EMPLOYMENT TRIBUNALS

Claimant: Mr I Hajee-Adam

Respondent: Drywall Solutions UK Ltd

Heard at: Central London Employment Tribunal
On: 22, 23, 26, 27 and 28 May, and 25 July 2025 in chambers

Before: Employment Judge Keogh, Ms Z Darmas, Mr R Baber

Representation
Claimant: Mr S John (Counsel)
Respondent: Mr M Green (Counsel)

JUDGMENT

1. The claimant's complaint of direct disability discrimination is unsuccessful (by reason of the application of section 212 Equality Act 2010) and is dismissed;

2. The claimant's complaints of discrimination arising from disability are successful;

3. The claimant's complaints of indirect disability discrimination are successful in part, in relation to matters 10(a) and (c) in the List of Issues;

4. The claimant's complaints of failure to make reasonable adjustments are successful in part, in relation to matters 14(a) and (c) in the List of Issues;

5. The claimant's complaints of harassment related to disability are successful.

REASONS

Introduction

1. This case is about the claimant's application for employment with the respondent. The claimant was offered a position as the respondent's Financial Director, but contends that the offer was withdrawn when he made a request for reasonable adjustments as a result of his disabilities. The claimant brings claims of direct disability discrimination, discrimination arising from disability, indirect discrimination, failure to make reasonable adjustments and harassment.

2. We received a bundle of documents and witness statements from the claimant, and for the respondent from Mr Rob Wardlaw (the respondent's former Operations Director/Managing Director), Mr Adam Dodds (the respondent's external auditor) and Mr Nick Kirby (an external recruitment agent). We heard oral evidence from all witnesses.

3. We received written submissions from both parties. Additional time was given after the completion of evidence for both parties to finalise their written submissions. As a result oral submissions were time limited.

4. We have considered all the written and oral evidence and the documentary evidence in the bundle to which we were referred and the submissions made to us. If we do not mention a particular fact or dispute in this judgment, it does not mean we have not taken it into account, only that it is not material to our conclusions. All our findings of fact are made on the balance of probabilities. Our decision was unanimous.

The Hearing

5. The claim in this matter was brought in March 2020. It has had a long and complex procedural history getting to a final hearing, with a number of postponements.

6. Of note in the procedural history is that the Tribunal refused the claimant's application for specific disclosure of correspondence between the respondent and its external HR adviser on the basis that the HR adviser was providing advice in respect of contemplated litigation. Questions about that advice were therefore curtailed in the hearing accordingly.

7. The hearing was listed to be heard over 5 days, listed to sit only from 12pm to 16.30pm as a reasonable adjustment for the claimant. With the claimant's agreement the Tribunal sat to just gone 5pm on 28 May in order to allow sufficient time for oral submissions. On 29 May the Tribunal was deliberating, which was a full day without attendance from the parties. The claimant also requested regular breaks of around 10 minutes each hour and additional breaks when required, which was accommodated. The room layout was altered to accommodate other requirements on the

claimant's side. The respondent did not require any reasonable adjustments on its side.

8. The parties had agreed a List of Issues prior to the hearing. It is noted that the matter had not been fully case managed since the claimant's successful application to amend the claim heard in 2022, at which hearing it was ordered that the parties produce an agreed list of issues to send to the Tribunal. There had been a further hearing to determine various applications but no further case management to ensure the list had been appropriately completed. The list agreed prior to this hearing lacked sufficient detail for the Tribunal to determine the matter, for example there was no indication what the disadvantages were in respect of the indirect discrimination and reasonable adjustment claims, and no indication what legitimate aims the respondent might wish to rely upon in respect of the indirect discrimination claim (the issue having been left out of the list entirely in respect of discrimination arising from disability). It was also not clear what concessions may had been made in relation to disability and knowledge of disability and what still needed to be determined by the Tribunal. In the circumstances a direction was given for the parties to come to the hearing prepared to provide the missing information. The claimant did so, whereas the respondent required further time to take instructions (which was provided) and changed its position a number of times during the first day of the hearing. A finalised list of issues was prepared overnight and was provided to the Tribunal, with the claimant reserving its position in respect of some minor points. These were discussed and the final list of issues is below. It was further agreed that the parties should include in their cross examination at the liability stage any points in relation to contributory fault (this was purely pragmatic, in order that the respondent's witnesses would not need to be recalled), however any argument as to contributory fault would be dealt with at any remedy hearing.

9. An application was made prior to the hearing for Mr Kirby to give evidence on 28 May 2025 between 12pm and 2pm. At the outset of the hearing it was raised that this would ordinarily be the time when the Tribunal would be deliberating, and that this may result in a reserved decision. The claimant objected to this. The respondent indicated that efforts were being made to secure Mr Kirby's attendance on 27 May, therefore it was determined the application should not be heard until the respondent had a definitive position. In due course his attendance was secured for 12pm to 1.30pm on 27 May 2025. The reason given for his limited ability to attend (which the respondent was ordered to provide in writing) was that the respondent failed to provide Mr Kirby with the updated notice of hearing, and this was not discovered until around three weeks prior to the hearing, by which time Mr Kirby had made arrangements to attend a significant family holiday. As a result of the timing, Mr Kirby's evidence was interposed (by video) in the middle of Mr Wardlaw's evidence, which was far from ideal. This however was preferable to leaving Mr Kirby's evidence to 28 May at which point the Tribunal was hoping to deliberate.

10. Just prior to the evidence of Mr Dodds, the respondent requested to disclose a further document said to have been found by Mr Dodds that morning. The document was provided to the claimant at around midday when the hearing was due to start, such that Mr Green had not had the chance to look at it or take instructions. The addition of this document was not in the end objected to, however there was some delay caused by the discussion, time for instructions and additional cross examination.

11. At the outset of the evidence given by Mr Dodds, he requested to make an amendment to his statement on a point which, for the reasons set out below, was fundamental to the issues to be determined in the claim. The claimant had not been informed of any change to the witness statement in advance and had cross examined the respondent's other witnesses, and in particular Mr Wardlaw, on the basis of the original statement. The alteration therefore took the claimant by surprise, and the Tribunal required an explanation, in so far as Mr John was able to provide one without divulging advice given to or discussions with the respondent. Mr Dodds had indicated that he became aware of the need for the change on Friday, after hearing Mr Wardlaw's evidence. Mr John eventually indicated that around the close of proceedings on Friday Mr Dodds was unsure about his statement, and he was given time to think about the matter over the long weekend. There were other matters to deal when the hearing resumed on Tuesday and he did not explore the issue further until Wednesday when Mr Dodds was due to give evidence. He apologised to Mr Green and to the Tribunal for not informing the claimant at an earlier stage, and the Tribunal is grateful for the detailed explanation provided. Nevertheless this did cause delay to the proceedings, both to discuss the matter and for Mr Green to ask additional cross examination. The claimant took a pragmatic view to the matter and did not make any further applications. When reaching our decision below, we bear in mind that there was no opportunity for the claimant to cross examine Mr Wardlaw further on the new version of events put forward by Mr Dodds.

12. As a result of the various delays to the proceedings the Tribunal concluded that it would be very unlikely to be able to deliver an oral judgment on the last day of the hearing, and so would use that full day for deliberations. The parties' views were canvassed as to whether their preference was for an oral judgment (which could be combined with any remedy hearing if needed), or a reserved judgment. The Tribunal's concern was that a reserved judgment would make reference to the claimant's disabilities. The claimant however asked for whichever method of judgment would be swiftest, with a provisional remedy hearing to be listed either way. The respondent preferred a reserved judgment. Given the time it would take for the Tribunal to reconvene, it was determined judgment should be reserved.

The Issues

Disability Status

1. *Was the Claimant at the material times a disabled person under section 6 Equality Act 2010? The Claimant alleges he was disabled by reason of physical and mental impairment.*

2. *The Claimant relies on:*

    a. *Chronic TBS (Conceded 23.3.21)*
    b. *Prostate and Bladder Neck Obstruction (Conceded 23.3.21)*
    c. *Stress, Anxiety (amended 17.5.21), Depression and panic attacks (including adjustment disorder, generalised anxiety disorder and seasonal affective disorder) (amended 29.1.21 and subsequently conceded)*

3. *If so, did the Respondent have actual or constructive knowledge of any disability at the material time?*

4. *Did the Respondent have actual or constructive knowledge of any substantial disadvantage for the purpose of the reasonable adjustments complaint?*

S13 Direct Disability Discrimination

5. *Did the Respondent subject the Claimant to the following less favourable treatment?*

    a. *withdrawal of the job offer*

6. *The Claimant relies on a hypothetical comparator.*

7. *If the Tribunal finds that the withdrawal of the job offer was less favourable treatment, was this less favourable treatment because of the Claimant's disability (including whether the withdrawal was on the basis of stereotypes about how many hours people with his disability could work).*

S15 Discrimination Arising from Disability

8. *Did the Respondent treat the Claimant unfavourably because of something arising in consequence of his disability? The "something arising" is:*

    a. *The Claimant's need and request to start work around midday/12pm;*
    b. *The Claimant's need and request to spread his hours over 3 days;*
    c. *The Claimant's need and request for a desk with natural light; and*
    d. *The Claimant's inability to regularly work more than 20 hours per week.*

9. *The alleged unfavourable treatment is:*

    a. *Refusing the requests in respect of working arrangements*

b. *Withdrawing the job offer*

The Respondent does not rely on a legitimate aim in respect of 8a-c, its case is that these were not refused nor a reason for withdrawing the job offer and therefore not causally linked to the alleged unfavourable treatment.
In respect of 8c the Respondent's position is that there was no requirement to sit at a desk without natural light.
In respect of 8d the Respondent's case is that the inability to grow with the business was a potential issue and would be a legitimate aim of ensuring sufficient Financial Director input to assist the business as it grows.

