



EMPLOYMENT TRIBUNALS

Claimant: Mr D Boland

Respondent: Office for National Statistics

HELD AT: Wrexham
on: 24, 27 – 31 January 2025
23-26 June 2025
In Chambers 27 June 2025 &
10 July 2025

BEFORE: Employment Judge T. Vincent Ryan
Mrs M Walters
Ms R Hartwell

REPRESENTATION:

C: A Litigant in Person (assisted by his wife, Mrs Boland)
R: Mr T Holloway, Counsel

RESERVED LIABILITY JUDGMENT

The unanimous judgment of the Tribunal is that the Claimant's following claims fail and are dismissed:

1. Discrimination Arising from Disability (s.15 Equality Act 2010 (EqA)) and
2. Failure to make Reasonable Adjustments (s.20 & s.21 EqA)

REASONS

The Claims & Issues

1. In a situation where the Claimant (C) was an unsuccessful applicant to the Respondent (R) for employment in an advertised post, he makes the following claims:
 - 1.1. Discrimination Arising from Disability (s.15 Equality Act 2010 (EqA)) and
 - 1.2. Failure to make Reasonable Adjustments (s.20 & s.21 EqA)

2. A draft List of Issues was prepared and amended during the preparatory stages and at Preliminary Hearings. The final agreed List of Issues, confirmed at the outset of the hearing in January 2025, and again at the outset of the resumed hearing in June 2025, is set out below; we have resolved the Liability Issues; the Remedy issues do not arise.

The Agreed List of Issues

Discrimination arising from a disability (s.15 Equality Act 2010)

3. Did R treat the C unfavourably by:
Not hiring C in the role of Front End Technical Lead (FETL)?
4. Did the following thing arise in consequence of the C's disability?
Difficulties with communication
5. Was the unfavourable treatment because of that thing?
6. Was the treatment a proportionate means of achieving a legitimate aim? R says that its aims were:
The need to hire a Front End Technical Lead (FETL) who demonstrated all the essential skills for the role and achieved the highest score across all skill areas.
7. The Tribunal will decide, in particular:
 - 7.1. Was the treatment an appropriate and reasonably necessary way to achieve those aims?
 - 7.2. Could something less discriminatory have been done instead?
 - 7.3. How should the needs of C and R be balanced?

Failure to make reasonable adjustments (s.20 and s.21 Equality Act 2010)

8. Did R apply a provision, criterion or practice (PCP) which put C at a substantial disadvantage compared to someone who did not have C's disability?
C relies on the following PCP's:
 - 8.1. PCP 1 - the requirement that interviews are carried out by more than one person on an interview panel.
 - 8.2. PCP 2 – requiring C to continue with the interview after his meltdown and either (a) concluding within the allotted time, or (b) concluding that day.
 - 8.3. PCP 3 – scoring him on his ability to “mediate and mend relationships”.
 - 8.4. PCP 4 – requiring him to answer questions orally in real time and/or posing questions while he is in the middle of reading his answers.
9. In respect of each PCP relied upon, did that PCP put C at a substantial disadvantage compared to someone without the C's disability?
C relies on the following disadvantages in respect of each PCP:
 - 9.1. PCP1 disadvantage - Where he has more than one input, that causes him to have difficulty or even causes him to have a meltdown.
 - 9.2. PCP2 disadvantage - He could not compose himself and perform as well after the meltdown.

- 9.3. PCP3 disadvantage - His disability makes social interactions and/or confrontation more difficult for him.
- 9.4. PCP4 disadvantage - He was not allowed to finish reading his answers, he was interrupted, he was challenged, he had a meltdown.
10. Did R know, or could it reasonably have been expected to know, that C was likely to be placed at the stated disadvantage by each PCP?
11. In respect of each PCP, what steps could have been taken to avoid the said disadvantage? C suggests:

PCP 1 - the requirement that interviews are carried out by more than one person on an interview panel.

Disadvantage - Where he has more than one input, that causes him to have difficulty or even causes him to have a meltdown.

Steps

- 11.1. Remove the need for a panel interview.
- 11.2. Allow a more neurodiverse-friendly way of interviewing by:
- 11.2.1. **[This was withdrawn by C]** The panel members not speaking all at once, interrupting, correcting and speaking across the C.
- 11.2.2. C being allowed to continue reading his pre-prepared answers through to the end before clarifications/objections are raised.
- 11.2.3. posting any follow-up questions in the chat.
- 11.2.4. Allowing C sufficient time to process questions and formulate his answers.
- 11.3. Not altering the pre-agreed adjustments.

Note: C will argue that following the Business Disability Forum Guidance would have helped the interviewers take the above steps.

PCP 2 – requiring C to continue with the interview after his meltdown and either (a) concluding within the allotted time, or (b) concluding that day.

Disadvantage – He could not compose himself and perform as well after the meltdown.

Steps

- 11.4. Terminate and reschedule the interview or take an extended break when C is overwhelmed and has to leave the call.
- 11.5. Give C more time to compose himself and extend time.

PCP 3 - scoring him on his ability to “mediate and mend relationships”.

Disadvantage - His disability makes social interactions and/or confrontation difficult for him.

Steps

- 11.6. Assess the requirement to mediate and mend relationships via autistic communication.
- 11.7. Adjust the role of Front-End Technical Lead to allow for mediating and mending relationships to be achieved via autistic communication.
- 11.8. Adopt a flexible approach to the scoring which allows for the effects of his disability by:

- 11.8.1. Making the criteria to “mediate and mend relationships” a clear requirement to the candidate by adding it to the list of essential criteria for the role – those which must be demonstrated before being invited to interview.
- 11.8.2. Assigning a numeric value that can be seen as a contribution to the overall “communicating between technical and non-technical” score of 3. To assist and make this as explicit as possible – if I have two items A and B and $A+B = 3$, then if A is 1, B must be 2.

Note: C will argue that following the Business Disability Forum Guidance would have helped the interviewers take the above steps.

PCP 4 - requiring him to answer questions orally in real time and/or posing questions while he was in the middle of reading his answers.

Disadvantage - He was not allowed to finish reading his answers, he was interrupted, he was challenged, he had a meltdown.

Steps

- 11.9. Permit him to answer the questions in writing.
- 11.10. Permit him to read his answer in full before the panel ask any questions.
- 11.11. Permit him to submit written responses by email or in the chat, rather than have him read them out.
- 11.12. Ask clarifying/follow-up questions in the chat.
- 11.13. Use closed captions in the video software.

12. Was it reasonable for R to have taken those steps?

13. Did R fail to take those steps?

The Hearing – given the complexities of the claim and hearing (which were largely overcome, as explained), I set out below a detailed summary of the hearing.

14. The Tribunal had a reading day on 24 January 2025. On the reading day the Tribunal reminded itself of the relevant parts of the Equal Treatment Bench Book; it read the minutes of previous case management preliminary hearings regarding C’s request for reasonable adjustments and the agreements reached in respect of them. The agreed adjustments are set out below. The Tribunal read all available witness statements, including the witness statements of the witnesses who were eventually heard (save for a second statement from Mrs Stokes which was read later). The panel also read key documents as indicated in the witness statements.
15. The hearing commenced on 27 January 2025. C commenced his oral evidence at 11:20 on 27 January 2025, affirming the truth of his written statement and reliance upon it. There were occasions when C appeared to be overwhelmed and left his seat facing the screen; this occurred a few times during the entire hearing when C would leave his seat and sometimes move away from his screen; on each such occasion throughout the hearing, after an appropriate, often short, break, we resumed on having an assurance from C that he was fit, able and willing to continue. In fact, C appeared to the Tribunal to recover composure and articulate ability to resume quickly and completely after short breaks; for this reason, and because C repeatedly stated his wish to continue, his assurances were accepted, and we continued. The adjustments in respect of breaks were honoured

throughout, breaks being offered at regular intervals and taken when required. The hearing ended on the first day at 15:30.

