts in 5.1.2.1 to 5.1.2.3 were not, therefore, acts of discrimination which occurred on the grounds of that condition; motivation and effect were very different things under the Act. Further and in any event, there was no evidence to indicate that the Claimant had not been given notice of the meeting because of any disabilities, which he then had yet to disclose (5.1.2.1). The other allegations within paragraphs 5.1.2.2 and 5.1.2.4 were not proved.

7.20 The Claimant alleged that the threat of dismissal (5.1.2.3 and 6.1.1) had been linked to his disabilities in a different way because it reflected disability related absences. If correct, that could have supported a claim under s. 15. The problems there were twofold; first only one of the Claimant's 4 days of absence had been disability related prior to that (those on 10 and 11 October had not been disability related, he could not remember why he had been off on the 24 October, but he attributed the 1 November absence to his anxiety) and, secondly, we found that the warning was made because of his 'attitude', not his sickness record [284], which he reflected back in his email [288]. Further, the Claimant accepted in evidence that the event in 6.1.1 had not arisen from his disabilities, as alleged in 6.2.

3 November 2022

7.21 This further meeting with Mr Boughan gave rise to allegations of direct discrimination on the grounds of disability (5.1.3). In evidence, the allegations were said to been connected to his dyslexia.

7.22 Again, the factual allegations in paragraphs 5.1.3.1 to 5.1.3.4 were not proved. Even if they had been, the Respondent had not known of the Claimant's disabilities and, even if he had passed both of those hurdles, there was nothing within the nature of the allegations themselves which would have enabled the Tribunal to have inferred that what had been said had been motivated by the fact that he was disabled.

9 November 2022

7.23 There was an allegation of direct discrimination on the grounds of disability in relation to this event (5.1.4) and of harassment (7.1.1).

7.24 There was, however again, no compelling evidence that Miss Hart had had any knowledge of the Claimant's disability. Further, there was nothing upon the face of the allegations that suggested that they had been acts of direct discrimination (as opposed to a claim under s. 15) and/or had been related to disability even if she had known.

Week of 14 November 2022 and 22 November

7.25 The Claimant brought complaints of direct disability discrimination and discrimination arising from disability which concerned Mr Boughan's alleged comments in relation to his spelling (5.1.5, 5.1.6, 5.1.7, 6.1.2 and 6.1.3).

7.26 The essential thrust of the Claimant's allegations had not been accepted here. The Tribunal had been prepared to accept that Mr Boughan had been concerned about clinical misdescription, not spelling or grammatical issues (see paragraphs 5.57 to 5.59 above).

7.27 The complaints of direct discrimination in paragraphs 5.1.5, 5.1.6 and 5.1.7 therefore failed and would have failed in any event because a comparator in those circumstances would have been somebody who had committed the same spelling errors, but did not have dyslexia. The complaints in paragraphs 6.1.2 and 6.1.3 primarily failed on the knowledge issue. Even if the Respondent had not been capable of relying upon that defence, the Claimant would have needed to have demonstrated that his misuse (and possible misunderstanding) of clinical terms had been a feature of his dyslexia, rather than simple misspelling.

21 November 2022

7.28 This was an allegation of direct discrimination on the grounds of religion (2.2.3) and harassment related to religion (3.1.2).

7.29 The Claimant accepted in evidence that Mr Broughan had not acted because of his religion. The stated reason behind the change had been the desire to have increased his exposure to supervised work with patients. As it turned out, the shifts did not change before his dismissal and the Claimant did not ever experience the detrimental treatment of missing Friday Jummah prayers. Fundamentally, the Respondent's account had been accepted and the suggested change had never been on the grounds of and/or related to his religion.

23 November 2023

7.30 This event was the foundation of allegations of direct race and disability discrimination and of discrimination arising from disability (2.2.4, 5.1.8 and 6.1.5).

7.31 The allegation within paragraph 2.2.4.1 failed for the simple reason that Head Office did not generally deal with Pre Reg complaints because, as a franchisee, the Respondent dealt with internally. That had nothing to do with the Claimant's race, as he had accepted in cross examination, or disability (5.1.8.1). The Claimant did not explain why Mr Boughan's rejection of his complaint in relation to Ms Outlaw and Ms Tidd had anything to do with his race (2.2.4.2) or disability (5.1.8.2), but this allegation failed on the facts in any event.