S19 Indirect Disability Discrimination

10. *Did the Respondent apply the following provision, criterion or practice (PCP) (not admitted by the Respondent):*

    a. *Requiring employees (in this role) to work 15 hours over a two-day working week*
    b. *Requiring employees (in this role) to sit at a desk without natural light*
    c. *Requiring/expecting employees (in this role) to increase their hours in the future (potentially up to more than 20 hours/week)*

11. *If yes, did the PCP(s) place or would the PCP(s) place persons with the Claimant's alleged disability at a particular disadvantage when compared to persons without the Claimant's alleged disability?*

    a. *For issue 10a, C relies on the particular disadvantage that those with his forms of disability are unable to work full days or start before around midday as it takes at least 6 hours to control bowel movements in the mornings and so they are unable to get to work before around midday.*
    b. *For issue 10b, C relies on the particular disadvantage that a lack of natural light worsens the metal health condition of those with Seasonal Affective Disorder.*
    c. *For issue 10c, C relies on the same particular disadvantage as 9a in addition to an inability to work long term consecutive days due to the fatigue from early rising at 4am each working day.*

12. *Did the PCP(s) put or would put the Claimant at those disadvantages? R concedes that such PCPs would put the Claimant at those disadvantages.*

13. *The Respondent does not rely on a legitimate aim for 9a and b. It contends that whilst not operative in the decision to withdraw the job offer, 9c would nevertheless have the legitimate aim of ensuring that the business had sufficient FD input to assist it as it grew.*

S20/21 Failure to Make Reasonable Adjustments

14. *Were the following PCP(s) applied by the Respondent:*

    a. *Requiring employees (in this role) to work 15 hours over a two-day working week*
    b. *Requiring employees (in this role) to sit at a desk without natural light*
    c. *Requiring/expecting employees (in this role) to increase their hours in the future (potentially up to more than 20 hours/week)*

15. *If so, did the PCP(s) place the Claimant, or would they place the Claimant, at a substantial disadvantage in respect of a relevant matter in comparison with persons without the Claimant's alleged disability?*

    a. *The substantial disadvantages relied upon by the Claimant are as for the particular disadvantages in para 11 above.*

16. *Did the PCP(s) put the Claimant at that substantial disadvantage? R concedes that such PCPs would put the Claimant at those disadvantages. For clarity, the Respondent contends that there was no requirement to sit at a desk without natural light.*

17. *Did the Respondent take such steps a were reasonable to avoid that disadvantage? The Claimant asserts the following reasonable adjustments:*

    a. *Issue 14a: Spreading work out over 3 non-consecutive days*
    b. *Issue 14b: Providing a desk near the window*
    c. *Issue 14c: Either a job share, or more use of external accountants or more delegation to the internal team which the Claimant would have trained up*

S26 Harassment

18. *Did the Respondent subject the Claimant to disability related harassment by:*

    a. *Refusing the requests in respect of working arrangements*
    b. *Withdrawing the job offer*

19. *Did that conduct have the purpose or effect of violating the Claimant's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?*

20. *In deciding whether conduct has the effect referred to above at paragraph 18, each of the following must be taken into*

account—

a. the perception of the Claimant
b. the other circumstances of the case;
c. whether it is reasonable for the conduct to have that effect.

Remedy

21. *Is the Claimant entitled to:*

a. Compensation for financial loss and injury to feelings
b. An award for aggravated damages
c. Interest

22. *If so, in what amount is the Claimant entitled to receive compensation?*

23. *Should any compensation be extinguished or reduced as a result of the claimant's contributory fault?*

The Facts

Credibility

13. We start by explaining our general approach to fact finding and credibility. Both parties have raised issues in relation to the other side's credibility.

14. The respondent contends that the Tribunal should take into account the claimant's conduct while giving evidence. The respondent submits that the claimant was *'often condescending in manner and was affronted by challenge in giving evidence'*. The respondent referred the Tribunal specifically to a response to a question about an email to Mr Dodds dated 20 October 2020, which in itself the respondent contends *'highlights* [the claimant's] *highly condescending, antagonistic attitude'*. When this was put to the claimant, he responded:

"The heading is constructive feedback. If after today I write an email to Chambers about your performance in this hearing, I am giving feedback. I am giving the benefit of my experience being senior to him in age and experience, so he can take it on board. It is not a criticism, may not be written in flowery Prince English, but says what I need it to say. I think in French, I write in English. I can't write Queen's English to your satisfaction."

15. The respondent also drew our attention to a point in cross examination where the claimant stood up and left the room without providing an explanation.

16. We conclude we should not take into account at all the claimant's manner while giving evidence or the fact that he left the room during cross examination. We have taken into account guidance given in the Equal

Treatment Bench Book, and note that giving evidence may be stressful and give rise to frustration and anger, and the claimant in particular suffers from stress and anxiety. His manner in giving oral evidence therefore is not likely to be a useful indicator as to his manner generally, or how the respondent might have viewed the way he conducted himself at the relevant time, which is the pertinent issue for us to consider. As to the claimant leaving the room, he had been given express permission to do so by the Tribunal at the outset of the hearing if required as a result of his condition. We also accept claimant's submission that his condition may be triggered by the stress of proceedings.

17. The relevance of the claimant's contemporaneous correspondence and how the respondent viewed it is considered in our findings of fact.

18. We found the respondent's witnesses generally to have given confused and often contradictory evidence. For the reasons set out below in relation to specific issues, we found the respondent's witnesses generally to be less reliable than the claimant.

The parties

19. The claimant is a finance professional and is ACA qualified. As at September 2019, the claimant had not worked in a finance role for nearly seven years.

20. It was suggested by Mr Kirby in his written evidence that the claimant told him during a period where there was a gap in his CV he was doing contract work. We find he was not, and that Mr Kirby is mistaken due to the passage of time. The claimant's CV, which Mr Kirby had at the time, confirms that the claimant was engaged in property work and was also not working at times for personal and medical reasons. There is no evidence he undertook any contract work during this period and no reason he would have told Mr Kirby this.

21. As conceded by the respondent, the claimant was disabled at all material times by reason of chronic IBS, prostrate and bladder neck obstruction, stress, anxiety, depression and panic attacks (including adjustment disorder, generalised anxiety disorder and seasonal affective disorder).

22. Relevant to this matter, it is not in dispute that the claimant required between 6.5 to 7 hours from the time he woke up for his chronic IBS to settle down sufficiently to allow the claimant to leave the house. He also needed to take medication at least two hours before going out. The claimant's condition did not vary from one day to the next. The consequence of this is that it was not practicable for the claimant to work prior to around midday, and this further required the claimant to wake up at around 4am on the days he was working. We accept that if the claimant was to work a minimum of 15 hours in a week this would have to be split up over 3 days, and those days would have to be non-consecutive due to the impact of waking up at 4am. Even with extended working hours, we

accept that it would be unlikely he would be able to work regularly over 20 hours per week. The claimant required a regular routine, and changes to his routine could cause stress and anxiety due to his mental health conditions, which in turn triggered his IBS. None of this was challenged by the respondent.

23. Although it was not anticipated there would be a dispute as to the effects of the claimant's seasonal affective disorder (SAD), this was explored in cross examination before the respondent conceded that it would be a substantial disadvantage for anyone with SAD to have no natural light. We readily accept that the claimant would need a desk with natural light. We do not have medical evidence in the bundle as to the extent of natural light needed, for the reason that it was not anticipated that the respondent challenged this issue at all and all medical evidence was therefore removed. We accept that what the claimant required to alleviate his SAD was what he said he required in his letter of 20 October 2019 (discussed below), namely:

    "I would need a seat near a window (opening or fixed it does not matter) that allows natural light in and with an outside view."

24. The respondent is a building services company, jointly owned by Mr Emilio Meola and Mr John Hesler (neither of whom gave evidence).

Recruitment to the Finance Director role

25. In around September 2019 the respondent was planning a management buy out and were advised having a Finance Director in place would facilitate this.

26. Mr Wardlaw approached Mr Kirby, whom he had known for around 20 years, and whose recruitment services he had used on a number of occasions. It is not in dispute that Mr Wardlaw and Mr Kirby were friends despite this being a business relationship.

27. Mr Wardlaw provided a verbal job description to advertise for the role of a part time Finance Director.

28. We do not accept that Mr Wardlaw told Mr Kirby at this stage that this was a part time role with a view to moving to full time. We accept this is what Mr Wardlaw had in mind, however he said in cross examination that Mr Meola was looking at matters in the short term. Mr Kirby speculated in evidence that the role might not change for two to five or three to five years. When this was put to Mr Wardlaw he said there was no timescale but it might have been quicker. He said whether it was six months or three years that was always the plan. The respondent was not sure at this initial point however how much work there would be available and that's why a decision was made to advertise for a part time position. If it had been said that the role was part time with a view to moving to full time, there would not reason why Mr Kirby would not pass this on to the claimant, and given

the claimant's restrictions as a result of his disability it is very likely he would have immediately said that was not suitable for him. It is not in dispute that the claimant was clear throughout the appointment process that he wanted to limit his hours to two days per week. Further, the Grounds of Response at paragraph 11 state that the role was advertised as being two days per week.

29. The role was advertised on Total Jobs. No copy of the advert has been provided. Both Mr Kirby and Mr Wardlaw confirmed that an advert found by the claimant, which was included in the bundle, was not for the respondent's role. We therefore disregard it.

30. The claimant had posted his CV on Total Jobs, and Mr Kirby called him on 16 September 2019 to ask if he would be interested in a part time Finance Director Role. As discussed above, we find that the claimant was told this was a part time role at two days per week, and not that it might increase. We note Mr Kirby's evidence that he looked at five or six other candidates, but none were suitable because they all wanted full time work. As a result, the claimant was the only candidate put forward for the position.