16. At every break for every witness who had not completed their evidence under cross examination, including when they were held overnight to resume the next day, I issued a warning that if the Tribunal lost confidence in the integrity of a witness' replies, such as if they suspected there had been coaching during a break, there would be a risk of either the claim or response being struck out as appropriate.
17. On 28 January 2025 C commenced his evidence at 10 AM. Cross examination continued throughout the day, with regular requested and or offered breaks. C appeared overwhelmed just before lunch and the break was taken for lunch at 12:25 when he exclaimed and walked away from his screen. We resumed at 13:30 without any apparent difficulty. We finished for the day at 15:36.
18. We resumed with C's cross examination on 29 January 2025 at 10 AM. At 11:16 C muted his camera and microphone but returned almost immediately. C did not always take breaks that were offered, and this was so throughout the hearing, although there were times that I insisted a break would be taken. We finished for the day at 15:01.
19. Before commencement of the hearing on 30 January 2025 I sent a message to the parties to the effect that it was clear we would not conclude witness evidence during the course of that week; I had already explained that C would not be required to commence cross-examination of witnesses on the same day that he finished being cross-examined by Mr Holloway; I said that we would have to reschedule a resumed hearing to hear R's witnesses' evidence. We resumed the hearing at 10 AM on 30 January. During the afternoon session (at 14:33) C became emotional (he said "tearful") but was insistent that he was able to continue effectively, and he did so at 14:37, after an agreed break. There were further breaks in the afternoon as required and we concluded for the day at 15:39. That was the end of cross examination of C. We agreed to list the matter for a resumed hearing to hear the witness evidence of R's witnesses, and if time allowed submissions. We concluded this day's hearing at 15:39 leaving only case management to consider on the following and last day of the listing. Before we finished, C said that he had been "really worried" about the week because of the "immense challenges" that the process posed for him; That said, he felt that a lot of good had come out of the week not least because he was able to perform when he had thought he would not be able, and that was due in part to the application of reasonable adjustments and the courtesy and professionalism (my wording, but C's expressed appreciation) of Counsel; C was also doing his utmost and he was greatly assisted in his endeavours by Mrs Boland. Mutual appreciation and expressions of gratitude were expressed, then as they were repeated throughout the hearing, to the extent that it was a feature of the hearing.
20. Owing to availability and other such difficulties, the resumed hearing could not be listed before a date in June. We resumed on 23 June 2025 and concluded R's case on Thursday 26 June.
21. After brief introductory comments starting at 10 AM, Mr. Anderson (for R) commenced his evidence at 10:15. By agreement, we continued until 16:10. Mr

Anderson requested and was allowed additional time to find, read, and process documents to which he was referred and, similarly, time to consider oral questions asked of him.

22. Mr. Anderson resumed giving his evidence under cross examination on 24 June 2025 at 10 AM. We finished for the day at 15:33 when cross examination finished. Mr. Anderson was then recalled on 25 June 2025 for re-examination by Counsel which commenced at 10 AM. Mr. Anderson completed his evidence and was discharged at 10:52 on 25 June 2025. We then continued with the evidence of Mrs Stokes, which commenced at 11:09. We finished for the day at 15:28, with some further cross examination due for Mrs Stokes.
23. We resumed at 10 AM on Thursday 26 June and Mrs Stokes' evidence was concluded by 11:17. We then heard evidence from Ms Calzavara between 11:31 and, by agreement with the parties, 15:56. Ms Calzavara is Italian, and English is not her first language; she did not require an interpreter; that said she became emotionally distressed around lunchtime at least in part through what I perceived as frustration at feeling that she had not been understood or had been unclear in her explanations; because she was tearful at 13:00 we took an immediate lunch break resuming at 14:00 with reassurance that she was able to continue; she continued to give her evidence without apparent difficulty; the Tribunal did not have difficulty understanding her evidence which was clear, concise, credible and relevant.
24. The panel met in Chambers on Friday 27 June 2025 in view of a likely delay in being able to reconvene post-receipt of submissions. We had not intended meeting before receipt of submissions, but it became apparent that there was a significant risk of a delay of several months before the panel could meet again. The reason for meeting was to plan the format of this judgment, identify uncontested facts and disputed facts, to discuss the List of Issues in terms of the legal tests and to identify any matters where the panel felt the parties' written submissions would most assist, and to conclude essential reading or re-reading while witness evidence was fresh on our minds. We did not reach our final judgment as written submissions are outstanding. We hoped however that this exercise would aid our clarity of thought and analysis, thus expediting the judgment when we have considered the parties' submissions. In the event, and thanks to the co-operation of the panel members and the Tribunal's Listing Officers we have been able to arrange an earlier final Chambers Day for deliberations than was feared. I thanked the parties for their co-operation in bringing forward the date for their Replies to Submissions to facilitate a panel meeting on 10 July 2025 (initially Replies were due on 11 July, but the parties agreed an earlier date).
25. Occasionally throughout the hearing it seemed that matters were getting on top of C, and we would pause or have a formal break. For the most part, indeed the vast majority of time of the hearing, C was not just actively, but effectively involved in giving his evidence, carrying out cross-examination that was appropriate, and in making timely and appropriate interventions, clarifications, and submissions. The hearing was characterised more by good humoured close co-operation between parties, witnesses, and the panel rather than the few instances where there were difficulties when C gave the impression that he was momentarily overwhelmed. I

am satisfied that the interests of justice were well served by all involved in these proceedings and that this was a fair hearing.

The Witnesses

26. The following witnesses gave oral evidence to the Tribunal over the course of the hearing including under cross examination:

- 26.1. C
- 26.2. Mr James Anderson, the interviewing panel chair, for R
- 26.3. Mrs Susan Stokes Head of Recruitment Operations January 2022 – December 2024 (now Head of Employment Relations), for R
- 26.4. Ms Sofia Calzavara, an interviewing panel member and “Product Owner” in relation to the project to launch the product for which R was recruiting, for R.

Documents

27. We were referred to:

- 27.1. An indexed hearing bundle comprising 557 (excl. index).
- 27.2. ONS People and Business Services Workplace Adjustments Guidance February 2023.
- 27.3. An anonymised (save for C) spreadsheet showing the scores of each of the seven candidates involved in the recruitment exercise in question.
- 27.4. A 53-page (excl. index) Witness Statements bundle.

Agreed Adjustments

28. We agreed and applied the following adjustments save as varied on request of C or with his considered agreement:

- 28.1. The hearings were remote and held on Teams, not CVP nor in person;
- 28.2. The timetable was 10:00 – 12:30, 13:30 – 15:30;
- 28.3. The participants were to ensure workable connectivity and if it was not satisfactory the hearing would be stopped until efficiency was restored;
- 28.4. questions and answers were to be paced to allow time for assimilation of information;
- 28.5. breaks were to be considered every 30 minutes or so, and to be allowed for between 5 and 10 minutes or as otherwise required;
- 28.6. C was not to be asked questions about his emotional state;

- 28.7. only closed questions were to be asked; there had been some confusion as initially it was understood that only open questions were to be asked; C clarified his requirement;
- 28.8. in so far as possible there would be no last-minute changes to the timetable, including timetable of witnesses;
- 28.9. those observing and not participating were to mute their cameras and microphones. On this point I emphasised that it was important, in accordance with the principle of open justice, that the panel members and I should be visible and audible at all times and that I would expect to be able to see R's Counsel, C, and any witness giving oral evidence; this was agreed by the parties;
- 28.10. Wherever possible questions would be posted in the Teams Chat function;
- 28.11. An adjustment adopted informally was that those who wished to do so, and C did, would use the Teams Captions function which set out the dialogue in real time as a subtitle. I used this function towards the end of the January hearing and throughout the June hearing. I expressed the Tribunal's gratitude to Ms Langan, for R, and to Mrs Boland for their work in posting the questions in the Chat function.