7.32 During his evidence, the Claimant accepted that the matters had not arisen in consequence of an effect of any of his disabilities (6.1.5). They were not viable claims under s.15 therefore either.

28 November 2023

7.33 This allegation was one of harassment related to race and/or disability (3.1.3 and 7.1.2). It was also advanced as a complaint of discrimination arising from disability (6.1.6).

7.34 The complaint of discrimination arising from disability could not have been sustained on the basis of the Claimant's evidence; he accepted that the events had not been an effect of any disability.

7.35 It was also difficult to understand how it had allegedly been related to the Claimant's disabilities or his race under s. 26 either. There was no evidential feature which made that connection, even if we had accepted the Claimant's account of the interaction. As to the latter, the Claimant had assumed that it had occurred because he had been the only person of colour on the shop floor at the time. The difference in treatment and a difference in protected characteristic was insufficient to found a complaint under s. 13 by and of itself.

29 November 2023

7.36 Several events arose on this day, being the date of the Claimant's dismissal. There were allegations which concerned events before his dismissal and events surrounding the dismissal itself. They were of direct race and disability discrimination (2.2.5 and 5.1.9) and harassment related to race and/or disability (3.1.4 and 7.1.3).

7.37 The Claimant accepted in evidence that the events before the dismissal, even if they had occurred (5.1.9.1 and 5.1.9.2), had not occurred on the grounds of disability. It was equally difficult to see how they had occurred on the grounds of race.

7.38 As to the dismissal, there was the decision itself and there were the issues around the meeting. In relation to the latter, the Claimant was not refused a scribe, nor was he threatened with the police but, if he had been, there was no evidence to indicate that his race and/or the fact of his disability had been the motivation and/or that those decisions had been related to disability for the purposes of s. 26 (2.2.5.4, 2.2.5.5, 3.1.4.4, 3.1.4.5, 7.1.3.4 and 7.1.3.5).

7.39 As to the dismissal itself, that decision had been taken by all of the Directors, but seemingly driven by Mr Boughan, and it was his motivation which had to be examined. As Mr Mogford succinctly put it, "*it was to do with attitude and behaviour, not performance*". Mr Boughan too stated that it had not been performance related. The Respondent's case was that the Claimant had been very capable, but that Mr Boughan had formed an

adverse view of his approach to learning and did not consider that his behaviour was where it needed to have been. That view was clearly shared by Ms Tidd, Ms Passafaro, Ms Outlaw and Ms Wilson and, again, as Mr Mogford put it in evidence, "*Donna, Sarah, Abi and Rowena were all very experienced members of staff*".

7.40 The decision to dismiss was not one that was taken, or tainted by, the Claimant's race (2.2.5.3), nor was it related to that protected characteristic within the meaning of s. 26 (3.1.4.3). Further, it was not taken on the grounds of disability (5.1.9.3) or for reasons related to it (7.1.3.3). Somewhat strangely, a complaint under s. 15 had not been raised in respect of the dismissal but, even if it had, there would have been fundamental problems with it; knowledge and the Claimant's inability to have demonstrated that the motivation had arisen from capability issues which had been a consequence of any disability.

7.41 Before leaving the complaints under s.13, mention ought to have been made of the Claimant's comparator, Ms White (see paragraph 4.2 above). It was not clear in respect of which of the particular allegations it was alleged that Ms White had been treated more favourably. The obvious candidates were those in relation to Ms Outlaw in November 2022 (3.1.3, 6.1.4, 6.1.5, 6.1.6 and 7.1.2), but they were advanced under ss. 15 or 26 and no comparator was necessary. Insofar as it might have been possible to have made further comparisons, whilst we knew that she was white and British, we knew nothing about her religion or whether she was disabled.