31. The claimant agreed for his CV to be sent to the respondent. The claimant shared messages with Mr Kirby, who provided the trading name for the respondent and confirmed that he had no specific job description for the role. An interview was arranged for 26 September 2019.

32. The claimant attended the interview on that date and met with Mr Wardlaw and Ms Olivia Randles, the respondent's finance manager.

33. It was intended that Ms Randles would report to the Finance Director. She was partly qualified and working towards full qualification. During the interview there was a discussion in which the claimant indicate he would be happy to train Ms Randles further.

34. There was a discussion about why the claimant wanted to work part time. It is not in dispute that at this point the claimant indicated he only wanted to work two days per week, and told the interviewers that he did not need to work because he had made some wise investments.

35. It is not in dispute that the claimant did not disclose at this stage that he had a disability or that he required reasonable adjustments to be made. He had arranged the interview to be after 2pm without providing to Mr Kirby an explanation for this and did not need further adjustments for the interview itself. We accept his evidence that he considered he was not required to disclose this and had read an article about someone with autism who had been open about their disability and had not received interviews as a result, and he was therefore cautious about disclosing his disability at this stage. However there were some discussions about terms and conditions at this interview, as highlighted later by the claimant in his amended contract (as to which, see below).

36. After the interview the claimant was given a tour of the offices. The claimant was shown where he was due to sit. Mr Wardlaw provided in evidence a description of the room. Ms Randles had a desk by a bay of windows. The space where the claimant was intended to be seated was not by a window but was underneath a roof window which could be opened for air.

37. It is not in dispute that the interview went well. Mr Wardlaw was impressed with the claimant, and felt he had a strong personality, which would be needed with the owners Mr Meola and Mr Hesler.

38. Mr Wardlaw called Mr Kirby to inform him that the respondent was impressed and wanted a second interview.

39. The claimant called Mr Kirby after the interview to provide his positive feedback, and was told that Mr Kirby had received positive feedback from the respondent. On 27 September Mr Kirby called the claimant to say that the respondent had been impressed and would like to invite him for a second interview.

40. In his witness statement Mr Kirby suggests that in the phone calls with the claimant between the first and second interviews that the claimant asked on a few occasions, *"Are you aware of the Disability Act"*, which he found strange. The claimant denies saying this. We find the claimant did not say this for a number of reasons. We have already found that the claimant was not intending to disclose his disability at this stage and was concerned about doing so. It is unlikely therefore he would have mentioned disability at all. Secondly, the claimant later referred to the Equality Act as the *"Equal Opportunity Act 2010"* in an email to Mr Dodds on 20 October and in a letter to Mr Wardlaw on the same date. He does not use the term "Disability Act" anywhere in correspondence. Further, Mr Kirby is an experienced recruiter and on his own evidence has placed a number of candidates with disabilities and his preference was to know about disabilities at an early stage so that adjustments could be discussed. If the word disability was used at all in these conversations we find it is likely that would have alerted Mr Kirby to ask questions whether the claimant had a disability or not and what adjustments he might need. The fact he did not do so suggests this was not said.

41. The respondent decided to invite Mr Dodds, from its external auditors, to attend the interview to ask technical questions of the claimant. He was sent a copy of the claimant's CV in advance. The auditors had only been appointed to deal with the respondent's affairs within the few weeks prior to this on 27 September 2019.

42. The second interview took place on 8 October 2019. The claimant met with Mr Wardlaw, Mr Meola and Mr Dodds.

43. Mr Dodds prepared a file note of the interview and discussions before and afterwards. We note this was typed up on 29 October 2019, after the

claimant's offer had been withdrawn. It notes there was a meeting beforehand to discuss the role. The note records, *"The directors advised that a new Finance Director is needed as soon as practicable, in order to support the growth of the business and future plans"*.

44. Mr Dodds had prepared technical questions in advance, which were considered important due to the gap in the claimant's CV. This is the document which was disclosed late. Mr Dodds confirmed in evidence he did not ask all the questions, and did not ask them in the order they appeared on the pre-prepared list. The claimant broadly agreed which questions were asked.

45. There is a dispute however as to how the questions were asked and Mr Dodd's conduct generally during the interview. The claimant gave oral evidence that Mr Dodd's had a shocked reaction when he walked into the room, which he attributed to Mr Dodds seeing a CV for 'Ifti Adam' who was French speaking, and the person in front of him was not what he was expecting. In his own words, he thought Mr Dodds was shocked by the colour of his skin. The claimant contends that Mr Dodds was confrontational and somewhat unprofessional, quite offensive and derogatory during the interview questions. It did not feel like a two-way conversation and Mr Dodds badgered him with one question after another about auditing matters and his knowledge of the latest Accounting Standards and Audit practices, pushing him for an answer even when he said he did not know.

46. Mr Dodds strongly denied that he was visibly surprised at the claimant's ethnicity, and said that he had a diverse workplace with a Malaysian colleague and a Jamaican manager. He was doing a presentation on workplace diversity two days after the interview. From his perspective, he was not impressed by the claimant's responses to questions and felt the claimant had knowledge gaps. He states in his witness statement that he was trying to tease out the claimant's technical experience and it was increasingly clear the claimant was irritated by his questions.

47. We accept Mr Dodd's evidence that at some point during the questions the claimant made a comment to Mr Dodds to the effect that *"With all due respect, I have over thirty years of experience compared to you so I shouldn't have to prove myself"*. This exchange, albeit in briefer terms, is recorded in Mr Dodd's file note.

48. We make it clear that this is not a case about race discrimination, and we make no findings in this regard. We find that the impression each of them had to the way the questions were going was subjective to them. The claimant had made assumptions about Mr Dodds' perception of him the moment he walked in the room, and this may have made him more stressed. The comment made to Mr Dodds suggests the claimant was at that point stressed and agitated by the questions he was being asked. It is clear from what he said in cross examination he didn't feel the questions were appropriate. However, we find that Mr Dodd's impression was

reasonable from his point of view. He considered the claimant was not answering questions sufficiently and that the comment made was inappropriate.

49. The relevance of this is that the comment created an uncomfortable atmosphere, and that after the interview Mr Dodds raised concerns about the claimant's attitude afterwards with the respondent, and concerns about the claimant's technical knowledge, as recorded in the file note.

50. Going back to the questions asked, it is not in dispute that the claimant was asked whether he would attend full time during an audit, and he responded to the effect that he would not consider this necessary because he would have prepared the file in advance and a list of questions could be left for him to deal with when next in the office. However, Mr Dodds concedes in his witness statement the claimant did say he would think about it. It is not in dispute that in response to this issue, Mr Meola said words to the effect of, *"Don't worry Ifti, no one is going to be asking you to come in more than two days a week."* However, Mr Dodds raised as a concern after the interview whether there was a limitation to the business of a Finance Director only being available two days a week, as recorded in the file note.

51. The claimant was also asked where he saw himself in five years' time, and said he would hopefully still be at the respondent.

52. It is not in dispute that at the end of the interview, before the discussion between the interviewers, Mr Meola verbally offered the claimant the role. It is also recorded in the file note that after the post interview discussion the directors concluded they would offer the role at the deemed market salary, despite the concerns raised.

53. Mr Wardlaw called the claimant later that day. He asserts that this was to check the claimant was alright after the interview and that the claimant was not appreciative of the call, and said he was going for retail therapy and couldn't speak right now and to speak in the morning. It was put to the claimant that he was abrupt and short with Mr Wardlaw.

54. The claimant disputes this and says he he did not refuse to speak to Mr Wardlaw. He had already gone shopping and was in his car in his driveway when Mr Wardlaw called. They discussed the offer of two days per week, 15 hours, with a salary of £40,000 per annum, and Mr Wardlaw said he would call the next day.

55. It was put to the claimant in cross examination that Mr Wardlaw had confirmed the offer to him on the basis of two days per week, and that the claimant had accepted it (in the context of why the claimant did not mention at that stage that he needed adjustments). Given that salary was only discussed between the directors post interview we conclude that the reason for the call was for Mr Wardlaw to confirm the offer and salary to the claimant, and that this was what was discussed.

56. A further call was needed the following day to discuss matters such as bonus structure and benefit details. During this call on 9 October there was also a discussion about the start date, which the claimant needed to delay due to a pre-booked holiday to Mauritius. This is supported by WhatsApp messages between the claimant and Mr Wardlaw on 10 October where the claimant says:

    "Hi Rob, further to our tel conv of y/day, you can pencil in a start date of Weds 4 Dec, assuming that is ok with you guys."

57. Mr Wardlaw responds:

    "Perfect – will chase contract up and let you know when it will be over"

58. There was a delay in the contract being sent because Mr Wardlaw had found a mistake in it. It was sent to the claimant on 16 October 2019.

The claimant's request for reasonable adjustments

59. On 17 October 2019 the claimant requested by email a word version of the contract so he could make minor changes which would be tracked for review.

60. Mr Wardlaw responded:

    "No problem, once amended we will review and confirm whether the amendments are acceptable…"

61. On 20 October 2019 the claimant sent an email to Mr Wardlaw which read:

    "Thank you for your email of 16 October 2019 attaching the draft contract of employment with Drywall Solutions Ltd.

    Please find attached the same with some minor changes, some of which are to reflect what we discussed and agreed at the interview stage, together with my letter for Reasonable Adjustment.

    Kindly note a few other points:-

    1) My core working hours will be 12 pm to 5 pm, Monday, Wednesday and Friday.
    2) Should there be a need for me to occasionally work additional hours over and above my contracted hours, I expect this to be paid at my contractual hourly rate or taken as time in lieu.
    3) I have a holidays booked from Friday 22 May to Friday 12 June 2020 and another one for 3 weeks scheduled for late October/November 2020, dates to be confirmed. Any number of days that is over and above my holiday entitlement can be treated as unpaid leave.
    4) As the company is employing me as qualified professional for the position, I would expect the company to pay my membership fee to the

ICAEW for calendar year 2020 which is about £350/£400. This is the norm and is an allowable expense for corporation tax purposes.