The Facts

29. C is autistic. In his witness statement C says that he has a medical diagnosis of Autism Spectrum Disorder (ASD). I would generally have referred to Autism Spectrum Condition, ASC, but I am quoting from C's statement. He confirms that this neurodevelopmental "disorder" "encompasses several aspects, including affecting communication, social interaction, and sensory processing". C provided a disability impact statement which has been read and is accepted; R accepts that C is a disabled person by reason of the condition so described.
30. In 2023 R commenced a recruitment campaign for a software engineer, an umbrella term used by R and accepted by C with some reservation, in connection with a project developing a website. The website would display a range of charts and other visualisation of multiple datasets from R and government departments to create a profile of a geographical area; someone could search under the name of a particular Local Authority and statistics would appear on screen in relation to various aspects of life in that Local Authority area [taken from the evidence of Ms Calzavara, who was described as being the Owner of this product].
31. The umbrella term "Software Engineer" encompasses engineers who specialise in the Front End (what is visible on a website, on-screen), Back End (the workings relating to matters such as data and data storage that is not visible on-screen to anyone looking at a website), and Platform (understood to mean coding and such like; also not immediately visible on-screen). Specialists in Front End, Back End, and Platform are all software engineers within that umbrella term, but not every

Software Engineer has specialist knowledge of each aspect, Back and Front and Platform.

32. C is a Front End specialist (my description).
33. R's job advertisement was to recruit a Front End Technical Lead (FETL). R did not intend to recruit a Back End or Platform Technical Lead; C was unaware of this.
34. The advertised post, for which C applied, was for a 1 year fixed term with a possible view to extend. The vacancy went live on 19 June 2023; the deadline for application was 4 July 2023; a sift was to take place in the week commencing 5 July 2023; the interviews were to take place week commencing 18 July 2023. That timetable was adhered to by R.
35. R's aim was to hire a Front End Technical Lead who demonstrated all the essential skills for the role and achieved the highest score across all skill areas.
36. Ms Calzavara is a statistician by profession and not a software engineer. She wanted the appointment of a FETL with relevant technical knowledge as the primary communicator on technical engineering issues with other stakeholders and with herself. The other stakeholders would include different areas of the civil service and directorates involved in the project. She anticipated complex conversations between various technical leads in other directorates. Whereas she primarily wanted a FETL, she expected assistance from that person in communicating technical engineering aspects of the project generally. Her understanding was that technical leads provide flexibility in different areas generally; being so adaptable is common in the Civil Service, not least when there are budgetary constraints. The essential criteria listed in the job advertisement at page 284, in this regard, includes "skilled in software engineering with an understanding of back end, front end and platform engineering. You are likely to have strong skills in at least one of those areas". R required a Software Engineer, a Technical Lead (also referred to as Tech Lead).
37. R's recruitment procedure involved:
- 37.1. Advertisement (commencing at p266, and in a different format on the Civil Service Jobs - GOV.UK platform at p279)
 - 37.2. expression of interest by a prospective candidate
 - 37.3. the provision by R of relevant and essential documentation
 - 37.4. written application
 - 37.5. liaison between an applicant and HR about practical arrangements and required adjustments.
 - 37.6. sift
 - 37.7. invitation to interview for those successfully through the sift.
 - 37.8. liaison regarding matters such as the need for reasonable adjustments in relation to recruitment procedures
 - 37.9. interview
 - 37.10. scoring of interview
 - 37.11. offer of employment to the candidate with the highest score

- 37.12. the potential for holding candidates, who satisfy minimum requirements but do not achieve the highest score, on a reserve list for potential future appointment.
- 37.13. rejection of an interviewed candidate who does not achieve the required minima in relation to any one of the skills or behaviours that were scored. The rejection is an automatic notification. Feedback is available.
- 37.14. Upon appointment R, including the manager of the area in which a recruit was appointed, would meet the successful candidate and discuss matters generally about their new role. In this discussion the parties would include the need to consider reasonable adjustments for disabled recruits with a view to the performance of their role.
38. The recruitment procedure is governed by Civil Service Commission Recruitment Principles ("the Principles"), and in this case the April 2018 version commencing at page 427. That document sets out the statutory provenance of legal requirements under the Principles, namely that selection for appointment to the Civil Service must be made on merit on the basis of fair and open competition. All three elements have to be met for the appointment to be lawful. The legal requirement is set out in full at page 429.
39. That document then goes on to say how, in this case R, can meet the legal requirement. A selection panel of two or more people must be set up to oversee the appointments process. There are provisions concerning the chair of that panel. Assessment of candidates must be impartial and measured against published selection criteria. It is the responsibility of the chair to approve the selection criteria, role description, panel membership, process to be followed, timetable and other matters including advertising strategy.
40. It is a requirement of the Principles that departments provide potential applicants with information about the nature and level of the role, the criteria against which they will be assessed, details of the selection process, and details of matters relating to the remuneration package.
41. The published process must be followed for all candidates save where reasonable adjustments are made for disabled candidates, or where a genuine difficulty arises. In practice this means that R will ensure that all candidates follow the same recruitment scheme based on the same information, but that disability related adjustments will be made to remove disadvantages to disabled applicants that would prevent them giving of their best in the established procedure. R does not operate different procedures on the basis of different information with applicants to facilitate adjustments for disabled candidates; if it is decided to follow the route of interview and scoring then a disabled candidate would be expected to be interviewed and scored, albeit adjustments will be made to facilitate the interview and to remove any disadvantage to a disabled candidate in achieving the required score. There are alternative methods of assessment to interview. If an interview created such a significant disadvantage to a disabled person that that person could not undertake one (even with adjustments), R would apply the alternative method adopted for that candidate to all candidates. Interviewing is not essential but is usual; when interviews are adopted it is by a panel.

42. The interview seeks evidence of knowledge, skill and experience. It is evidence based. The evidence that the panel seeks relates to knowledge, skill, and experience that can be evidenced to the date of the interview. The interviewing panel does not speculate, estimate, or assess potential future performance in trying to ascertain required minimum levels of knowledge, skill, and experience. With that in mind, R does not consider how a candidate who has a disability would perform if appointed and if reasonable adjustments were made for that successful candidate in future. Once a candidate has been successful in establishing that they have the required minimum skill, or better, and not only appointable but appointed, R's HR team and the relevant departmental manager or product owner would liaise with the successful candidate about any substantial disadvantages facing them in relation to the performance of their duties, and therefore reasonable adjustments to remove such disadvantage.
43. R Provided C with the information prescribed in the Principles. The documentation comprised an estimated 83 pages including:
- 43.1. The benefits package
 - 43.2. Terms and Conditions
 - 43.3. Candidate Pack FETL Grade 7
 - 43.4. Software Engineer DDaT Profile (where DDaT is understood to refer to Digital, Data and Technology in government departments). This profile includes a table commencing at page 323 setting out key responsibilities by grade for junior software engineers, software engineers, senior software engineers, and "Lead Software Engineer (grade 7)", known by R as "the Tech Lead". The latter was the role for which C applied.
44. R provided C with details of, amongst other things, the Essential Criteria (p318), and key responsibilities in relation to each skill area (commencing at p322 as referred to above).
45. Ultimately in interview, C did not score above the required minimum in the skill area of communicating between technical and non-technical, described at page 330.
- 45.1. In relation to the Tech Lead (grade 7), a key responsibility of the post holder is to be "able to mediate and mend relationships, communicating with stakeholders at all levels. Able to manage stakeholders expectations and facilitate discussions across high risk and complexity or under constrained timescales. Able to speak and represent the community to large audiences inside and outside of government" (p330);
 - 45.2. The candidate pack explains at page 315 that the successful candidate would "lead and facilitate technical discussions with software engineers and other stakeholders ensuring system and service designs align with our technical strategy and meet the needs of our users";
 - 45.3. The description of the role at p317 refers to "technical leadership, coaching, and mentoring the team, promoting knowledge sharing and adoption of good practise";