Adjustments claims

7.42 Despite the fact that the overarching problem for the Claimant was the lack of knowledge previously discussed, the Tribunal nevertheless dealt with each of the complaints on their merits by considering each of the 6 provisions, criteria and/or practices ('PCPs') that were relied upon, the alleged consequential substantial disadvantages and the proposed adjustments together, but sequentially as the Act required;

(i) PCP1; A practice of conducting meetings without a minute being taken or without providing such a minute or the means to make one to the employee;
(ii) PCP2; A practice that employees could not bring a note taker to meetings;
(iii) PCP3; A policy that employees could not be accompanied to meetings;

The first three were closely linked and were taken together.

There was no evidence that there was a practice of not taking minutes at meetings generally. There were, of course, minutes of the important meetings of 2 and 29 November and Mr Boughan followed his meeting of 3 November up with a summarising email.

Further, there was no basis upon which we could have found that the Claimant had ever been prevented from taking a minute should he have wanted to on the basis of the facts that we received. PCP1 was not established;

Further, we had not accepted the Claimant's case that he had ever been *refused* the right to bring a notetaker or a colleague/supporter to a meeting. He had never asked, as he conceded during his evidence, whether it had been to the meeting on 2 November or any other. No practice of denial or refusal was established (PCP2 and 3). It is true that he was not *offered* the right to have been accompanied at the meeting on 29 November, which had not been good industrial practice, but there was no evidence that it was an habitual practice.

(iv) PCP4; A practice of pre-registration staff learning by shadowing experienced employees, without the provision of written instructions;

(v) PCP5; A practice of conducting one to one training on the shop floor which was busy and noisy;

These PCPs were analysed together as they both concerned the Pre Reg in-store learning experience.

As to PCP4, although it could not have been said that there were *no* written instructions, Ms Passafaro described a Pre Reg's learning experience as largely 'show and tell' and we could readily understand why; the practical steps involved in measuring glasses, of loading the till paper, of applying the retail prices at the point of sale, of showing patients to upstairs examination rooms, of using the sight test equipment and the various other machines all needed hands-on demonstration and experience. It was practically difficult to understand how all of those activities could have been reduced to written instruction. That was why shadowing was so important. Accordingly, whilst there was a PCP in existence similar to that framed in PCP4, we were not convinced that the case for overcoming/adjusting it had been made out (8.7.2). It was not a theme that was developed by the Claimant in his cross examination of the witnesses.

In terms of the store noise and busyness (PCP5), once qualified, that was clearly where the Claimant was going to have been working and any adjustment to it would not have been realistic if he was to have gained meaningful experience of the service that he was expected to have delivered once fully qualified. Whilst again not something which was developed through cross examination, having considered the evidence as a whole, we were not convinced of the reasonableness of the adjustments contended for (8.7.3).

Further, the substantial disadvantages which were allegedly suffered as a result of PCPs 4 & 5 were the fact that the Claimant learnt more slowly (8.3.1) and/or less able to process the information that he received and learn (8.3.3) which seemed to amount to the same thing. We struggled to find evidence of the Claimant's dyslexia impacting upon his speed of comprehension or retention in relation to oral (as opposed to written) instruction (PCP4). Ms Bull's report expressly stated that it was "*more difficult for* [him] *to use the written word to a standard commensurate with ability*" [200]. Whilst it was clear that his learning was expected to have taken longer, he was never criticised in respect of the speed at which he was learning whilst at the Respondent's store. As previously stated, competence was never seen to have been the issue. There was insufficient evidence to indicate that his speed would have been improved had he been given more written material to absorb and apply.

In relation to PCP5 also, the speed of his learning and competence *per se* was never an issue.

(vi) PCP6; A practice of using standard sized fonts and white paper for forms;

The Tribunal had no evidence that the text used on paperwork by the Respondent was of a uniform font or size. No standard font size was ever referenced. The documents which we saw contained a number of different font sizes, although we did not see anything other than white paper. Only part of the PCP was demonstrated.

As to the disadvantage, the Claimant complained that he was less able to process the information when on white paper and in the font sizes used by the Respondent because of his dyslexia (8.3.4). Again, it was said that that hindered his development and slowed his progress so as to have constituted a substantial disadvantage. From our experience of dyslexia generally and the Claimant's description of his condition, we had no reason to doubt that evidence.