I await to hear from you to wrap things up before I go away."

62. The email had two attachments: the amended contract, and a letter containing the reasonable adjustments he was requesting ("The Reasonable Adjustments letter").

63. As regards the contract, the claimant amended a number of paragraphs. Of significance, the section headed 'Normal Working Hours' now read as follows:

"6.1. Your normal hours of work ~~per week~~ are between ~~08:30 a.m.~~12 p.m and 5:00 p.m, three~~five~~ days a week normally Monday, Wednesday and Friday. ~~pro rata (subject to change) inclusive with 1 hour for lunch, which is unpaid. Currently we anticipate that it will be two days a week.~~

6.2. You are required to carry out such hours as are necessary to fulfil your employment function. Any additional hours worked will be remunerated at your hourly rate.

6.3 The Company may at its discretion vary the hours of work in order to meet business requirements. Any requirement will be discussed with you and you will be given reasonable notice of such change.

…

~~7.2. The Company reserves the right to change your normal place of work either temporarily or permanently to any place within a 35 mile radius or to any of the Company offices within the UK from time to time and as the business requires. Any requirement for such change will be discussed with you and you will be given reasonable notice of any such change.~~ Deleted as per discussion and agreement at the first interview.

~~7.3. Your duties may involve travel to other Company sites and/or customers' locations. You may be required to travel anywhere within the UK as is necessary for the proper performance of your duties including overnight stays.~~

…

8.1. Regulation 4(1) of the Working Time Regulations 1998 specifies a maximum working time limit (as amended from time to time). ~~With respect to your employment, you expressly agree and acknowledge that this Regulation 4 (1) is excluded and therefore no working time limit applies to you. This agreement is called an "Exclusion Agreement" and shall apply until termination of your employment.~~"

64. The Reasonable Adjustments letter stated as follows:

*"**Employment Contract***

Thank you for your email of 16 October 2019 attaching the draft contract of employment with Drywall Solutions Ltd. Please find attached the same

with some minor changes, some of which are to reflect what we discussed and agreed at the interview stage.

Kindly note that I am disabled as defined in the Equal Opportunity Act 2010 and as such, I would require some "Reasonable Adjustment" to be made in order to be able to take up the post.

The Reasonable Adjustments that I would need are as follows:-

1) Working Hours
We agreed that I would work 2 days a week, i.e.15 hours per week. The 15
hours would need to be spread over 3 days, Monday, Wednesday and Friday, and with my working hours being 12pm to 5pm.

If however you prefer that I work 2.5 days a week which I am able to do, this
would be on those same days but with the working hours being 11.45am to 6pm.

2) Seating
I would need a seat near a window (opening or fixed it does not matter) that
allows natural light in and with an outside view.

…

I look forward to your confirmation that the company is able to make the reasonable adjustments requested."

65. We accept Mr Wardlaw's evidence that when he first received this email it was a Sunday and he was with his family. He read the cover email, and opened the attachments briefly but could not read them on his phone. He had no concerns with the four points made in the email. This is consistent with him relaying to Mr Kirby, and Mr Kirby then relaying to the claimant on 22 October 2019, that the proposed amendments were acceptable and he would send a revised contract before the claimant left (to go on holiday). This is recorded by the claimant in his handwritten note after the call of 24 October 2019, the provenance of which we will come to in due course. We accept Mr Wardlaw's evidence that in relaying his acceptance of the amendments to Mr Kirby he meant just those four points.

66. Also on 20 October 2019, very shortly after the email to Mr Wardlaw was sent, the claimant sent an email to Mr Dodds, copying in his manager Mr Yap, as follows:

"Hi Adam

Further to our recent meeting at Jessella/Drywall, I would suggest that as part of your CPD you attend an interactive course on interview skills/techniques before you sit on another interview panel.

I feel you would benefit hugely and hopefully, learn something from attending such a course.

Furthermore, you should brush up on your knowledge, if any, of the Equal Opportunity Act 2010."

67. Mr Dodd's witness statement, in its original and amended form, records that he decided not to do anything about the email at this point, despite being shocked and surprised by its tone and contents. He states at paragraph 27:

"I opted not to mention this to Rob [Mr Wardlaw] *or Milly* [Mr Meola]*, because I knew that they had offered the Claimant the role, and that if that were the case, then I would have to work reasonably closely with the Claimant, as my client's Finance Director. I saw no benefit in making our relationship awkward, and decided it would be better to develop/build a better rapport with the Claimant when I next saw him."*

Withdrawal of the offer

68. On 24 October 2019 the offer was withdrawn. This is a key date where a number of things happened. We need to decide what happened and the sequence of events.

69. There are several key documents relating to this date:

(i) At 11.49am Mr Dodds forwarded the claimant's email of 20 October 2019 to Mr Wardlaw, saying *"Please see the email below as requested."*

(ii) The claimant has presented a hand written note of a conversation with Mr Wardlaw at 4pm, lasting 3 minutes and 49 seconds, in which the offer was withdrawn. This states:

"Cannot accommodate adjustments required.
- *window a problem given where was planning to put me. Not important, can live without window.*
- *hours proposing not going to work for them especially given that as business grows might need more hours.*
- *Terms and conditions not willing to change for anyone without exception.*
- *Did not know @ interview stage that I was disabled.*
- *as otherwise would not have pursued further.*

Will have another word with HR & C what can be done.
Requested that he puts withdrawal of the offer in writing just like I did & explain reasons.
He agreed to it."

The document then has a record of the call on 22 October 2019, then a note of a conversation with Mr Kirby on 25 October 2019 as follows:

"22/10/19 Nick had indicated in tel call 22/10/19 @12.13, all acceptable & will send revise contract b4 I leave.

25/10/19 @ 11.57
- *Nick*
- *HR – Emilio – can't accommodate - 2 full days*
- *Email will be sent to withdraw offer formally.*
- *Feel allowing me to do short days will set precedent in small co where everyone knows everyone & will open floodgates to other such requests. Can't allow this*
- *He knows that it is wrong and that my disability should not matter but this is reality. Nothing he can do about it."*

(iii) At 16.32pm Mr Wardlaw sent an email to Ms Randles which says:

"I've called Ifti today and said we are unable to amend terms and conditions and can't accommodate a seat near the window.

We also would like someone to work 2 days rather than 3 half days and with the potential to increase hours if required.

Ifti was not happy when I said we would be withdrawing the offer and asked for that in writing.

Not sure where he is going with that. However, before we do that please can you ask Penny to withdraw for us. He started to mention his disability and not sure if he is going to say we are discriminating."

(iv) On 25 October 2019 the claimant wrote a letter to the respondent as follows:

"I refer to our telephone conversation of 24th October at 16.00 when you phoned to inform me that the company had decided that they were unable to make the Reasonable Adjustments I had requested in my letter dated 20/10/19, and therefore withdrawing the job offer. You went on to elaborate the reasons for this, which I wrote down and I requested you confirm this to me in writing and you agreed to do so.
You then said that you will have another word with your HR and come back to me today 25 October 2019 with a final decision.

Nick Kirby of Pinnacle Recruitment phoned me today 25/10/19 at 11.57 and informed me that you have now withdrawn the job offer as you are unable to accommodate my request for reasonable adjustments.

As I have made you aware, I have a disability as defined by the Equality Act 2010. As a direct result of my disability, I am unable to work the company's standard working hours, as my condition only settles some 6 to 7 hours after waking up."

The claimant went on to summarise the respondent's responsibilities under the Equality Act 2010 as he saw them.

(v) On 25 October 2019 Mr Wardlaw emailed Mr Meola and Ms Randles twice:

17:18pm – *"The guy never once suggested he had a disability until I said we were with drawing the offer. We will need to consider a response."*

17:30pm – *"Actually he did in letter"*

(vi) At 20.12pm on 25 October 2025 Mr Wardlaw emailed Mr Meola and Ms Randles attaching the email which had been forwarded to him that morning by Mr Dodds, stating:

"Further to Olivia's previous email, we have received the attached.

It has also come to light that Ifti sent the below email to our accountant."

It is not clear what the other attachment may have been, nor what the email from Ms Randles referred to was.

(vii) On 28 October 2019 at 12.07pm Mr Kirby emailed Mr Wardlaw stating:

"I spoke to Ifti on Friday with regards the withdrawal of the offer, I reiterated what we had discussed the previous night to him and that the offer was likely to be withdrawn awaiting HR confirmation"

We infer from this Mr Kirby and Mr Wardlaw had a discussion about the reasons for withdrawing the offer on the evening of 24 October 2019.

(viii) On 28 October at 16.31pm Mr Wardlaw asked Mr Kirby to confirm whether he had given any further reasons as to why the respondent was withdrawing the offer, as prompted by HR. He responded the next day:

"As discussed, I never gave any detailed reasons for the withdrawal of the offer, I said that maybe that because he was so hell bent only working 2 days per week as "he didn't need to work" and that he changed that to 3 half days

At this point he said he had to change it to 3 half days due to a disability and that he couldn't work mornings and I said that he should of made us aware of this before within the recruitment process."

(ix) On 7 November 2019 Mr Meola wrote to the claimant as follows:

"Subject: Complaint Regarding Withdrawal of Job Offer.

I am writing to you following receipt of your written complaint dated the 25th October 2019 regarding the withdrawal of your job offer from Drywall Solutions UK Limited and request for written reasons for the withdrawal.