- 45.4. Describing the selection approach at p320 R states that assessment at interview stage will be assessed against the behaviours and technical criteria outlined in the advert where more details about technical skills can be found within the role profile attached to the advert;
- 45.5. The person specification at page 325 confirms that the successful candidate would lead and develop a team of experts to deliver service improvements.
46. C's preference in dealing with communications is written communication. C did not understand that the role for which he applied would involve, perhaps at short notice, immediate oral interaction with team members and other stakeholders. such as at workshops. He did not understand that the successful candidate's leading role would include mediating and mending relationships with team members or stakeholders in a situation where it was anticipated that some team members and/or stakeholders may challenge or oppose planned actions, or at very least require detailed explanation and persuasion about the most effective way to progress the development. C was provided with all relevant documentation required by the Principles; this documentation made clear the responsibilities of the appointed Tech Lead; C did not take on board aspects of the advertised role that he did not consider strictly relevant to the technical aspects of being FETL.
47. C did not accept, or maybe did not appreciate, that the role was any wider than the technical application of his skills developing the Front End of the product. C either read and discounted, or discounted and did not read, those aspects of the role that he did not consider relevant to him.
48. C Indicated on his application form that he was a disabled person. In these circumstances, under the Disability Confident Employer Scheme, C was entitled to reach the interview stage if his application met the minimum essential criteria for the job, as set out in the person specification or job description. C met those requirements. Such was the content and standard of C's written application that Mrs Stokes expressed her opinion, noted by the Tribunal and accepted as being genuinely held, that C would likely have been invited to interview regardless of that Scheme.
49. C gave sufficient detail in his application to alert R to the need for reasonable adjustments in the recruitment process. He stated his preference for written communication. He followed this up by e-mail. C suggested a number of adjustments. He did not say that he needed an intermediary, that he was not the best person to ask about his emotional state or preparedness or ability to continue any stage of the process. C conducted a dialogue with R about required adjustments that he felt would be satisfactory. R's HR department liaised closely with C in relation to reasonable adjustments.
50. By e-mail dated 21 June 2023, C inquired of R asking for details of the process and he expressed his concern around how an autistic person would be judged against some of the criteria mentioned in the provided documentation, including team working and behaviours (p347).

51. R replied the next day (p 347 – 349) explaining the procedure in detail concluding that the assessment would be against all the technical and behavioural criteria listed in the advert with an explanation that two types of questions would be asked namely situational questions and past evidence questions. In relation to past evidence questions they would be such as “tell us about a time? What did you do? What would you do differently”. It was explained that all technical questions would be assessed using past evidence questions. R gave C various tips and hints including to check the behaviours being assessed and to read the behaviour descriptions provided, together with the need for him to think about relevant scenarios and examples for each. R’s HR Team worked closely with C, even arranging to reset his application so that he could edit CV details as he wished. C repeatedly expressed his appreciation and gratitude to HR. HR later caused distress to C in a telephone call and apologised.
52. Notwithstanding any earlier communication, C agreed the following adjustments with R before the interview stage (R’s email of 10 July 2023 commencing at p.365, and C’s reply of 13 July 2023 at p367 thanking R and not suggesting “anything additional.... to make the process better” in response to being asked, and at p368, email 13 July 2023 at 16:58):
- 52.1. The Panel’s main questions would be sent to C in writing 24 hours ahead of the interview.
 - 52.2. Only one panel member would ask questions during the interview, other panel members would keep their cameras off and mute the call.
 - 52.3. Panel members will only use their cameras for introductions and then turn them, off to minimise sensory overload.
53. R Also agreed in an e-mail on 13 July 2023 that the interviewing panel would add the interview questions (those that had been disclosed) to the chat box, and confirmed that probing questions, follow-ups, would not be posted to the chat box. There were two types of follow up questions, firstly prepared follow ups that could be used depending on what a candidate said where it was likely the panel would need an explanation, and secondly questions that were purely reactive to something said and which could not be anticipated. Because of the reactive element, the need for the panel members to “think on their feet”, and the essential interactive element of an interview, it was deemed impractical to commit to posting follow up questions (and here I include re-focussing questions where a candidate strayed off point). R made clear to C that follow up questions would not be posted and he did not object to, or query, this; it appeared that he accepted this situation; C did not insist on a further adjustment in this regard. R told C that he could turn off the chat during the interview if he found it to be a distraction.
54. The interview panel comprised James Anderson (Chair), Ahmed Barclay of HR, and Sofia Calzavara. The interviews were all conducted via Microsoft Teams. Mr. Anderson had prior managerial experience of a colleague who was autistic. Ms Calzavara had attended a workshop concerning autism in the context of the workplace.
55. R provided C with the main questions in writing in advance as agreed. This allowed C the opportunity to prepare his replies, which he did in writing and which he read

out during the interview; the interview panel was not aware that C was reading a script at interview.

56. The initial or main questions are set out in an e-mail from R to C dated 19 July 2023 commencing at page 369. C was to make a presentation on the topic of managing a quality service around an example of past experience. He was then to answer a number of questions on the following topics:

- 56.1. Behaviour 1 : making decisions.
- 56.2. Behaviours Presentation: Managing a Quality Service
- 56.3. Behaviour 2 : working together.
- 56.4. Technical 1: programming and build (software engineering) - past evidence required.
- 56.5. Technical 2: functional and nonfunctional testing - past evidence required.
- 56.6. Technical 3: communication between technical and non-technical - past evidence required.
- 56.7. Technical 4: service report - past evidence required.

57. The Behaviour and Technical questions were marked with a maximum score of 7; the minimum acceptable score was 4. A score of less than 4 in respect of any such question would disqualify the candidate from appointment and the reserve list. A candidate scoring less than 4 in respect of any such question would have to submit a fresh application for any future employment with R and re-commence the entire process.

58. Seven candidates were successful at the sift stage and were interviewed by the panel. The candidates' scores were respectively:

- 58.1. 36 points - this candidate was offered but declined employment.
- 58.2. 32 points - this candidate was held on the reserve list and then appointed.
- 58.3. 29 points – C's score (see below); unsuccessful.
- 58.4. 26 points - unsuccessful
- 58.5. 25 points - unsuccessful
- 58.6. 22 points - unsuccessful
- 58.7. 22 points – unsuccessful

59. In the circumstances described below C scored as follows in respect of the Behaviours and Technical questions:

- 59.1. Behaviour 1 : making decisions - score 4.
- 59.2. Behaviours Presentation: Managing a Quality Service – score 5.
- 59.3. Behaviour 2: working together – score 4.
- 59.4. Technical 1: programming and build (software engineering) - past evidence required - score 4.
- 59.5. Technical 2: functional and nonfunctional testing - past evidence required – score 4.
- 59.6. Technical 3: communication between technical and non-technical - past evidence required - score 3 (a disqualifying score).