The adjustments contended for overlapped with the claims in respect of physical features and auxiliary aids (below). Many would have been been entirely possible *if* they had been requested and the issues raised with Ms Passafaro or Mr Boughan. Unless or until those conversations took place, the Respondent had no reason to have acted.

7.43 Then there were the 'physical features' and 'auxiliary aids' claims which, again, largely turned upon the knowledge issue;

(i) The stairs (8.4);

The stairs were accepted to have been a physical feature. Given the contents of the Claimant's impact statements, albeit that they were not written with reference to the actual period of his

employment, it was reasonable to assume that he was caused some additional symptoms whilst walking and/or using the stairs, but they were never mentioned and a cancelled physiotherapy session in September did nothing to support the assertion that the physical feature had caused a *substantial* disadvantage. Gentle exercise for those with spinal conditions was often considered advantageous and the medical evidence did not suggest otherwise.

Further, it was not the fact or existence of the stairs which caused the alleged disadvantage, but the frequency with which he was required to have used them as he accessed machinery which was located upstairs and/or brought prescriptions to and from the dispense area. The frequency of use was more properly seen as a PCP which, again, would probably been capable of having been adjusted had the Claimant raised the issue. He did not.

(ii) The lack of coloured paper, larger fonts, anti-glare overlays and a spell checker (8.5);

These issues were the adjustments which the Claimant had sought in respect of PCP6. That did not mean that they could *not* have been auxiliary aid claims but, as with (i) above, without knowledge of the disabilities and a discussion about his disadvantages and the most appropriate ways to have overcome them, it would not have been reasonable for the Respondent to have been expected to have provided them.

Had knowledge not been an issue, the Respondent may have taken a point about substantial disadvantage because those aids were not ones recommended by Ms Bull and/or the Royal College of Optometrists [290].

Time limits

7.44 Although identified as an issue within the list (paragraph 2), it was accepted that the claim was all in time. Only acts before 16 September 2022 would have been out of time and that was before the Claimant's employment had started.

Employment Judge Livesey

Date: 27 June 2025

JUDGMENT SENT TO THE PARTIES ON

11 July 2025

Jade Lobb
FOR THE TRIBUNAL OFFICE

Notes

Public access to employment tribunal decisions

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

Recording and Transcription

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

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/
written record of the decision.

Appendix; the List of Issues (Case Summary of 5 June 2025)

1. **Time limits**

1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about any act or omission which took place more than three months before that date (allowing for any extension under the early conciliation provisions) is potentially out of time, so that the Tribunal may not have jurisdiction.

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

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act or omission to which the complaint relates?

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

1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

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

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

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

2. **Direct race and/or religion or belief discrimination (Equality Act 2010 section 13)**

2.1 The Claimant describes himself as a [British Asian][1] and Muslim

2.2 Did the Respondent do the following things:

2.2.1 On 17 October 2022 David (Dispensing Optician): **Race only**

2.2.1.1 spoke to the Claimant in an loud and aggressive manner when asking the Claimant to move, looked the Claimant up and down and said "I can tell why you're taking up most of the space".

2.2.1.2 Later he confronted the claimant and entered his personal space and said “instead of just standing there, just move”

2.2.2 On 18 October 2022, Donna: **Race only**

2.2.2.1 Repeatedly took the folder/clip board (provided by an optometrist to the Claimant) out of his hands and on one occasion snatched it and gave it to another member of staff,

[1] The claimant did not specify precisely how he self identifies but this is what is understood from his claims; he may correct how he self identifies in accordance with the Order for further information of his claims.

said to the Claimant "I don't think you're capable of dispensing," and "I've told you once, you're not allowed to dispense."

2.2.2.2 Said to Teigen, referring to the Claimant, "just because he's a pre-reg, who does he think he is? I'll keep him busy" whilst whispering and laughing. Donna and Teigan continued laughing looking in the direction of the Claimant.

2.2.2.3 Donna said to Abi, referring to the Claimant, "yeah him" and then laughed.

2.2.2.4 Donna kept filling the cleaning frames basked to the top and asked the Claimant to clean frames and put them on the shelf, while she, Abi and Teigan stood and talked to each other.