The contents of your complaint are summarised as follows:
1. *Withdrawal of Job Offer*
2. *Failure to make reasonable adjustments*

I have investigated your complaint and would respond as follows.
Withdrawal of Job Offer
The company have decide to withdraw their offer of employment having reconsidered their position on the matter of the days/hours. The job was offered to you on a two-day week basis. At the interview the hours of work were discussed, and you stated that you had no desire to work more than two days, that you were independently wealthy and only wished to work two days.
It was also noted at interview that you took exception to the technical questions being asked of you by our accountant, who we asked to attend the interview to assess your accounting knowledge from a financial perspective, as neither Rob Wardlaw nor myself are accountants.
Rob called you after the interview and you acknowledged that you had not handled the questioning well.
Having reflected on the positions our plans for growth meant that we would expect a Financial Director to be able to give more time to the business as it grows and on reflection we felt that your refusal to be able to work any more than two days, on grounds of your personal wealth, would be detrimental to the business as we grow, and that it would not be worth the investment in time and effort to embark on the employment relationship that ultimately would not grow with the business needs.
Failure to make Reasonable Adjustments
I am aware of the employers requirement to make reasonable adjustments where a disability is known. You made no mention of having a disability at interview and we were only aware of this when you returned our contract of employment with your suggested amended working hours over three half days, instead of two full days. You also requested a window seat.
I note that you have not declared the nature of your disability in any of your correspondence, merely that you have a disability, therefore I am not aware of what your disability is.
Nevertheless in principle we could accommodate reasonable adjustments, however the main reason for withdrawing the offer of employment was and is because of your unwillingness to work any more than two days maximum, which was not down to disability reasons, but down to your own financial position and not needing to work as stated at interview."

70. The claimant asserts that the respondent must have read the documents he provided and this led to the call to him withdrawing the offer. He states the hand written note was prepared immediately after the call. The bullet

points may not be in the correct order however they were the key points discussed in the call. He was clear in his evidence that it was Mr Wardlaw that raised the amendments to the contract and the issue of the window seat first.

71. The respondent asserts that the Tribunal should prefer Mr Wardlaw's version of events. Mr Wardlaw insists that he did not read the documents sent by the claimant on 20 October again as these were matters for HR. He states in his witness statement that on 24 October he had a call with Mr Dodds and Mr Dodds mentioned he received an email from the claimant on 20 October stating that he needed to brush up on the Equal Opportunity Act. This email was then forwarded. He had previously had reservations about the claimant's attitude arising from the second interview, and receiving this was the final straw as it suggested the claimant was erratic and needlessly aggressive. He voiced his concerns to Mr Meola and Mr Hesler and they decided to withdraw the offer. The call was then made to the claimant. He states that he told the claimant that the reason for withdrawal was that he did not appear flexible to increase his working hours as the business grew. This was a significant part of the reason for withdrawing the offer, but the claimant's behaviour was also a large factor.

72. In his oral evidence, Mr Wardlaw said he thought the claimant was trying to cause trouble by sending the email to Mr Dodds and copying in his boss. He could not give a reason why he called Mr Dodds that day but denied that the reason for this was to tell him he was withdrawing the offer. He says that this first time he knew about the window seat and that the claimant had a disability. He stated that the email sent to Ms Randles was not a true reflection of the conversation. It was a brief note of the 'sticking points' in the conversation, and he conceded a poor record of the sticking points. He later said when asked why he sent the email to Ms Randles that she was the go between with the external HR company, so he was making her aware that the conversation didn't go how he expected her to go. He said variously that the purpose of the note was for further discussion with Ms Randles and that he sent it so she could speak to HR. However, he confirmed he did not have any further discussion with Ms Randles. Nor did he speak with HR. There was a discussion between Mr Meola and HR, and a letter was then sent to the claimant. We are not clear from Mr Wardlaw's evidence what the respondent's position is as to this email and the purpose of sending it and what on the respondent's case it was supposed to mean.

73. We also had evidence from Mr Kirby and Mr Dodds as to what they say happened on this day.

74. As already discussed, Mr Dodds sought to alter his written evidence. The original paragraph 27 of his witness statement read (referring to the email the claimant had sent him, which he had previously decided not to mention):

"I only mentioned it to Rob when he called me on Thursday 24 October 2019, to tell me that the Respondent was retracting the offer to the Claimant. I understand that they had been struggling to get an agreed employment contract with him, and that he was not being professional or forthcoming. The Claimant was also not able to start as soon as the Respondent had been expecting. It was then that I told Rob Wardlaw that the Claimant was
not on the ICAEW register and about the email he had sent me."

75. The new version he sought to rely on at the outset of his evidence was amended as follows:

"*I only mentioned it to Rob when he called me on Thursday 24 October 2019, to tell me that the Respondent was <u>contemplating</u> retracting the offer to the Claimant.*"

76. Mr Kirby's witness statement records that he had a call from Mr Wardlaw on 24 October 2019 saying that the respondent had withdrawn the role as the claimant was unwilling to grow with the business. He spoke to the claimant the following day on 25 October. He states in an email to Mr Wardlaw on 28 October 2019:

"I spoke to Ifti on Friday with regards the withdrawal of the offer, I reiterated what we had discussed the previous night to him and that the offer was likely to be withdrawn awaiting HR confirmation"

77. In a further email to Mr Wardlaw on 29 October 2019, having been requested by HR to confirm the reasons that he gave to the claimant, he states:

"As discussed, I never gave any detailed reasons for the withdrawal of the offer, I said that maybe that because he was so hell bent only working 2 days per week as "he didn't need to work" and that he changed that to 3 half days

At this point he said he had to change it to 3 half days due to a disability and that he couldn't work mornings and I said that he should of made us aware of this before within the recruitment process."

78. In his cross examination Mr Kirby said that in the conversation on 24 October was late at night. He said that Mr Wardlaw did not provide specific reasons for the withdrawal but had said the respondent was struggling to make the hours work, meaning splitting the claimant's hours over three days. He accepted he may have said something to the claimant on 25 October along the lines of there being nothing he could do about it, but denied mentioning anything about the claimant's disability.

79. We conclude on balance:

    79.1 Mr Wardlaw did read the documents sent by the claimant on 20 October prior to the call to Mr Dodds on the morning of 24 October, and that the reason given to the claimant for withdrawal of the offer

on 24 October was about the amendments and reasonable adjustments requested as set out in the claimant's hand written note:

79.1.1 It is the respondent's position that the claimant's note is fabricated. This is a serious allegation and there is nothing to support this suggestion. We accept the claimant's evidence that the handwritten note is contemporaneous. It is consistent with Mr Wardlaw's own email to Ms Randles at 16:32pm, and the claimant's letter sent to him on 25 October 2019;

79.1.2 In particular, we find that it was Mr Wardlaw who raised first the issue of not being able to provide a window seat. He would not have known about that issue if he had not read the letter.

79.1.3 We do not accept the very confused explanation given by Mr Wardlaw as to why the email of 16.32pm should not simply be read as meaning what it says, that in the call he told the claimant that the amendments to the contract and window seat could not be accommodated. The explanation given in cross examination is also at odds with Mr Wardlaw's witness statement as to this doc:

"On 24 October 2019, late in the afternoon, I called the Claimant to say that the job offer was withdrawn, on the basis that he did not appear flexible to increase his working hours as the business grew, and that it would be unfair to both parties to invest further time in each other [Bundle 141]. This was a significant part of the reason for withdrawing the offer, but the Claimant's defensive and combative behaviour was also a large factor."

79.1.4 Nor does that explanation marry with the version of events given by Mr Kirby, that the only issue relayed to him was the problem with the claimant's hours. We find Mr Wardlaw's attempt to explain this email wholly disingenuous.

79.1.5 This email to Ms Randles also refers to the claimant mentioning *'his disability'*, which suggests that Mr Wardlaw already knew that the claimant was disabled before this conversation, which can only have come from reading the reasonable adjustments letter.

79.1.6 The letter from Mr Meola to the claimant on 7 November states that *'You made no mention of having a disability at interview and we were only aware of this when you returned our contract of employment with your suggested amended working hours…'* Mr Wardlaw again gave a disingenuous explanation for this in cross examination, attempting to give plain English words, that the respondent became aware of the disability when the amended contract was returned, an alternative meaning:

"No. Says we were only aware. Doesn't say specifically aware at that time. That's not what it says. That's not how I read it and not how it's intended to be written

…

We weren't aware of it before that. That's first time we would have been aware of it. Doesn't mean read it and understood, that was first opportunity we had to understand"

79.1.7 Mr Wardlaw accepted he had some influence in the writing of this letter. We note that no explanation has been provided in this case why the Tribunal has not heard evidence from Mr Meola who signed the letter, and we heard was still the part owner of the business.

79.1.8 The respondent says Mr Wardlaw cannot have read the documents because of the emails sent to Mr Meola and Ms Randles at 17:18pm and 17:30pm. At first blush, the email of 17:18pm may suggest that Mr Wardlaw had not read the reasonable adjustments letter of 20 October 2019, or he would have known it raised that the claimant was disabled. However, in light of all the other evidence discussed above, we find he must have read the letter by the time the offer was withdrawn. Whatever the reason was for Mr Wardlaw stating in the first email that the claimant had not raised disability before the offer was withdrawn, that was in our view clearly an error, possibly as a result of him mis-recollecting at that point the exact sequence of events, and he must have known at the point the offer was withdrawn that the claimant had said he was disabled. We note that the first email was sent within minutes of the claimant sending his second letter of 25 October 2019.