59.7. Technical 4: service support - past evidence required – score 5.

60. At the commencement of the interview Mr. Anderson introduced himself, and confirmed the names of the other two panel members whose cameras were turned off. C said that he was happy for them to turn on their cameras, as seeing them would be more natural (my paraphrase), and for them to speak; C specifically said that he wanted them to interrupt him, asking questions that would re-focus his attention as he had a tendency to stray from the point. In evidence C could not recall how he phrased that request, but accepted that he “definitely said the panel could re-focus me”. It remained C’s requirement that no two people spoke at the same time. Mr Barclay and Ms Calzavara turned on their cameras in response to C.
61. Behaviour 2 asked how, if working on a complex project “with an immovable delivery date”, the candidate would ensure an appropriate solution that met business needs deliverable within the time available. During C’s answer (reading from his prepared script) Ms Calzavara raised her virtual hand on screen to indicate she wanted to speak; C he stopped talking to enquire what Ms Calzavara wanted to say; she asked a refocusing question and commented to the effect that she did not think C had addressed the issue of the “immovable delivery date”. C did not appear to understand the intervention. In turn, both of the other panel members tried to explain the point to C in their own words. The panel members did not speak at the same time; they spoke in turn; they did not challenge what C had said in his answer; C felt challenged. The Tribunal notes that C has withdrawn the allegation that the panel members spoke at once, interrupting, correcting and speaking across him; any such allegation is therefore dismissed and the Tribunal accepts that the panel did not act in that way. The Tribunal understands, however, that the said combination of interventions resulted in a sensory overload for C. He had what he describes as an autistic meltdown. C was clearly distressed. He left the call and later explained that he took time to calm down by walking around the garden at his home. There was a 17 minute interlude between C leaving the call and returning to the call. On his return, only Mr. Anderson had his camera on and only Mr. Anderson spoke to C; initially he sought reassurance from C that he was able to continue. We find that Mr Anderson was genuinely concerned about C’s well-being and ability to continue. C reassured the panel that he was ready, able, and willing to continue. He explained that he wanted to succeed at this interview, and he wanted the employment for which he had applied; he did not wish to delay matters; he gave every appearance to Mr. Anderson that he had regained his composure and was able to continue, which was his expressly stated wish. Mr. Anderson would have considered delaying the process by allowing a further or longer break or rescheduling if that were deemed helpful and possible, but more particularly if the C had even asked him to consider it; there were circumstances in the past where an interview had to be interrupted and resumed and Mr. Anderson was open to this possibility.
62. Mr. Anderson moved on to the Technical questions without revisiting Behaviour 2. C had given an answer before the meltdown; the panel considered that he needed to refocus and clarify; C did not seem to understand that need, and became distressed; Mr Anderson sought to minimise distress and decided to move on to the next question so as not to risk re-opening the distressing situation, and to allow C resume answering questions on the basis of his preparation. C answered the

remaining questions in accordance with his preparation, reading from his script (still unknown to the panel).

63. Later, when scoring Behaviour 2, the panel considered that C's score was borderline 3-4, towards a 3 (which was a disqualifying score). Mr. Anderson asked for HR advice about how fairly to take into account the fact of the meltdown suffered by C. HR advised that it would not be fair to other candidates if the panel added a point to bump up the score as compensation for C's distress and disruption to the process; the panel had to score candidates according to the evidence received in accordance with the Principles. In discussion, the panel gave C the benefit of the doubt that he had given sufficient evidence before discontinuing his answer to enable the panel to score his answer as 4. He was not given a compensatory additional point; the panel did not feel that it had to revisit the question and answer, even in relation to "immovable date" as it had enough evidence on which to base a score of 4. The score of 4 was sufficient for C to avoid disqualification in relation to Behaviour 2.
64. Following the resumption of the Teams call/interview the panel continued with the main questions and only Mr Anderson put any questions to C, main questions and any follow ups. C continued to provide answers from his prepared notes, and spontaneously in response to any follow ups. Neither Mr Barclay nor Ms Calzavara asked any follow ups, and we accept from Mr Anderson and Ms Calzavara this was because they saw no need. C achieved the following scores in relation to questions asked post resumption of the interview:
- 64.1. Technical 1: 4 points
 - 64.2. Technical 2: 4 points
 - 64.3. Technical 3: 3 points – this disqualified C from appointment and the reserve list.
 - 64.4. Technical 4: 5 points
65. Technical 3 was a question about communication between "technical and non-technical". It was specifically aimed at giving the interviewee the opportunity to provide past evidence, that is of an experience; R was not asking about possible future situations and how they would or could be handled. All candidates were asked "to give an example of where you have got technical and non-technical buy-in to resolve a high risk design or software problem and how did you do this?"
66. In answer to this question, in accordance with his preparation in advance and his script, C gave as an example an experience where he had some opposition from a colleague to a proposal; to achieve what he considered to be the best outcome he circumvented that colleague. The example related to C's employment at a university. C encountered resistance from a senior member of staff. He did not directly get technical and non-technical buy-in from this colleague but bypassed them and achieved the preferred outcome via an approach to the Head of School. R did not assess the merits of C's achievement of his proposal; R scored C as to whether the evidence provided by C about past experience addressed the question asked. In particular R considered whether the example given amounted to mediating and mending relationships, as referred to in the Person Specification essential skills and experience documentation provided to C in accordance with the Principles. Mr Anderson even asked C a follow up question as to why C by-

passed his colleague; C's explanation was that it was "expedient" (Mr Anderson's statement at para 25 and confirmed in oral evidence as "efficient or expedient"). R took this into account. C chose his own example in answer to the question. It did not strike Mr Anderson that his approach was related to C's disability, and it was not explained by C in those terms; in any event R was assessing an essential skill and C's prepared answer did not give the evidence required of use of the required skill.

67. C did not consider that he was being, or needed to be, scored on his ability to mediate and mend relationships. He did not think that this formed part of the essential skills that should be assessed in relation to communicating between technical and non-technical for a FETL, as he understood the role. R assessed all interviewed candidates on the same basis and in reliance on the documents disclosed in accordance with the Principles; R did so having made the reasonable adjustments agreed with C, as varied by C, and to accommodate his stated aim of completing the interview when he was suitably composed after a meltdown.

The Law

68. As was explained during the hearing, the list of issues is framed in such a way as to address the applicable law; the questions in that list are taken from the statutory provisions and decided case law.
69. R has made legal submissions as to the statutory provisions of the Equality Act and has cross referenced a number of legal authorities (decided cases). R's legal submissions are clear, precise and succinct. As he did throughout the conduct of the hearing, Mr Holloway has set out his written submission in a way that he reasonably believes the C will best understand.
70. There is little, if anything, that the Tribunal can add to the clearly expressed legal submissions of R. The Tribunal is wary of causing confusion by adding any unnecessary clarification or qualification of R's legal submission. The Tribunal agrees with and adopts R's legal analysis set out by Mr Holloway in his written submission and reply to C's submission.
71. C has not made more detailed legal submissions, nor was he expected to as a Litigant in Person. Understandably, he has concentrated on factual submissions addressing the list of issues appropriately. In doing so he has therefore effectively put forward his case, based on the law as he understands it, answering the list of issues questions with their legal implications. He chose not to make any formal response to R's submissions and confirmed he had no comment to make up on them. The Tribunal therefore notes that to all intents and purposes C agrees with R's legal submissions. He clearly does not agree with the factual submissions, but does not challenge the legal basis of this case and how the Tribunal ought to address issues under section 15 and sections 20-21 EqA.
72. The Tribunal has considered the wording and meaning of section 15 and sections 20 to 21 EqA. It has taken due cognisance of each of the authorities cited by R, copies of which were provided to the Tribunal. The Tribunal only really takes issue with R's legal submission on the point as to whether C's non appointment was "unfavourable treatment"; this point is dealt with below.