2.2.2.5 Donna refused to let the Claimant leave the store during his lunch, making the comment, "I think it's best if you have it upstairs in the staff room as I may need you on the ship floor."

2.2.3 On or about 21 November 2022, Gurminder: **Religion only**

2.2.3.1 Asked the claimant to change his shift pattern from having Friday and Sunday off to work Friday and have Tuesday and Sunday off (Friday was a day on which the claimant attended Jummah prayers),

2.2.3.2 Told the claimant that if he did not agree to the shift change there would less opportunity for him to test patients and/or pressured the claimant to accept the shift change.

2.2.3.3 Told the claimant that there was nowhere in the store to accommodate the claimant's request for a quiet and private space to conduct prayer on Fridays

2.2.4 On 23 November 2023, Gurminder: **Race only**

2.2.4.1 told the claimant that Head Office did not normally deal with pre-registration complaints and that they should be resolved internally; and

2.2.4.2 Disputed the claimant's account that Abi and Donna would supervise Phoebe on tasks but not him, telling him that was untrue and he should be patient.

2.2.5 On 29 November 2023: **Race only**

2.2.5.1 Gurminder refused the claimant's request to shadow the contact lens department for a day

2.2.5.2 Gurminder told the claimant that it could take up to four months before the claimant would be permitted to conduct tests on patients, depending on the claimant's working days and ability to write legible records

2.2.5.3 The claimant's employment was terminated with immediate effect

2.2.5.4 Gurminder refused the claimant's request for someone to write down what was being discussed

2.2.5.5 The claimant was threatened that if he did not leave the building "the police would be called."

2.3 Was that less favourable treatment?

The Tribunal will have to decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and those of the Claimant. If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether he was treated worse than someone else would have been treated. The Claimant says he was treated worse than a hypothetical white / Christian comparator (all allegations except 2.2.2.4 and 2.2.25; in respect of those claims the claimant relies upon actual comparators namely his colleagues Teigen, Abi, and Donna)

2.4 If so, was it because of the claimant's race, ethnicity or religion or belief?

2.5 Is the Respondent able to prove a reason for the treatment occurred for a non-discriminatory reason not connected to the protected characteristic?

3. **Harassment related to race and/or religion and belief (Equality Act 2010 s. 26)**

3.1 Did the Respondent do the following things:

3.1.1 The matters at 2.2.1 and 2.2.2; **Race only**

3.1.2 On or about 21 November 2022, Gurminder: **Religion**

3.1.2.1 Asked the claimant to change his shift pattern from having Friday and Sunday off to work Friday and have Tuesday and Sunday off (Friday was a day on which the claimant attended Jummah prayers at a mosque),

3.1.2.2 Told the claimant that if he did not agree to the shift change there would less opportunity for him to test patients and he would not be able to test patients until December or early January, and/or pressured the claimant to accept the shift change.

3.1.2.3 Told the claimant that there was nowhere in the store to accommodate the claimant's request for a quiet and private space to conduct prayer on Fridays

3.1.3 On 28 November 2023, Tom Morford shouted/spoke loudly and told the claimant (in relation to his complaints that Donna would allocate tasks to Phoebe and not him) "Yasser, let's not go there," Donna was happy to help and the claimant should avoid "getting on the wrong side of Donna" **Race**

3.1.4 On 29 November 2023: **Race**

3.1.4.1 Gurminder refused the claimant's request to shadow the contact lens department for a day

3.1.4.2 Gurminder told the claimant that it could take up to four months before the claimant would be permitted to conduct tests on patients, depending on the claimant's working days and ability to write legible records

3.1.4.3 The claimant's employment was terminated with immediate effect

3.1.4.4 Gurminder refused the claimant's request for someone to write down what was being discussed

3.1.4.5 The claimant was threatened that if he did not leave the building "the police would be called."

3.2 If so, was that unwanted conduct?

3.3 Did it relate to a protected characteristic, namely race or ethnicity, or Muslim faith?

3.4 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

3.5 If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

4. **Duplication of Harassment and Direct Discrimination**

4.1 The claimant's complaints relating to **race and/or religion or belief** are presented as both harassment and/or direct discrimination. The tribunal will determine these allegations in the following manner.