79.2 The decision to withdraw was made prior to the call with Mr Dodds on 24 October 2019 and prior to Mr Wardlaw learning of the email sent to Mr Dodds:

79.2.1 This is what was said in Mr Dodd's initial witness statement. As already discussed, Mr Dodds conceded that he raised an issue with the statement after hearing Mr Wardlaw's evidence on Friday. We were told by Mr John that Mr Dodds raised his concerns about his statement at the end of the day. We note it was towards the end of the day Mr Wardlaw was challenged as to his account of what had occurred in the call with Mr Dodds, based on paragraph 27 of Mr Dodd's statement about this conversation and the discrepancy in the version of events given by Mr Wardlaw compared to Mr Dodds. We find that Mr Dodd's memory is considerably more likely to have been reliable in 2023 when he wrote the statement, and he conceded this in cross examination.

We find his recollection of what happened has been affected by hearing Mr Wardlaw's evidence, which contradicted his own, and that the original version is more likely to be true. We are supported in this by the surrounding content of the paragraph. For example, there is no mention at all of the further detail Mr Dodds said in cross examination happened in the call, including reading out the email, Mr Wardlaw's reaction to it, and Mr Wardlaw then saying he would withdraw the contract. Nor is his new version of events at all consistent with what Mr Wardlaw says occurred, for which there was no adequate explanation either in evidence or in the respondent's submissions. In particular, at no point in his evidence did Mr Wardlaw suggest that he had told Mr Dodds that the respondent was contemplating withdrawing the offer to the claimant, or any reasons for this.

79.2.2 There is no mention of the claimant's email to Mr Dodds in Mr Wardlaw's call with Mr Kirby. Bearing in mind that they were friends, and that Mr Kirby stood to lose out, there is no sensible reason why Mr Wardlaw would not mention it to Mr Kirby if that was the true reason for withdrawing the offer.

79.2.3 The email sent by Mr Wardlaw to Mr Meola and Ms Randles at 20:12pm on 25 October 2019 does not read as though there had been a conversation with Mr Meola about the email to Mr Dodds the previous day or that that email was anything to do with withdrawing the offer.

79.2.4 There is no mention of the email to Mr Dodds in Mr Meola's letter of 7 November 2019 explaining to the claimant why the offer was withdrawn. This again suggests Mr Wardlaw's assertion of a conversation about the email with the owners on 24 October 2019 did not happen.

79.3 We also prefer the remainder of the claimant's version of the conversation with Mr Wardlaw on 24 October 2019 and in particular the reported comment that the respondent would not have proceeded if the claimant had told them about his disability:

79.3.1 We have already found the claimant's note was an accurate reflection of conversation;

79.3.2 This is also consistent with what the claimant says Mr Kirby said on 25 October 2019. Mr Kirby accepted he

said part of this. However, Mr Kirby's email of 29 October 2019 also confirms that he said the claimant should have made them aware of the disability before the recruitment process. Therefore we find he did say this and that it is likely that came from Mr Wardlaw.

79.3.3 The respondent contends that Mr Wardlaw would not have said this because he is not of that mindset, being the driving force behind company sponsorship of disabled children in Ruislip being able to go on holiday. We reject this argument, as it is not comparing like with like. It is a different matter for a company to wish to support local children's charities than it is for a small company to employ a disabled person with the perceived burdens that may go with that, including here that other employees might also seek flexibility of hours, or that, as Mr Wardlaw said frankly in cross examination, it was not nice for someone who has the window seat (Ms Randles) to move out and someone to be there part time.

79.3.4 The respondent in its submissions suggests that the comment in the note has *'the feel of an agenda'* which the the respondent confirmed in answer to the Tribunal's questions in submissions was suggesting the claimant's probity is in question and that he was using damaging discriminatory language, presumably as part of a mindset on bringing a claim. The respondent points to the letter the next day being *'laced with Equality Act language'*. This is a serious allegation to be making, and the claimant was not cross examined on this. It is not surprising the claimant's letter referred to the respondent's responsibilities under the Equality Act, which in his view they had failed to comply with. He was entirely entitled to write such a letter in the circumstances.

The Law

Knowledge of disability

80 Section 6 Equality Act 2010 provides:

"(1) A person (P) has a disability if—

(a) P has a physical or mental impairment, and
(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities."

81 Schedule 1 paragraph 2 provides:

"(1) The effect of an impairment is long-term if—

(a) it has lasted for at least 12 months,
(b) it is likely to last for at least 12 months, or
(c) it is likely to last for the rest of the life of the person affected.

(2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur."

82 Knowledge in this case is relevant to the complaints under section 15(2), and Schedule 8, Part 3 paragraph 20 in respect of the reasonable adjustments claim. The latter requires consideration not only of knowledge of the disability, but also knowledge of any substantial disadvantage.

83 Whether a decision maker (as opposed to the respondent generally) had actual knowledge that the claimant was disabled and to what extent is also relevant to causation in the direct discrimination complaint.

84 In **Gallop v Newport City Council** [2013] EWCA Civ 1583 the Court of Appeal confirmed that the task for the Tribunal was to ascertain whether the respondent had actual or constructive knowledge of the facts, under the relevant statutory provisions, constituting the claimant's disability. That case concerned the Disability Discrimination Act 1995. The relevant facts the Tribunal is now required to consider are those set out in section 6 Equality Act 2010 as supplemented by Schedule 1.

85 In **Donelien v Liberata UK Ltd** [2018] EWCA Civ 1239, the Court of Appeal emphasised that, in considering whether a respondent has constructive knowledge of a disability, the question is what they could *reasonably* have been expected to know. This is a question of fact.

86 In **Secretary of State for the Department of Work and Pensions v Alam** [2010] IRLR 283 the Employment Appeal Tribunal confirmed that the correct approach to what is now Schedule 8, Part 3 paragraph 20 is to ask two questions:

(1) Did the employer know both that the employee was disabled and that his disability was liable to affect him in the manner set out in [section 20(2) to (4)]? If the answer to that question is: 'no' then there is a second question, namely,

(2) Ought the employer to have known both that the employee was disabled and that his disability was liable to affect him in the manner set out in [section 20(2) to (4)]?

87 If the answer to that question is also 'no', then there is no duty to make reasonable adjustments. Thus, a respondent will be able to rely on the exemption if it had knowledge of the disability, but not of the substantial disadvantage caused by the PCP.

88 The EHRC Employment: Statutory Code of Practice offers the following guidance in relation to discrimination arising from a disability:

"5.14 It is not enough for the employer to show that they did not know that the disabled person had the disability. They must also show that they could not reasonably have been expected to know about it. 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'.

5.15 An employer must do all they can reasonably be expected to do to find out if a worker has a disability. What is reasonable will depend on 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."

89 The Code offers the following specific guidance in relation to reasonable adjustments:

"What if the employer does not know the worker is disabled?

6.19 For disabled workers already in employment, an employer only has a duty to make an adjustment if they know, or could reasonably be expected to know, that a worker has a disability and is, or is likely to be, placed at a substantial disadvantage. 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 on 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.

Sch. 8, para 20(1)(b)

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.

6.20 The Act does not prevent a disabled person keeping a disability confidential from an employer. But keeping a disability confidential is likely to mean that unless the employer could reasonably be expected to know about it anyway, the employer will not be under a duty to make a reasonable adjustment. If a disabled person expects an employer to make a reasonable adjustment, they will need to provide the employer – or

someone acting on their behalf – with sufficient information to carry out that adjustment."

Burden of proof

90 Section 136 Equality Act 2010 provides:

"(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision."

Direct discrimination

91 Section 13(1) Equality Act 2010 provides:

"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."

92 Section 23 provides that a comparator must be in circumstances that are not materially different from those of the claimant. A comparator may be real or hypothetical.

93 Demonstrating a difference in treatment is not sufficient. There must be 'something more' from which the Tribunal could conclude that the reason for the less favourable treatment was discriminatory in order to shift the burden of proof to the respondent (**Madarassy v Nomura International Plc** [2007] ICR 867).

94 When considering whether treatment is 'because of' the protected characteristic, the protected characteristic does not have to be the only reason for the treatment in question provided that it was a significant influence (**Nagarajan v London Regional Transport** [1999] ICR 877). This must be an influence which is more than trivial. If the claimant makes out a prima facie case, then the burden is on the respondent to show that the withdrawal was in no sense whatsoever on the grounds of disability (**Wong v Igen Ltd** [2005] ICR 931).

95 Section 212 Equality Act 2010 provides:

*""*detriment" *does not, subject to subsection (5), include conduct which amounts to harassment"*

96 Section 212(5) provides:

"Where this Act disapplies a prohibition on harassment in relation to a specified protected characteristic, the disapplication does not prevent conduct relating to that characteristic from amounting to a detriment for the purposes of discrimination within section 13 because of that characteristic."

97 The effect of these provisions is that if alleged conduct amounts to harassment, it cannot also amount to direct discrimination.

Discrimination arising from disability

98 Section 15 Equality Act 2010 provides:

"(1) A person (A) discriminates against a disabled person (B) if—
(a) A treats B unfavourably because of something arising in consequence of B's disability, and
(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

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

99 In **Pnaiser v NHS England** [2015] UKEAT the Employment Appeal Tribunal set out various propositions. In summary:

(i) A Tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises;
(ii) The Tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. There may be more than one reason. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it;
(iii) The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant;
(iv) The Tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is "something arising in consequence of B's disability". That expression 'arising in consequence of' could describe a range of causal links. The causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case

whether something can properly be said to arise in consequence of disability;

(v) The more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact;

(vi) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

(vii) It is not necessary for the alleged discriminator to know that the 'something' that causes the treatment arises in consequence of disability. Knowledge required is of the disability only, and does not extend to a requirement of knowledge that the 'something' leading to the unfavourable treatment is a consequence of the disability;

(viii) It does not matter precisely in which order these questions are addressed.

100 When considering whether unfavourable treatment is a proportionate means of achieving a legitimate aim, a Tribunal must weigh the real needs of the employer against the discriminatory effect of the proposal on an objective basis. In **DWP v Boyers** [2022] EAT 76. The Employment Appeal Tribunal confirmed the focus of the Tribunal's exercise should be on the outcome of the decision making process requiring justification, though the procedure leading to it was still a relevant factor to consider.