Application of law to facts – The Judgment

73. It was stated frequently during the hearing that C ought to be considered as an individual and that no two autistic people are the same; there is no “one size fits all” description of all characteristics attributable to autism or approaches to the needs of autistic people. The Tribunal was understanding of C’s reluctance to discuss labels, his emotional state, or to delve into diagnosis.
74. C was prescriptive throughout the hearing as to what best suited him, and he made several reasonable requests for adjustments and accommodations to remove perceived disadvantages. Those discussions had to be led by him. It would have been inappropriate for us to assume what might be best for him. Within reason, we had to accept that what he told us was the best for him was in fact optimum. C is clear and outspoken, not shy, in making known his situation and circumstances, but particularly the way he wants matters to be dealt with in terms of communication; this is not a criticism but a statement of fact as assessed by the Tribunal. It is not always appropriate to read across from one’s performance as a witness or party in the Tribunal to how one may have behaved in a work setting or, as in this case, at job interview, but the Tribunal is entitled to take note of a claimant’s capabilities and characteristics as demonstrated in its dealings with that claimant, provided it also takes into account the multiple other factors that influence one’s behaviour either at work or in the context of contested litigation.
75. The Tribunal finds that R attempted to find out from, and agree with, C any reasonable adjustments that would be required to remove substantial disadvantages facing him in the recruitment process. It did the best it could. It did the best it could to give C every opportunity to provide his best evidence in an interview setting so that it could assess his suitability for the advertised role. The assessment was in relation to skills and experience that were clearly set out in written documentation provided to all candidates. It was for the candidates to select their best examples of evidence that would establish suitability for the role. This required that candidates read the printed material sent to them; it required that the candidates prepare fully for the interview. Proper and full preparation for interview included taking due notice of R’s requirements and the factors it would take into account in assessing a candidate’s suitability. It was not for any candidate to discount or exclude consideration of matters that they personally felt were irrelevant; it was not for a candidate to determine the required skills for the role as that candidate interpreted them; to do so was necessarily to risk failing to produce appropriate evidence to an acceptable standard.
76. In brief, C prepared for interview and assessment on what he considered was important, not what R had made clear was important to it. This created an obvious risk for C. The evidence sought was in relation to past experience, and it was for each candidate to choose their example and produce their evidence to satisfy R’s needs. C did not do this to a level that was better than two other candidates; principally, C was marked as not being appointable because he chose an example in support of the criterion of communication between technical and non-technical that did not meet R’s required standard. C still thinks that his example was a good one; whereas it may be a good example of achieving an efficient or expedient outcome, that was not what he was asked to provide. This failure on his part was

not down to communication difficulties but selective preparedness and, notwithstanding agreed adjustments, C not satisfying an evidence based, merit-based, fair and transparent recruitment process. That process was for R to recruit a FETL who demonstrated all the essential skills for the role and achieved the highest score across all skill areas, where the printed and circulated documentation made clear what R required in terms of skills. C did not consider that mediating and mending relationships should have been part of the role in question, but that was not his call. He says it was not clear to him that it was considered to be part of the role by the R, but that was overlooking the printed material provided to him. Written communication was his preferred method, and C is intellectually sophisticated and experienced.

77. The Tribunal's Judgment in relation to the List of Issues:

Discrimination arising from a disability (s.15 Equality Act 2010)

1. Did R treat C unfavourably by:

1.1 Not hiring C in the role of Front End Technical Lead

C wished to be appointed to the role of FETL; he needed employment; he was not appointed to that role; his non-appointment was unfavourable to him. That said, in reaching the decision to appoint another candidate, C was not treated unfavourably. He was treated fairly, that is favourably, in accordance with the Principles where the reasonable adjustments that he agreed with R were made, varied as he requested, and then reinstated as he had originally asked after he had experienced a meltdown (so as to minimise the risk of further distress to him). The treatment was in accordance with a fair, evidence-based, merit-based, open competition, where due adjustments were made, and to this extent he was not treated unfavourably despite the outcome being unfavourable to him.

2. Did the following thing arise in consequence of the C's disability?

Difficulties with communication:

Sometimes C has difficulty dealing with oral communication. If he is addressed by multiple voices, is challenged, or given complicated oral instructions that he considers are ambiguous or lack precision, he may encounter a sensory overload. C is a sophisticated communicator in the sense that he has acute comprehension skills and he is articulate to a high standard. His problem with communication arises in the context of sensory overload. C's preferred method of communication is written. He is able to process technical written documentation. He is prone to literal interpretation.

3. Was the unfavourable treatment because of that thing?

C was not appointed to the role for which he applied because he did not evidence past experience that was adjudged appropriate to meet the needs of R. C was assessed against evidence that he produced, as were all other candidates, and he scored relatively highly but not highly enough to be appointed. The reason he was not appointed was on the basis of the answers that he gave, where those answers were to questions of which he had 24 hours notice and where he read his written script in reply. C received written questions from R and he prepared written replies. Insofar as it can be said that non-appointment was unfavourable, as opposed to the process amounting to the

treatment in question, the unfavourable non-appointment was due to the deemed lack of merit, or relative lack of merit, in his replies to written questions. He did not satisfy the minimum requirements for the role, and this was not due to communication difficulties.

4. Was the treatment a proportionate means of achieving a legitimate aim? The R says that its aims was:

The need to hire a Front End Technical Lead who demonstrated all the essential skills for the role and achieved the highest score across all skill areas.

The Tribunal has found as a fact that the above statement was R's legitimate aim. R utilised a merit based, fair, and open competitive assessment to achieve its aim. R effected the reasonable adjustments requested by C to remove any substantial disadvantage that he faced (see below). C had 24 hours' notice of the questions to be asked at interview and the advanced notification of questions was written. He was given the opportunity to prepare a written reply although it was not known to the panel that in giving his answers he was reading from a script; that is however what he did. R marked C fairly and according to the documented and disclosed procedures and required skills. The Tribunal concludes that R's process was a proportionate means of achieving the legitimate aim.

5. The Tribunal will decide, in particular:

- 5.1 Was the treatment an appropriate and reasonably necessary way to achieve those aims?

Yes, in accordance with the legal obligations under the Principles bearing in mind that R also put in place C's reasonable adjustments and was guided by him throughout as to what best suited him and his communication issues.

- 5.2 Could something less discriminatory have been done instead?

The Tribunal does not find that there was discriminatory treatment.

- 5.3 How should the needs of C and R be balanced?

The Tribunal finds that the needs of C and Rs were balanced. The process applied was applicable to all candidates equally, save for reasonable adjustments that were made as agreed. R was therefore able to comply with its legal obligations upon recruitment and any substantial disadvantage facing C was addressed in the adjustments that he agreed with the recruitment team.

Failure to make reasonable adjustments (s.20 and s.21 Equality Act 2010)

6. Did R apply a provision, criterion or practice (PCP) which put C at a substantial disadvantage compared to someone who did not have the C's disability?

The C relies on the following PCP's:

- 6.1 PCP 1 - the requirement that interviews are carried out by more than one person on an interview panel.