4.2 In the first place the allegations will be considered as allegations of harassment. If any specific factual allegation is not proven, then it will be dismissed as an allegation of both harassment and direct discrimination.

4.3 If the factual allegation is proven, then the tribunal will apply the statutory test for harassment under section 26 EqA. If that allegation of harassment is made out, then it will be dismissed as an allegation of direct discrimination because under section 212(1) EqA the definition of detriment does not include conduct which amounts to harassment.

4.4 If the factual allegation is proven, but the statutory test for harassment is not made out, the tribunal will then consider whether that allegation amounts to direct discrimination under the relevant statutory test.

5. **Direct disability discrimination (Equality Act 2010 section 13)**

5.1 Did the Respondent do the following things:

5.1.1 On or around 18 October 2022, Sarah Pasafaro:

5.1.1.1 When the claimant asked for support, she told him that there were no written instructions that she could provide to him on the shop floor and that she could not change the colour of the paper or the size of the font used for support to manage his dyslexia, stating, "it is white paper for everyone".

5.1.1.2 Failed to support the claimant by providing more 1:2:1 training, at a slower pace and providing it in a quieter environment;

5.1.1.3 Told the claimant "let's walk before we can run;" said that he was asking too many questions and that she found it "highly inappropriate" and said "this is not a spoon feeding

environment" and that he should be "actively looking for ways to help [himself] out."

5.1.2 On 2 November 2022, at a meeting attended by Ms Pasafaro and Mr Mike Thompson:

5.1.2.1 The claimant was not given notice of the meeting or what it was about;

5.1.2.2 Mr Thompson raised his voice at the claimant, causing the claimant to cry and become anxious

5.1.2.3 The claimant was told that if he had any further sickness absence he would be dismissed

5.1.2.4 The claimant's requests for a note of what was discussed and/or for someone to be instructed to take a note for the claimant were refused.

5.1.3 On 3 November 2022 at a meeting attended by the claimant and Gurminder, Gurminder told the claimant that:

5.1.3.1 If he communicated through email it with Gurminder would make the Claimant's pre-registration year difficult

5.1.3.2 Mr Thompson "was trying to lay down the law" and said that "Mike is the nicest one out of all of us, if you have a problem with him you're more than likely going to have a problem with one of us (the other directors at the branch)". Gurminder implied that the claimant was not getting on with other staff members and by doing so "he would have a tough time."

5.1.3.3 Instructed the claimant to complete all of the OCT and PCD training modules on ilearn by the following Monday.

5.1.3.4 when the claimant stated raised issues around reporting incidents didn't remain strictly confidential within the workplace Gurminder stated "Yasser, this is Specsavers"

5.1.4 On 9 November 2022, when the claimant asked Emma to check his pricing:

5.1.4.1 Told the claimant he had selected the wrong offer and the price and led the customer to believe that the claimant had made an

error in processing the dispense; when the price remained the same as that offered by the claimant,

5.1.4.2 She rolled her eyes at him and spoke to him in an aggressive manner,

5.1.4.3 With a raised voice demanded that the claimant clean frames (in respect of 20-25 glasses) and place them back on the shelf.

5.1.5 In the week commencing 14 November 2022, during a discussion about the claimant's work, Gurminder:

5.1.5.1 told the claimant that his spelling was poor by circling words multiple times and wanted to know why the claimant couldn't spell simple words

5.1.5.2 stated that if the claimant could not spell words correctly his college assessors may not accept the records; that assertion was factually inaccurate.

5.1.5.3 told the claimant to "try to learn the spelling of words" by making a note of words he spells incorrectly on paper and not to make the same mistakes again and

5.1.5.4 instructed the claimant to correct the misspellings he had identified.

5.1.6 On 15 November 2022, Gurminder pointed out spelling mistakes in the claimant's sight test and accused the claimant of rushing rather than taking the time to spell the words correctly and told him that the claimant would only be permitted to test members of the public when he was comfortable with the claimant's ability and could be reassured that the claimant provided records that had improved and that no spelling or grammar errors were made.