Indirect discrimination

101 Section 19 Equality Act 2010 provides:

"(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,
(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
(c) it puts, or would put, B at that disadvantage, and
(d) A cannot show it to be a proportionate means of achieving a legitimate aim."

102 In **Ishola v Transport for London** [2020] ICR 1204 Simler LJ concluded as follows:

"35. The words "provision, criterion or practice" are not terms of art, but are ordinary English words. I accept that they are broad and overlapping, and in light of the object of the legislation, not to be narrowly construed or unjustifiably limited in their application. I also bear in mind the statement in

the statutory code of practice that the phrase PCP should be construed widely.

…

36. The function of the PCP in a reasonable adjustment context is to identify what it is about the employer's management of the employee or its operation that causes substantial disadvantage to the disabled employee. The PCP serves a similar function in the context of indirect discrimination, where particular disadvantage is suffered by some and not others because of an employer's PCP… To test whether the PCP is discriminatory or not it must be capable of being applied to others because the comparison of disadvantage caused by it has to be made by reference to a comparator to whom the alleged PCP would also apply. I accept of course … that the comparator can be a hypothetical comparator to whom the alleged PCP could or would apply.

37. In my judgment, however widely and purposively the concept of a PCP is to be interpreted, it does not apply to every act of unfair treatment of a particular employee. That is not the mischief which the concept of indirect discrimination and the duty to make reasonable adjustments are intended to address. If an employer unfairly treats an employee by an act or decision and neither direct discrimination nor disability-related discrimination is made out because the act or decision was not done/made by reason of disability or other relevant ground, it is artificial and wrong to seek to convert them by a process of abstraction into the application of a discriminatory PCP.

38. In context, and having regard to the function and purpose of the PCP in the Equality Act 2010 , all three words carry the connotation of a state of affairs (whether framed positively or negatively and however informal) indicating how similar cases are generally treated or how a similar case would be treated if it occurred again. It seems to me that "practice" here connotes some form of continuum in the sense that it is the way in which things generally are or will be done. That does not mean it is necessary for the PCP or "practice" to have been applied to anyone else in fact. Something may be a practice or done "in practice" if it carries with it an indication that it will or would be done again in future if a hypothetical similar case arises. Like Kerr J, I consider that although a one-off decision or act can be a practice, it is not necessarily one."

Reasonable adjustments

103 Section 20 Equality Act 2010 provides:

"(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not

disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage
…"

104 Section 21 provides:

"(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.
(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person."

105 Schedule 8, Part 3 paragraph 20 provides:

"(1) A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know—
…
(b) in any case referred to in Part 2 of this Schedule, that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement."

106 In a claim for reasonable adjustments the burden is on the employee, initially, to show (if disputed) that the provision, criterion or practice ("PCP") was applied and that it placed the employee at the substantial disadvantage asserted. They also need to put forward and identify some at least potentially or apparently reasonable adjustment which could be made. But, if they do, then the burden may pass to the employer to show that it would not have been reasonable to expect them to make that adjustment. Once the burden has passed, the employee does not have to adduce further evidence, though they may do so; and the tribunal will take account of all the evidence that is relevant to the point (**Rentokil Initial UK Ltd v Miller** [2024] EAT 37).

107 **Ishola** applies equally to reasonable adjustments complaints.

Harassment

108 Section 26 Equality Act 2010 provides:

"(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and
(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or
(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) A also harasses B if—

(a) A engages in unwanted conduct of a sexual nature, and
(b) the conduct has the purpose or effect referred to in subsection (1)(b).

(3) A also harasses B if—

(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,
(b) the conduct has the purpose or effect referred to in subsection (1)(b), and
(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.
(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
(a) the perception of B;
(b) the other circumstances of the case;
(c) whether it is reasonable for the conduct to have that effect."

109 When considering the effect of unwanted conduct, a Tribunal will consider whether, subjectively, the claimant felt or perceived their dignity to be violated or an intimidating, hostile, degrading, humiliating or offensive environment to be created, and whether, objectively, it was reasonable for the conduct to have that effect, and all other circumstances (**Pemberton v Inwood** [2018] ICR 1291.

Conclusions

Knowledge of Disability

110 We first consider whether there was actual knowledge of the claimant's disabilities. Applying **Gallop**, this requires more than a claimant simply stating there is a disability. The respondent needs to have actual knowledge of the matters as set out in s6 and Sch1 constituting a disability. The claimant in his reasonable adjustments letter did not set out what impairments he had, or any indication as to the longevity of his impairments or the impact they may have on normal day-to-day activities, such that the respondent did not have the matters required to know that he had a disability.

111 In determining whether there was constructive knowledge, the question is whether the respondent could reasonably have been expected to know the matters set out in s6 and Sch 1 (**Donelien** and **Gallop**).

112 The Statutory Code makes it clear that an employer must do all they can reasonably be expected to do to find out if a worker has a disability. What is reasonable will depend on the circumstances.

113 Here, the respondent was given a very clear letter on 20 October 2019 setting out that the claimant was disabled and required reasonable adjustments, and set out the adjustments he said he required. Any reasonable employer at this point would have made enquiries of the claimant as to his condition and how it might affect him in the workplace, and indeed this is what the respondent's own policies required. Having found that Mr

Wardlaw did read this document at least before 24 October 2019, we find that the respondent did have constructive knowledge of the disability at the latest at that date.

114 We consider knowledge of substantial disadvantage below in our conclusions on reasonable adjustments.

Direct disability discrimination

115 The only treatment relied on by the claimant is withdrawal of the job offer, relying on a hypothetical comparator.

116 More than enough in this case for the claimant to show something from which the Tribunal could conclude that the claimant was treated less favourably than someone without the claimant's disabilities would have been treated in relation to withdrawal of the offer, including:

116.1 A job offer had been made, despite any doubts or concerns about the claimant's conduct during interview or his limit of 2 working days expressed at that time;

116.2 The timing of the withdrawal in relation to receipt of reasonable adjustments letter which stated that the claimant was disabled, which we found had been read by Mr Wardlaw prior to the withdrawal. The only thing that had changed between the offer being made at the second interview and the acceptance of the four points in the cover letter of 20 October 2019, and the subsequent decision to withdraw the offer, was that Mr Wardlaw had read the reasonable adjustments letter stating that the claimant was disabled;

116.3 Comments made by Mr Wardlaw to the claimant that he should have told them earlier in process or they would have not have gone ahead, which demonstrates the respondent's attitude to the situation.

117 The burden therefore shifts to the respondent to show that the withdrawal was in no sense whatsoever on grounds of disability (**Igen**).

118 The respondent contends in its submissions that the real reason for the withdrawal was:

118.1 Justified concerns as to the claimant's attitude having seen the email sent to Mr Dodds;

118.2 Concerns about the claimant's flexibility based on stated personal wealth reasons.

119 We reject the suggestion that the email was the reason for withdrawal, because we have found that the decision to withdraw had already been made prior to Mr Wardlaw having the call with Mr Dodds on 24 October 2019 or learning of the email. The email was not even sent to Mr Meola until the

evening of 24 October after the conversation between Mr Wardlaw and the claimant, and there was no mention of it at all in the call to the claimant, in the conversations between Mr Wardlaw and Mr Kirby, or in the letter from Mr Meola as to the reasons for withdrawal.

120 We also reject the suggestion that there were concerns about the claimant's flexibility based on stated personal wealth reasons. The respondent already knew the claimant's position on not working more than 2 days per week as at the second interview, and this did not prevent the claimant being offered the job. Moreover, in his letter of 20 October 2019, which Mr Wardlaw read before the decision to withdraw was made, the claimant offered to increase to 2.5 days of work spread over 3 days. He also made clear that the hours he was willing to work were as a result of reasonable adjustments, so the respondent must have known at that point that there were health reasons why the claimant could not work longer hours rather than this being purely a matter of preference. If they were in any doubt at all, this is spelled out in the claimant's letter of 25 October 2019, at which point the respondent could have reconsidered its position if that was truly a reason for withdrawing the offer. They did not do so. The respondent did not know at this point when they might need additional hours to be worked. The job offered was two days per week, without any discussion with Mr Kirby as to further hours being needed in future, and the respondent did not at that point need a full time Financial Director.

121 The respondent's evidence of reasons for withdrawing the offer are inconsistent and have changed over time. The reasons given to the claimant by Mr Wardlaw on 24 October are very different to those eventually set out in the letter of 7 November 2019. We do not even have clear evidence from the respondent as to who made decision. Mr Wardlaw now suggests the decision was made by the owners, albeit he would have had some influence over their decision. But if that is correct, we have not heard any evidence from them as to what their reasons were.

122 In the circumstances the respondent cannot show that the reason for withdrawing the offer was nothing whatsoever to do with disability, and this claim would therefore be made out.

123 However, as a matter of law, applying s212 Equality Act 2010, conduct complained of cannot amount to both direct discrimination and harassment. As we have found below that the complaint of harassment in relation to the withdrawal of the offer succeeds, it cannot also amount to direct discrimination. The complaint is therefore unsuccessful only as a result of this technicality.

<u>Discrimination arising from disability</u>

124 We accept that the following arose from C's disability:

124.1 The claimant's need and request to start work around midday/12pm (a);

124.2 The claimant's need and request to spread his hours over 3 days (b);

124.3 The claimant's need and request for a desk with natural light (c); and

124.4 The claimant's inability to regularly work more than 20 hours per week.

125 The matters referred to in the List of Issues as (a), (b) and (d) are not disputed by the respondent. As to the need and request for a desk with natural light, as discussed above, the respondent concedes that the claimant needed some natural light, and we have found that his SAD would have been alleviated by having a seat near a window that allowed natural light in, with an outside view. The need for a desk with natural light, and the request for this, therefore arose from his disability. The respondent contends that there was no requirement for a desk without natural light, however that is not the question for the Tribunal at this stage. The question is whether there was a need for a desk with natural light, which there was, and whether there was therefore a request for it, which there was.