This was a PCP. It was not essential that there was an interview, but it was the usual and preferred method of assessment. In this case it was the method of assessment applied to all candidates. The purpose of convening a panel rather than having a single interviewer was to ensure balance both as to gender and skill set. The purpose of the interview was to assess skills and evidence of previous experience for a role where team leadership and communication, such as between technical and non-technical, would be required.

- 6.2 PCP 2 – requiring C to continue with the interview after his meltdown and either (a) concluding within the allotted time, or (b) concluding that day.

It was not a PCP that C had to continue with his interview after a meltdown; there was no such requirement but the interview continued at C's request and subject to his reassurance that he was both able and willing to continue, in fact that he wanted to continue. The circumstances of the meltdown were peculiar to him and a "one off" and do not amount to a PCP.

R devised a timetable for interviews, allocating time slots to each candidate. C had a break of between 15 to 17 minutes during the course of his interview because of his meltdown, so that he could compose himself. The timetable was therefore not adhered to. Mr. Anderson confirmed that he would consider, if asked or it otherwise seemed necessary, breaks, delays and rescheduling but he did not engage them because of C's reassurances that he was willing to proceed and wanted to proceed that day and to conclude the exercise. There was no PCP requiring that a candidate continue an interview within the allocated time or by concluding it on that day.

- 6.3 PCP 3 – scoring him on his ability to "mediate and mend relationships".

This was a PCP. The ability to mediate and mend relationships was clearly stated in the literature provided to all candidates and formed part of the essential skills required of the successful candidates in communicating between technical and non-technical, and leadership generally.

- 6.4 PCP 4 – requiring him to answer questions orally in real time and/or posing questions while he is in the middle of reading his answers.

There was a PCP that candidates reply to questions orally and that was part of the interview and assessment process. It was not a PCP that a candidate was required to answer questions while in the middle of reading their answers. The panel did not know that C was reading his answers from a script. In his submissions C says that the R ought to have realised this because he had been given 24 hours written notice of the questions and therefore an opportunity to prepare a script; the Tribunal disagrees. The panel could reasonably have assumed that a candidate with prior written notice of the questions would prepare notes and may prepare a script, but the panel did not know that C was reading from one.

7. In respect of each PCP relied upon, did that PCP put C at a substantial disadvantage compared to someone without C's disability?

The C relies on the following disadvantages in respect of each PCP:

- 7.1 PCP1 disadvantage - Where he has more than one input, that causes him to have difficulty or even causes him to have a meltdown.

Depending on the input, but particularly if there was a perceived challenge to C, more than one simultaneous input could cause C to have a meltdown. In an interview context a meltdown would be a disadvantage.

- 7.2 PCP2 disadvantage - He could not compose himself and perform as well after the meltdown.

C composed himself after an interval following his meltdown. He reassured the panel that he was composed and able to proceed with the interview. The panel gained the impression that this was the case. It was reasonable in all the circumstances for the panel to be led by C as to his state of composure or distress, his needs and preferences. The scoring post-meltdown shows that C did perform well after it, save in respect of the question about communicating between technical and non-technical (mending and mediating relationships). He scored 4, 4, 3, 5 after the meltdown, where only the score of 3 was below minimum acceptable. C was able to perform as he wished to perform because he was reading from a script post-meltdown. What was considered inadequate performance was in respect of the evidence he had used of past experience that involved bypassing a colleague rather than mending and mediating relationships and "getting buy-in" from a colleague. He cited a bad example, but one that he had prepared and submitted from his script. The Tribunal therefore does not accept that he was disadvantaged in the way claimed.

- 7.3 PCP3 disadvantage - His disability makes social interactions and/or confrontation more difficult for him.

In certain situations, C's disability makes some social interactions more difficult for him; his disability makes confrontation more difficult for him. This disadvantage did not arise from PCP 3 in the situation where he was given due notice in all of the documentation. The ability to "mediate and mend relationships" was required and would be assessed, where he was given 24 hours advanced notification of the questions and an opportunity to prepare his answers, and where he was actually reading from a script citing the example of prior experience that he chose. He chose a bad example in terms of trying to evidence the required skill; his chosen example may have been a good example of efficiency or expediency but that was not being assessed.

- 7.4 PCP4 disadvantage - He was not allowed to finish reading his answers, he was interrupted, he was challenged, he had a meltdown.

C was allowed to finish reading his answers albeit the panel did not know that he was reading at the time. He had asked that the panel refocus him by questioning him if he was going off point, in other words, anticipating that he may be interrupted which he said he would welcome if off point. Miss Calzavara deemed that he had gone off the point of addressing the "immovable date" and raised a hand; C accepted an actual interruption

by inviting her to make her point, effectively interrupting his own flow; she asked him a refocusing question. When that was not understood, the other panel members sequentially attempted to clarify it. They did not challenge him. C was not disadvantaged as alleged.

8. Did R know, or could it reasonably have been expected to know, that C was likely to be placed at the stated disadvantage by each PCP?

R knew that C's preference was for written communication in that this was made clear in the job application and some subsequent e-mail correspondence. In discussion with the recruitment team C agreed reasonable adjustments to overcome what he perceived would be substantial disadvantages facing him; the agreed adjustments were adopted; they did not include all the adjustments that C had once mentioned. Save in respect of the agreed adjustments, the panel adopted the same approach that it did with all candidates in line with the Principles. As the panel adopted C's stated preferences, stated either by way of his agreement with the recruitment team for the three reasonable adjustments to be put in place, or as they were varied by C during the course of the interview, and as C reassured the panel that he was able to continue post-meltdown and wish to do so, R did not know and could not reasonably have been expected to know that C was placed at the stated disadvantages. The Tribunal feels that R did all that it reasonably could to accommodate C and to ensure that he was not disadvantaged.

9. In respect of each PCP, what steps could have been taken to avoid the said disadvantage? The C suggests:

PCP 1 - the requirement that interviews are carried out by more than one person on an interview panel.

Disadvantage - Where he has more than one input, that causes him to have difficulty or even causes him to have a meltdown.

Steps

- 9.1 Remove the need for a panel interview.
Obviously, the advertisement was placed before R knew that C would apply. Once the advertisement had been placed and the procedure started, it could not be stopped unless it was completely scrapped and started from scratch for all candidates. To do otherwise would have been unfair to other candidates. Bearing in mind C's willingness to undergo interview with agreed reasonable adjustments in place, and the needs of R to achieve its legitimate aim as found above, the Tribunal does not consider that the removal of panel interview would have been a reasonable adjustment.
- 9.2 Allow a more neurodiverse-friendly way of interviewing by:
- 9.2.1 *[Withdrawn by C: the panel members not speaking all at once, interrupting, correcting and speaking across the C.]*
- 9.2.2 C being allowed to continue reading his pre-prepared answers through to the end before clarifications/objections are raised.
C asked that the panel ask him refocusing questions; this necessarily entails interruption; Ms Calzavara's interruption was not vocal but by raising a virtual hand such that it was for C to stop talking and take the interruption as and when he saw fit. The panel allowed C to read

his pre-prepared answers, albeit they did not know he was reading them, but in any event, it allowed him to say all that he wanted to say save in respect of the answer that was interrupted by the meltdown. Mr. Anderson decided it would be better to move on than to reopen the area that caused distress to th C before his meltdown and so the interview moved on to the next question. C had not addressed the issue of “the immovable date” in the question concerned and had not understood the refocusing attempted by the panel. The Tribunal finds that on balance Mr Anderson's approach was therefore reasonable as he reasonably considered that moving on would avoid the risk to C or further distress. In any event, C was not marked down but was scored 4 in respect to the interrupted question in a situation where there was no indication that C's pre-prepared answer would ever address the outstanding matter of “the immovable date”. C was not prejudiced in terms of scoring by the refocusing interruption. It was obviously distressing to C that he had a meltdown and that is regrettable and was clearly regretted by the panel. The panel did not raise objections; they sought evidence and queried the relevance of the evidence provided, but always measured against the published material that had been sent to all candidates in advance.