5.1.7 On 22 November 2022, Gurminder told the claimant that he would not be permitted to test the patients that the claimant had booked into his test clinic because the claimant was "making simple spelling mistakes" and as a result Gurminder had "no confidence in my clinical ability."

5.1.8 On 23 November 2023, Gurminder:

5.1.8.1 told the claimant that Head Office did not normally deal with pre-registration complaints and that they should be resolved internally; and

5.1.8.2 Disputed the claimant's account that Abi and Donna would supervise Phoebe on tasks but not him, telling him that was untrue and he should be patient.

5.1.9 On 29 November 2023:

5.1.9.1 Gurminder refused the claimant's request to shadow the contact lens department for a day

5.1.9.2 Gurminder told the claimant that it could take up to four months before the claimant would be permitted to conduct tests on patients, depending on the claimant's working days and ability to write legible records

5.1.9.3 The claimant's employment was terminated with immediate effect

5.1.9.4 Gurminder refused the claimant's request for someone to write down what was being discussed

5.1.9.5 The claimant was threatened that if he did not leave the building "the police would be called."

5.2 Was that less favourable treatment?

The Tribunal will have to decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and those of the Claimant. If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether he was treated worse than someone else would have been treated. The Claimant says he was treated worse than a hypothetical non-disabled comparator.

5.3 If so, was it because of the claimant's disability?

5.4 Is the Respondent able to prove a reason for the treatment occurred for a non-discriminatory reason not connected to disability?

6. **Discrimination arising from disability (Equality Act 2010 section 15)**

6.1 Did the Respondent treat the Claimant unfavourably by:

6.1.1 On 2 November 2022, at a meeting attended by Ms Pasafaro and Mr Mike Thompson, the claimant was told that if he had any further sickness absence he would be dismissed

6.1.2 In the week commencing 14 November 2022, during a discussion about the claimant's work, Gurminder:

6.1.2.1 told the claimant that his spelling was poor

6.1.2.2 stated that if the claimant could not spell words correctly his college assessors may not accept the records; that assertion was factually inaccurate.

6.1.2.3 told the claimant to "try to learn the spelling of words" and

6.1.2.4 instructed the claimant to correct the misspellings he had identified.

6.1.3 On 22 November 2022, Gurminder told the claimant that he would not be permitted to test the patients that the claimant had booked into his test clinic and said that if the claimant was making simple spelling mistakes he would have no confidence in his clinical ability. The claimant was instructed to work on the shop floor instead.

6.1.4 In November 2022, Abi Outlaw

6.1.4.1 saw the claimant fit till paper incorrectly to the till and said "which thick moron has put this in the wrong way," laughed at the claimant when he said it was him, told him not to do it again but did not show the claimant how to do it correctly; and

6.1.4.2 repeatedly rejected the claimant's request to supervise him whilst the claimant performed focimetry assessments

6.1.4.3 rejected the claimant's request to join a supervise session, saying the claimant "takes too long"

6.1.5 On 23 November 2023, Gurminder:

6.1.5.1 told the claimant that Head Office did not normally deal with pre-registration complaints and that they would tell the claimant that such grievances should be resolved internally; and

6.1.5.2 Disputed the claimant's account that Abi and Donna would supervise Phoebe on focimetry an other tasks but not him, telling him that was untrue and he should be patient.

6.1.6 On 28 November 2023, Tom Morford shouted/spoke loudly and told the claimant (in relation to his complaints that Donna would allocate tasks to Phoebe and not him) "Yasser, let's not go there," Donna was happy to help and the claimant should avoid "getting on the wrong side of Donna"

6.2 Did the following things arise in consequence of the Claimant's disability? The Claimant's case is that:

6.2.1 The claimant has difficulty with cognitive function which affects his ability to process and/or retain information:

6.2.2 In consequence he has difficult with learning and it takes him longer to complete tasks; and

6.2.3 He has difficulty with spelling and reading

6.3 Was the unfavourable treatment because of any of those things?

6.4 Was the treatment a proportionate means of achieving a legitimate aim? The Respondent says that its aims were:

6.4.1 Ensuring that employees are trusted to act with integrity and are only allowed to carry out tasks that they are genuinely competent to complete.