126 The claimant relies on two matters as unfavourable treatment because of these matters, namely refusing the claimant's requests in respect of working arrangements, and withdrawing the offer. We find that the reason for the withdrawal of the offer was because the respondent did not want to make the reasonable adjustments requested by the claimant (having read the reasonable adjustments letter in full). We refer to the same matters as shifted the burden of proof in relation to direct discrimination, and additionally:

126.1 This is what Mr Wardlaw told the claimant in conversation on 24 October 2019;

126.2 This is what Mr Wardlaw told Ms Randles he had told the claimant in his email of 25 October 2019 at 16.32pm, referring specifically to the request for a seat near the window, the request to work over 3 days and the potential to increase hours which must relate to the limits the claimant had placed on the hours he could work;

126.3 This is what Mr Kirby told the claimant the respondent had said in their conversation on 25 October 2019 at 11.57am, namely that R could not accommodate (his adjustments) and would require the claimant to work 2 full days, and that allowing the claimant to work short days would set a precedent. We find this last detail must have come from Mr Wardlaw in the conversation Mr Kirby had with him on the evening of 24 October 2019. As confirmed in Mr Kirby's email of 28 October 2019 at 12.07pm, he had reiterated to the claimant the discussions he had had with Mr Wardlaw the previous night. We find it unlikely that a recruitment agent who was experienced in dealing with clients with disabilities would speculate that the respondent would not allow flexible hours to be worked to avoid opening the floodgates;

126.4 In respect of the window seat, as admitted by Mr Wardlaw in cross examination, his view was that it was not nice for someone who has the window seat (Ms Randles) to move out and someone to be there part time. This demonstrates his dismissive attitude to the reasonable adjustment request;

126.5 We find the letter of 7 November 2019, which suggests reasonable adjustments could have been made entirely disingenuous given what the claimant had been told previously and internal correspondence we have referred to above. We have already rejected in our conclusions on direct discrimination that the reason for withdrawal was to do with the claimant's attitude or the limit on his working hours due to him being independently wealthy.

127 We therefore conclude that the unfavourable treatment did occur, and that it was because of things arising from the claimant's disability.

128 We go on to consider whether the respondents have a legitimate aim defence. The respondent only relies on a legitimate aim in respect of (d), namely the inability to grow with the business was a potential issue and would be a legitimate aim of ensuring sufficient Financial Director input to assist the business as it grew.

129 We find that the respondent has not evidenced that it had this legitimate aim. Inconsistent evidence was given as to when there might have been a need for a full time Financial Director or even longer hours, suggesting the respondent had not even at the time of the hearing given any real thought to this. There was no requirement in the offer made of 2 days to increase over time as the business grew.

130 Even if this was a legitimate aim, there were other ways this could have dealt with more proportionately, for example allowing the claimant to train up Ms Randles as had been discussed, and using Barnes Roffe more, which is what in the end the respondent did.

<u>Indirect discrimination</u>

131 We consider first whether the PCPs proposed by the claimant were applied by the respondent.

132 We find there was a requirement imposed to work 15 hours over a 2 day working week ((a) in the List of Issues):

(i) The claimant was told working over 3 days could not be accommodated;

(ii) We have found that it was likely that Mr Wardlaw told Mr Kirby, who relayed to the claimant, that allowing flexibility would open the floodgates to other employees to request this, which suggests this is a practice the respondent applied or would apply to all staff.

133 We find that there was no PCP to sit at a desk without natural light ((b) in the List of Issues). As discussed above, while the claimant required some natural light, we do not know the extent of that. Leaving aside the issue of the view that might be afforded by a window to the outside, which is not included as part of the PCP pursued, the claimant was to be given a seat with some natural light, under a roof light. Moreover, if, as the claimant submits, there was a requirement for the claimant to sit at a desk without *enough* light, then applying **Ishola**, this the type of one-off decision which was applied specifically to the claimant and in the circumstances of availability of desks that the respondent had at that particular time. It does not in our view constitute a PCP applied or which would be applied to anyone who undertook a Financial Director role.

134 We find that there was a requirement imposed that employees in the Financial Director role would be expected to increase their hours in the future ((c) in the List of Issues). While we have not accepted that this is something the respondents in fact needed at that time, this is something which was nevertheless imposed both on the claimant and more generally in relation to the FD role, as stated in Mr Meola's letter to the claimant on 7 November 2019: *"…we would expect a Financial Director to be able to give more time to the business as it grows…"* This was therefore clearly imposed as a criterion to continue in the role, whether or not the requirement was genuine.

135 It is conceded by R that the two PCPs we have found to be applied would have put employees with the same disabilities as the claimant, and would in fact put the claimant, at a disadvantage compared to employees without his disabilities, namely his inability to start work before midday, and his inability to work long term consecutive days.

136 We go on to consider whether the respondent has a legitimate aim defence. No legitimate aim is relied upon in respect of (a). In relation to the requirement imposed that employees in this role were expected to increase their hours in the future, the respondent relies on the legitimate aim of ensuring sufficient Financial Director input. We reject this for the same reasons as in the section 15 claim.

137 This complaint therefore succeeds in relation to PCPs 10(a) and (c) in the List of Issues.

<u>Failure to make reasonable adjustments</u>

138 This claim relies on the same PCPs as for the indirect discrimination complaint. As before, we find (a) and (c) proven and (b) not proven.

139 The same disadvantages are relied upon as in the indirect discrimination complaint, and are conceded by the respondent.

140 We find in relation to knowledge that the respondent had no actual knowledge of the substantial disadvantages. The claimant did not inform the

respondent of these specifics. However, we find the respondent did have constructive knowledge. Having been told in the reasonable adjustments letter of 20 October 2019 that various adjustments were needed, it was reasonably expected that the respondents should have discussed the reasons behind those requests with the claimant. The fact that the claimant did state explicitly the disadvantage in relation to (a) in his letter of 25 October 2019 suggests he would readily have discussed this information if asked.

141 We go on to consider whether the respondent took such steps as were reasonable to avoid the disadvantages.

142 In relation to the requirement to work 15 hours over a 2 day week, we find there were reasonable steps the respondent could have taken to avoid the disadvantage, namely spreading the hours over 3 non-consecutive days as the claimant requested. This was initially agreed by the respondent when Mr Wardlaw saw the cover letter to the contractual amendments as opposed to the reasonable adjustments letter. We conclude that these adjustments could easily have been made. Furthermore the respondent conceded as much in its letter of 7 November 2019. The respondent itself does not rely on the suggestion that other employees might have also made requests if this was permitted, which it attributed to Mr Kirby speculating (which we have nevertheless rejected). In any event that would not be a good reason to deny the adjustment requested.

143 In relation to the requirement for employees in this role to increase their hours in the future, we have found that at this time there was no genuine requirement for this, even though such a requirement was imposed. In the circumstances there could be no genuine reason for enforcing this. In any event, if it was a genuine requirement, then we find for the reasons already stated in relation to the section 15 claim that the respondent could have made more use of the external accountants Barnes and Roffe or delegated to the internal team (namely Ms Randles). The respondent further cannot say that a job share would not have been reasonable as Mr Wardlaw conceded in cross examination the respondent gave no consideration to such a step.

144 We therefore find the reasonable adjustments claim is successful in relation to PCPs 14(a) and (c).

<u>Harassment</u>

145 We have already found that the respondent did refuse the claimant's requests in respect of working arrangements and withdrew the job offer.

146 We find that this was related to disability, namely that the reason for withdrawal of the offer and refusing the requests was because Mr Wardlaw had read the reasonable adjustments letter of 20 October 2019 stating the claimant was disabled and needed adjustments as a result, and did not want to engage a disabled employee, for the reasons already discussed above.

147 The claimant submits that these matters both had the effect of violating the claimant's dignity and creating a degrading and humiliating environment for him. Given what the claimant was told in the withdrawal conversation on 24 October 2019, that adjustments he had asked for could not be accommodated, and that had he told the respondent about his disabilities they would not have pursued the matter further, we find that the fact that the respondent refused to honour the adjustments they had said previously could be accommodated, also refused the other adjustments requested in his letter, withdrew the offer, and the manner in which this was communicated from which the claimant reasonably concluded that the reason for withdrawal was because he was disabled, would obviously have that effect. As the claimant submits, the only reasons given to the claimant for the withdrawal were related to a purported inability to make the adjustments requested, which was plainly related to his disability. No other reason was given. Worse than this, when the claimant wrote a further letter on 25 October 2019 clarifying his position in circumstances where Mr Wardlaw had said he would consult with HR, the respondent then attempted to justify its decision in its formal withdrawal letter of 7 November 2019 for reasons wholly different to those given on 24 October 2019. For example, the respondent reiterates that the reason for withdrawal is because of the claimant's inflexibility due to his own personal wealth, when the claimant had already made clear in both the reasonable adjustments letter of 20 October and the letter of 25 October that the reason for inflexibility in relation to hours was because of his disability. The respondent raised for the first time the issue of how the second interview was conducted, even though this had not prevented an offer being made previously.

148 We find it obvious that the respondent's conduct would reasonably have the effect of causing the claimant significant distress and humiliation, and we accept the claimant's evidence that it in fact did. The harassment claim is therefore successful on both counts.

Employment Judge Keogh

28 July 2025

JUDGMENT & REASONS SENT TO THE PARTIES ON

31 July 2025

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FOR THE TRIBUNAL OFFICE