9.2.3 posting any follow-up questions in the chat.

It was explained to the C that follow up questions would not be posted in the chat; he appeared to accept this; he did not seek a further adjustment in respect of it once he was told of the intention not to post them. In these circumstances it would not have been a reasonable adjustment to post them.

9.2.4 Allowing C sufficient time to process questions and formulate his answers.

There was no evidence before the Tribunal that the C was denied sufficient time to process questions and formulate his answers. As agreed with him, he was given 24 hours prior notice of the questions which were sent to him in writing. He not only had time to prepare his answers, but he did so, preparing a script which he read from during the interview.

9.3 Not altering the pre-agreed adjustments.

The agreed adjustments were altered at the request of C. After C's meltdown Mr. Anderson unilaterally reimposed them without comment or criticism from C. At different times C has criticise R for going along with his suggested variations, appeared satisfied that the adjustments were reinstated following meltdown but then on other occasions criticised that same step. The Tribunal is unsure what C now considers to be optimum. During evidence C seemed to be criticising the panel members, other than Mr. Anderson, for not asking further questions following the meltdown. They had none. They were not obliged to ask questions. When they had asked refocusing question it had caused distress. It is difficult to know from all of this what more the R could have done to assist the C.

PCP 2 – requiring C to continue with the interview after his meltdown and either (a) concluding within the allotted time, or (b) concluding that day.

Disadvantage – He could not compose himself and perform as well after the meltdown.

Steps

9.4 Terminate and reschedule the interview or take an extended break when C is overwhelmed and has to leave the call.

9.4 [sic] Give C more time to compose himself and extend time.

C returned to the interview having apparently composed himself and that is what he reassured the panel about. He expressed the wish to continue and showed that he was able to do so. He did not request an extended break or rescheduling. His scores post-meltdown, save in respect of the relatively poor example of mending and mediating, show that he performed well after his meltdown. It is difficult to speculate how C would have reacted had he been overruled by Mr. Anderson when he said he wanted to continue with the interview and if Mr. Anderson had insisted on terminating it or postponing it and rescheduling it. It is reasonable to assume that C would have objected to assumptions being made contrary to his autonomous assertion that he was ready, able, willing and desirous to continue. The Tribunal thinks it likely that C would have refused to postpone and reschedule, likely that deferring matters would have caused further anxiety and distress, likely that it would have derailed the ongoing procedure in circumstances where the panel was reassured there was no need. Rescheduling would not have been a reasonable adjustment.

PCP 3 - scoring him on his ability to “mediate and mend relationships”.

Disadvantage - His disability makes social interactions and/or confrontation difficult for him.

Steps

9.5 Assess the requirement to mediate and mend relationships via autistic communication.

Nobody could clearly explain what was meant by the phrase “autistic communication”. In those circumstances it cannot be said to be a reasonable adjustment.

9.6 Adjust the role of Front-End Technical Lead to allow for mediating and mending relationships to be achieved via autistic communication.

Nobody could explain what was meant by the phrase “autistic communication”. In those circumstances it cannot be said to be a reasonable adjustment.

9.7 Adopt a flexible approach to the scoring which allows for the effects of his disability by:

9.7.1 Making the criteria to “mediate and mend relationships” a clear requirement to the candidate by adding it to the list of essential criteria for the role – those which must be demonstrated before being invited to interview.

R had made it clear to all candidates that being able to mediate amend relationships was important and formed part of the essential skill of communicating between technical and non-technical. C either did not read the documentation or did not consider this important enough to prepare his response to any question on it at interview. Such was his preparation or lack of preparation that he did not realise that the example he gave, of bypassing his colleague to be expedient, failed to address this crucial aspect of the FETL role that was advertised.

- 9.7.2 Assigning a numeric value that can be seen as a contribution to the overall “communicating between technical and non-technical” score of 3. To assist and make this as explicit as possible – if I have two items A and B and $A+B = 3$, then if A is 1, B must be 2.

The R had made it clear that communicates between technical and non-technical was essential and that part of that was evidencing an ability to mediate and mend relationships. It is impossible or at least so difficult as to be impractical, to assign numerical values to any number of essential elements of the need to mediate amend relationships and indeed to communicate between technical and non-technical. It would not have been a reasonable adjustment. The point is that C overlooked it or ignored it as a requirement and chose a poor example to evidence his ability to mediate and mend, choosing instead an example of what he considered to be efficiency or expediency in achieving an outcome by bypassing a colleague. It was not the lack of a numerical measurement of the ability to mediate and mend that resulted in C’s score of 3.

PCP 4 - requiring him to answer questions orally in real time and/or posing questions while he was in the middle of reading his answers.

Disadvantage - He was not allowed to finish reading his answers, he was interrupted, he was challenged, he had a meltdown.

Steps

- 9.8 Permit him to answer the questions in writing.
R was conducting a consistent procedure in accordance with the Principles and as advertised. Assessment was to be by way of interview for all candidates. In fact, questions were put to the C in writing and as we now know he read his response and therefore he had the benefit of written answers to questions, which other candidates did not.
- 9.9 Permit him to read his answer in full before the panel ask any questions.
C was permitted to read his answer, and he chose to stop in response to Ms Calzavara’s raised virtual hand. She did that to ask a refocusing question because she felt that C had gone off point. He had not addressed the issue of the immovable date. On resumption of the interview post-meltdown C was asked the prepared questions, and he read his prepared answers in full.
- 9.10 Permit him to submit written responses by email or in the chat, rather than have him read them out.
R was conducting a fair and consistent recruitment procedure in accordance with the principles. C was not required to read out his written answers, but he chose to do so and in fact the panel did not know that he was reading. He was in effect providing a written response because he was reading from his script. Given the nature of the recruitment exercise it would not have been a reasonable adjustment to allow candidates, or disabled candidates, to engage in an e-mail trail outside the interview process that had been advertised.
- 9.11 Ask clarifying/follow-up questions in the chat.
It was made clear to C before the interview that follow up questions would not be posted in the chat, and he did not object to this or seek an additional adjustment to the three agreed reasonable adjustments. In those circumstances this consideration being made in hindsight does not make it a reasonable adjustment. R had no reason to believe that C

would face a substantial disadvantage by oral follow up questions in a situation where he had not sought the said adjustment.

9.12 Use closed captions in the video software.

This was never considered at the time. The Tribunal notes that C explained he only became aware of closed captions in the video software during the course of an Employment Tribunal preliminary hearing in relation to this litigation. He had not suggested it as a reasonable adjustment, and it was not one of the three that was agreed. In these circumstances this would not have amounted to a reasonable adjustment.

10. Was it reasonable for the R to have taken those steps?

For all the reasons stated not all of the alleged PCPs were in place, few of the substantial disadvantages existed, and none of the asserted adjustments would have been reasonable.

11. Did the R fail to take those steps?

The Tribunal considers that R did its best and that C was not discriminated against by any failure to make reasonable adjustments in accordance with a statutory duty.

Approved by Employment Judge T V Ryan

Date: 11.07.25

JUDGMENT SENT TO THE PARTIES ON
16 July 2025

Kacey O'Brien
FOR THE TRIBUNAL OFFICE