6.5 The Tribunal will decide in particular:

6.5.1 Was the treatment an appropriate and reasonably necessary way to achieve those aims;

6.5.2 Could something less discriminatory have been done instead;

6.5.3 How should the needs of the Claimant and the Respondent be balanced?

6.6 Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date?

7. **Harassment related to disability (Equality Act 2010 s. 26)**

7.1 Did the Respondent do the following things:

7.1.1 On 9 November 2022, when the claimant asked Emma to check his pricing:

7.1.1.1 She rolled her eyes at him and spoke to him in an aggressive manner,

7.1.1.2 Selected the offer and the price remained the same as that offered by the claimant, but led the customer to believe that the claimant had made an error in processing the dispense;

7.1.1.3 With a raised voice demanded that the claimant clean frames (in respect of 20-25 glasses) and place them back on the shelf.

7.1.2 On 28 November 2023, Tom Morford shouted/spoke loudly and told the claimant (in relation to his complaints that Donna would allocate tasks to Phoebe and not him) “Yasser, let’s not go there,” Donna was happy to help and the claimant should avoid “getting on the wrong side of Donna”

7.1.3 On 29 November 2023:

7.1.3.1 Gurminder refused the claimant’s request to shadow the contact lens department for a day

7.1.3.2 Gurminder told the claimant that it could take up to four months before the claimant would be permitted to conduct tests on patients, depending on the claimant’s working days and ability to write legible records

7.1.3.3 The claimant’s employment was terminated with immediate effect

7.1.3.4 Gurminder refused the claimant’s request for someone to write down what was being discussed

7.1.3.5 The claimant was threatened that if he did not leave the building “the police would be called.”

7.2 If so, was that unwanted conduct?

7.3 Did it relate to a protected characteristic, namely disability?

7.4 Did the conduct have the purpose of violating the Claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

7.5 If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

8. **Reasonable Adjustments (Equality Act 2010 ss. 20 & 21)**

8.1 Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date?

8.2 A "PCP" is a provision, criterion or practice. Did the Respondent have the following PCPs:

8.2.1 PCP1 A practice of conducting meetings without a minute being taken or without providing such a minute or the means to make one to the employee

8.2.2 PCP2 A practice that employees could not bring a note taker to meetings

8.2.3 PCP3 A policy that employees could not be accompanied to meetings

8.2.4 PCP4 A practice of pre-registration staff learning by shadowing experienced employees, without the provision of written instructions.

8.2.5 PCP5 A practice of conducting one to one training on the shop floor which was busy and noisy

8.2.6 PCP6 A practice of using standard sized fonts and white paper for forms

8.3 Did the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that

8.3.1 PCPs 1, 2 and 4 The claimant was less able to recall the detail of the discussion due to his dyslexia and, PCP4: learned more slowly

8.3.2 PCP3 ?

8.3.3 PCP5 the claimant was less able to process the information, to learn and recall it, because the noise effected his ability to do so.

8.3.4 PCP6 the claimant was less able to process the information because of his disability

And/or

8.4 Did a physical feature, namely stairs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that the claimant experienced pain and fatigue when climbing and descending the stairs.

And/or

8.5 Did the lack of an auxiliary aid, namely:

8.5.1 The use of coloured paper and larger fonts for forms

8.5.2 Anti-glare screen overlays for monitors

8.5.3 A speller checker

put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that the claimant was less able to read, process and recall the information in forms on white paper at standard font size, or when reading from computer screens, and was more likely to make spelling mistakes.

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

8.7 What steps (the 'adjustments') could have been taken to avoid the disadvantage? The Claimant suggests:

8.7.1 Taking a minute of meetings and providing the claimant with a copy or permitting the claimant to be accompanied by a note taker

8.7.2 Providing the claimant with written notes to aid his learning

8.7.3 Providing a quiet space for the claimant's one to one sessions

8.7.4 Providing the claimant with forms on coloured paper and in larger text fonts

8.7.5 Excusing the claimant from duties requiring him to climb stairs….

8.8 Was it reasonable for the Respondent to have to take those steps and when?

8.9 Did the Respondent fail to take those steps?